

No. 07-1893

In The
United States Court of Appeals
for the
Fourth Circuit

BASHE ABDI YOUSUF, AZIZ MOHAMED DERIA
(in his Capacity as Personal Representative of the Estates of
Mohamed Deria Ali, Mustafa Mohamed Deria, James Doe I and James Doe II)
OFFICER JOHN DOE I, JANE DOE I, and JOHN DOE II,

Plaintiffs-Appellants,

v.
MOHAMED ALI SAMANTAR,

Defendant-Appellee.

*On Appeal from the United States District Court for the Eastern District
of Virginia in No. 04-CV-1360 (Hon. Leonie M. Brinkema, Judge)*

BRIEF FOR DEFENDANT-APPELLEE

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JANUARY 2, 2008

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No. 07-1983

Caption: Bashe Abdi Yousuf, et al. v. Mohamed Ali Samantar

Pursuant to FRAP 26.1 and Local Rule 26.1,

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(name of party/amicus) (appellant/appellee/amicus)

makes the following disclosure:

1. Is party/amicus a publicly held corporation or other publicly held entity?
 YES NO
2. Does party/amicus have any parent corporations?
 YES NO
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?
 YES NO
If yes, identify all such owners:
4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?
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If yes, identify entity and nature of interest:
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 YES NO
If yes, identify all members of the association, their parent corporations, and any publicly held companies that own 10% or more of a member's stock:
6. If case arises out of a bankruptcy proceeding, identify any trustee and the members of any creditors' committee:

Justin W. Zani
(signature)

January 2, 2008
(date)

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QUESTIONS PRESENTED

Is Defendant Mohamed Ali Samantar (“Samantar”) entitled to immunity under the Foreign Sovereign Immunities Act, (the “FSIA”), 28 U.S.C. §§ 1602-11, as the District Court held, for actions that he took while Prime Minister, First Vice President, and Defense Minister of Somalia, when the Complaint and letters from officials of Somalia confirm that he took those actions in his official capacities?

Is Samantar entitled to have the Complaint dismissed on any other ground advanced to the District Court, including the availability to Samantar of head-of-state or other common law immunity, the running of the statute of limitations based on Samantar’s amenability to suit in Italy during the period of Samantar’s residence in that country, and the failure of Plaintiffs to exhaust local remedies in Somalia?

STATEMENT OF THE CASE

On November 10, 2004, Plaintiffs filed a Complaint in the United States District Court for the Eastern District of Virginia. Joint Appendix (“J.A.”) at 28-65. The Complaint alleged that Samantar violated the human rights of a number of residents of Somalia while Samantar served variously as Prime Minister, First Vice President, and Defense Minister of Somalia from January 1980 to September 1990. (J.A. 102, 209).

Samantar filed a motion to dismiss the Complaint on December 1, 2004. (J.A. 3). At a hearing on the motion on January 7, 2005, the District Court stayed the proceedings, before ruling on the motion, to enable the United States Department of State (“State Department”) to make its views known to the District Court on Samantar's eligibility for immunity. (J.A. 209).

A little over two years later, in the face of State Department inaction, the District Court reinstated the case to the active docket. (J.A. 210). With leave of court, the Plaintiffs filed a Second Amended Complaint. (J.A. 10). On March 29, 2007, Samantar moved to dismiss the Second Amended Complaint. (J.A. 11, 66). Samantar argued principally that Samantar enjoyed immunity from Plaintiffs’ claims under the FSIA and common law, that Plaintiffs’ claims were time barred, and that Plaintiffs had improperly failed to exhaust their legal remedies in Somalia. (J.A. 71-125).

As part of his motion, Samantar submitted a letter written by the Acting Prime Minister of Somalia, an official of the Transitional Federal Government (the “TFG”), to the United States Secretary of State on February 17, 2007. This letter was written, by its terms, “to indicate that the actions attributed to Mr. Samantar in the [instant] lawsuit in connection with the quelling of the insurgencies from 1981 to 1989 would have been taken by Mr. Samantar in his official capacities and to

