

Federal Court



Cour fédérale

Date: 20150115

Docket: IMM-6784-14

Citation: 2015 FC 54

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 15, 2015

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

FRANCIS MBAIOREMEM

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

[1] This is an application by the applicant to

[TRANSLATION]

[o]btain the reasons for the decision of the Minister of Public Safety and Emergency Preparedness not to respect Canada's international law obligations under the United Nations' *International Covenant on Civil and Political Rights* and to remove the applicant despite the risk to his life.

[2] As submitted, this application does not pass the clean hands test; in addition, it has no merit, for at least two reasons:

1. Following an order by Justice St-Louis dated June 4, 2014, dismissing his application for a stay, the applicant had to report for removal on June 10, 2014, which he failed to do. Consequently, a warrant for the applicant's arrest was issued, and, for the time being, it is impossible to execute the warrant. The applicant is not complying with Canada's laws, and he is sought for a legal proceeding. To present his application, he has not come before the Court with clean hands. Furthermore, he signed an affidavit in support of the application in which he provided an address as his home. Upon verification, the evidence reveals that he does not reside at this address. For these reasons, the application does not have to be heard. However, in order to end this dispute once and for all, I conclude that the application has no merit and that it should be dismissed for the following reasons.
2. The application for the reasons underlying the Minister's decision dated May 23, 2014, should have been made in docket No. IMM-4198-14, in which an application for a stay of removal was made and denied in an order by Justice St-Louis dated June 4, 2014. The application for leave and judicial review (ALJR) of the Minister's decision associated with the application for stay was dismissed by Chief Justice Crampton because of the applicant's failure to file his record on August 28, 2014. The Minister's decision dated May 23, 2014, not to stay the applicant's removal despite the recommendation of the Human Rights Committee of the United Nations Office of the High Commissioner for Human Rights was debated in the context of the stay application (see the order of Justice St-Louis dated June 4, 2014). In this proceeding, the applicant wishes to obtain

the reasons for the same decision of the Minister, a subject that should have been addressed as part of the proceeding in docket No. IMM-4198-14. In not filing his record for the ALJR, the applicant waived debate of the present application. The application is a duplication of proceedings. In fact, the same issue is being relitigated, which is akin to an abuse of process and brings into question *res judicata*.

3. More importantly, however, since November 2010, the applicant has benefitted from a refugee protection claim, an application based on humanitarian and compassionate (H&C) considerations, two pre-removal risk assessment (PRRA) applications, three stay applications and, as a result of his ALJRs, more than five Federal Court decisions and orders:

- (a) Refugee protection claim, November 2010, rejected by the Refugee Protection Division (RPD) on the basis of a lack of credibility;
- (b) decision of the Federal Court (Justice Shore), September 2011, dismissing the ALJR of the RPD's decision (*Francis v Canada (Citizenship and Immigration)*, 2011 FC 1078);
- (c) H&C application rejected on July 25, 2012;
- (d) order of the Federal Court (Justice Mosley) dismissing the ALJR of the H&C application, dated March 21, 2013;
- (e) first PRRA application rejected in May 2012;

- (f) first stay application associated with the rejection of the PRRA decision allowed by Justice Tremblay-Lamer in December 2012;
- (g) decision of the Federal Court (Justice Scott) setting aside the PRRA decision, dated July 2013 (*Mbaioirem v Canada (Citizenship and Immigration)*, 2013 FC 791);
- (h) second PRRA application rejected on November 20, 2013;
- (i) second stay application associated with the rejection of the second PRRA decision dismissed by the undersigned on December 14, 2013;
- (j) order of the Federal Court (Justice Mosley) dismissing the ALJR of the second PRRA decision;
- (k) third stay application (IMM-4198-14) associated with the ALJR of the Minister's oral decision to remove the applicant dated May 23, 2014, dismissed (the order to dismiss being dated June 4, 2014, and signed by St-Louis J.);
- (l) in connection with the ALJR (IMM-4198-14) of the Minister's decision dated May 23, 2014, a copy of this decision was sent to the Court under section 9 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. The applicant subsequently informed the Court Registry that he would turn to the Court to obtain the reasons underlying the decision dated May 23, 2014. In the same proceeding, on August 28, 2014, Chief Justice Crampton dismissed the ALJR on the basis that the applicant had failed to file his record;

- (m) on September 22, 2014, the applicant filed a new ALJR of the same decision of the Minister dated May 23, 2014, which was the subject of the ALJR in docket No. IMM-4198-14; ALJR dismissed in an order by Chief Justice Crampton for failure to file his record, dated August 28, 2014.
4. As demonstrated by the many proceedings instituted by the applicant, as described above, the applicant fully benefitted from the administrative and judicial remedies available in immigration law. In addition, given that a warrant for the applicant's arrest has been issued and that the purpose of the latest application is to obtain the reasons underlying the decision dated May 23, 2014, the subject of docket No. IMM-4198-14, this application not only is akin to an abuse of process considering the history and quantity of the proceedings and the duplication of the issue in this case compared with the previous file, but also violates the principle of *res judicata*.
 5. There is a limit to what the applicant can do to defend his rights. The legal system is not an arena where anything is allowed, without boundaries. Unless there is a successful constitutional challenge, the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], must be respected if one wishes to benefit from its remedies and protection. In the case at bar, the applicant is showing no respect for Canada's laws and can therefore not avail himself of other remedies unless there has been a change in the facts, which is by no means apparent here.
 6. For the reasons above, namely, duplication of proceedings, abuse of process and *res judicata*, the application is dismissed. In addition, the applicant did not submit his application with clean hands.

7. At the respondent's request, the respondent's name shall be changed to Minister of Public Safety and Emergency Preparedness, and the style of cause will be amended accordingly.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES the following:

1. The style of cause is amended to list the Minister of Public Safety and Emergency Preparedness as the respondent in this matter.
2. The application requesting the reasons underlying the decision dated May 23, 2014, is dismissed.

“Simon Noël”

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6784-14

STYLE OF CAUSE: FRANCIS MBAIOREMEM v THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 13, 2015

**JUDGMENT AND REASONS
BY:** SIMON NOËL J.

DATED: JANUARY 15, 2015

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