



REPUBLIC OF NAMIBIA

OFFICE OF THE PRIME MINISTER

THE GOVERNMENT / MINISTERIAL STATEMENT

BY

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ON

**THE RECENT JUDGEMENT OF THE SUPREME COURT OF NAMIBIA
DELIVERED ON 16 MAY 2023 REGARDING RECOGNITION OF SAME-SEX
MARRIAGES CONCLUDED OUTSIDE NAMIBIA BETWEEN FOREIGN
NATIONALS AND NAMIBIAN NATIONALS AND THEIR RECOGNITION FOR
PURPOSE OF SECTION 2(1)(c) OF THE IMMIGRATION CONTROL ACT, 7
OF 1993**

PARLIAMENT, NATIONAL ASSEMBLY, WINDHOEK

TUESDAY, 06 JUNE 2023

HON. SPEAKER, HON. MEMBERS

I stand here today to make a brief statement on this important issue that has triggered heated debate and public discussions across various segments of the Namibian society.

The Supreme Court of Namibia, in two consolidated appeals namely Seiler-Lilles and Digashu v Minister of Home Affairs under case numbers SA 6/2022, delivered its judgment on 16 May 2023 after such appeals were heard by the Full Bench of the Supreme Court on 3 March 2023.

The two appeals relates to cases in which Namibian nationals were married to foreign nationals in same-sex marriages concluded in countries which recognise same-sex marriage namely, South Africa and Germany , respectively.

The Court had to determine, amongst others, whether or not the Ministry of Home Affairs was correct in its refusal to recognise the two foreign nationals in the foretasted same-sex marriages who were married in a foreign country that has legalized such marriages, for purposes of qualifying as spouses of the Namibian same-sex partners, as contemplated under section 2(1)(c) of the Immigration Control Act, 7 of 1993.

The above provisions of the immigration act exempts spouses and dependents of Namibian nationals from necessary permits under Chapter 6 of the Immigration Control Act, for purposes of entering and residing in Namibia.

The applicants/appellants, both in the High Court and in the Supreme Court, challenged the position of the Ministry of Home Affairs and its refusal to recognise them as foreign spouses of Namibian nationals in marriages concluded in and in accordance with laws of countries that recognise same-sex marriages.

The Ministry of Home Affairs, and the Attorney-General representing the Government both in the High Court and Supreme Court, opposed the appellants' cases , principally on the basis that with due regard to the Namibian common law and Article 14(1) and (3) of the Constitution, and a previous Supreme Court judgment (what is known as the Frank case), same-sex marriages are not recognized in Namibia, and , therefore , the two cannot qualify as spouses in terms of section 2(1)(c) of the Immigration Control Act, and thus , they were under obligation to apply for necessary permits to enter and reside in Namibia.

HON. SPEAKER AND HON. MEMBERS

The Supreme Court majority judgment ruled and found that the Ministry of Home Affairs' approach to exclude foreign spouses of Namibian nationals in same-sex marriages concluded in countries which recognise same-sex marriage from the beneficial exemption provided for under section 2(1)(c) of the Immigration Control Act, infringed the interrelated rights to dignity of the appellants (in terms of Article 8) and equality (in terms of Article 10) under the Namibian Constitution.

The validity of the marriage was determined using the common law principle known as *lex loci celebrations*. The above principle means that the validity of the marriage is determined in accordance with the statutory requirements of the country in which the marriage was concluded.

The court further overruled it's earlier decision in the Frank case which was the authority on the issue of the same sex marriages (which decided that sexual orientation was not one of the ground envisaged under Article 10 and Article 14 of the Namibian Constitution).

HON SPEAKER, HON. MEMBERS

The Supreme Court therefore found and held that both Mr Digashu and Ms Seiler-Lilles are to be regarded as spouses for the purposes of section 2(1)(c) of the Act , since they were in marriages that were concluded in compliance with the laws of South Africa and Germany respectively where they were conducted.

The Supreme Court, in its judgment, however, pointed out that since marriages are manifold and multi-faceted and implicate a wide range of Namibian law, **its judgment only relates to the recognition of foreign spouses in same-sex marriages, concluded abroad in compliance with laws of those countries, for purposes of section 2(1) (c) of the Immigration Control Act.**

HON SPEAKER, HON MEMBERS

Over the last few days, in the aftermath of the Supreme Court judgment, there has been strong and at times emotive reaction and responses to the judgment. Various non-government organizations, spiritual leaders, and church organisations, as well as traditional leaders, have petitioned the Government and Parliament with complaints and submissions expressing their unhappiness over the judgment.

HON. SPEAKER, HON. MEMBERS

Given the importance of this matter, Government will bring a bill to this house **to seek that parliament modifies, by an Act of Parliament, in terms of article 66 of the Constitution, the relevant common law principle in order that same sex marriages even where solemnized in Countries that permit such marriages cannot be recognized in Namibia where the right to marriage is, under our laws, guaranteed between men and women of mature age.**

I thank you Hon. Speaker.