

CERTIFY COPY OF THE ORIGINAL BY: Ellen Hall-Kamara/CLERK OF COURT

ATTESTED BY:

Nancy Washington/Clerk/Filings & Records

21ST DAY'S JURY SITTING

JUNE TERM, A.D. 2004

SATURDAY, JULY 17, 2004

SHEET SEVEN

COURT'S SEAL:

21/
THE COURT: MR. SHERIFF CALL THE CASE: IN RE: DR. MALACHI Z. YORK
BY AND THRU HIS ATTORNEY-IN-FACT, AND LEGAL COUNSEL,
COUNSELLOR FRANCIS Y.S. GARLAWOLU OF THE CITY OF
MONROVIA, LIBERIA, PETITIONER VERSUS THE GOVERNMENT
OF LIBERIA BY AND THRU THE MINISTRY OF JUSTICE THRU
THE MINISTER OF JUSTICE AND ALL APPROPRIATE GOVERNMENT
FUNCTIONARIES OF THE CITY OF MONROVIA, LIBERIA,
RESPONDENT, PETITION FOR DECLARATORY JUDGMENT, YOUR HONOUR
CASE CALL FOR RULING.

REPRESENTATIONS: The Petitioner is represented by Counsellor Francis
Y.S. Garlawolu of the Garlawolu & Associates Law Firm, and present
~~XX~~
and ready to receive Your Honour's Ruling. And respectfully submit.
While the Respondent is represented by Atty. Morris A. Kaba of the
Ministry of Justice and present in Court and ready to receive this
Court's Ruling. And submit.

THE COURT: Representations of parties are hereby noted, Court will
now render its ruling in the Petition for Declaratory Judgment.
AND IT IS HEREBY SO ORDERED.

COURT'S FINAL JUDGMENT ON THE PETITION FOR DECLARATORY
JUDGMENT

This case owes its genesis to a Petition for Declaratory
Judgment filed by the Petitioner through his legal Counsel in
Liberia, Counsellor Francis Y.S. Garlawolu, against the Respondent,
on the 13th day of July, A.D. 2004, specifically requesting this
Court to grand and declare the following relief to said Petitioner:

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**S PETER DOE KPAP
NOTARY PUBLIC**

1. To order Respondent to repatriate Petitioner in
fulfillment of its obligation to its citizens within
and without Liberia, and
2. To order the Respondent to defend and protect the
diplomatic status of Petitioner.

When the case was called for hearing, the Respondent requested
the indulgence of Court to spread its resistance on the minutes
of Court, which was granted.

Accordingly, Attorney Morris A. Kaba appearing for the
Respondent, resisted to the Petition on the minutes of Court,
thus conceding veracity of the averment of the Petition to the
effect that Petitioner is a citizen of Liberia and Consular
assigned at Atlanta, U.S.A.

Agreements were held pro-et-con by Counsels for both parties.
From the Petitioner's Petition and Respondent's Resistance, two
fundamental issues decisive of this case involved for our
determination, thus:

.....

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SHEET EIGHT

COURT'S SEAL:

1. Whether or not our domestic and International Laws impose upon Respondent the legal obligation to repatriate or seek the repatriation of Petitioner?
2. Whether or not Respondent is under legal obligation to protect and defend its diplomats?

This Court shall proceed to dispose of the above issues in the reverse.

As regards the issue of diplomatic immunity, the record in this case establishes the fact that Petitioner, Dr. Malachi Z. York, was duly appointed by the Government of Liberia as a Consular on December 15, 1999. The letter of appointment reads thus:

"REPUBLIC OF LIBERIA"

OFFICE OF THE PRESIDENT

December 15, 1999

Dr. Malachi Z. York
Athens, Georgia
United States of America

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S. PETER DOE KPAR
NOTARY PUBLIC

I am pleased to appoint you hereby, Consul General of the Republic of Liberia to Atlanta, Georgia, United States of America.

This preferment is evident of our conviction and expectation that you will continue to be of greater service to Liberia and its people, especially those in the State of Georgia.

Congratulations.

Cordially yours,

Dahannah Dr. Charles Ghankay Taylor

The fact of Petitioner's appointment is not in dispute. Hence, Petitioner squarely falls under our domestic and International laws, within the category of the diplomatic personnel with all immunities appertaining thereto.

This Court holds that the Constitution of Liberia and International Laws and the Vienna Convention on Diplomatic Relations immune diplomatic personnel against arrest and detention, Chapter 9 of Public International Law, 2nd Edition, Section 9-1 (pages 215) has this to say:

DIPLOMATIC AND RELATED IMMUNITIES

Section 9-1, Function. The immunity of foreign diplomatic personnel from local actions or proceedings has long been a feature of the International legal system. Diplomatic immunity contributes to friendly relations among nations by promoting "the efficient performance of the functions of diplomatic missions as representing states..." Vienna Convention on Diplomatic Relations (hereinafter cited as Convention), an essential condition for maintaining any sort of international community. In general and accredited diplomat is immune with respect to acts or omissions in the exercise of his

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SHEET NINE COURT'S SEAL:

S PETER DOE KPAR

or her official functions and ~~under~~ circumstances in which lack of immunity would be inconsistent with diplomatic status. The diplomat is also immune from criminal process and from most civil process in the receiving state. See Section 464, Restatement (Third) (1987).

The person of a diplomatic officer is inviolable under international law and the receiving nation had an affirmative duty to protect each diplomat from an attack "on his person, freedom or dignity." Convention, art 29. Consequently, the receiving nation may neither arrest nor detain the diplomat, and the diplomat is immune from the criminal laws as well as the civil and administrative jurisdiction. Convention, art, 31 (1). Diplomatic personnel may not be compelled to give evidence. Convention, Art, 3 (2). They are also immune from personnel service, Convention, Art, 35, most taxes, Convention, Art 34, social security provisions, Art, 33, and Customs duties and inspections, Convention, Art, 36. Diplomatic immunity also extends to the diplomat's family members. Convention, Art, 37...The physical premises of a diplomatic mission are also inviolable. Convention, Art 22"

Also See Consular Convention Articles 41 & 43 and Section 465, Restatement (Third) (1987)

Further, the United States has enacted the terms of the Vienna Convention on Diplomatic Relations into Federal Statutory Law, 22 U.S.C. Section 254 A-E (1982), which extends the privileges and immunities of the Convention to all diplomatic personnel regardless of whether the sending state is a Convention party.

Thus, consistent with the principle of inviolability of Diplomatic personnel, and the Petitioner being a Consular duly appointed by the Government of Liberia, is protected under the laws granted supra.

Respondent is hereby ordered to protect and defend the person and premises of Petitioner are a Diplomatic personnel, to all intents and purposes; and in light of that, Respondent is further ordered to liaise with the Government of the United States of America, to ensure the effective enforcement of this judgment.

Relative to the first issue, the Constitution of Liberia, vouchsafes unto every citizens of Liberia, within and without Liberia, equal protection, public International Law, 2nd Edition, page 162, Section 7-2, under the nationality principles has this to say:

"States have jurisdiction over their nationals, even when those nationals are physically outside the country's borders. This is so because the nationals owes allegiance to his own country no matter where he or she is located and because each nation has both responsibility to other nations for the conduct of its nationals and an interest in their welfare while they are abroad."

In view of the above quoted law, it is the further holding of this Court that Petitioner is entitled, as a matter of law and right, to the protection of Respondent.

Respondent is therefore hereby ordered to reparate Petitioner to the Republic of Liberia. Wherefore, it is the judgment of this Court that the Petition and the same is hereby granted and the Respondent is hereby ordered to give effect to this judgment. AND SO ORDERED. GIVEN UNDER MY HAND AND SEAL OF THIS COURT, 21ST DAY OF JULY, A.D. 2004

MATTER CLOSED

COURT'S SEAL

YUSSIF D. KABA

ASSIGNED CIRC IT JUDGE PRESIDING, SIXTH JUDICIAL CIRCUIT, MONTSERRADO CO., L.L.

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[Signature]

