

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BASHE ABDI YOUSUF;	.	Civil Action No. 1:04cv1360
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	
representative of the estate	.	
of Mohamed Deria Ali;	.	
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	
representative of the estate	.	
of Mustafa Mohamed Deria;	.	
BURALLE SALAH MOHAMOUD;	.	
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	
representative of the estate	.	
of Abdullahi Salah Mahamoud	.	
(the deceased brother of	.	
Buralle Salah Mohamoud);	.	
AZIZ MOHAMED DERIA, in his	.	
capacity as the personal	.	
representative of the estate	.	
of Cawil Salah Mahamoud	.	
(the deceased brother of	.	
Buralle Salah Mohamoud); and	.	
AHMED JAMA GULAID,	.	
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	.	
Plaintiffs,	.	
	.	
vs.	.	Alexandria, Virginia
	.	February 23, 2012
MOHAMED ALI SAMANTAR,	.	10:06 a.m.
	.	
	.	
Defendant.	.	
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TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

(Pages 1 - 18)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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APPEARANCES:

FOR THE PLAINTIFFS:

L. KATHLEEN ROBERTS, ESQ.
Center for Justice and
Accountability
870 Market Street, Suite 680
San Francisco, CA 94102
and
THOMAS P. McLISH, ESQ.
DEBRA A. DRAKE, ESQ.
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Feld LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

FOR THE DEFENDANT:

JOSEPH PETER DRENNAN, ESQ.
218 North Lee Street, Third Floor
Alexandria, VA 22314

SOMALI INTERPRETER:

ABDURAHMAN KHASSE

ALSO PRESENT:

MOHAMED ALI SAMANTAR

OFFICIAL COURT REPORTER:

ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

1 P R O C E E D I N G S

2 THE CLERK: Civil Action 04-1360, Bashe Abdi Yousuf
3 et al. v. Mohamed Ali Samantar. Would counsel please note
4 their appearances for the record.

5 MR. McLISH: Good morning, Your Honor. Tom McLish
6 for the plaintiffs. With me are Debra Drake, Kathy Roberts,
7 and Joseph Whitehead.

8 THE COURT: Good morning.

9 MR. McLISH: Good morning, Your Honor.

10 MS. ROBERTS: Good morning.

11 MR. DRENNAN: Good morning, Your Honor. Joseph Peter
12 Drennan on behalf of the defendant, Mohamed Ali Samantar, who
13 is seated next to me at counsel table.

14 THE COURT: All right. Now, again, Mr. Drennan, you
15 were late this morning. You need to be on time for court
16 proceedings.

17 MR. DRENNAN: I apologize, Your Honor. We had delay
18 in security and also with me getting Mr. Samantar here, we
19 walked -- we parked about a block away, and he walks very
20 slowly, and I apologize to the Court.

21 THE COURT: Well, but you need to leave enough time,
22 understanding that those things can happen. In any case --

23 MR. DRENNAN: I do understand, Your Honor.

24 THE COURT: All right. Now, what concerns the
25 Court -- and we need to address this issue quickly, because

1 I've got approximately 50 civilians downstairs in the jury
2 assembly room who were called to be here today, because this
3 case, as you know, was delayed two days because of the
4 bankruptcy filing. The bankruptcy stay has been lifted to let
5 this matter go forward.

6 We received a call this morning from your office
7 indicating that Mr. Samantar is not planning to contest this
8 case. Is that correct?

9 MR. DRENNAN: That, that is indeed correct, Your
10 Honor. I have just been apprised of that. I've been preparing
11 for trial, and Mr. Samantar has reached the conclusion that,
12 that his circumstances basically make it impossible for him to
13 proceed, and he has elected to, to take a default at this point
14 and not to contest.

15 THE COURT: Now, is that both liability and damages?

16 MR. DRENNAN: Yes.

17 THE COURT: All right, I'm going to need to get on
18 the record from Mr. Samantar himself --

19 MR. DRENNAN: I understand, Your Honor.

20 THE COURT: All right. Mr. Samantar, come up to the
21 lectern.

22 MR. DRENNAN: Can we have an interpreter, Your Honor?
23 Is the interpreter here?

24 THE INTERPRETER: Yeah.

25 THE COURT: All right, we'll have the interpreter

1 come up, please. I need Mr. Samantar right by the -- will the
2 interpreter please state your name and slowly spell it for us.

3 THE INTERPRETER: Your Honor, I am a Somali
4 interpreter. Last name is Khasse, last name, K-h-a-s-s-e,
5 first name Abdurahman, A-b-d-u-r-a-h-m-a-n.

6 THE COURT: All right. And what is your professional
7 background such that we can accept you as an interpreter in
8 this case?

9 THE INTERPRETER: Well, Your Honor, I came from
10 Minnesota, and we take a test. I'm on the roster in Minnesota
11 Supreme Court, and we do different federal, state, and civil
12 cases.

13 THE COURT: So you've appeared as a Somali translator
14 in federal court?

15 THE INTERPRETER: Yes, Your Honor.

16 THE COURT: All right. Then I'll have our clerk
17 administer an affirmation to you at this time, and unless
18 there's an objection from the plaintiffs, we'll accept this
19 gentleman as a proper interpreter.

20 MR. McLISH: No objection, Your Honor.

21 THE COURT: All right, that's fine. We'll administer
22 the affirmation.

23 (ABDURAHMAN KHASSE affirmed to translate Somali into English.)

24 THE COURT: Now, Mr. Samantar, I'm going to place you
25 under an affirmation. That means a promise to tell the truth

1 in answering the Court's questions. Do you understand that?

2 MR. SAMANTAR: Yes.

3 THE COURT: All right. Please raise your right hand.

4 MOHAMED ALI SAMANTAR, DEFENDANT, AFFIRMED

5 THE COURT: All right. Now, will you please for the
6 record state your full name.

7 MR. SAMANTAR: Mohamed Ali Samantar.

8 THE COURT: All right. And, Mr. Samantar, do you
9 understand that all of your answers to the Court's questions
10 must be completely truthful and that if you were to lie in
11 answering any question, you would be subject to possible
12 prosecution, criminal prosecution for perjury? Do you
13 understand that?

14 MR. SAMANTAR: Yes.

15 THE COURT: All right. Do you understand that your
16 lawyer has told the Court this morning that you no longer want
17 to contest this lawsuit?

18 MR. SAMANTAR: Right.

19 THE COURT: Now, have you had enough time to talk
20 with Mr. Drennan about this decision not to further contest or
21 debate or rebut the claims in this lawsuit?

22 MR. SAMANTAR: Yes.

23 THE COURT: Is it your decision today that you don't
24 want to contest this lawsuit?

25 MR. SAMANTAR: Yes.

1 THE COURT: Now, do you understand if the Court
2 accepts your position, that means I am going to find that you
3 are liable for all the actions that are described in the
4 plaintiffs' complaint?

5 MR. SAMANTAR: Yes.

6 THE COURT: That means among other things you will be
7 found liable for causing the deaths that are at issue in this
8 case, for being responsible for the extrajudicial killings, the
9 attempted extrajudicial killings, the rape, the torture, and
10 the other very serious allegations in this complaint. Do you
11 understand that?

12 MR. DRENNAN: Your Honor, if I might, the rape cause
13 of action was nonsuited by -- dismissed by the, by the
14 plaintiffs earlier. That action is no longer a part of the
15 case.

16 THE COURT: I'm sorry. That's correct, correct?

17 MR. McLISH: That's right.

18 THE COURT: All right. Omitting the rape, the other
19 serious allegations in the complaint, you would be admitting to
20 being liable for them. Do you understand that?

21 MR. SAMANTAR: I understand, but, but I want to say
22 something here to clarify. I want to stop this litigation.
23 The reason is I don't have any economical, you know --

24 THE COURT: Wait, I'm sorry, I'm not getting -- we
25 need to stop, because I can't get the interpreter's English.

1 Yeah. Could you repeat that, please?

2 MR. SAMANTAR: What I say is I want this case -- this
3 court to be stopped. The reason is to continue this
4 proceeding, it needs to have some money, and I don't have any
5 money. Because of that, I request to accept default, but that
6 doesn't mean that, you know, I'm guilty or I commit any crime.

7 THE COURT: Well, you can't have it both ways. This
8 is not a criminal case, so we're not talking guilt, but we are
9 a civil case, so we are talking about liability.

10 MR. SAMANTAR: Yes.

11 THE COURT: If you default, if you choose not to
12 fight this case, then the way the law is structured, the Court
13 will accept all of the well-pleaded allegations in the amended,
14 second amended complaint that have not been nonsuited, and the
15 only issue that will be left -- there still is going to be,
16 have to be a trial on the issue of damages. Whether you can
17 pay the damages if damages are ultimately awarded or not is a
18 completely separate issue, but I want to make sure you
19 understand that just taking a default and walking away doesn't
20 stop the litigation.

21 Do you understand that?

22 MR. SAMANTAR: Yes.

23 THE COURT: And has -- Mr. Drennan, had you basically
24 discussed what I've just been trying to explain to your client
25 with him so he understands that with a default, that doesn't

1 stop the litigation in the sense that it doesn't prevent a
2 judgment from issuing?

3 MR. DRENNAN: I have indeed discussed that with, with
4 my client, Your Honor. He understands fully that his electing
5 to take a default will give rise to liability, as Your Honor
6 just indicated, on all the well-pleaded causes of action in
7 respect to the case. He also understands further that this
8 decision will invariably give rise to the Court assessing
9 damages against him, both compensatory and possibly, in the
10 Court's discretion, punitive as well.

11 THE COURT: All right. Mr. Samantar, you heard what
12 Mr. Drennan just explained to the Court, did you?

13 MR. SAMANTAR: Yes.

14 THE COURT: And is that an accurate description of
15 the conversation he had with you about the default?

16 MR. SAMANTAR: Yes.

17 THE COURT: All right. Has anybody -- other than
18 your financial situation, has anybody put any force or pressure
19 on you to make the decision to default?

20 MR. SAMANTAR: No.

21 THE COURT: Has your medical condition in any respect
22 and the medications you may be taking made it difficult for you
23 to understand your conversations with Mr. Drennan?

24 MR. SAMANTAR: No, I understand them well.

25 THE COURT: All right. And, Mr. Drennan, for the

1 record, do you use an interpreter when you're communicating
2 with your client, or does he have moderately decent English
3 capability?

4 MR. DRENNAN: Your Honor, Mr. Samantar's present
5 English capability is exceedingly modest, and my communications
6 with him are through his siblings, the older of which are
7 fluent in Somali and English, primarily Yusuf Samantar, who is
8 here in court, and Ayanle Samantar --

9 THE COURT: All right.

10 MR. DRENNAN: -- his brother.

11 THE COURT: All right. I think on this record, there
12 is no question that the defendant has made the decision to
13 default on the issue of liability and damages with the full
14 advice of counsel, that he's made this decision in a knowing
15 and voluntary fashion, and nothing has been brought to the
16 Court's attention to in any respect have concerns about the
17 legitimacy of the default.

18 Is there anything further the plaintiffs want the
19 Court to establish on this issue?

20 MR. McLISH: I don't think so, Your Honor.

21 THE COURT: All right. I'm accepting then this
22 position that the defendant is defaulting, and that means
23 therefore the Court is going to go ahead and find, because I
24 reread the amended complaint this morning, that the allegations
25 are adequately well-pleaded, they are consistent with the

1 statutory requirements, and that liability is established as to
2 all of the claims still at issue in the second amended
3 complaint, and that leaves for us then the determination of
4 damages.

5 Now, we have a jury downstairs, but I've researched
6 this issue this morning, and I'm satisfied that this issue of
7 the damages should be tried to the Bench, and unless the
8 plaintiffs have any objection, I want to excuse the jury at
9 this point.

10 MR. McLISH: Your Honor --

11 THE COURT: Mr. Samantar, you may now sit next to
12 your counsel.

13 And the interpreter can stay at table so Mr. Samantar
14 can understand the proceedings.

15 Yes, sir.

16 MR. McLISH: Your Honor, we just found out about the
17 defendant's intention this morning, also, so we've had a
18 limited opportunity to research the issue. We believe that
19 Your Honor does have the discretion to order a jury trial on
20 the damages in this situation, so the plaintiffs would ask that
21 you, that you do that, that they be allowed to present their
22 damages evidence to a jury, and then we proceed in that
23 fashion.

24 THE COURT: Well, I'm going to exercise my discretion
25 and deny that request. I think the time that juries spend is

1 very precious time. We have almost 50 people downstairs
2 waiting to come in, but a jury trial will greatly extend the
3 length of these proceedings, which in my view is not necessary.

4 For the amount of time to voir dire the jury, to get
5 them in place, the need to at the end of the proceedings give
6 them instructions, the very extensive verdict form, which I
7 agree would be shorter but still it would definitely be adding
8 many, many additional hours to the trial, plus the wear and
9 tear on members of our community, which in my view is
10 unnecessary, the law does not -- and I've looked at the case
11 law carefully on this. I think the opinion that is most
12 instructive is the *Mwani* -- that's M-w-a-n-i -- *et al. v. Bin*
13 *Laden and al Qaeda*, it's a 2007 decision out of the District of
14 Columbia by Judge Kollar-Kotelly. It's a very, very articulate
15 description of the issues, and although I don't believe the
16 Fourth Circuit has addressed this issue, I'm satisfied that
17 there's not a Seventh Amendment right, absolute right to a
18 trial by jury on damages in a default case, and the defendant
19 has defaulted not only on liability but on damages. He's not
20 contesting or planning to be here to fight the damage issue.

21 Your clients want their day in court, they're here,
22 and we're ready to start within the next two or three minutes
23 the damage portion of the case. Do you need a few minutes
24 to -- because again, I'm not going to take a significant amount
25 of time. It's not going to be necessary to establish the facts

1 in the second amended complaint. They're deemed admitted, and
2 the issue will then be what evidence you have as to what the
3 appropriate damages should be.

4 MR. McLISH: Your Honor, I think we do need a short
5 amount of time to, to figure out exactly how we would like to
6 do that and to work out a way to do it as efficiently as
7 possible. We came here prepared to put on our full case. It
8 sounds very much to me like Your Honor does not think we should
9 do that, so --

10 THE COURT: No. Again, your clients will have their
11 day in court, but the parameters of that day in court or two
12 days in court is what is a reasonable presentation of the
13 appropriate evidence that is now needed to decide the issues
14 that are before us.

15 What I want to do is this: I'm going to excuse the
16 jury. I had given serious thought to imposing the costs of a
17 second jury on the defendant, but I realize that the issue
18 about whether or not there would still be a trial by jury even
19 in an ex parte situation is an open question.

20 I mean, I'm satisfied the courts that have looked at
21 it have all gone in this direction, and I'm going to go in this
22 direction as well, conducting it as a bench trial, but giving
23 the defendant the benefit of the doubt on that, I will not
24 impose the costs, but I came close to doing it.

25 So how much time do you need to get yourselves

1 organized?

2 MR. McLISH: Bear with me one moment, Your Honor?

3 Your Honor, in the interests of efficiency, I think
4 if we could have an hour, maybe two hours to cull down our case
5 to efficiently address what, you know, the current posture of
6 the case? We didn't know what was going to be left after this
7 morning's proceeding, so if we could have a recess of maybe two
8 hours and come back and get started?

9 THE COURT: All right, I'll give you until 12:00.
10 It's an hour and a half, all right? So we can get some of this
11 started before the lunch break.

12 Now, as I recall, Mr. Deria is the plaintiff who
13 traveled across country to be here? Isn't he the person with
14 the large family, or is it one of the other plaintiffs?

15 MR. McLISH: All of the plaintiffs have various
16 travel issues, Your Honor.

17 THE COURT: All right.

18 MR. McLISH: And we need to take that into
19 consideration in deciding who's going to testify when. We do
20 have several people who need to testify and be on their way as
21 soon as possible.

22 THE COURT: That's fine. All right, so 12:00 noon I
23 want to get this started.

24 The -- if we don't finish the evidentiary hearing
25 today, we will go into tomorrow, probably not starting until

1 eleven, and I would think we would conclude the evidence in two
2 days if we don't finish it today, I mean, because again, a
3 significant number of the issues are already resolved through
4 the default, all right?

5 MR. McLISH: Understood, Your Honor.

6 THE COURT: Anything else?

7 MR. McLISH: One other thing. Rule 55 of Federal
8 Rules of Civil Procedure does provide for a seven-day notice to
9 the defaulting party before there'd be a hearing on the default
10 judgment, and I just want to establish clearly on the record
11 that that seven-day period is being waived.

12 THE COURT: Mr. Drennan?

13 MR. DRENNAN: Your Honor, I would waive the seven-day
14 notice period in Rule 55, and I would state to the Court that I
15 know that the Court has expressed when we were here on Tuesday
16 some concerns about the timing of the bankruptcy filing on
17 Sunday evening. Mr. Samantar has defaulted -- or elected to
18 take his default as to liability and damages this morning.

19 Your Honor, this is a most extraordinary case, and
20 one factor that Mr. Samantar did not mention to the Court is
21 that today, there is an extraordinarily historic conference
22 presently underway in London convened at the behest of Prime
23 Minister David Cameron. There are leaders of 45 countries
24 there to discuss the future of Somalia. Secretary of State
25 Hillary Clinton is there. French Foreign Minister Alain Juppe

1 is there. Leaders of all of the countries that surround
2 Somalia are there.

3 Mr. Cameron said as he convened the hearing early
4 this morning that the world will pay a high price if the
5 problems of Somalia are not addressed. Secretary Clinton gave
6 her remarks, and just one sentence or two here, she stated:
7 "For decades, the world has focused on what we could prevent
8 from happening in Somalia, be it conflict, famine, or other
9 disasters. Now we are focused on what we can build. The
10 opportunity is real."

11 My client concurs with that sentiment, Your Honor,
12 and although perhaps not articulated at the podium, that, too,
13 is a factor in his decision. He believes that it would be
14 destructive to the very, very fragile peace process underway
15 for a two-week trial on liability and damages, with daily press
16 reports, with the plaintiffs' counsel promising the world to
17 provide daily feeds on Twitter and Facebook.

18 Counsel represented to the bankruptcy court
19 yesterday -- or Tuesday rather, that tens of thousands of
20 dollars have been expended to bring this case forward. Counsel
21 represented among other things having rented office space
22 across the court -- across from the court here, referring to
23 that office space as a war room.

24 Your Honor, one last point on this: Clausewitz said
25 that war is politics by another means. Litigation should not

1 be an atavistic prolongation of clan conflict by other means.

2 Mr. Samantar and his family have suffered greatly
3 over the last seven years, and I know that the plaintiffs claim
4 to have suffered. I won't speak to that. We've defaulted.
5 But what I can speak to is the sentiment that Somalia needs
6 better than this. Somalia does not need more clan conflict.
7 Somalia needs peace and reconciliation, Your Honor.

8 THE COURT: Well, Mr. Drennan, I think that argument,
9 which you made in a somewhat different context two or three
10 years ago, we gave the United States executive branch, the
11 State Department over two years to put their -- make a
12 position -- take a position in this case. They chose not to.

13 As you know, more recently in the matter that's
14 pending before the Fourth Circuit and it was before us as well
15 on the issue of common law immunity, the United States
16 government did not come in on your side.

17 I mean, the government -- the executive branch could
18 have stopped this litigation if they felt that it was going to
19 have the kind of negative impact that you discuss on the
20 delicate efforts to heal the problems in Somalia. That's an
21 area of expertise beyond this Court 's area, but I think it's
22 fair to say so the record is clear that whatever dire impact
23 you feel this case might have on that process is not shared by
24 our State Department or any other executive branch officials,
25 and that's reflected in the position that's been taken in this

1 case.

2 So we're going to go ahead and treat this just like
3 any other, because that's what it is, this is a civil case in
4 which the plaintiffs are seeking compensatory and punitive
5 damages, and it will be treated like any other case in that
6 posture.

7 So we'll recess until noon, at which time I expect
8 the plaintiffs to be ready to go forward. Thank you.

9 MR. McLISH: Thank you, Your Honor.

10 (Which were all the proceedings
11 had at this time.)

12
13 CERTIFICATE OF THE REPORTER

14 I certify that the foregoing is a correct transcript of
15 the record of proceedings in the above-entitled matter.

16
17
18 /s/
19 _____
20 Anneliese J. Thomson

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