United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-7170 **September Term, 2019**

FILED ON: NOVEMBER 26, 2019

JOHN DOE 1, ET AL.,
APPELLANTS

v.

TUKUR YUSUF BURATAI, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:17-cv-01033)

Before: MILLETT and RAO, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

J U D G M E N T

This case comes before the Court on appeal from the United States District Court for the District of Columbia's order dismissing appellants' complaint. This action was considered on the briefs of the parties. The Court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED and **ADJUDGED** that the dismissal of appellants' claims be affirmed.

This case arises out of a long-running conflict between the Nigerian government and members of the Biafran and Igbo communities, who have sought secession from Nigeria. Appellants, ten Nigerian nationals who have sued pseudonymously (collectively, "the Does"), allege that the appellees, fifteen Nigerian government, military, and police officials, participated in or oversaw violent and unprovoked attacks on peaceful gatherings of Igbo civilians. The Does filed suit in the United States District Court for the District of Columbia alleging that the Nigerian officials' conduct violated the Torture Victim Protection Act, 28 U.S.C. § 1350 note, and international law, and seeking damages for their mistreatment. The District Court dismissed the action, concluding that it lacked personal jurisdiction over the officials and that the officials were entitled to foreign-official immunity. We review the judgment of dismissal de novo. *See Estate of Klieman v. Palestinian Auth.*, 923 F.3d 1115, 1123 (D.C. Cir. 2019); *Simon v. Republic of Hungary*, 812 F.3d 127, 135 (D.C. Cir. 2016).

The Does allege that the defendant Nigerian officials engaged in or supervised a series of three

attacks against peacefully assembled groups of pro-Biafran supporters. On January 18, 2016, the Indigenous People of Biafra, a pro-Biafran organization, held a rally, and Nigerian military and police forces allegedly "fired into the * * * peaceful protest." According to the complaint, approximately one month later, the same group organized another gathering at a high school, which the Nigerian military and police forces then attacked—killing or critically wounding at least thirty individuals. The final attack identified in the complaint occurred from May 29–30, 2016, during an assemblage to celebrate Biafran Patriots Day. Nigerian forces reportedly massacred many of the gathered demonstrators while they were sleeping and during the subsequent day's events.

One year later, a group of victims filed suit. Nine of the plaintiffs filed as legal representatives of the victims of the alleged extrajudicial killings. The remaining plaintiff alleged that he was detained and tortured following the attack on the Biafran Patriots Day demonstration. The complaint sought damages and any other relief the District Court deemed just and proper under the Alien Tort Statute, 28 U.S.C. § 1350, and the Torture Victim Protection Act.

The current appellee Nigerian officials waived service of the complaint, and then filed a motion to dismiss for (i) lack of personal jurisdiction, (ii) lack of subject-matter jurisdiction due to foreign-official immunity, the act of state doctrine, and the political question doctrine, and (iii) failure to state a claim. The District Court granted that motion, concluding that it lacked both personal jurisdiction over the officials and subject-matter jurisdiction over the lawsuit because of foreign-official immunity.

The Does appealed. During the pendency of this appeal, one of the defendant Nigerian officials, Willie Obiano, filed a motion for summary affirmance based on lack of personal jurisdiction. This Court granted summary affirmance of the District Court's dismissal of the claims against Obiano on personal jurisdiction grounds. *See* Order Granting Motion for Summary Affirmance, Docket No. 1773638, 2019 WL 668339 (Feb. 15, 2019). Because the remaining defendant Nigerian officials failed to file a motion for summary affirmance, their case proceeded to merits briefing.

We now affirm the District Court's dismissal of the case against the remaining Nigerian officials on personal jurisdiction grounds.

For a lawsuit to go forward, the Due Process Clause of the Fifth Amendment to the Constitution requires that defendants either be present within the territory of the forum court or that they have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citations and quotation marks omitted). Because the Nigerian officials are not present in the District of Columbia and the Does make no argument that the Nigerian officials fall within the District's (or any States') long-arm statute, Federal Rule of Civil Procedure 4(k)(2) governs the personal-jurisdiction analysis. The Rule provides that, for a claim arising under federal law (like the Alien Tort Statute and Torture Victim Protection Act claims raised in the complaint), "filing a waiver of service establishes personal jurisdiction over a defendant" if that defendant "is not subject to jurisdiction in any state's courts of general

jurisdiction," and "exercising jurisdiction is consistent with the United States Constitution and laws." FED. R. CIV. P. 4(k)(2).

There is no dispute in this case that the defendant Nigerian officials are not subject to the jurisdiction of any state court because the defendant Nigerian officials have not identified a state in which they could be sued. *See Mwani v. bin Laden*, 417 F.3d 1, 11 (D.C. Cir. 2005) (stating that a defendant, to avoid application of Rule 4(k)(2), must concede to jurisdiction in a state). So the only question is whether the officials have constitutionally sufficient contacts with the United States as a whole to permit the federal court's exercise of personal jurisdiction over them. *See id.*; *see also* Does Reply Br. 1 (arguing that personal jurisdiction exists under Rule 4(k)(2)).

The Due Process Clause requires that a district court asserting personal jurisdiction over a defendant must possess either general or specific jurisdiction. *See Klieman*, 923 F.3d at 1119. The District Court in this case correctly determined that it possessed neither.

There is no general jurisdiction over the Nigerian officials. General jurisdiction exists if the defendant is domiciled or "at home" in the forum. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011). The Does do not plausibly allege any facts suggesting that the Nigerian officials have ever been to the United States, let alone are domiciled or at home here. Nor do they allege that the officials undertook any relevant conduct at all within the United States, let alone engaged in a pattern of contacts that could sustain an exercise of general jurisdiction. *See Walden v. Fiore*, 571 U.S. 277, 283 n.6 (2014); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414–415 & n.9 (1984); *see also* J.A. 16 (stating suit involves "exclusively Nigerian Plaintiffs and Nigerian Defendants").

As for specific jurisdiction, the complaint needed to show that the dispute arose "out of or relate[d] to the defendant's contacts with the forum." *Klieman*, 923 F.3d at 1119 (formatting altered) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014)). In particular, "to exercise [specific] jurisdiction consistent with due process, the defendant's *suit-related conduct* must create a *substantial connection* with the forum." *Id.* at 1120 (second and third alterations in original) (quoting *Walden*, 571 U.S. at 284). But neither the complaint nor the Does' briefing to this Court identified any facts demonstrating (or arguments suggesting) an "affiliation between the forum and the underlying controversy," which involves exclusively conduct that was undertaken in Nigeria against Nigerians by Nigerian officials. *See Livnat v. Palestinian Auth.*, 851 F.3d 45, 56 (D.C. Cir. 2017) (quoting *Walden*, 571 U.S. at 283 n.6).

Instead, the Does argue that those who commit murder or torture in violation of international law should anticipate being sued in any court in the world for their crimes. *See* Does Opening Br. 17 ("Like pirates, every torturer or murderer acting under color of foreign law presumably knows they may be held accountable for their crimes against all mankind in any nation in the world that chooses to exercise jurisdiction."). In the Does' view, this "theory of universal jurisdiction" for crimes against humanity overrides any due process limitations on personal jurisdiction. *See* Does Opening Br. 19.

That is not the law. In *Klieman*, this Court ruled that the district court could not exercise

personal jurisdiction over the Palestinian Authority in a suit arising from a terrorist attack in the West Bank, even though one of the victims was a United States citizen. *See* 923 F.3d at 1118, 1123–1126. Absent a plausible showing that the attack was aimed at or designed to influence the United States, no sufficient basis for personal jurisdiction existed. *Id.* at 1124–1125; *see also Livnat*, 851 F.3d at 57 (same). This case falls even shorter of the mark. No Americans were victims, targets, or otherwise affected by the Nigerian officials' actions, and there is no claim that the officials' actions were aimed at or intended to injure the United States.

The Does' reliance on *Mwani* is misplaced. That case arose out of the bombing of the United States' embassy in Nairobi. 417 F.3d at 13. We held that personal jurisdiction existed over al Qaeda, the entity responsible for the attack, and Osama bin Laden, al Qaeda's leader, because the attack was specifically aimed at harming the United States, its people, and its property. *Id.* at 12–14; *see generally Owens v. Republic of Sudan*, 864 F.3d 751, 762 (D.C. Cir. 2017). Specifically, the *Mwani* plaintiffs' allegations and evidence tied the attack to the United States in that (i) the attack was orchestrated to "kill both American and Kenyan employees"; (ii) it was designed to "cause pain and sow terror in the embassy's home country, the United States"; and (iii) it was part of "an ongoing conspiracy to attack the United States." *Mwani*, 417 F.3d at 13.

The Does claim none of those bases for jurisdiction. Instead, they argue that the Nigerian officials "purposely directed their extermination and torture of the Biafrans against the entire world, including the United States," and "[t]hey knowingly chose to commit universal crimes knowing that universal jurisdiction would be triggered." Does Opening Br. 20. Our precedent forecloses that concept of world-wide personal jurisdiction. *See Klieman*, 923 F.3d at 1124–1125; *Livnat*, 851 F.3d at 53, 56–57.

Nor do any of the other cases cited by the Does provide a legal foundation for the claim of universal personal jurisdiction. For example, *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), concerns federal subject-matter jurisdiction, not personal jurisdiction. *Id.* at 878. And, in any event, the defendant was served with process in the United States, which by itself established personal jurisdiction. *Id.* at 885. The Does' invocation of *Demjanjuk v. Petrovsky*, 776 F.2d 571 (6th Cir. 1985), *vacated by* 10 F.3d 338 (6th Cir. 1993), and the concurrence in *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 775–798 (D.C. Cir. 1984) (Edwards, J., concurring), fares no better. *Demjanjuk* involved extradition for a criminal offense, 776 F.2d at 583, and the concurrence in *Tel-Oren* agreed that the prerequisites for personal jurisdiction must be met in actions under the Alien Tort Statute, 726 F.2d at 788.

For those reasons, we affirm the District Court's dismissal of the case for lack of personal jurisdiction.

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 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