

The Constitutionality of Dual Citizenship in Nigeria's Democratic Experiment

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Abstract

Of recent, one phenomenal issue that continue to burg the minds of political scientists, lawyers and academics in Nigeria is the constitutional legality of dual citizenship in Nigeria as regard vying for political offices. This issue has been raised in different political fora that Nigerians who have acquired the citizenship of other countries cannot context elective posts even if they desire to contribute their quota to the development of their motherland. It is on this premise that this paper examines the constitutionality of Dual Citizenship in Nigerian Democratic Experiment.

1. Introduction

Since ancient Athens,¹ theories of citizenship have rested on the idea of an autonomous polity. Common membership in a political entity forms the basis of most discussions of citizenship from Aristotle onward. In the writings of Aristotle, Bodin, Hobbes, Rousseau,² and Marshall, citizenship is conceived of in terms of political institutions which are free to act according to the will of (as per Aristotle),³ in the

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¹ For a concise historical account of the origins of the different concepts of citizenship, see Douglas Klusmeyer, *Between Consent and Descent: Conceptions of Democratic Citizenship* (Washington DC: Carnegie Endowment for International Peace, 1996).

² Rousseau wrote that a democratic state recognises political liberty i.e, the right to a share in the government of the state and in this type of state; the associates are called collectively as a *people*, severally *citizens* as sharing in the sovereign authority and *subjects* as submitting to the laws of the state. See A. Appaddoria., *The Substance of Politics* (Oxford: Oxford University Press, 1975) p.78

³ *Ibid.*, A Citizen, according to Aristotle is one who is capable of ruling as well as being ruled.

interests of (as per Rousseau)⁴ or at least with authority over (as per Bodin or Hobbes),⁵ their citizenry. Since the enlightenment period, national sovereignty has been the theoretical basis of this freedom and its subject the modern State.⁶ The term “citizenship” is confined mostly to domestic legal forum, and while citizenship describes the technical legal relationship between the individual and the polity; it is more than merely a descriptive category. It is a normative sense whereby “social membership becomes increasingly comprehensive and open ended.”⁷

Citizenship represents cohesion in a world increasingly characterized by fragmentation. Though, as a singular concept, the term “citizenship” is used to describe a number of discrete but related phenomena surrounding the relationship between the individual and the polity.⁸

The word citizen can be viewed as a person who by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections- a member of the civil state entitled to all its privileges. Citizenship on the other hand is the status of being a citizen, the quality of a person's conduct as a member of a community.⁹ In *Herriot v City of Seattle*,¹⁰ citizens are defined as members of a political community who in their associated capacity

⁴ Jean Jacques Rousseau, *The Social Contract* (Charles Frankel trans., New York : Hafner Publishing Company, 1947) p.1762.

⁵ Jean Bodin, *Six Books of The Commonwealth*, M.J. Tooley Trans., (Oxford: Basil Blackwell 1955) p.1577; Thomas Hobbes, *On The Citizen*, Richard Tuck & Michael Silverthorne trans., (Cambridge: Cambridge Univ. Press, 1998) p.1642.

⁶ Kim Rubenstein and Daniel Adler., “International Citizenship: the Future of Nationality in a Globalized World”, *Indiana Journal of Global Legal Studies*, vol. 7:519, 2000, p.520.

⁷ Bryan S. Turner, “Citizenship and Capitalism: the Debate Over Reformism” (London ; Boston : G. Allen & Unwin, 1986) p.135

⁸ Linda Bosniak, “Citizenship Denationalized”, 7 *Indiana Journal of Global Legal Studies*, 447, 506 (2000). p.455

⁹ Bryan A. Garner (ed)., *Black's Law Dictionary* (7th edn.), (Minn: West Group, 1999), p.237.

¹⁰ 81 Washington 2d48, 5000 p.2d 101. 109

have established or submitted themselves to the dominion of a government for the promotion of their general welfare and protection of their individual as well as collective rights. Citizenship has reference to the jural relationship under municipal law and they are those persons who have full political rights as distinguished from nationals who may not possess all political rights although still residing in that state.¹¹ There is no doubt that a citizen is the recipient of some basic rights provided for in the constitution and laws of a nation, in return for which certain minimum level of allegiance is expected from him towards the community for which he is a citizen.¹²

In the view of Bronwen Manby, while trying to distinguish between citizenship and nationality states that,¹³ “Citizenship” is a term commonly used in the social sciences to indicate different types of belonging to a political community and the rights that such belonging brings with it.¹⁴ Citizenship in law is defined somewhat differently, where the legal bond between the state and the individual is at the core of its meaning. This bond provides the basis for other

¹¹ S.P. Gupter, *International Law and Human Rights.*, (Haryana-India: Allahabad Law Agency, 2009) pp.249-250

¹² K. M. Mowe., *Constitutional Law in Nigeria* (Lagos: Malthouse Press Limited, 2008), p. 257.

¹³ The word “citizenship” and “nationality” are used interchangeably as in contemporary usage to refer to the legal relationship between an individual and a state, in which the state recognizes and guarantees the individual’s rights.³ Precisely which rights the state guarantees to its citizens varies by state, but the most common rights of citizens are the right to permanent residence within the state, the right to freedom of movement within the state, the right to vote and to be elected or appointed to public office, the right of access to public services, the right to diplomatic protection when outside the country, and other rights that are guaranteed to noncitizens as well as citizens. Neither “citizenship” nor “nationality” is used to indicate the ethnic origin of the individual concerned: the terms refer only to the legal bond between a person and a state.

¹⁴ Bronwen Manby., *Citizenship Law in Africa: A Comparative Studies.*, (New York: Open Society Institute, 2009), p. ix. See, for example, A. William Barbieri, *Ethics of Citizenship: Immigration and Group Rights in Germany*, 1998; Jurgen Habermas, “Citizenship and National Identity,” in: Bart van Steenbergen (ed.), *The Condition of Citizenship*, London, 1994; R. Grawert, *Staatsvolk und Staatsrechts*, 1987; and T. Alexander Aleinikoff and Douglas Klusmeier, *Citizenship Policies for an Age of Migration*, 2002

rights, including the right to diplomatic protection by the state concerned.

In the *Nottebohm case*,¹⁵ the International Court of Justice (ICJ) said citizenship is:

According to the practice of States, to arbitral and judicial decisions and to the opinion of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties.

Under International Law, each State may determine who will be considered a citizen of that State.¹⁶ Domestic laws concerning who is and who is not a citizen vary significantly; laws relating to citizenship in each of the different States are also different. As a result, many people acquire more than one nationality by fulfilling the formal requirements for citizenship in more than one domestic legal framework¹⁷ and this is the core concept of this paper.

2. Concept of Citizenship in Nigeria

Citizenship question in Nigeria could be traced to colonial era when Lagos was conquered in 1851 by the British colonial masters and it was annexed ten years later in 1861 and thereafter British rule was instituted in Lagos as a colony of Britain.¹⁸ Upon the annexation of Lagos, the inhabitants of the Lagos Colony became *de jure* British

¹⁵ *Liechtenstein v Guatemala* ICJ Reports, 1955, p.23. Liechtenstein sought a ruling that Guatemala should recognize Friedrich Nottebohm as a Liechtenstein national. See also Carol A. Batchelor, "Statelessness and the Problem of Resolving Nationality Status," *International Journal of Refugee Law*, vol. 10, No. 1/2, 1998, pp.159–160.

¹⁶ Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 12 April 1930, Art. 1, 179 L.N.T.S. 101,

¹⁷ Rubenstein and Adler., *above note 7*.

¹⁸ The British assumed a direct, full, and absolute dominion of the colony of Lagos following the Treaty of Clesion in 1861.

subjects and enjoyed the rights and privileges of British citizens.¹⁹ In 1906, the Colony of Lagos was joined with the Protectorate of Southern Nigeria to become the Colony and Protectorate of southern Nigeria²⁰ and henceforth Lagos citizens ceased to be subjects of Britain but citizens of the Protectorate of Southern Nigeria. This is where the issue of citizenship became part of Nigeria political development. The next issue to be considered is what constitution entrenched the provision or doctrine of citizenship in Nigeria?

In the first Republic under the 1960 Independence and 1963 Republican constitution three main methods of acquiring citizenship were provided for. This includes citizenship by birth, by registration and by naturalisation. The two constitutions elaborately defined how each category of citizenship could be attained or denied.²¹ Though what appeared to be the deficiency in both constitutions were resolved in the 1979 constitution and the issues of citizenship in Nigeria became firmly stamped in Nigerian Body Politic.²² But for the purpose of this paper the Nigerian Constitution 1999 will be our point of reference since it serves as the grundnorm in Nigeria as at today.

3. Citizenship under the 1999 Constitution

Chapter III of the Constitution of the Federal Republic of Nigeria, 1999²³ deals exclusively with the requirements for citizenship in

¹⁹ Constitutional Development., Available online at <http://www.onlinenigeria.com/independence/?blurb=633> visited 10 November, 2011.

²⁰ Michael Omolewa., *Certificate History of Nigeria*, (Ibadan: Longman Group Ltd, 1986), p.168.

²¹ Aaron T. Gana and Samuel G. Egwu (eds) *Federalism in Africa: The Imperative of Democratic Development*, African Centre for Democratic Governance (Eritrea: African World Press Inc, 2003). pp.15-43 Available online at http://books.google.com.ng/books?id=U185N9mh2EcC&pg=PA45&lpg=PA45&dq=when+was+Citizenship+entrenched+in+Nigerian+Constitution&source=bl&ots=ISH2bRqIOh&sig=BOhU4KF1Aw18ogdkKS_W_fODIMtY&hl=en&ei=XQe9TsCYGe7R4QTNSDBA&sa=X&oi=book_result&ct=result&resnum=8&ved=0CGgQ6AEwBw#v=onepage&q=when%20was%20Citizenship%20entrenched%20in%20Nigerian%20Constitution&f=false visited 11 November, 2011

²² *Ibid.*

²³ Herein after 1999 Constitution.

Nigeria and these spans from Sections 25 to 27 of the constitution dealing with citizenship by birth, registration and naturalisation and section 28 which deals with dual citizenship respectively.

3.1 Citizenship by Birth

Section 25 of the constitution of Nigeria deals with citizenship by birth which is the first type of citizenship recognised by the constitution of Nigeria 1999 and it provides that:²⁴

- (1) The following persons are citizens of Nigeria by birth namely
 - (a) every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria; provided that a person shall not become a citizen of Nigeria by virtue of this section if neither of his parents nor any of his grandparents was born in Nigeria,
 - (b) every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and
 - (c) every person born outside Nigeria either of whose parents is a citizen of Nigeria.
- (2) In this section, "the date of independence" means the 1st day of October 1960.

By virtue of section 25(1) (a) of the 1999 Constitution, a person either of whose parents or any of his grandparents was born in Nigeria and has assumed such a status is, a member of an indigenous community by reason of such birth may claim the status of being a citizen of Nigeria by birth.²⁵ Hence in *Shugaba v Minister of Internal*

²⁴ Section 25 (1) (a-c) and (2), 1999 Constitution.

²⁵ Section 29 1999 Constitution, provides that, "(1) Any citizen of Nigeria of full age who wishes to renounce his Nigerian citizenship shall make a declaration in the prescribed manner for the renunciation. (2) The President shall cause the declaration made under subsection (1) of this section to be registered and upon such registration, the person who made the declaration

Affairs,²⁶ the court held that the applicant could claim Nigerian citizenship through his mother whose citizenship was established as a Kanuri, which is a “community indigenous to Nigeria”, despite the fact that it was established that his father had migrated to Nigeria from a neighbouring country called Chad. Thus a person becomes a Nigerian by reason of the status of either of his parents or any of his grandparents’ status as belonging to a community indigenous to Nigeria and the said parent, parents or grandparents must have been born in Nigeria.²⁷

3.2 Citizenship by Registration

Section 26 of the 1999 Constitution deals with citizenship by registration and it provides that:²⁸

shall cease to be a citizen of Nigeria. (3) The President may withhold the registration of any declaration made under subsection (1) of this section if- (a) the declaration is made during any war in which Nigeria is physically involved; or (b) in his opinion, it is otherwise contrary to public policy. (4) For the purposes of subsection (1) of this section. (a) “full age” means the age of eighteen years and above; (b) any woman who is married shall be deemed to be of full age.”

²⁶ (1982) 3 NCLR 1.

²⁷ J.A. Yakubu, *Constitutional Law in Nigeria* (Ibadan: Demyaxs Law Books, 2003), p.334

²⁸ Subject to the provisions of section 30 of the 1999 Constitution of Nigeria, (1) The President may deprive a person, other than a person who is a citizen of Nigeria by birth or by registration, of his citizenship, if he is satisfied that such a person has, within a period of seven years after becoming naturalised, been sentenced to imprisonment for a term of not less than three years. (2) The President shall deprive a person, other than a person who is citizen of Nigeria by birth, of his citizenship, if he is satisfied from the records of proceedings of a court of law or other tribunal or after due inquiry in accordance with regulations made by him, that - (a) the person has shown himself by act or speech to be disloyal towards the Federal Republic of Nigeria; or (b) the person has, during any war in which Nigeria was engaged, unlawfully traded with the enemy or been engaged in or associated with any business that was in the opinion of the president carried on in such a manner as to assist the enemy of Nigeria in that war, or unlawfully communicated with such enemy to the detriment of or with intent to cause damage to the interest of Nigeria.

- (1) Subject to the provisions of section 28 of this Constitution, a person to whom the provisions of this section apply may be registered as a citizen of Nigeria, if the President is satisfied that
- (a) he is a person of good character;
 - (b) he has shown a clear intention of his desire to be domiciled in Nigeria; and
 - (c) he has taken the Oath of Allegiance prescribed in the Seventh Schedule to this Constitution.
- (2) the provisions of this section shall apply to
- (a) any woman who is or has been married to a citizen of Nigeria; or
 - (b) every person of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria.²⁹

The requirement that an applicant wishing to acquire the citizenship of Nigeria by registration must be a person of good character is a question of fact in each case as the requirement that the person must show a clear intention or his desire to be domicile in Nigeria, it seems that the requirement of domicile will be satisfied if the person has the *animus manendi* that is the intention to reside in Nigeria permanently and he must also establish the fact of his physical presence although it does not mean that he cannot travel.³⁰ In *Willer v Willar*,³¹ it was stated by Thompson L.J that:

Clearly there must be actual residence, and, in the absence of residence, no amount of intention will suffice. One cannot acquire a domicile of choice by wishful thinking although, where intention is absolutely clear, a minimum of residence in the ordinary case at any rate is enough.

It could be seen that by virtue of section 26(1) (c) and (2)(b) that a person born outside Nigeria after the date of independence either

²⁹ *Ibid.*, Section 26(1) (a-c) and (2) (a-b).

³⁰ Yakubu., above note 27., p.335.

³¹ (1954) SC 144 at p. 147.

of whose parents or any of whose grandparents is a citizen of Nigeria by birth. With respect to section 26(2)(b) every person of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria may apply for citizenship by registration and it is the President of Nigeria who can confer or grant the status of citizenship to a suitable applicant.³²

3.3 Citizenship by Naturalisation

The third type of citizenship that can be conferred on an applicant is by the process called naturalisation³³ and by virtue of section 27(1) of the 1999 Constitution subject to the provisions of section 28, any person who is qualified in accordance with the provisions of this section may apply to the President [of Nigeria] for the issuance of a certificate of naturalisation. (2) No person shall be qualified to apply for the grant of a certificate or naturalisation, unless he satisfies the

³² Section 31 1999 Constitution, provides that for the purposes of this Chapter IV of the constitution, a parent or grandparent of a person shall be deemed to be a citizen of Nigeria if at the time of the birth of that person such parent or grandparent would have possessed that status by birth if he had been alive on the date of independence; and in this section, "the date of independence" has the meaning assigned to it in section 25 (2) of this Constitution.

³³ In Sierra Leone, for example, citizenship by naturalisation is in theory possible after an (already-long) 15-year legal residence period; in practice it is nearly impossible to obtain. According to available records, in the whole of Sierra Leone there are roughly a hundred naturalised citizens. In Madagascar, naturalisation is very difficult to obtain for those not of ethnic Malagasy origin. Similarly, some countries add requirements based on cultural assimilation, in particular knowledge of the national language(s). Ethiopia's 1930 Nationality Law, though now repealed, was the most extreme example: it required an applicant to "know the Amharic language perfectly, speaking and writing it fluently"; today, the 2003 Proclamation on Ethiopian Nationality requires only the ability to "communicate in any one of the languages of the nations nationalities of the Country." Egypt requires an applicant for naturalisation to "be knowledgeable in Arabic." Botswana requires a knowledge of Setswana or another language spoken by a "tribal community" in Botswana; Ghana requires knowledge of an indigenous Ghanaian language; and other countries have similar requirements. In practice, these laws are in some cases used to restrict citizenship on an ethnic basis. See Bronwen Manby., *above note 17*, p.6.

President that, (a) he is a person of full age and capacity; (b) he is a person of good character; (c) he has shown a clear intention of his desire to be domiciled in Nigeria; (d) he is, in the opinion of the Governor of the State where he is or he proposes to be resident, acceptable to the local community in which he is to live permanently, and has been assimilated into the way of life of Nigerians in that part of the Federation; (e) he is a person who has made or is capable of making useful contribution to the advancement; progress and wellbeing of Nigeria; (f) he has taken the Oath of Allegiance prescribed in the Seventh Schedule to this Constitution; and (g) he has, immediately preceding the date of his application, either- (i) resided in Nigeria for a continuous period of fifteen years; or (ii) resided in Nigeria continuously for a period of twelve months, and during the period of twenty years immediately preceding that period of twelve months has resided in Nigeria for periods amounting in the aggregate to not less than fifteen years.³⁴

4. Dual Citizenship in Nigeria

According to Section 28 of the Constitution:³⁵

- (1) Subject to the other provisions of this section, a person shall forfeit forthwith his Nigerian citizenship if, not being a citizen of Nigeria by birth, he acquires or retains the citizenship or nationality of a country, other than Nigeria, of which he is not a citizen by birth.
- (2) Any registration of a person as a citizen of Nigeria or the grant of a certificate of naturalisation to a person who is a citizen of a country other than Nigeria at the time of such registration or grant shall, if he is not a citizen by

³⁴ Section 27 (1), (2) (a)-(g) 1999 Constitution.

³⁵ *Ibid.*, Section 28 (1) and (2). Note that: section 32 states that (1) The president may make regulations, not inconsistent with this Chapter, prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of Chapter IV, and for granting special immigrant status with full residential rights to non-Nigerian spouses of citizens of Nigeria who do not wish to acquire Nigerian citizenship.

birth of that other country, be conditional upon effective renunciation of the citizenship or nationality of that other country within a period of not more than five months from the date of such registration or grant.

This sub topic on dual citizenship is the epicentre of this research exercise as it is meant to examine the constitutional provision of section 28 of the 1999 Constitution and whether Nigerians of dual citizenship can or cannot contest for an elective position whenever they choose to under section 28 in relation to the provisions of section 25 (1), 26 and 27 of the 1999 constitution.³⁶

Under the 1979 Constitution,³⁷ any citizen of Nigeria who acquired the citizenship of another country automatically forfeited the citizenship of Nigeria. This was so except such a person was a citizen by birth, and renounced his other citizen by the age of twenty-one or within one year of the coming into force of the Nigerian Constitution 1979.³⁸ Under the 1999 Constitution however, a citizen by birth can acquire the citizen of another country without renouncing his Nigerian citizenship.³⁹ Also citizen by registration and naturalisation can retain their citizenship by birth and acquire Nigerian citizenship.

They must, however, within twelve months of the grant of the certificate of registration, renounce the citizenship of any other country other than that of the citizenship of their birth. This innovation, whilst taking into consideration, the reality of the situation in which many Nigerians by birth held such dual citizenship, may lead to conflict of allegiance in relation to citizens by registration, and especially those by naturalisation.⁴⁰ It is possible for a person to have dual citizenship either because of the birth of a person in Nigeria as a country of origin that is by reason of either of his parents or his parents being Nigerians and also by reason of the birth of the person outside Nigeria in

³⁶ *Ibid.*, sections 25 (1), 26, 27 and 28.

³⁷ Constitution of the Federal Republic of Nigeria 1979, Section 26.

³⁸ *Ibid.*

³⁹ Constitution of The Federal Republic of Nigeria, 1999, Section 28.

⁴⁰ Mowe., above note 12., p.263

consequence of or naturalisation which he acquires the status of citizenship of that country by birth or by reason of registration.⁴¹

Having considered the different types of citizenship provided for under the constitution of Nigeria 1999, this paper will now consider the grounds for disqualification of a political office aspirant based on dual citizenship status as provided under section 28 of the constitution.

5. Disqualifications from Holding Political Offices in Nigeria

There are several reasons for disqualifying an aspirant to a political office in Nigeria but for the purpose of this research exercise emphasis will be placed on those provisions of the 1999 Constitution that deals with disqualification as it relates to dual citizenship as provided in section 28 of the 1999 constitution.

Section 66 provides for disqualification from seeking election into the National Assembly (House of Representative and Senate);⁴² section 107 deals with similar situation as to House of Assembly; and section 137 relates to President and section 182 for Governors. The wordings of the sections are the same with variations as to offices (e.g. President, National Assembly, House of Assembly, or Governor). For this purpose, the relevant provisions as to the National Assembly are adopted as a guide, for purposes of analysing the content of this paper. Therefore, Section 66 provides that:

(1) No person shall be qualified for election to the Senate or the House of Representatives if- (a) subject to section 28 of this Constitution he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, has made a declaration of allegiance to such a country.”

When a legal provision starts with “subject” or related clauses, it means that the section is read subject (in tandem) with the section indicated. For purposes of this paper, it is clear from the above provisions that sections 66 (1); 107 (1); 137 (1); and 182 (1) as they relate to offices of National Assembly, State House of Assembly,

⁴¹ Yakubu., above note 32., p.341

⁴² Section 66 (1) 1999 Constitution. See also Sections 107 (1); 137 (1); and 182 (1) of the same 1999 Constitution.

President, and Governor respectively are subject to the provisions of section 28 of the Constitution of the Federal Republic of Nigeria 1999⁴³. As indicated, section 28 states clearly that dual citizenship is allowable where one qualifies as a Nigerian by birth as contained in section 25(1) (a-c). The only instance in which forfeiture of citizenship is allowed under the 1999 Constitution is by holders of: (i) citizenship by registration under section 26; and (ii) citizenship by naturalization, under Section 27.⁴⁴

6. Judicial Pronouncements on Dual Citizenship with Respect to Election Petitions in Nigeria

At this juncture, it is pertinent to look into disputes that have arisen as a result of a candidate seeking for political office in Nigeria having dual citizenship and how these matters were resolved through the interpretation of the constitution of Nigeria 1999 by competent courts of record and whether these decisions have put to rest the question of dual citizenship with respect to election petitions in Nigeria. Our starting point under this sub-heading is the decision of the Court of Appeal in the classical case of *Ogbeide v Osula & ors*,⁴⁵ one of the issues under contention was on whether a dual citizenship of Nigeria and another country may or may not forfeit his citizenship and eligibility to contest for election in Nigeria. The appellant (Ogbeide) and the 1st respondent (Osula) were candidates together with other contestants in the National Assembly Election into the Oredo Federal Constituency of Edo State in Nigeria which was held in April, 2003. The appellant contested on the platform of Peoples Democratic Party (PDP), while the 1st respondent contested on the platform of All Nigeria Peoples Party. At the conclusion of the election, the 1st respondent was returned by the 2nd – 4th respondents⁴⁶ as duly elected.

⁴³ See Yemi Oke, "Legal Opinion," Available online at www.utexas.edu/conferences/africa/ads/1515.html visited 10 November, 2011.

⁴⁴ 1999 Constitution.

⁴⁵ (2004) 12 NWLR (Pt. 886) pp.126-127 para.138.

⁴⁶ Olufemi Olumise Ayeni (Returning Officer, Oredo Federal Constituency of Edo State), The Electoral Officer, Oredo Local Government Area and Independent National Electoral Commission (INEC) respectively.

The appellant was aggrieved with the return of the 1st respondent and he filed an election petition in which he claimed among other things that the 1st respondent was not qualified to contest the election. One of the grounds upon which the appellant challenged the 1st respondent's qualification to contest the election were that the 1st respondent did not pay his tax for years 1999, 2000 and 2001 as and when due, that the 1st respondent presented a false sworn declaration and forged tax clearance certificate to the Independent National Electoral Commission, that the 1st respondent held dual citizenship of Nigeria and United States of America; and that he made a declaration of allegiance to the Government of United States of America before he was allowed to register a company in the United States and that there was violence on the day of the election which marred voting at some wards of the constituency.⁴⁷

The 1st respondent averred that he, his parents and grandparents are citizens of Nigeria by birth and he had not and did not intend to make any declaration renouncing his Nigerian citizenship. He further averred that in the United States of America and in the State of New York, all that foreign nationals need to incorporate a company is proof of permanent residence.

In its judgement, the election tribunal held *inter alia*, that, dual citizenship of Nigeria and of another country is a disqualifying factor against any person seeking election to the House of Representatives and that the 1st respondent's denial of the appellant's allegation of his dual citizenship of Nigeria and the United States of America, was a traverse and far below what a proper traverse should be in a normal civil case, it however held that the appellant failed to prove his allegation because his evidence of the 1st respondents alleged dual citizenship was hearsay evidence. Consequently, the election tribunal dismissed the appellant's petition. The appellant dissatisfied with the

⁴⁷ The 1st respondent, on his side filled a reply to the petition and denied presenting a forged tax clearance certificate to Independent National Electoral Commission (INEC). He averred *inter alia*, that he did not earn any taxable income during years 1999, 2000 and 2001 because he was not employed in Nigeria but paid tax for the year 2002 and was issued a tax clearance certificate.

judgement of the election tribunal appealed to the Court of Appeal.⁴⁸ The appeal was unanimously dismissed and allowing the cross appeal. It was held that by virtue of the combined provisions of sections 25, 26, 27, 28 and 66 of the 1999 Constitution a Nigerian citizen by birth does not forfeit his citizenship or become ineligible to contest election to the House of Representatives simply because he is also a citizen of another country. On the other hand, a Nigerian Citizen by either registration or naturalisation who subsequently acquires the citizenship of another country or swears allegiance to that country in addition to Nigerian citizenship automatically forfeits his Nigerian citizenship and ineligible to contest election to the House of Representatives. In the instant case, the first respondent is a Nigerian by birth in the circumstance, he cannot be disqualified from contesting election to the House of Representatives even if he acquired the citizenship of the United States of America as alleged but not proved by the appellant.

In a recent judgment of the Governorship Election Tribunal holding in Ibadan, Oyo State which decided on the Petition brought by the *Peoples Democratic Party (PDP) v Senator Abiola Ajimobi & Ors*,⁴⁹ the issue of disqualification on the grounds of dual citizenship of the elected Governor of Oyo State, Senator Abiola Ajumobi, who contested the election under the platform of the Action Congress of Nigeria (ACN) and defeated his opponent the immediate past Governor of Oyo State, Otunba Alao-Christopher Akala, was the crux of the petition.

It was stated in the petition brought before the tribunal: “that pursuant to the Governorship election held in Oyo State on the 26th of April, 2011 in which the Peoples Democratic Party (PDP) presented one Otunba Alao-Christopher Akala as its standard flag bearer to contest for the office of the Governor, Oyo State. Senator Abiola Ajimobi the 1st Respondent was officially declared winner of the

⁴⁸ Court of Appeal is the penultimate Court in Nigeria and the Final Appellate body on election to the office of the Governor, National and Assemblies Election.

⁴⁹ CTC of the Judgment of Oyo State Governorship Election Tribunal of 10 November 2011, which held in Ibadan Oyo State (Petition NO EPT/OY/GOV./1/2011) (Unreported).

contest by the Independent National Electoral Commission (INEC)⁵⁰ having scored the highest number of votes. Alao-Akala further claimed that Abiola Ajimobi was not qualified to contest for the office of the Governor of Oyo State having voluntarily acquired the citizenship of the United States of America, thereby having or maintaining dual citizenship status as at the time he contested the election.⁵¹ The Election Tribunal considered among other issues and held that, "it is necessary to consider the provisions of section 28 of the 1999 Constitution which section 182 (1) (a) is subject to."⁵²

Section 28(1) provides that, "subject to the other provisions of this section, a person shall forfeit forthwith his Nigerian citizenship if, not being a citizen of Nigeria by birth, he acquires or retains the citizenship or nationality of a country, other than Nigeria, of which he is not a citizen by birth. The above section appears to us also clear and unambiguous, now the import of Section 28 is clear to us. It without equivocation allows for dual citizenship. It is to the effect

⁵⁰ (INEC is the third Respondent in the case). The Second Respondent in this case is Action Congress of Nigeria the Political Party that fielded Senator Abiola Ajimobi for the Governorship context.

⁵¹ He stated that he will rely on the following documents: (1) Documents from the United States Embassy in Nigeria as to the Citizenship status of Abiola Ajimobi, (2) Documents from the United States of America as to the Citizenship Status of Abiola Ajimobi (3) International Passport of Abiola Ajimobi, (4) Certificate of Citizenship of Abiola Ajimobi and (5) Abiola Ajimobi's United States of America citizenship social security No. 127-52-8533 containing his date of birth and residence at 745 Red Oak Lane, University Park IL604-66-2964.

⁵² In *Yusuf v Obasanjo* (2003) 16 NWLR (Pt.847) 554. S.C. p.562 at 2. On construction of "Subject to" when used in a statutes, the words "subject to" is often used in statutes to introduce a condition, a proviso, a restriction, and a limitation. The expression subordinates this provisions of the subject section to the section referred to which is intended not to be affected by the provisions of the latter. In another case of *Odjegba v Odjegba* (2004) 2 NWLR (Pt.566) 571 on limitation of the phrase "subject to" in statutes- wherever the expression "Subject to" is used at the commencement of a statutes, it is an expression of limitation. It implies that what the section or subsection is subject to shall govern, control and prevail over what follows in that section or subsection.

that a person shall forfeit his Nigeria Citizenship if not being a citizen or nationality of a country, other than Nigeria of which he is not a citizen by birth. The key phrase is a citizen of Nigeria by birth. The implication here is that a citizen of Nigeria by birth within the purview of section 25(1) of the 1999 Constitution cannot forfeit his citizenship where he acquires or retains the citizenship of another country. Put in another way, it is only a person who acquires citizenship of Nigeria other than by birth that loses his citizenship of another country....” “In this case, it is not the case of Peoples Democratic Party (PDP) that Senator Abiola Ajimobi is not a citizen of Nigeria by birth and it is also not their case that he has renounced his citizenship to allow for a consideration of section 29 (1) of the 1999 Constitution.⁵³

The issue of Dual citizenship is one within the domestic province of each individual state and the applicable law and principle differ from state to state. The point to be underscored is that each country has the sole prerogative to determine its citizens. Indeed with the world increasingly becoming a global village, the concept of citizenship is now blurred and is constantly being defined and redefined to accommodate constantly changing peculiarities. As a result a person by birth may have nationality in two countries. For example, Great Britain has laws that a person born in Britain by Nigeria Parent is a British Citizen.

Similarly, we have Nigerians by births who have taken advantage of the issuance of American Green Card by the U.S.A to become American Citizens. Such persons clearly by the Nigerian constitution are also citizens and they do not lose their Nigerian Citizenship if they do not renounce their British or American Citizenship which was hitherto the case before coming into effect of the extant constitution. This right which must be emphasised is only for citizens of Nigeria by birth. Therefore, others who acquire Nigerian Citizenship must renounce their other citizenship within a period of 12 months from their acquisition of Nigerian Citizenship.

⁵³ Sections 25(1) and Section 29(1), 1999 Constitution.

This is made clear by the provision of section 28(2) of the Constitution.⁵⁴

Having stated the proper ambit of section 28(1), this paper takes a look at section 182(1) (a) that deals with disqualification for contest for the Office of the Governor of a state which is the bone of contention in the above case.⁵⁵

By the doctrine of *stare decisis* the tribunal in the instant case is enjoined and indeed bound to apply the reasoning in the classical case of *Ogbeide v Osula (Supra)* hitherto. The Peoples Democratic party (PDP) failed not only to establish the dual nationality of Senator Abiola Ajimobi but indeed also failed to prove that he is a person subject to sections 28-30 of the 1999 constitution which applies to a person who are Nigerians other than by birth.

6. Dual Citizenship in other African Countries

At independence, most African countries took the decision that dual citizenship should not be allowed but in recent years, many of them have changed their rules to allow dual citizenship. Among those that have changed the rules in the last decades are Angola, Burundi, Djibouti, Gabon, Gambia, Ghana, Mozambique, Rwanda, São Tomé and Príncipe, Sierra Leone, Sudan, and Uganda.⁵⁶ Others, including Egypt, Eritrea, and South Africa, allow dual citizenship but only with the official permission of the government. According to Bronwen Manby:⁵⁷

Just under half of all African countries still prohibit dual citizenship in principle though in many cases the rules are not enforced, so that a citizen can acquire another citizenship without facing adverse consequences in practice. Some African countries notably Ghana and Ethiopia have created an intermediate status for their members in diaspora, in addition to or instead of creating a right to dual nationality. Many countries have rules prohibiting those with dual

⁵⁴ *Ibid.*, section 128

⁵⁵ Section 28(1) and 183 (1) (a), 1999 Constitution.

⁵⁶ B. Manby., *above note 17.*, pp.7-8.

⁵⁷ *Ibid.*

citizenship or who are naturalised citizens rather than citizens from birth from holding senior public office on the grounds that the loyalty of such persons should not be divided. In Ghana, dual citizens may not hold a set of listed senior positions; in Senegal and several other countries, they may not be Presidents; and in Côte d'Ivoire, the constitution prohibits those who have ever held another citizenship from becoming the President of the Republic or the President or Vice President (Speaker and Deputy Speaker) of Parliament. Mozambique has a prohibition on naturalised citizens' being Deputies or members of the government or working in the diplomatic or military services.

7. Conclusion

After a careful examination of the provisions of the 1999 Constitution, there is nothing in the constitution that precludes Nigerian citizens by birth (as against those by registration and naturalization) from holding dual citizenship⁵⁸ while seeking for elective office(s) and therefore a Nigerian by birth can retain, and maintain dual citizenship for purposes of seeking any elective office(s) in Nigeria, subject to any amendment to the Constitution or any new law passed by the National Assembly to the contrary.

⁵⁸ Dual citizenship means a situation whereby a Nigerian citizen holds at the same time the citizenship of any other country in addition to Nigerian citizenship.