



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE REFERENCE NO. 116 OF 2023
(Arising from Labour Dispute No. KCCA/NAK/LC/540/2023)

DAVID DULI :::CLAIMANT

VERSUS

WORLDWIDE FUND FOR NATURE INTERNATIONAL :::::::::::::::::::::::::::::::::::::::RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana,

Panelists: Hon. Adrine Namara, Hon. Suzan Nabirye & Hon. Michael Matovu.

Representation:

1. *Mr. Stanley Omony of M/S Stanley Omony & Co Advocates, for the Claimant.*
2. *Mr. Rodney Nganwa of M/S S & L Advocates for the Respondent.*

RULING

Introduction

- [1] This ruling concerns a preliminary objection to the Claimant's reference to this Court. The objection asks whether the Respondent, a prescribed Organisation that employed the Claimant and dismissed him, enjoys diplomatic immunity against the legal process in Uganda. In other words, can the Respondent be subjected to the jurisdiction of the Industrial Court?

Background

- [2] The Claimant was employed as Country Director of the Respondent, an international Organisation designated as a prescribed Organisation under the Diplomatic Privileges (Extension to Prescribed Organisations)(Amendment) (No.3) Regulations, Statutory Instrument No. 103 of 2014(**the Regulations**). On the 26th of July 2022, he was suspended for inappropriate use of a company credit card for personal purposes without authorisation and irresponsible and inappropriate home office purchase at his residence during the COVID-19 Lockdown. On the 26th of August, 2022, a disciplinary hearing was conducted. On the 16th of September 2022, the Claimant was summarily dismissed for gross misconduct. US\$ 10,970 was deducted from his terminal benefits for the home office purchase. The Claimant appealed against his dismissal, and the appeal panel upheld his dismissal. Aggrieved, he complained to the Labour Officer at Nakawa. The Respondent

invoked diplomatic immunity. When the matter was referred to this Court on the 20th of March 2023, we invited the parties to make written submissions, which we have summarised and considered below, on the preliminary point of law on invoking diplomatic immunity. We are grateful to Counsel for the helpful submissions.

Respondent's submissions;

- [3] Mr. Nganwa submitted that the Respondent enjoyed diplomatic immunity from the civil and administrative jurisdiction of all Courts in Uganda under the Regulations made under the Diplomatic Privileges Act Cap. 185(**the Act**). The Act gives effect and domesticates the Vienna Convention on Diplomatic Relations, 1961(**the Convention**). It was argued that under the Convention, Act and Regulations, a diplomatic agent and prescribed Organisation enjoys immunity from the civil and administrative jurisdiction of the receiving state. We were referred to *Thai-Europe Tapioca Service Limited v Government of Pakistan, Ministry of Food and Agriculture, Directorate of Agricultural Supplies, Imports and Shipping Wing*¹ for the rationale that execution against foreign sovereigns might imperil multinational relations. We were also referred to *Democratic Governance Facility v Uganda Youth Network and 4 Others*² for jurisdictional immunity for intergovernmental organisations and their staff discharging their official duties. It was argued that the Claimant's dismissal was done during the Respondent's official functions and, therefore, was outside this Court's jurisdiction. Counsel cited a passage from *Wandui v Association for Strengthening Agriculture in Eastern and Central Africa (ASARECA)*³ which holds that what is required to be shown is that the acts done by the defendant were outside its functions for immunity not to apply. We were asked to dismiss the claim on the strength of these authorities.

Claimant's submissions

- [4] It was submitted that immunity conferred by the Regulations did not extend to the Respondent as an entity. Citing *Wandui*, Mr. Omony submitted that a review of the host agreement should be conducted to understand the immunity's scope and extent. Counsel referred to Article 1 clause (m) and (q) under Article 4 of the Host Agreement for the juridical personality of the Respondent. Counsel also visited Articles 19(1)(a)-(k), 21(1) and 22(3) of the Host Agreement before concluding that the immunities were conferred on the Officials of and not the Respondent as an Organisation. Counsel argued that an employment dispute did not fit within diplomatic privilege by any stretch of the imagination. It was contended that immunities are not absolute. Additionally, it was suggested that the Respondent was unilaterally expanding the scope of the privileges beyond what the Host Agreement provided for. We were asked to reject the Respondent's argument and overrule the objection as it was not above municipal law.

Rejoinder

- [5] Mr. Nganwa countered that those immunities in the host agreement⁴ are to be read as supplementary to the privileges conferred by the Regulations. Counsel argued that by the

¹ [1975] 3 All ER 961 at 965

² [2021] UGCommC 182

³ [2016] UGCommC 210

⁴ Counsel made reference to Article 22(3) of the Host Agreement

time of execution of the host agreement, the Respondent had immunity conferred by Section 31(1) of the Act. Counsel contended that Article 22(2) was not a waiver of immunity. He referred us to *Wandui* for the argument that the immunities of officials extended to the Organisation. It was suggested that the Claimant had misconstrued Article 4(2) of the Host Agreement. It was also suggested, on the authority of *DGF*, that waiver of immunity also occurs if the Organisation initiates litigation, which the Respondent did not do. Counsel reiterated the prayer to dismiss the claim.

Determination

- [6] The law relating to diplomatic and consular relations and immunities, constituting the general principles of customary international law as stipulated under the Vienna Convention 1961, are domesticated under Schedule 1 of the Diplomatic Privileges Act, Cap 185. In Section 1 of the Act, several articles of the Convention have the force of law in the Republic of Uganda. Article 31(1) of the Convention cited by Counsel for the Respondent confers on a diplomatic agent immunity from the civil and administrative jurisdiction of the receiving state except for action relating to private immovable property or an action relating to succession in which the diplomatic agent is involved as executor or administrator. Counsel for the Claimant argues that such immunities do not extend to the Respondent as an Organisation but are conferred only on its officials. As such, Mr. Ssebaduka contends that the immunities do not extend to employment disputes. Mr. Nganwa disagrees.
- [7] This Court has already pronounced itself on this question. In *Nabulere v International Organization for Migration*⁵(the IOM), we adopted the rigorous approach preferred by Madrama J. (as he then was) in *Wandui* to establish whether an organisation enjoyed diplomatic immunity. His Lordship insisted on generally (i) establishing that the Respondent was a prescribed Organisation and (ii) reviewing the host agreement to confirm that the immunity was a function of the organisation's constituent document. Applying the *Wandui* approach in *Nabulere*, we found that Article 3 of the IOM host agreement extended the same privileges and immunities as those granted to specialised agencies of the United Nations by the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947.
- [8] In the present matter, under Rule 2 of the Diplomatic Privileges (Extension to Prescribed Organisations) Regulations S.I 201-1, the immunities and privileges conferred on a diplomatic agent under the Act extend to the organisations prescribed in the schedule to the Regulations. The Diplomatic Privileges(Extension to Prescribed Organisations) (Amendment) (No.3) Regulations, 2014, which amend S.1 201-1 by inserting after item 23 two items the following;
- “24. The Inter-University Council for East Africa
25. The World Wide Fund for Nature”
- [9] Therefore, by including the Respondent in the prescribed Organisation list, the Respondent is conferred the immunities under the Vienna Convention embedded in Section 2 of the Act.

⁵ [2023] UGIC 65

This satisfies the first test in *Wandui*. To this extent, we cannot agree with Counsel for the Claimant that diplomatic immunity is conferred only on the officials of a diplomatic agent. We agree with Counsel for the Respondent that diplomatic immunities extend to the prescribed organisations, and the Respondent is one such Organisation as listed in Statutory Instrument No. 201-1. Therefore, in answer to Mr. Omony's argument on extension of immunity to an organisation, we would find that the Respondent enjoys diplomatic immunity and uphold the objection.

- [10] The other aspect of the *Wandui* threshold concerns the host agreement. What are the provisions of the host agreement? The agreement was common to both parties who presented it in their submissions. Turning to Article 19(1)(a) of the Host Agreement, it is provided that officials of the Respondent shall enjoy privileges and immunities in respect of words spoken and written and all acts performed by them in their official capacity. Article 21(2) of the Agreement provides for waiver of immunity by the Country Director. The Claimant's employment and dismissal is an official act to further its objectives and activities. The letter of termination dated 6th September 2022 was written word in the official capacity of the Respondent. It follows that *Nabulere* and *Sheikh Katungulu v World Islamic Call Society*⁶ directly applicable because in both those cases, we found that acts of terminating employees were done officially. For emphasis, *Katungulu*, the Claimant, was employed as a Muslim Preacher of the Respondent, which fell within the Respondent's humanitarian and socio-economic objectives. The Director of the Respondent terminated him. Under Article 20 of the Host Agreement, officials of the WICS and their immediate dependents enjoyed immunity from legal process regarding words spoken or written and in all acts they performed in their official capacity. We found that the Director and the Organisation enjoyed immunity from the legal process concerning the words written in the letter of termination performed by the Director in his official capacity. After reviewing its host agreement, we confirmed this position in extending the diplomatic immunity of a diplomatic agent from the legal process to an organisation. We cited the passage from Malcolm N. Shaw's treatise "International Law."⁷ The author argues that as far as other international organisations are concerned, the relevant agreements must be consulted since there are no general rules but rather particular treaties. While Mr. Ssebadduka also referred to this critical passage in his submissions, in our view, Counsel arrived at the polar opposite of this Court's conclusion in *Nabulere* and *Katungulu*. In our view, applying the dicta of these two cases to the matter now before us, the Respondent would enjoy diplomatic immunity regarding the Claimant's termination under Article 19 of the Host Agreement, and we so hold.

- [11] The other aspect of Mr. Sebadduka's argument is that the diplomatic immunity of prescribed organisations does not extend to employment disputes. That argument would fail given this Court's decisions in *Nabulere* and *Katungulu*. Further, in *Agnes Akinyi Ameyo v the Austrian Embassy, Nairobi Commercial Section, and two others*,⁸ where the Employment and Labour Relations Court of Kenya examined the application of Article 31 of the Vienna Convention 1961 as domesticated under Section 4 of the Privileges and Immunities Act⁹ and found that it did not have jurisdiction to entertain an employment dispute on the grounds of diplomatic

⁶ [2023] UGIC 99

⁷ 4th Edition, Cambridge International Press page 927

⁸ Cause E190 of 2021 [2021]eKLR

⁹ Cap. 179 Laws of Kenya

immunity of the Respondents.¹⁰ The Kenyan law is worded similarly to the Diplomatic Privileges Act Cap. 185.

[12] The English Courts have explored this question more definitively. In *Al-Malki and Another V Reyes and Another*¹¹ Lord Sumption thought employing a domestic servant to provide purely personal services was not a professional or commercial activity exercised by the diplomatic agent to fall within the only relevant exception to the immunities. Similarly, in *Basfar v Wong*¹² the Supreme Court of England held that applying the general rule of interpretation set out in art 31(1) of the Vienna Convention on the Law of Treaties 1969, employing a domestic worker did not, itself, constitute the exercise of a 'commercial activity' by a diplomatic agent, within the meaning of the exception, but that it was necessary to examine the context and, importantly, the purpose of the relevant provision. Both cases involved the mistreatment of domestic workers by diplomatic agents and elements of human trafficking but emphasised the principles of immunity. The cases confirm that Mr. Ssebaduka's suggestion that employment disputes are exempted from diplomatic immunity is inaccurate.

[13] There may be a misclassification of diplomatic and sovereign immunity in that where International Organisations have immunity for legal processes; they are not sovereign. Laws J. observes in *Propend Finance Pty Ltd v Sing*¹³ the law relating to diplomatic immunity is not free-standing from the law of sovereign or state immunity but is an aspect of it. The exceptions to immunity include under Article 31(1)(c) of the Convention, where an action related to a professional or commercial activity exercised by the diplomatic agent is outside his official functions. In these circumstances, the courts have suggested that the agent is not immune. The activities are like carrying on a business. The classical exception to these immunities, in the words of Lord Denning in *Trendtex Trading Corporation Ltd v Central Bank of Nigeria*¹⁴ where the Master of The Rolls relied on *Thai-Europe Tapioca Service Limited*, opining that

A foreign sovereign has no immunity when it enters into a commercial transaction with a trader here and a dispute arises which is properly within the territorial jurisdiction of our courts ... if a government department goes into the marketplaces of the world and buys boots or cement – as a commercial transaction – that government department should be subject to all the rules of the marketplace.

[14] The authorities of decided cases do not appear to have placed employment disputes within commercial transactions or trading activity to attract the classical exception espoused by Lord Denning in *Trendtex* above. Employment in this context seems to remain within the functional context of the diplomatic agent or organisation's purpose and is therefore protected. Put otherwise, an employee's engagement by a diplomatic agent is not cement trading. Consequently, we do not accept Mr. Ssebaduka's argument that the doctrine of

¹⁰ The wording is like provisions in the Diplomatic Privileges Act, Cap 185.

¹¹ [2018] 1 All ER 629

¹² [2022] UKSC 20

¹³ (1997) 1 ILR 611, 633-634

¹⁴ [1977] 1 All ER 881

diplomatic immunity is 'stretched by any imagination' in the present case. On the contrary, the law is more exact. The 2017 United Kingdom Supreme Court decision in *Al-Malki* reinforces this stance. While recognising that immunities may put severe practical obstacles in the way of a claimant's pursuit of justice for what may be truly wicked conduct, Lord Sumption emphasised that that cannot permit a Judge to whittle away an immunity sanctioned by a fundamental principle of national and international law.

[15] In other words, there must be some consistency in interpreting the Convention and the immunities. Lord Sumption¹⁵ surmises that a domestic court should not depart from the Convention's natural meaning unless the departure plainly reflects the intentions of the other participating states so that it can be assumed to be equally acceptable to them. We have yet to be persuaded to depart from the prevailing interpretation.

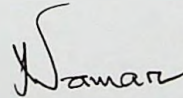
[16] Having considered the facts and applying them to the law expressed above, we find that as a prescribed organisation, the Respondent would enjoy diplomatic immunity, and its officials enjoy diplomatic immunity from the jurisdictional process of this Court for the acts complained of in the instant case. Accordingly, Labour Dispute Reference No. 116 of 2023 is dismissed with no order as to costs.

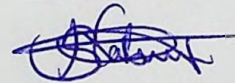
Dated and delivered in open Court at Kampala this 12th day of July, 2024

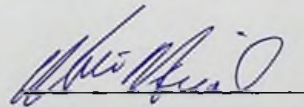

Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.







¹⁵ *Al-Malki op.cit*

12.07.2024

9:38 a.m.

Appearances:

1. **For the Claimant:** Mr. John Paul Rubagumya holding brief for Mr. Stanley Omony.
2. **For the Respondent:** Mr. Rodney Nganwa, holding brief for Mr. James Zeere for the Respondent.

No parties in Court.

Court Clerk:

Mr. Samuel Mukiza

Mr. Rubagumya:

Matter for ruling on a preliminary point of law, and we are ready to receive it.

Court:

Ruling delivered in open Court.

9:56 am
Anthony Wawire Musana,
Judge, Industrial Court.

