

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ABUKAR H. AHMED,	:	Case No. 2:10-cv-342
Plaintiff	:	District Judge: George C. Smith
	:	Magistrate Judge: Mark R. Abel
vs.	:	
	:	
	:	MEMORANDUM OF LAW IN SUPPORT
	:	OF PLAINTIFF’S MOTION TO STRIKE
	:	THE AFFIDAVITS OF ALESSANDRO
	:	CAMPO, MAHMOUD HAJI NUR, AND
	:	MOHAMED ABDIRIZAK
	:	
ABDI ADEN MAGAN,	:	
Defendant	:	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S MOTION TO
STRIKE THE AFFIDAVITS OF ALESSANDRO CAMPO, MAHMOUD HAJI NUR,
AND MOHAMED ABDIRIZAK**

I. INTRODUCTION

Plaintiff Abukar Ahmed filed the Complaint against Defendant Abdi Magan, alleging that Defendant ordered his detention and torture in Somalia, in violation of the Torture Victim Protection Act (“TVPA”) and the Alien Tort Statute (“ATS”). 28 U.S.C. § 1350 note; 28 U.S.C. § 1350. Defendant moved to dismiss (the “Motion”) the Complaint arguing, *inter alia*, that (1) Plaintiff failed to exhaust his remedies in the country where the alleged conduct occurred as required under the TVPA, and (2) Plaintiff’s claims are time-barred because he could have brought an earlier claim in his home country. In support of his Motion, however, Defendant does not address circumstances in Somalia. Rather, Defendant focuses on Somaliland – a different country. The incongruity between the facts of this case and the evidence Defendant submits results from the fact that Defendant plucked affidavits from the public record of a completely unrelated case, filed six years ago and involving different parties, different claims,

and even a different country, and simply attached them to his Motion. Somaliland is a self-declared autonomous country that declared independence from Somalia in 1991. The Defendant's own affidavits acknowledge that Somaliland cannot entertain claims that arose in Somalia, such as the claims at issue here. Furthermore, Defendant's affidavits recognize that Somalia, and Mogadishu specifically, has been plagued with tribal warfare since 1991, making fair trials there impractical. Lastly, two of Defendant's experts, Mahmoud Haji Nur and Mohamed Abdirizak, have not established that they have the requisite knowledge, education or experience to render opinions in this case that would be helpful to the Court.

Plaintiff therefore moves, pursuant to Fed. R. Evid. 401 and 702, to strike the affidavits of Alessandro Campo, Mahmoud Haji Nur, and Mohamed Abdirizak (collectively, "the Affidavits").

II. ARGUMENT

A. The Affidavits are Irrelevant to the Present Case.

To be admissible, expert testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue," Fed. R. Evid. 702, and be "relevant to the task at hand." Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 597 (1993). Expert testimony must (1) be based upon sufficient facts or data, (2) be the product of reliable principles and methods, and (3) the witness must apply the principles and methods reliably to the facts of the case. Fed. R. Evid. 702. "Relevant evidence" is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Fed. R. Evid. 401. Here, Defendant has not satisfied any of these criteria.

The issue raised by Defendant's Motion is whether, after 1991, there was a judicial system in *Somalia* that would provide a fair forum for Plaintiff to raise his claims of torture against a former government official such as Defendant. None of the Affidavits address the judicial system in Somalia. Instead, each focuses on Somaliland which, as of 1991, declared its independence from Somalia and has since continually operated as a separate state with a separate judiciary. Ganzglass Aff. ¶ 10; see also U.S. Dep't of State, *U.S. Department of State Country Report on Human Rights Practices 2002 - Somalia*, ¶ 3, Mar. 31, 2003, available at www.unhcr.org/refworld/docid/3e918c2e10.html.

That Defendant's experts made no attempt to address circumstances in Somalia is unsurprising given that the Affidavits were not prepared with any knowledge of the facts alleged in this case. Indeed, the Affidavits were drafted six years before this case was filed and were prepared to address the facts of another case involving different parties, different claims, and a different location of activity. See *Yousuf v. Samantar*, Civ. Action No. 1:04W1360 (E.D. Vir.). Defendant has not retained these experts for this case, they have no knowledge of it, and likely are unaware that their affidavits have been used here. See Amended Rule 26(f) Report at 6(g) (stating that "Defendant is uncertain as to whether he will designate any expert witnesses in this matter").

Expert testimony must "fit the facts of the case." Fed. R. Evid. 702 Advisory Committee's Note. The objectionable Affidavits clearly do not "fit the facts of the case," as they describe the condition of Somaliland rather than Mogadishu (Somalia). In fact, the Campo Affidavit states that an individual in Plaintiff's position could not have brought his case in Somaliland and must bring a case in Mogadishu for events that took place in the district around

Mogadishu. First Campo Aff. ¶ 8. Accordingly, the Affidavits are not relevant or helpful to the trier of fact and should be excluded under Fed. R. Evid. 702.

B. Mahmoud Haji Nur and Mohamed Abdirizak Do Not Qualify as Experts Within the Definition of Federal Rule of Evidence 702.

Witnesses must be qualified by “knowledge, skill, experience, training, or education” in order to provide expert opinion testimony. Fed. R. Evid. 702. Neither Mahmoud Haji Nur nor Mohamed Abdirizak¹ provide any information from which the Court could conclude that they have sufficient knowledge, skill, experience, training or education to discuss political and judicial conditions in Somalia. Accordingly, they are not able to provide opinions based on specialized, expert knowledge.

Mahmoud Haji Nur presents his qualifications as a former Somali Ambassador (from 1973-1986, before the incidents alleged in the Complaint occurred), the Chairman of the Somali Ports Authority (until 1991), a former resident of an area which now forms part of Somaliland, and as someone who “closely follow[s] the developments in Somaliland and the rest of Somalia.” Nur Aff. ¶ 8. He does not tie his experience to “knowledge[] about Somaliland’s government and judiciary and the general state of affairs in the rest of Somalia.” Nur Aff. ¶ 8. Nur has lived in the United States since the fall of the Barre administration in 1991, and has not claimed to have any relevant experience or employment by the government since that time. Thus, it is unclear how he could qualify as an expert on conditions in Somalia and Somaliland after 1991.

Mohamed Abdirizak claims to be qualified because of his service with the United Nations Development Program for Somalia, which was based out of Kenya but included several

¹ Plaintiff does not concede that Mr. Alessandro Campo is qualified to serve as an expert under Fed. R. Evid. 702.

missions to Somaliland. He does not claim any expertise with the region of Mogadishu.

Additionally, while he notes his educational experience in Pakistan and at Johns Hopkins, he does not assert that this contributes to his knowledge of Somalia or even Somaliland.

It is Defendant's burden to demonstrate that his experts are qualified to render opinions that would be relevant and helpful to understanding the facts of this case. Nelson v. Tennessee Gas Pipeline Co., 243 F.3d 244, 251 (6th Cir. 2001) (citing Daubert, 509 U.S. at 592 n. 10) ("It is the proponent of the testimony that must establish its admissibility by a preponderance of proof").

Because Defendant has not done so, the Affidavits should be stricken.

III. CONCLUSION

For the above stated reasons, the Court should strike the Affidavits of Alessandro Campo, Mahmoud Haji Nur, and Mohamed Abdirizak and not consider them in ruling on Defendant's Motion to Dismiss.²

² Alternatively, if the Court does consider the Affidavits, Plaintiff moves pursuant to Fed. R. Civ. P. 56(f) for discovery from the Affiants.

Dated: July 6, 2010

ABUKAR HASSAN AHMED,

By: s/ Tiffany T. Smith_____

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2010, I electronically transmitted the foregoing Memorandum of Law in Support of Plaintiff's Motion to Strike the Affidavits of Alessandro Campo, Mahmoud Haji Nur, and Mohamed Abdirizak to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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