**Beysne v Republic of Romania**

**Division:** High Court of Tanzania at Dar-Es-Salaam

**Date of Ruling:** 9 January 1998

**Case Number:** 88/94

**Before:** Chipeta J

**Sourced by:** A Bade

**Summarised by:** H K Mutai

*[1] State and diplomatic immunity – International law – Foreign sovereign state – Immunity from suit –*

*Agreement to lease part of diplomatic premises to Plaintiffs – Plaintiffs evicted from premises – Action to*

*recover damages – Whether Tanzania applies absolute or restrictive theory of diplomatic immunity –*

*Whether the Defendants could claim immunity – Articles 22, 32(3), and 39(2) – Vienna Convention on*

*Diplomatic Relations 1961.*

**Editor’s Summary**

On 10 June 1989, the Republic of Romania and the Second Plaintiff entered into a lease agreement whereby the former leased to the latter a portion of its property, which was partly used as its Chancery, for a period of 4 years 11 months at a monthly rent of US$ 1 400. The lease provided, *inter alia*, that if the Plaintiffs failed to pay rent within 14 days after it was due, the Defendants could re-enter the premises whereupon the lease would determine. The First Plaintiff, who was the managing director of the Second Plaintiff, then went into occupation of the leased premises. Following the apparent breach of this term by the Plaintiffs, the Second Defendant, who at the time was Romania’s *Chargé D’Affaires* and was acting under its instructions, allegedly removed the Plaintiffs’ properties worth US$ 100 000 and evicted them from the premises.

The Plaintiffs reported the matter to the police but no action was taken apparently because of the

Defendants’ diplomatic or state immunity. The Plaintiffs then filed suit against the Defendants claiming damages. On learning of the suit, the Republic of Romania sent a *note verbale* to the Ministry of Foreign

Affairs and International Co-operation claiming state and diplomatic immunity in respect of the suit and requesting the Ministry to inform the court to abstain from dealing with the matter on that ground. The

Ministry thereafter wrote two letters dated 12 April and 15 April 1996 to the court informing it that the

Defendants were not amenable to the jurisdiction of the court and that the court should accordingly desist from further dealing with the case. Counsel for the Plaintiffs submitted that in 1992 and again in 1995, the Defendants had initiated proceedings relating to the premises before a local tribunal in the form of the Dar-es-Salaam Regional Housing Tribunal thereby precluding them from raising the plea of state and diplomatic immunity under article 32(3) of the Vienna Convention. The Plaintiffs also contended that the

Second Defendant no longer enjoyed diplomatic immunity since he had left the country and was no longer an employee of the Romanian Ministry of External Affairs. Lastly, the Plaintiffs averred that as the dispute was purely commercial in nature, the plea of state and diplomatic immunity was not available to the Defendants under the doctrine of restrictive diplomatic immunity.

After hearing the Plaintiffs’ submissions, the court requested the opinion of the Attorney-General, in the capacity of *amicus curiae*, on the issue. The Attorney-General submitted, *inter alia*, that in view of the *note verbale* from the First Defendant and the fact that at all material times the Second Defendant had been Romania’s diplomatic agent, the plea of diplomatic immunity was available to the Second Defendant. The Attorney-General also submitted that there was no evidence to suggest that Tanzania had ever adopted the restrictive doctrine of diplomatic immunity and that, in view of the Ministry’s letters, it was clear Tanzania still adhered to the absolute doctrine.

**Held** – Article 32(3) of the Vienna Convention was not applicable to this suit as it was the Plaintiffs, and not the Defendants, who had initiated the proceedings. Any acts done by the Defendants in proceedings before other tribunals were not relevant for the purposes of this suit.

At all material times the Second Defendant was a Romanian diplomat and, *prima facie*, enjoyed diplomatic immunity from civil, criminal and administrative jurisdiction. Accordingly, article 39(2) of the Vienna Convention applied and he enjoyed immunity in relation to the acts he performed in the exercise of his functions. The mere fact that he was no longer in the country did not end his immunity and, in any case, the Republic of Romania had categorically stated that it would not waive his immunity.

The absolute theory of state and diplomatic immunity provided that municipal courts would not, by their process, make a foreign sovereign a party to legal proceedings against its will whether the proceedings involved process against its person or claims to recover specific property or damages; *The Charkieh* [1873] LR 4 A and E 59 and *The Cristina* [1938] AC 485 approved. The restrictive theory on the other hand sought to differentiate between acts of the sovereign done in a public capacity and those acts done for commercial, financial or professional purposes, and then to grant immunity for the former and withhold it in the case of the latter; *Victory Transport v Comisaria General* 336 Fed Rep (2a) 354 and *Trendtex Trading Corp v Central Bank of Nigeria* [1977] QB 529 approved.

Where the restrictive theory was applied, the issue before the courts was where to draw the line between public acts and commercial acts. In deciding which theory to apply, a court should be free to exercise its judicial discretion on the basis of authorities and circumstances where the government of the receiving state took no stance in the matter. However, where the government of the receiving state took a definite stand on whether it adhered to the absolute or restrictive theory of state and diplomatic immunity, the courts would do well to defer to such a pronouncement. Applying that test to this case, the Ministry had clearly stated that state and diplomatic immunity was available to the Defendants and, from the tone of the letters, it appeared that Tanzania still adhered to the absolute theory. Moreover, it was clear that the suit premises were part of Romania’s mission in Tanzania and therefore inviolable under article 22 of the Vienna Convention. The plea of state and diplomatic immunity would therefore be upheld and the suit dismissed accordingly.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means explained; “**F**” means followed; “**O**” means overruled)

***United Kingdom***

The Charkieh [1873] LR 4 A and E 59 – APP

The Cristina [1938] AC 485 – APP

Trendtex Trading Corporation v Central Bank of Nigeria [1977] QB 529 – APP

***United States of America***

Victory Trasport v Comisaria General 336 Fed Rep (2a) 354 – APP