

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

JANE DOE and JOHN DOE, . Civil Action No. 1:04cv1361
Plaintiffs, .
vs. . Alexandria, Virginia
August 5, 2005
YUSUF ABDI ALI, . 10:00 a.m.
Defendant. .
.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: ROBERT R. VIETH, ESQ.
SCOTT A. JOHNSON, ESQ.
Cooley Godward LLP
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FOR THE DEFENDANT: JOSEPH PETER DRENNAN, ESQ.
218 North Lee Street, Third Floor
Alexandria, VA 22314-2631

ALSO PRESENT: YUSUF ABDI ALI

OFFICIAL COURT REPORTER: ANNELIESE J. THOMSON, RDR, CRR
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P R O C E E D I N G S

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2 THE CLERK: Civil Action 2005-701, Jane Doe, et al. v.
3 Yusuf Abdi Ali. Will counsel please note their appearance for the
4 record.

5 MR. VIETH: Good morning, Your Honor. Robert Vieth of
6 Cooley Godward on behalf of the plaintiffs, and with me at counsel
7 table is Scott Johnson of our office.

8 MR. JOHNSON: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. DRENNAN: Good morning, Your Honor. Joseph Peter
11 Drennan on behalf of the defendant, Yusuf Abdi Ali, who is also
12 present.

13 THE COURT: All right. What is before the Court this
14 morning is the defendant's motion to dismiss with prejudice the
15 complaint. I have looked with care at both the defendant's motion
16 and the plaintiffs' opposition, and as we've been struggling with
17 this case for some time because of its sort of unique situation,
18 I've thought very carefully about how to resolve the pending
19 motion.

20 Although the motion raises interesting legal questions
21 about the statute of limitations, the far more interesting
22 question and troubling question to the Court and a question upon
23 which the defendant has offered significant evidence in my view at
24 this point is the very delicate issue of the extent to which if at
25 all this case going forward in a federal court of this country and

1 including potentially the taking of evidence in foreign countries,
2 particularly Ethiopia, could have a significantly negative impact
3 on the foreign policy of the United States in that part of the
4 world and could have a detrimental effect on what appear to be
5 significant efforts at reconciliation in that very troubled part
6 of the world.

7 These are incredibly serious issues. They have been
8 raised throughout this case, and in the defendant's -- attached to
9 the defendant's motion are two pieces of evidence that have in
10 particular gotten my attention. One is the affidavit of
11 Mr. Trusten Crigler, who is the former American ambassador to
12 Somalia and apparently is an advisor and mediator to various
13 Somali faction leaders, who is apparently very concerned about the
14 impact of this particular litigation on the healing process in
15 that part of the world.

16 And then we have a statement from the minister of state
17 for foreign affairs of the transitional federal government of the
18 Somali Republic, which Mr. Crigler feels the Court should give
19 great deference to but also which on its own the Court would have
20 given deference to. In that letter, as I know you know,
21 Mr. Vieth, the Somali official -- or the official indicates that
22 he was recently in the United States, was meeting with members of
23 the United States Senate addressing some of these issues.

24 Now, I also have among the papers submitted by
25 Mr. Drennan an affidavit from a Charles Schaefer, who is a

1 professor of African history at Valparaiso University and an
2 expert in the area of Africa involving Ethiopia and what was the
3 area of Somalia, and he indicates that from his understanding of
4 the very delicate situation in Ethiopia, which has recently had
5 some political problems itself, that it is possible that the
6 taking of depositions officially authorized by a United States
7 federal court at this time could disrupt tenuous political
8 relationships between that country and Somalia.

9 There are in my view or there has been no countervailing
10 evidence presented by the plaintiff that undercuts at this point
11 these very serious concerns raised by Mr. Drennan.

12 Now, on the other hand, I recognize that the plaintiffs
13 in this case have articulated very, very serious potential human
14 rights violations which they allege they have been the victim of,
15 and obviously, those types of concerns also need to be addressed
16 carefully by a federal court, but in this political environment,
17 where if there is the possibility of reconciliation, that would
18 suggest peace and stability that could affect millions of people
19 versus just a few getting compensation for past injuries, I find
20 that this Court must stay this proceeding indefinitely until I get
21 some definitive guidance from the United States Department of
22 State and/or if the -- I don't think the attorney general needs to
23 get involved, but the executive branch.

24 I actually got some assistance in deciding how I was
25 going to handle this case from a case that the plaintiffs actually

1 relied upon in their opposition brief, the Kadic v. Karadzic case
2 out of the Second Circuit. Although that dealt with a different
3 question, that is, it dealt with an immunity question, what I
4 was -- what took my attention or got my attention was the fact
5 that apparently the Second Circuit on its own sent an inquiry
6 trying to find out what the executive branch's position would be.

7 That gives me confidence in my sense that a judge has
8 the ability and perhaps even the obligation in these types of
9 cases to ensure that what we do in the third branch of the
10 government does not inappropriately affect the other two branches
11 of government.

12 And again, this part of the world is such a sensitive
13 area. There are huge national interests of this country involved
14 there that I don't want to intrude upon without having gotten some
15 guidance from the executive branch.

16 Now, Mr. Vieth, I know in the related case, are you
17 not -- you've been pursuing on a somewhat different issue, but you
18 have had contact with the Department of State.

19 MR. VIETH: We have, Your Honor. Your Honor in that
20 case directed our -- opposing counsel to contact the State
21 Department, and both sides made submissions, and we're still
22 waiting to hear.

23 THE COURT: I know. And so what I am going to do is I
24 am staying this case indefinitely. I'm putting it on the inactive
25 docket of the Court, which means it's not dismissed; it's there.

1 It's much like the way we stay a case when there's been a
2 bankruptcy filed. I am staying it to await guidance from the
3 executive branch.

4 Either of you can pursue that, but until I get a clear
5 green light from the executive branch that, No. 1, this case can
6 go forward without interfering with or creating problems for
7 American foreign policy, and 2, that I am satisfied that any
8 discovery that we might permit in that part of the world, that is,
9 because Ethiopia is what we were talking about, will not interfere
10 with American foreign policy, then at that point with those green
11 lights, this case can go back on the docket, and then we'll
12 address the legal issues out there.

13 Obviously, since it is stayed, that would not affect the
14 statute of limitations. It would be tolled in that time period.

15 I also find that any delay will not be of any prejudice
16 to the plaintiffs in this case as they have first of all waited an
17 extremely long time since the original alleged harms to even come
18 to court. No. 2, they're not seeking any kind of ongoing
19 injunctive relief in any respect that could change actual behavior
20 that's happening, and frankly, it may enure to their benefit
21 because if that world becomes more stable, it may become easier if
22 the case does stay on the docket, A, to get discovery, or B, they
23 may ultimately be able to come to this country, which would solve
24 at least that aspect of the discovery issues in this case.

25 So for the reasons I've just announced from court, that

1 is how I'm going to handle the motion, and what I will ask you to
2 do is I don't need every month, but give me a status report. I'll
3 tickle it in three to six months to see what's happening. I would
4 expect the State Department will be weighing in at some point
5 since they've been contacted already in the other case. All
6 right?

7 MR. VIETH: Very well, Your Honor, thank you.

8 THE COURT: Anything further?

9 MR. DRENNAN: Your Honor, I would just point out to the
10 Court that Ambassador Crigler is actually here this morning,
11 sitting in the second row here.

12 THE COURT: All right.

13 MR. DRENNAN: He came up from North Carolina to attend
14 the hearing.

15 THE COURT: Well, I was impressed, as I said, with the
16 quality of the evidence that you presented and with the
17 credentials of Mr. Crigler, and obviously, I've taken this
18 situation very seriously, and I urge both sides to try to get some
19 guidance for us from the executive branch.

20 Thank you.

21 MR. DRENNAN: Thank you, Your Honor.

22 MR. VIETH: Thank you.

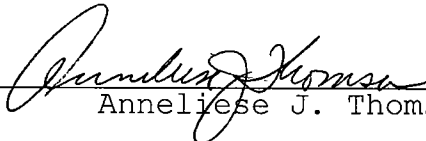
23 (Which were all the proceedings
24 had at this time.)

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CERTIFICATE OF THE REPORTER

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


Anneliese J. Thomson