United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-7044 **September Term, 2018**

FILED ON: FEBRUARY 22, 2019

GODSON M. NNAKA,

APPELLANT

v.

FEDERAL REPUBLIC OF NIGERIA AND ABUBAKAR MALAMI,

APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:16-cv-01400)

Before: TATEL and KATSAS, *Circuit Judges*, and SENTELLE, *Senior Circuit Judge*.

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia, and on the briefs and oral arguments of the parties. The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* Fed. R. App. P. 36; D.C. Cir. R. 36(d). It is

ORDERED and **ADJUDGED** that the judgment of the United States District Court for the District of Columbia be affirmed.

Godson Nnaka, a United States citizen, alleges that the Federal Republic of Nigeria hired him in 2004 to find and repatriate stolen Nigerian assets. In 2014, the United States unsealed a forfeiture action to recover assets allegedly used in connection with money laundering in Nigeria. Nnaka sought to intervene in the proceeding, purportedly on Nigeria's behalf. However, Nigeria's then-Attorney General, Mohammed Adoke, sent a letter to the Department of Justice stating that Nnaka was not authorized to represent Nigeria. The district court then dismissed Nnaka from the case. Attorney General Adoke also referred Nnaka to the Nigerian Economic and Financial Crimes Commission for criminal prosecution.

In 2016, Nnaka filed a ten-count complaint against Nigeria and its current Attorney General, Abubakar Malami. Seven counts raised contract and tort claims arising from Attorney General Adoke's 2014 letter and his referral of Nnaka for prosecution. Two counts raised claims

for unjust enrichment and *quantum meruit*. In the final count, Nnaka asked the district court to appoint him and his attorney as private attorneys general of Nigeria.

The district court concluded it had jurisdiction under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1330 *et seq.*, but dismissed the complaint for failure to state a claim. Our review is *de novo*, *Medina v. Whitaker*, 913 F.3d 152, 157 (D.C. Cir. 2019), and we affirm.

The FSIA is the "sole basis for obtaining jurisdiction over a foreign state" in a civil action. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989). The FSIA grants foreign nations immunity from suit unless an exception applies. 28 U.S.C. § 1604. As relevant here, one exception covers any case "based upon … an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere," if the act "causes a direct effect in the United States." *Id.* § 1605(a)(2).

The district court correctly concluded that section 1605(a)(2) applies to this case. Nnaka's complaint was "based upon" Attorney General Adoke's decisions to mail the 2014 letter and, relatedly, to refer Nnaka for prosecution. Both of these acts occurred "outside the territory of the United States." Moreover, the letter was mailed "in connection with a commercial activity" of Nigeria outside the United States, for it repudiated that country's alleged 2004 agreement with Nnaka. While the agreement allegedly charged Nnaka to recover sovereign funds, that does not make it any less commercial. Under the FSIA, "commercial character" turns on "the nature of the … particular transaction or act," rather than "its purpose." 28 U.S.C. § 1603(d); *see Guevara v. Republic of Peru*, 468 F.3d 1289, 1299 (11th Cir. 2006) (offer of award for information leading to arrest of former government official qualifies as commercial activity). Finally, the letter caused the district court to dismiss Nnaka from the asset forfeiture case, which plainly qualifies as a "direct effect in the United States."

On the merits, the district court correctly dismissed Nnaka's contract and tort claims under the act-of-state doctrine, which forbids courts to "declare invalid the official act of a foreign sovereign performed within its own territory." *W.S. Kirkpatrick & Co. v. Envtl. Tectonics Corp., Int'l*, 493 U.S. 400, 405 (1990). An official act involves "conduct that is by nature distinctly sovereign, *i.e.*, conduct that cannot be undertaken by a private individual or entity." *McKesson Corp. v. Islamic Republic of Iran*, 672 F.3d 1066, 1073 (D.C. Cir. 2012). Here, the contract and tort claims rely on Attorney General Adoke's 2014 letter and his referral of Nnaka for criminal prosecution. The first was an intergovernmental communication from Nigeria to the United States regarding who had authority to represent the Nigerian government in an asset-forfeiture action. The act-of-state doctrine clearly covers such communications. *See Hourani v. Mirtchev*, 796 F.3d 1, 13 (D.C. Cir. 2015) ("an authoritative representation by the foreign government" is "binding and conclusive in the courts of the United States" (cleaned up)). The second was an executive decision to conduct a criminal investigation, which ranks "[f]oremost among the prerogatives of sovereignty." *Heath v. Alabama*, 474 U.S. 82, 93 (1985).

Next up are the claims for unjust enrichment and *quantum meruit*. We assess them under District of Columbia law because the FSIA requires us to apply the choice-of-law rules of the forum state. *Oveissi v. Islamic Republic of Iran*, 573 F.3d 835, 841 (D.C. Cir. 2009). Those rules provide that where, as here, the parties "have failed to prove foreign law, the forum may say that

the parties have acquiesced in the application of the local law of the forum." *Oparaugo v. Watts*, 884 A.2d 63, 71 (D.C. 2005) (quotation marks omitted).

Under District of Columbia law, a plaintiff states a claim for unjust enrichment or *quantum meruit* only if he conferred a benefit on the defendant. *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 47 n.31 (D.C. 2015). Nnaka does not plead that he conferred any benefit on Nigeria. There is no allegation that Nnaka discovered the looted funds that prompted the asset forfeiture action in the United States. And in any event, Nigeria rejected his services and has neither intervened in the proceedings nor recovered the funds at issue.

Finally, and needless to say, the district court correctly concluded that it lacked authority to appoint private attorneys general for Nigeria.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

PER CURIAM

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk