



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NUMBER 1195 OF 2015**  
**EDWARD ONKENDI.....CLAIMANT**  
**VERSUS**  
**INTERNATIONAL CENTRE OF INSECT**  
**PHYSIOLOGY AND ECOLOGY (ICIPE).....RESPONDENT**

**RULING**

1. The respondent herein has raised objection as to the jurisdiction of this Court to entertain the present claim. The respondent's counsel argued that his client being an intergovernmental organization was by article 27 of the respondent charter immune from the host country's legal process.
2. The claimant has opposed the objection stating that immunity does not include acts of impunity and breach of the claimant's right to fair labour practice as provided in the Constitution.
3. In support of the objection Counsel for the respondent has relied on the ICIPE Charter, Privileges and Immunities Act, and the cases of **Gerard Killeers Vs. ICIPE** and **Karen Njeri Kandie v. Alassane BA and Shelter Afrique.**
4. The purpose of immunity law was laid out by US Supreme Court in the **Schooner Exchange v. Mc Fadders** case where Justice Marshall observed that state immunity was based upon the perfect equality and absolute independence of sovereigns and common interest impelling them to mutual intercourse. It is based upon international comity among nations.
5. Lord Denning of the UK in the **Thai-Europe Tapioca's** case observed that

**“...the general principles is undoubtedly that except by consent, the Courts of this Country will not issue their process so as to entertain a claim against a foreign sovereign for debt or damages...the reason is that, if the Courts here were to entertain the claim, and in consequence gave Judgment against the foreign sovereign, they could be called on 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.**
6. In that Judgment Lord Denning noted that this was the general principle which must be applied but there were however recognized exceptions which included cases where a sovereign leases land and fails

to pay rent, or holds trust funds or money lodged for the payment of creditors or debts incurred in respect of services rendered to its property. A sovereign did not also enjoy immunity when it enters into a commercial transaction with a trader and a dispute arises which is properly within the jurisdiction of the English Courts. This last aspect was decided locally in the case of **Tononoka Steel Ltd v. Eastern & southern Africa Trade & Development Bank** where Justice Kwach stated:-

**“...I know of no country which would allow a bank to provide banking and financial services with absolute immunity from suits and legal process and with absolutely no protection for its hapless customers...”**

7. From the foregoing sovereign immunity should be upheld in all cases except those which are exempted by international law and practice such as adumbrated to above. That is to say those activities and relationships that a foreign sovereign creates or interacts with in their normal operations and functions are immune from legal process of the host country. Employment relationship is one such relationship that a foreign sovereign will obviously enter into in the course of their day to day operations. The claim herein is of such nature and is therefore caught up by the sovereign immunity law and the Court will therefore decline jurisdiction. The objection therefore succeeds with the consequence that the suit is truck out.

8. It is so ordered.

Dated at Nairobi this 13<sup>th</sup> day of May 2016

**Abuodha Jorum Nelson**

**Judge**

Delivered this 27<sup>th</sup> day of May 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha Jorum Nelson**

**Judge**