



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
HIGH COURT CIVIL CASE NO. 122 OF 2017

MURIGI KAMAU WANJOHI.....PLAINTIFF

VERSUS

THE INTERNATIONAL BANK FOR

RECONSTRUCTION & DEVELOPMENT.....DEFENDANT

RULING

1. In the Notice of Preliminary Objection dated 10th October, 2017 the Defendant has objected to the jurisdiction of this court. It is stated that this court lacks jurisdiction to entertain this matter on account of the immunities and privileges enjoyed by the Defendant under the Bretton woods Agreement Act (Cap 464 laws of Kenya) and under the general principles of customary International Law as domesticated under Article 2(5) of the Constitution.
2. The Preliminary Objection was canvassed by way of written submissions. I have considered the said submissions.
3. The background to the Preliminary Objection is that, in the plaint herein, the Plaintiff claims infringement of his rights to human dignity, privacy and property through the use of his image by the Defendant. The Plaintiff has described himself as a gospel artist.
4. The Defendant has described itself as an International Intergovernmental Organization owned and governed by 189 member states and it is one of the five institutions that comprise the World Bank. According to the Defendant's statement of defence the organization is governed by the general rules of International law and the Bretton Woods Agreements Act Cap 464 Laws of Kenya. It is pleaded that the Defendant enjoys immunity from suits and legal processes in Kenya and therefore this court lacks jurisdiction to hear and determine the suit herein.
5. In their submissions, both counsels relied, *inter alia*, on the Bretton Woods Act Cap 404 of the Laws of Kenya and the general principles of International law. The Plaintiff submitted that the Bank has no immunity while on the Defendant's side it was submitted that the Defendant cannot be separated from the World Bank and that the immunity enjoyed by the bank is all encompassing.
6. The Court of Appeal in the case of **Unicon Ltd v Ghana High Commissioner 2016 eKLR** while referring to several of its decisions held that the immunity enjoyed is not absolute. The Court stated thus:

“...This court held in Ministry of Defence of the Government of the United Kingdom v Joel

Ndegwa [1983] eKLR that the immunity is not absolute but restrictive and that the “test is whether the foreign sovereign or government is acting in a governmental capacity under which it can claim immunity, or a private capacity, under which an action may be brought against it...It is therefore the nature of the dispute that is critical in determining whether or not our courts will take cognizance of a dispute where immunity is pleaded.”

...In *Tononoka Steels Limited v Easter and Southern Africa Trade and Development Bank* (supra) this court dispelled the notion of absolute immunity taking the view that where a state engages in purely private commercial activities, it would be prejudicial and contrary to public policy to uphold sovereign immunity. Tunoi, JA (as he then was) put it in these words;

I do not think that Parliament in its wisdom could have granted absolute immunity from suit and legal process to such a body or organization if it was going to engage in purely private commercial activities and which had nothing whatsoever to do with Member States. This would be prejudicial to the interests of Kenya and would be contrary to public policy.”

7. The nature of the dispute herein alleges violation of the Plaintiff’s rights which is a matter of a rather personal nature. This has nothing to do with the immunity enjoyed by the Defendant in carrying out it’s mandate.

8. In the aforestated case of ***Unicom Ltd (Supra)*** the Court of Appeal referred to it’s decision in ***Karen Njeri Kandie v Alssane B & another [2015] eKLR*** where it upheld its earlier decision in ***Ministry of Defence of the Government of the United kingdom v Joel Ndegwa (Supra)*** where it stated that:

“.....the doctrine of absolute immunity would be anachronistic, and has been for some time now. What immunity there is must be restricted or qualified so that private or commercial activities cannot be immunized.”

9. The upshot is that I find no merits in the Preliminary Objection and dismiss the same with costs.

Dated, signed and delivered at Nairobi this 7th day of June, 2018

B. THURANIRA JADEN

JUDGE