

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 028 OF 2022
(Arising from Labour Dispute No. KCCA/RUB/LC/141/2020)

SHEIK KATUNGULU TWAHA LUYIMBAZI ::::::::::::::::::::CLAIMANT

VERSUS

WORLD ISLAMIC CALL SOCIETY::::::::::::::::::RESPONDENT

BEFORE:

1. THE HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

1. Ms. ADRINE NAMARA,
2. Ms. SUZAN NABIRYE &
3. Mr. MICHAEL MATOVU

RULING

1.0 Introduction

When this matter came up for a scheduling conference on 15th December 2022, Mr. Ahmed Kassim, appearing for the Respondent, raised a preliminary objection to the claimant's reference to this Court on the ground that the Respondent enjoys diplomatic immunity against legal process in Uganda. Accordingly, the parties were invited to make written submissions on the point.

2.0. Submissions

2.1. Mr. Ahmed Kassim contended that the Respondent is clothed with diplomatic immunity under the Diplomatic Privileges Act, Cap 201 (from now on the "Act") and the Diplomatic Privileges (Extension to Prescribed Organizations) (Amendment) Regulations, 2014 S.I No. 54 of 2019. Further, Articles 10 and 13 of the Host Country Agreement¹ between the Government of Uganda and the Respondent granted the Respondent immunity from legal

¹ The Agreement is dated the 18th of April 2019.

process. Mr. Ahmed Kassim submitted that the Respondent is a prescribed organization under S.I 54 of 2019 and was gazetted as such in the Uganda Gazette of 9th August 2019. Counsel also cited Article 22(3) of the Schedule to the Act and Rule 2 of the Regulations in support of the proposition that immunity and privileges conferred on diplomatic agents extend to organizations, representatives, officials, and employees. He submitted that the principle of immunity from the receiving state's criminal, civil and administrative jurisdiction as provided under the Vienna Convention had been domesticated in Uganda. He cited the cases of **Blueline Enterprises vs. EADB C.A 110 of 2009** quoted in **Clet Wandui Masiga vs. Association for Strengthening Agriculture in Eastern and Central Africa (ASARECA) H.C.C.S Nos. 266,267, and 268 of 2016** to buttress the objection. Counsel prayed that the reference be dismissed with costs.

2.2. As at the quorum date (13.01.2023) the Claimant's Counsel had not filed any submissions. This Court has, therefore, not benefited from the Claimant's views on the point.

3.0. Analysis

3.1. We generally agree with the Respondent's submission that a court may try issues of law under Order 15 Rule 2 of the Civil Procedure Rules S.1 71-1. The issue of immunity is a pure point of law² as the Respondent relies on an Act of Parliament, subsidiary legislation made thereunder, and customary international law. It is also without doubt that a court can only proceed to hear a matter when it is clothed with jurisdiction. The defence of immunity goes to the root of the jurisdiction of the Court. It is an absolute defence because it would collapse the claim if it were to succeed.

3.2. The general principles of customary international law, as stipulated under the Vienna Convention 1961, have been domesticated under Schedule 1 of the Diplomatic Privileges Act, Cap 201. Under Section 1 of the Act, several Articles of the Convention have the force of law in the Republic of Uganda. One such article is Article 31(1) of the Convention, under which a diplomatic agent enjoys immunity from the civil and administrative jurisdiction of the receiving state except for actions relating to private immovable property or an action relating to succession in which the diplomatic agent is involved as executor or administrator.

² Per Madrama J(As he then was) in Masiga vs ASARECA(Op cit)

- 3.3. In the matter before us, the Claimant seeks a declaration that he was unlawfully, wrongfully and summarily dismissed/terminated from the employment of the Respondent Organization. In addition, he seeks payment of salary arrears, salary in lieu of notice, payment for untaken leave, severance pay, unremitted Social Security benefits, a certificate of service, general damages, interest, and costs of the suit. In the Claimant's case, he joined the Respondent Organization in the early 1980s and was terminated on 20th April 2020. He, therefore, seeks to enforce an action for infringement of his employment rights against the Respondent Organization in this Court.
- 3.4. The Respondent opposes the claim and now relies on the plea of diplomatic immunity. In support of this proposition, Mr. Ahmed Kassim referred this Court to the Diplomatic Privileges (Extension to Prescribed Organizations) (Amendment) Regulations S.I 54 of 2019, which lists the Respondent as a Prescribed Organization within the meaning of the Schedule to Diplomatic Privileges (Extension to Prescribed Organizations) Regulations S.I 201-1. In addition, a copy of the **Uganda Gazette Vol CXII No.38 dated 9th August 2019** was placed on the Court record together with a copy of the host agreement made between the Respondent and the Government of Uganda.
- 3.5. In the Masiga Case (*op cit*), Madrama J (*as he then was*) provides instrumental guidance in determining whether a defendant enjoys immunity from legal process. In that case, the plaintiff, an erstwhile employee of ASARECA, filed a suit seeking damages for intellectual property infringements for works he had made when he was an employee of ASARECA. ASARECA, in its defence, asserted diplomatic immunity. His Lordship examined the host agreement and traced the plea of immunity to Rule 2(b) of the Diplomatic Privileges (Extension to Prescribed Organizations) Regulations S.I 201-1, which was made under Section 2 of the Diplomatic Privileges Act, 1965. His Lordship found Articles 31 and 32 of the Vienna Convention to have been domesticated in the Diplomatic Privileges Act. The Court also established the exceptions to immunity as spelled out in paragraph 3.2 above. The Court added that actions relating to professional or commercial activities exercised by a diplomatic agent outside his official functions were part of the exception. In Lordship's view, it was also imperative to consider the instrument creating the organization.
- 3.6. The rigour suggested by the approach of His Lordship in the Masiga case is justified for two reasons, in our view. First, is the matter of jurisdiction. In the case of **Ozoo Brothers vs. Ayikoru Milka**, the Honourable Mr. Justice

Mubiru posited that a court's jurisdiction is not to be ousted easily or fleetingly. On the contrary, the jurisdiction of courts of law must be guarded jealously and should not be dispensed with too lightly.³ This dictum supports the view that it would be necessary to carefully examine all the circumstances where a plea of diplomatic immunity is raised. Secondly, the need to balance between the rights of the employee in a diplomatic employment contract as against the doctrine of diplomatic immunity. Some schools of thought hold that diplomatic immunity is not absolute. Accordingly, we are persuaded that the approach in the Masiga case is sufficiently exhaustive, and we adopt it in the instant case.

- 3.6.1 We have been referred to the Diplomatic Privileges (Extension to Prescribed Organizations) (Amendment) Regulations S.I 54 of 2019, which lists the Respondent as a Prescribed Organization within the meaning of the Schedule to Diplomatic Privileges (Extension to Prescribed Organizations) Regulations S.I 201-1. S.I 54 of 2019 provides for the amendment of S.I 201-1 by inserting immediately after item 29 of the Schedule to the Regulations "30. The World Islamic Call Society. The said society is represented as the Respondent in the matter herein. S.I 54 of 2019 was gazetted in the Uganda Gazette Vol. CXII No. 38 of 9th August 2019.
- 3.6.2 We find that S.I 54 of 2019 is under Section 2 of the Diplomatic Privileges Act Cap 201. The title of S.I 54 of 2019 bears a direct reference to the said provision.
- 3.6.3 Article 5 of the Host Agreement establishes the objectives of the Respondent. These include humanitarian relief projects in Uganda, implementation of socio-economic development projects in Uganda, and any such private and public sector projects as it deems fit.
- 3.6.4 Under Article 20 of the Host Agreement, officials of the Respondent and their immediate dependents enjoy immunity from legal process in respect of words spoken or written and in all acts performed by them in their official capacity. As a basis for consideration of the Host Agreement, in the Masiga case, Justice Madrama cited a passage from Malcolm N. Shaw treatise "**International Law**"⁴ on page 927, where the author posited that as far as other international organizations are concerned, the relevant agreements have to be consulted, since there are no general rules but rather particular treaties."

³ Per Mulenga JSC in *Habre International Co Ltd vs Kassam and Others* [1999] 1 EA 125 cited with approval in the *Ozuo Brothers vs Ayikoru Milka* H.C.C.R No. 002 of 2016)

⁴ 4th Edition, Cambridge International Press.

3.6.5 Applying the above to the facts of the case before us, the Claimant was employed as a Muslim Preacher of the Respondent. This falls within the humanitarian and socio-economic objectives of the Respondent. The Director of the Respondent terminated him. It would follow that the Director and the Organization enjoys immunity from legal process in respect of the words written in the letter of termination performed by the Director in his official capacity. The principle that immunity from legal process of the diplomatic agent extends to the organization is contained in Rule 2 of the Diplomatic Privileges (Extension to Prescribed Organizations) Regulations S.I 201-1, which provides that the immunities and privileges conferred on a diplomatic agent under the Act extend to the organizations prescribed in the schedule to the regulations. The S.I 54 of 2019 listed the Respondent as a prescribed organization. Therefore, we are of the firm conviction that the Respondent enjoys immunity from legal process in Uganda except for the statutory exceptions. In other words, it is this Court's finding that the Respondent would be immune from legal process regarding the employment dispute. And should we have found otherwise, there are practical difficulties involved. First, under Article 31(2) of the Act, a diplomatic agent is not obliged to give evidence in a Court of law. Secondly, the income property and assets of the Respondent are immune from legal process and inviolable⁵, and finally, any immunity must be expressly waived under Article 22 of the Host Agreement. A court finding rendering the Respondent subject to the jurisdiction of this Court would have effects on the principle of reciprocity and Uganda's international relations and obligations.

3.6.7 And we are fortified in this position by a very instructive decision of the Employment and Labour Relations Court of Kenya. In **Agnes Akinyi Ameyo vs. the Austrian Embassy, Nairobi Commercial Section, and two others**,⁶ the Honourable Lady Justice Maureen Onyango found that the Court did not have jurisdiction to entertain an employment dispute on the grounds of diplomatic immunity of the Respondents. In that case, the Learned Judge examined the application of Article 31 of the Vienna Convention 1961 as domesticated under Section 4 of the Privileges and Immunities Act. The effect and wording are similar to provisions in the Diplomatic Privileges Act, Cap 201.

3.6.8 Before taking leave of this matter, there are provisions within the Host Agreement that provide for dispute resolution where the Respondent is concerned. The doctrine of absolute diplomatic immunity is not for personal

⁵ Mr. Kassim referred us to Articles 11 and 13 of the Host Agreement.

⁶ Cause E190 of 2021 [2021]eKLR

inviolability. It is essential to aid in the efficient performance of the functions of the diplomatic agent. Diplomatic agents would not be expected to abuse the tenets of immunity to the detriment of those that provide services to them.⁷ For this reason, Article 23 of the Host Agreement requires the Respondent to make provisions for appropriate modes of settlement of disputes arising out of contracts and other disputes of a private law character to which the Respondent is a party. It is noted that the termination letter dated 20th April 2020 invited the Claimant to communicate with the Respondent's Finance Officer to settle the financial dues. An appropriate mode of settlement would be helpful.

4.0. Decision of the Court

It is our conclusion, therefore, that the preliminary objection to the diplomatic immunity of the Respondent from legal process is meritorious. It is, accordingly and in all circumstances, sustained. Labour Dispute Reference No. 028 of 2022 is dismissed with no order as to costs.

Signed, delivered and dated at Kampala this 20th day of January 2023

SIGNED BY:

1. ANTHONY WABWIRE MUSANA, JUDGE

PANELISTS

1. MS. ADRINE NAMARA

2. MS. SUZAN NABIRYE

3. MR. MICHAEL MATOVU

Delivered in open Court in the presence of:

1. **Mr. Jonathan Elotu for the Claimant:**

Court Clerk. Mr. Samuel Mukiza.

⁷ Article 28(4) of the Host Agreement enjoins all persons to whom privileges and immunities accrue to observe the laws and regulations in force in the Republic of Uganda.