



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 1737 of 2002

GERARD KILLEEN PLAINTIFF

VERSUS

**INTERNATIONAL CENTRE OF INSECT PHYSIOLOGY AND
ECOLOGY..... DEFENDANT**

RULING

The Defendant herein has moved the Court by way of a Chamber Summons filed on 28th October 2004 brought under Order VI Rule 13(1)(b) and (d) of the Civil Procedure Rules S.63 (e) and 3A of the Civil Procedure Act. The orders sought are for the striking out of the Plaintiff on the ground that being the holder of diplomatic immunity under Sections 9, 11 and 16 and part I of the 4th Schedule to the Privileges and Diplomatic Immunities Act (Cap 179) the Defendant is immune from legal process and for damages for breach of contract and attendant special damages as contained in the Plaintiff. The applicant therefore wishes that the suit be dismissed for being scandalous, frivolous and an abuse of the process of the Court.

The applicant has cited 8 authorities in support of the application among them the Privileges and Immunities Act, Cap 179 of the Laws of Kenya in particular Legal Notice No. 13 of 1989 which conferred diplomatic immunity upon the Defendant. The said Legal Notice under order 3(b) confers upon the defendant

“the privileges and immunities specified in

paragraphs 1,4 and 5 of Part I of the Fourth Schedule to the Act.”

Paragraph 1 of the said part of the Schedule specifically confers “Immunity from suit and legal process”.

The Respondents on the other hand oppose this application on the strength of Grounds of Opposition dated 21st **December 2004 as follows:**

- 1. The diplomatic immunity conferred on the Defendant does not absolve it from contractual obligations.**
- 2. The Defendant does not enjoy absolute immunity from legal process.**
- 3. The Court has jurisdiction to entertain the suit.**

The Respondents relied in the case of **TONONOKA STEELS LTD –vs- THE EAST AFRICAN AND SOUTHERN AFRICA TRADE AND DEVELOPMENT BANK** Civ. Appeal No. 255 of 1998

which I will consider and distinguish later in this Ruling.

The reasons for conferment of diplomatic immunity have been discussed in the various authorities submitted herein. I do find paragraph 1595 of Halsbury's Laws of England Vol.4 useful in this respect. It reads as follows in reference to the United Nations Organization:

“...The Charter of the United Nations stipulates that the organization is to enjoy in the territory of each member state such privileges and immunities as are necessary for the fulfillment of its purposes and that representatives of member states and officials of the organization are similarly to enjoy such immunities as are necessary for the independent exercise of their functions.”

In the English Case of THAI EUROPE TAPIOCA SERVICE LTD –vs- GOVERNMENT OF PAKISTAN MINISTRY OF FOOD AND AGRICULTURE SUPPLIES IMPORTS AND SHIPPING WING [1975] 3 All E.R. 961, cited in the local case of MINISTRY OF DEFENCE OF THE GOVERNMENT OF THE UNITED KINGDOM –vs- NDEGWA Civ. Appeal No. 31 of 1982 Lord Denning had this to say at Page 965

“The general principle is undoubtedly that, except by consent, the Courts of this Country will not issue process so as to entertain a claim against a foreign sovereign for debt or damages. The reason is that if the Courts here once entertained the claim, and in consequence gave judgment against the foreign sovereign they could be called to enforce it by execution against its property here. Such execution might imperil our relations with that country and lead to repercussions impossible to foresee.”

I do not foresee, in the presence of the Immunity enjoyed by the Defendant herein, a situation where the Defendant, having obtained a judgment in this suit would then be allowed to execute against I.C.I.P.E. property in Kenya. The implications for such a move are obvious. Counsel for the Respondent submitted that though the Immunity itself is not denied, it is not absolute as to absolve the holder from its contractual obligations. It is at this point I would wish to distinguish the case of TONONOKA STEELS LTD –vs- THE EAST AND SOUTHERN AFRICA TRADE AND DEVELOPMENT BANK in that the refusal by the Court to uphold immunity as applicable in that case was that the commercial activity from which the suit arose went outside the purposes for which the bank had been granted immunity. In the present suit, the damages claimed are based on a contract of employment between the Plaintiff and the Defendant. Under paragraph 3 of the Plaintiff states that he was

“an employee of the Defendant under a contract of service that provided that the Plaintiff was to be employed for 2 years as a visiting Scientist...”

Going by the reasons for which diplomatic immunity is conferred upon an organization I find that the contract between the Plaintiff and the Defendant fell squarely within the operations of the Defendant in Kenya in respect of which diplomatic immunity and privileges “as one necessary for the fulfillment of the Defendants purposes” may be invoked. Quite obviously, to lift the view of diplomatic immunity in this case would set a dangerous precedent and would adversely affect the hiring and control of staff employed

to carry out the organizations purposes. I must hold therefore that this suit cannot be entertained in view of the Defendant's immunity from legal process. The Defendant in paragraph 9 of its Supporting Affidavit has stated that

“...this matter may be mediated upon by the Ministry of Foreign Affairs and International Cooperation if need be.”

The Plaintiff may be wiser to pursue that course.

I allow the application, strike out the Plaint and dismiss the suit with costs to the Defendant.

Dated, Signed and Delivered at Nairobi this 27th day of May, 2005

M.G. Mugo

Judge

In the presence of:

Mr. Njagi present for the Plaintiff

N/A for the Defendant