

IN THE HIGH COURT OF SIERRA LEONE

Olufemi Boyle Hebron

-

Plaintiff /Respondent

AND

The Chief of Mission Support (ERSG)

-

Defendant/Applicant

United Nations Integrated Peace Building

Office in Sierra Leone UNIPSIL (UNITED NATIONS)

PRESIDING;

THE HON MR. JUSTICE REGINALD SYDNEY FYNN JA

Counsel;

Abigail Suwu and Precious Fewry State Counsel for the Applicant

RULING dated

R S FYNN JA

1. The applicant in this application is The Chief of Mission Support United Nations Integrated Peace Building Office in Sierra Leone (UNIPSIL) represented significantly by counsel from the Law Officers Department. The orders prayed for on the face of the motion dated 4th February 2016 included the following which formed the nucleus:
 - a. *That proceedings issued against the defendant/applicant by writ of summons dated 26th March 2014 and all subsequent proceedings be stayed pending the hearing and determination of this application.*
 - b. *That the writ of summons and all proceedings herein be struck of on the grounds that the United Nations is entitled to diplomatic immunities and privileges.*
2. The matter came up for hearing before me for the first time on 21st March 2016 the defendant /applicant represented by state counsel was in attendance with no representation from the plaintiff/respondent save for once on 11th July 2016 when S.Katta Esq (deputizing AE Manly-Spaine) appeared for the plaintiff respondent and requested an adjournment on the instructions of his senior. This state of affairs persisted notwithstanding several adjournments and notices of hearing to the plaintiff/respondent and it did not change till date.

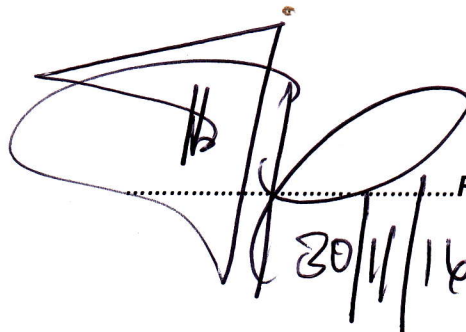
3. According to the affidavit of Abigail Suwu, State Counsel sworn to on 4th February 2016 in support of the application, the writ of summons which the applicant seeks to stay was issued by the plaintiff/respondent seeking to recover from the defendant/applicant, damages for breach of agreement, special damages, mense profit, interest and costs.
4. The said affidavit also states that "the United Nations is an international non-governmental organization and that the defendant is an employee of the United Nations". The affidavit also directs the courts attention to the fact that "the Republic of Sierra Leone is a member and signatory to the United Nations Convention on Privileges and Immunities"
5. In a supplemental affidavit sworn to on 17th March 2016 a letter from the Ministry of Foreign Affairs is exhibited (Exhibit C). This letter which was signed by an officer acting for the Director General and Ambassador-at-large was later replaced (via another supplemental affidavit, this one dated 30th July 2016), by a letter with content and purport similar to the former but this time signed by Mr. Mohammed Gibril-Sesay the Acting Minister of Foreign Affairs and International Cooperation. In summary that letter confirmed that "the United Nations, and in particular, the United Nations Integrated Peace Building Office in Sierra Leone (UNIPSIL) enjoys full immunity from legal processes in Sierra Leone".
6. Moving the court on 25th April 2016 counsel referred to and relied on both the Agreement between United Nations and Sierra Leone Concerning the Status of The United Nations Mission in Sierra Leone and the Diplomatic Immunities and Privileges Act (No 35 of 1961). Regarding the latter counsel relied more especially on S.17 which provides as follows:

"If in any proceedings any question arises whether or not any organization or any person is entitled to immunity from legal process under any provision of this act or any regulations made under this Act a certificate issued by the Minister stating any fact relevant to that question shall be conclusive evidence of that fact"
7. Counsel has submitted that Exhibit C is conclusive proof that the applicant enjoys full diplomatic immunity in Sierra Leone. Exhibit C itself does attempt to lay the question of whether the applicant enjoys such privilege to rest by "confirming "it does enjoy the stated status. I however take a narrower view of S.17; it does not take away from the courts the power to decide whether in fact diplomatic status exists in a given set of circumstances. It gives the Ministry of Foreign Affairs the ability to conclusively answer issues of fact which are relevant to the question of whether there exists diplomatic immunity. Whilst the answer to such relevant issues may in fact have the effect of laying the main question to rest they however must not be confused with the main question itself *i.e.* whether or not diplomatic immunity attaches.
8. Unlike "*foreign envoys, foreign consular.... the members of their families etc...*" in respect of whom the Diplomatic Immunity and Privileges Act provide immediate immunity from suit, the same is not true for international organisations. There is no similar all-embracing provision in the Act bestowing immunity from suit to International organisations generally. The fact that such immunity exists if at all must be proved whenever the question arises.

9. S.11 of the Diplomatic Immunity and Privileges Act makes it clear that an order is required "from time to time" to provide any organisation with the immunities set out in the first schedule of the said act. It would have been particularly helpful if the court's attention had been drawn to such an order in this case (provided that there is a relevant one in existence made in favour of the applicant). A reference to the order pursuant to S.11 by which the applicant became seised of immunity from process in Sierra Leone would have been most helpful.
10. I have perused the Agreement between the Government of Sierra Leone and the United Nations copy of which is attached to Exhibit B. I am satisfied that at Part VI thereof which is entitled **Status of the Members of UNAMSIL** and at Article 26 and immediately following the parties agreed that several officers of the United Nations including the Special Representative (the applicant) will enjoy the privileges and immunities referred to in sections 19 and 27 of the Vienna Convention. The same which are usually accorded to diplomatic envoys.
11. The immunities and privileges referred to include immunity from suit which is what the applicant herein now claims.
12. The letter from the Acting Minister as well as the attached agreement leaves no doubt in my mind that the Government of Sierra Leone is committed to according the applicant diplomatic immunity. This commitment is underscored by the fact that the present application has been filed and moved by counsel from the law officers department. In the absence of submissions to the contrary I adopt the opinion of my brother D B Edwards JA, **Representative of WHO v Joseph Monrovia 12/15 2005 F No51** where he said....

"It would indeed be unfortunate if, after recognition had been afforded by the State (through the passing of such Order as effecting the Vienna Convention to which this State of Sierra Leone is a party) to people holding such posts on the international organizations' staff entitling them to the privileges and immunities which the defendants seek to invoke; and for a statement as to their position having been afforded on behalf of the State through our Foreign affairs office, it was to be regarded lightly by the judiciary, which hold a duty to take Judicial notice of same, for in such circumstances, the ensuing contest could not possibly inure to public good."

I therefore hold that the Defendant/ applicant is entitled to diplomatic immunity and the writ of summons and all proceedings herein are accordingly struck off. No order as to costs.

A handwritten signature in dark ink, appearing to be 'R. Fynn', with a large, stylized flourish extending from the bottom left.

.....Reginald Sydney Fynn JA

30/11/16