

LOUIS BAUCHAU, Plaintiff, v. THE GOVERNMENT OF THE UNITED STATES OF AMERICA, represented by AMBASSADOR DONALD PETERSON, Chief of Mission, and MICHAEL BIJEK, Counsellor for Administrative Affairs, United States Embassy, Defendant.

ACTION OF DAMAGES FOR WRONG BEFORE THE SUPREME COURT.

Heard: May 1, 2000. Decided: May 12, 2000.

1. Original jurisdiction is jurisdiction conferred on a court to proceed in the first instance.
2. Jurisdiction is conferred by the constitution or statute of a state and courts can only exercise such jurisdiction as is derived from such conferring authority.
3. The Constitution of Liberia specifically enumerates the classes of cases over which the Supreme Court has original jurisdiction, and they include only cases affecting Liberian ambassadors assigned to a foreign capital, other public ministers and consuls, and matters to which a county is a party.
4. The usual international practice, accepted in Liberia, is that when a foreign diplomat is involved in a dispute in the courts of the receiving state, the diplomat protests the service of the writ, pleads immunity, informs the foreign ministry of the receiving state of the problem, and requests the ministry to direct an appropriate communication or suggests immunity to the court.
5. Foreign diplomatic representatives are exempt from all local processes in the country to which they are accredited, and the immunity extends to the ambassador as well as his subordinates, family and servants.
6. It is law for the Ministry of Foreign Affairs, upon receipt of process for service on a foreign mission or diplomat who enjoys diplomatic immunity, to determine not to effect such service on the defendant sovereign government, but to instead inform the court of the immunity enjoyed by the foreign government.
7. The Ministry of Foreign Affairs does not have to file a motion to intervene as a party to a litigation involving a foreign government or diplomat as the certification of the foreign diplomatic envoy does not require that it should do so.
8. Diplomatic status is a political question and a matter for states, and the finding of the Secretary of State of Minister or Foreign Affairs must be accepted unquestioned.
9. The decision of the Executive Department as to whether a person is a member of a foreign mission or of its personnel is conclusive upon the courts.

10. The Ministry of Foreign Affairs is the sole agency of the Government of Liberia clothed with the responsibility to register and maintain records regarding the status of officials and employees of foreign diplomats accredited to or accepted by the Republic of Liberia, and is done pursuant to the law of nations and of Liberia, or treaties or agreements to which Liberia is a party.

11. An ambassador is defined as a public officer clothed with high diplomatic powers, commissioned by a government to transact the international business of his government with a foreign government.

12. Ambassadors commissioned by the Government of Liberia to transact international business with foreign governments, as specified in article 66 of the Liberian Constitution, are personal representatives of the President of Liberia and therefore report to the President through the Ministry of Foreign Affairs.

13. The provisions of article 66 of the Liberian Constitution do not extend to foreign ambassadors accredited near the Liberian capital, except where the foreign governments expressly waive the immunity enjoyed by their ambassadors or other diplomats.

14. It is only pursuant to the expressed waiver of diplomatic immunity that the Supreme Court of Liberia can acquire jurisdiction over a suit or action in which a foreign diplomat is involved.

15. Once diplomatic immunity has been conferred by accreditation to the host country, the courts no longer have jurisdiction over the person enjoying such immunity, even though the courts continue to have jurisdiction over the subject matter of a suit commenced prior to the acquisition of diplomatic immunity.

16. Where the parties freely enter into a contract without duress or other legal disability, the courts have no authority to alter the terms, provisions, or requirements of the contract.

17. The sanctity of a contract must be adhered to by the parties at all times.

Plaintiff Louis Bauchau, a national of Belgium residing in Monrovia, Liberia, instituted in the Supreme Court of Liberia an action of damages for wrong against the Government of the United States of America, by and thru its ambassador and counsellor for administrative affairs. The suit grew out of a tripartite lease agreement which the plaintiff alleged the United States Government had violated.

A writ of summons was duly issued and served on the Ministry of Foreign Affairs of Liberia for delivery to the United States Government, through its ambassador. The Ministry of Foreign Affairs of Liberia, as facilitator, did not make such delivery on the United States Embassy but chose instead to file returns to the complaint. In the returns, the Ministry informed the Supreme Court of the sovereign status of the United States, of the treaty obligations of the Republic of Liberia to respect that status as stipulated by the 1961 Geneva Convention on Diplomatic Relations and other international agreements, and of the laws of Liberia to the same affect. In

that regard, the returns asserted the immunity enjoyed by the United States diplomatic mission and envoy near the Liberian capital, except as to the limited waiver stated in the tripartite lease agreement in which the United States Government agreed to arbitration under the rules and procedure of the United Nations Commission on International trade Law (UNCITRAL).

The plaintiff resisted the returns, contending (a) that the Ministry of Foreign Affairs of Liberia should have delivered the precept to the United States Embassy rather than file re-turns thereto; and (b) that the Ministry had not filed a motion to intervene and had not been granted the right to intervene as would have vested it with the right to file returns to the complaint.

The Supreme Court rejected both contentions, holding, firstly, that Liberia was bound by its treaty obligations to respect the diplomatic immunity of foreign missions and personnel against the administrative, civil and criminal jurisdiction of the receiving state, and secondly, that the Ministry of Foreign Affairs of Liberian was the proper agency of the Liberian Government clothed with the authority to inform the Court of such immunity. The Court noted that the Ministry of Foreign Affairs did not have to effect service of the summons on the United States diplomatic mission, but could instead communicate directly with the Court information of the diplomatic immunity enjoyed by the foreign government and its envoys. The Court noted also that in so acting the Ministry did not have to file a motion to intervene but could, as was done, legally file an answer or returns to the complaint. The Court observed that it had no authority to exercise jurisdiction over foreign mission or diplomats, in the instant case United States diplomatic mission, as long as the individuals continued to hold their diplomatic positions. It cautioned however that the Ministry of Foreign Affairs was without authority to go into the merits of the case.

The Court observed further that while the United States Government had agreed to waive its immunity, that waiver was restricted by the tripartite lease agreement to submitting any dispute arising under the agreement to arbitration under the rules and procedure of the United Nations Commission on international Trade Law (UNCITRAL). The Court opined that as the plaintiff had not entered into the agreement under duress or other legal disability, he was expected to abide by the terms of the agreement and submit his claim to arbitration. The Court reiterated its long standing views that it had no authority to alter the terms of contracts concluded between parties and that parties to such contracts were expected to respect the sanctity thereof.

Accordingly, the Court sustained the returns and dismissed the complaint without prejudice, noting that the plaintiff had the option of taking the matter to arbitration.

Richard McFarland, C. Alexander Zoe, Isaac E. Wonasue and William A. Gbaintor appeared for the plaintiff. L. Kobo Johnson, of the Ministry of Foreign Affairs, appeared for the facilitator.

MR. JUSTICE JANGABA delivered the opinion of the Court.

It is a universal principle of law that "original jurisdiction is that of a court to proceed in the first instance, and appellate jurisdiction comprises the power of a superior court to review and revise the final judgment of an inferior tribunal." 21 C.J.S., Courts, §17, p. 34. It is also a universally accepted principle that "jurisdiction is conferred by the constitution or statutes of a state and courts can only exercise such as is derived there-from." 11 CYC 783, Courts.

This Court has been called upon in this case to give a fair and impartial construction and interpretation to Article 66 of the 1986 Liberian Constitution, as regard the original jurisdiction of this Court over an ambassador or representative of a diplomatic mission accredited near this capital, in an action involving a resident of Liberia with respect to a lease of a realty.

Article 66 of our Constitution provides that "[t]he Supreme Court shall be the final arbiter of constitutional issues and shall exercise final appellate jurisdiction in all cases, whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact, except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein."

The framers of our Constitution made specific enumeration of the classes of cases in which the Supreme Court shall exercise original jurisdiction. The classes of cases include those affecting ambassadors, other public ministers and consuls, and those to which a county is a party. The first question to be resolved by this Court is whether or not article 66 of the Constitution refers to Liberian ambassadors accredited to foreign nations or ambassadors of foreign nations accredited near this capital? The next question is, under what conditions can an ambassador of a sending state be subjected to the jurisdiction of a receiving state?

We shall give a brief history of this litigation before determining the issues enumerated above, which we deem to be decisive of the case. The plaintiff, Louis Bauchau, a national of the Kingdom of Belgium, presently residing in Monrovia, instituted an action of damages for wrong before this Court of last resort, against the Government of the United States of America, represented by its ambassador, accredited near this capital. Plaintiff basically alleged in his complaint that he and the defendant government, along with another party, had entered into and executed a tripartite lease agreement on the 6th day of February, A. D. 1999, for a parcel of land lying and situated at Mamba Point, Monrovia, for the use of the U.S. Government Diplomatic Mission in Liberia.

At Article III of the agreement, the parties agreed that the defendant government should pay the plaintiff the sum of US\$2,500.00 per annum for the period covering February 1, 1999 up to and including January 31, 2006, payable annually in advance. It was also agreed that the defendant should pay the amount of US\$3,750.00 per annum to the intestate estate of the late Rowena

Johnson from the period February 1, 2006 to January 31, 2023. The plaintiff's action is predicated upon the rejection by the defendant government of the plaintiff's offer to lease to the defendant government the Intestate Estate of Rowena Johnson, which was already under lease to the defendant government under Article III(b) of the agreement. The plaintiff prayed this Court to award him the sum of US\$350,000.00 which he said was the rental for the said estate for the period up to 2023, as well as the sum of US\$200,000.00 as general damages, US\$15,000.00 as special damages, and legal fees and expenses.

This Court issued a writ of summons, which was served on the Ministry of Foreign Affairs as facilitator, for service on the defendant government. The facilitator did not serve the process on the defendant government, opting instead to file before this Court a fourteen-count returns, counts 2-6 of which the Court deems relevant for the determination of this case. In count 2 of the returns, the Ministry of Foreign Affairs contended that all treaties concluded in the name of Liberia prior to the 1986 Constitution continued to be valid and binding on this Republic under article 95(b) of the 1986 Constitution. It also contended that under article 34(f) of the 1986 Constitution the Liberian Legislature is vested with the authority to approve all treaties, conventions and other international agreements negotiated or signed on behalf of Liberia.

In Count 3 of the returns the facilitator cited the case *Davis v. Republic*, 1 LLR 17 (1862), which it relied upon to support the contention that the plaintiff could not sustain the action. In the *Davis* case this Court held that any treaty which is con-firmed or ratified by the Legislature becomes a part of our domestic laws and has the full force and effect as any other law enacted by the Legislature.

In counts 4 & 5 of the returns, the facilitator asserted that the government of the United States of America, the defendant herein, was a sovereign government, and that as such it enjoyed all the rights, privileges and emoluments of a sovereign State. The facilitator also certified that Ambassador Donald Peterson, Chief of Mission of the United States Government accredited to the Republic of Liberia, and Michael Bejik, Counsellor for Administrative Affairs, of the United States Embassy near Monrovia, are diplomats of the United States of America.

In count 6 of the returns, the facilitator contended that article 31 of the 1961 Vienna Convention on Diplomatic Relations, to which both Liberia and America are parties, provides for protection, privileges and immunities to a diplomat from criminal, civil and administrative jurisdictions of a receiving state, except in such cases as provided therein. The facilitator therefore prayed this Court to quash the writ issued against the Government of the United States and to deny and dismiss the complaint without prejudice to the plaintiff to seek his redress through arbitration, as directed by the afore-mentioned tripartite agreement.

The plaintiff filed an eleven-count resistance to the facilitator's returns. In counts 1, 2, 3, 4, 5, 6, 7 & 8 of the returns, the plaintiff principally contended that the Government of the Republic of Liberia, acting through the Ministry of Foreign Affairs as facilitator in this action, is not a party

to the suit and has not been made a party thereto by this Court by the granting of a motion to intervene. As such, the plaintiff said, the act of the facilitator in filing returns to the complaint in this case, rather than serving the writ of summons on the defendant government as commanded by this Court, was contemptuous to the Court.

In light of the contention raised by the plaintiff with respect to the action by the Ministry of Foreign Affairs in filing returns rather than delivering the precepts to the defendant, this Court takes recourse to its previous holding regarding the service of process on a diplomatic envoy accredited near this capital. In the case *Royal Exchange Assurance v. Barriero et al.*, 25 LLR 306 (1976), text at 309, this Court held that the "usual international practice, when a diplomat is involved in a dispute in the courts of the receiving state, is that the diplomat protests the service of the writ, pleads immunity, informs the foreign ministry of the receiving state of the problem, and requests the Ministry to direct an appropriate communication or suggests immunity to the court." In the case at bar, the writ of summons was served on the Ministry of Foreign Affairs of Liberia as the facilitator for onward transmission to the defendant government. The Ministry of Foreign Affairs, being cognizant of international law and practice in cases involving diplomatic envoys, appropriately communicated to this Court that the United States was a sovereign government, that its officials were diplomatic envoys of the United States Government accredited near this capital, and that they were immune from the civil jurisdiction of this Republic, unless such immunities were waived by the sending state. In the case *Carrera v. Carrera*, 174 Federal Reporter 2d. 496, at Syl.4 (1948), the United States Court of Appeals held that "Foreign diplomatic representatives are exempt from all local processes in the country to which they are accredited, and the immunity is not only given to an ambassador but to his subordinates, family, and servants as well." It is in contemplation of this universally acceptable principle of law that the Government of Liberia, by and thru its Ministry of Foreign Affairs, deemed it lawful not to serve the process on the defendant sovereign government, but to instead inform this Court of the immunity enjoyed by the defendant. The Ministry of Foreign Affairs did not have to file a motion to intervene as a party to this litigation, as the certification of foreign diplomatic envoys to this Court does not require the said Ministry to file a motion to be made a party.

It is also universally held that "diplomatic status is a political question and a matter of states; the finding of the Secretary of State must be accepted unquestioned. The courts of the United States are not alone in applying this rule. The decision of the executive department as to whether a person is a member of a foreign mission or of its personnel is conclusive upon the courts." *United States v. Conlon*, 88 Fed. Supp. 921 (1950). Accordingly, this Court holds that the Ministry of Foreign Affairs of Liberia is the sole government institution clothed with the responsibility to register and to maintain records with respect to the status of officers and employees of foreign diplomats accredited to or accepted by our country, for the purpose of recording those who are entitled to diplomatic immunity pursuant to the law of nations and the laws of this Republic, or as specified in any treaty or other international agreement to which this

Republic is a signatory. The Ministry of Foreign Affairs therefore acted within the confines of inter-national law and practice, quoted supra. Counts 1, 2, 3, 4, 5, 6, 7, & 8 of plaintiff's resistance are therefore hereby overruled and counts 2, 3, 4, & 5 of the facilitator's returns are sustained.

The next question for our consideration is whether or not this Court, under Article 66 of the 1986 Constitution, has original jurisdiction over the defendant in this case or its diplomats. The facilitator maintained that the diplomatic representatives of the United States Government accredited near this capital are immune from the civil and administrative jurisdiction of this Republic pursuant to Article 31 of the 1961 Vienna Convention on Diplomatic Relations, except where such immunity is expressly waived by the sending state, the Government of the United States of America. In counts 9 & 10 of his resistance to the returns, the plaintiff strongly contended that the 1961 Vienna Convention is inferior to the 1986 Liberian Constitution, and that the defendant's officials are known diplomatic representatives over whom the Supreme Court has original jurisdiction, as well as over this case by virtue of Article 66 of the said Constitution. The plaintiff also argued before this Court that the treaty is in no way and manner in conflict with the Constitution.

Let us take recourse to certain accepted international law principles in resolving the contentions raised. Who, for example, is an ambassador? An Ambassador is defined by law writers as "a public officer clothed with high diplomatic powers, commissioned by a government to transact the inter-national business of his government with a foreign government." BLACK'S LAW DICTIONARY 79 (6th ed. 1990). Article 66 of the 1986 Liberian Constitution refers to Liberian ambassadors being commissioned by the government to transact international business with foreign governments. They are indeed the personal representatives of the President of the Republic of Liberia and therefore report to the President through the Ministry of Foreign Affairs. Thus, the constitutional provision referred to by the plaintiff does not extend to foreign ambassadors accredited near this capital, except where their government expressly determines to waive the diplomatic immunity enjoyed by them. It is through this express waiver of diplomatic immunity that the Supreme Court acquires original jurisdiction over a suit or an action in which foreign diplomatic envoys are involved.

A recourse to the 1961 Vienna Convention on Diplomatic Relations, to which both Liberia and the United States are parties, reveals that "a diplomatic agent is immune from the criminal, civil and administrative jurisdictions of the receiving state, except where such diplomatic envoy in his private capacity holds private immovable property in the territory of the receiving state, or as executor, administrator, heir or legatee, as a private person, not acting on behalf of the sending state, or where such diplomatic agent in the receiving state exercises activities outside of his official functions." In the instant case, the United States envoys hold the property for and on behalf of the United States Government and not in their private capacity, a point conceded by the plaintiff in his resistance.

A careful perusal of the tripartite agreement showed clearly that "in the event of any dispute on the interpretation or effect of any provision of this agreement, the parties shall settle such dispute by mutual negotiations and cooperation, and should such negotiations fail, the matter shall be referred to arbitration using the rules and procedures of the United Nations Commission on International Trade Law (UNCITRAL) in effect at the time."

The defendant government expressly waived its immunity for the settlement of any dispute only with regard to the interpretation or effect of any provision of the tripartite agreement, and even then, only with regard to arbitration using the rules and procedures of the United Nations Commission on International Trade Law. It did not waive its immunity or agree to subject itself to the courts of the receiving state, the Republic of Liberia. The fact that the lease agreement was entered into and executed by the parties in the Republic of Liberia did not in any way or manner bring the Government of the United States under the jurisdiction of the Supreme Court of the Republic of Liberia, in the absence of any waiver of immunity by that nation. Counts 9, 10 & 11 of the plaintiff's resistance are therefore overruled and count 6 of the returns is hereby sustained. In light of the opinion stated above, all other counts of the returns of the facilitator which delved into the merits of the case, transient beyond the role and responsibility of the facilitator, are also overruled. The merits and demerits of this case fall squarely within the pale of the arbitration proceedings.

This Court has held that "once diplomatic immunity has been conferred by accreditation to the host country, the courts no longer have jurisdiction over the person enjoying such immunity, even though the courts continue to have jurisdiction over the subject matter of a suit commenced prior to acquisition of diplomatic immunity." *Royal Exchange Assurance v. Barriero*, 24 LLR 546 (1976), Syl. 3. In the *Barriero* case, Dr. & Mrs. Barriero obtained a money judgment in an action of damages for breach of contract against the Royal Exchange Assurance as defendant. The defendant appealed to this Court for appellate review. During the pendency of the appeal, Dr. Barriero was accredited as Ambassador of the Argentine Republic near this capital. The Supreme Court held that the case should remain dormant until such time when the diplomat was relieved of his duties as Ambassador of Argentina. This Court subsequently granted Dr. Barriero's motion to dismiss the appellant's appeal when he was relieved of his duty as ambassador and no longer enjoyed diplomatic immunity. In that case, this Court held that "[t]he basis of diplomatic privileges and immunities is the necessity of permitting free and unhampered exercise of the diplomatic function and of maintaining the dignity of the diplomatic representative and the State which he represents." *Royal Exchange Assurance v. Barriero et al.*, 25 LLR 306 (1976), text at 310. Consistent with that decision this Court holds that it has no jurisdiction over the diplomatic representatives of the United States Government who are presently enjoying diplomatic immunity. This case is cognizable before the arbitration board specified under the tripartite lease agreement executed amongst the parties and is to be governed by the rules and procedures of the United Nations Commission on International Trade Law as expressly agreed to by the parties to the said agreement. This decision is consistent with the well

settled principle of law that where the parties freely enter into a contract without any duress or legal disability, the courts have no authority to alter the terms or provisions or requirements of the contract. We reiterate that the sanctity of a contract must always be adhered to by the contracting parties.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the plaintiff`s complaint and his entire action should be and the same is hereby dismissed without prejudice to the plaintiff to seek his remedy in arbitration pursuant to the terms of the tripartite agreement. The Clerk of this Court is hereby ordered to send a mandate to the parties in this case to give effect to this opinion. Costs are disallowed. And it is hereby so ordered.

Case dismissed without prejudice.