

Federal Court



Cour fédérale

Date: 20190212

Docket: IMM-2918-18

Citation: 2019 FC 186

Toronto, Ontario, February 12, 2019

PRESENT: The Honourable Mr. Justice Bell

Docket: IMM-2918-18

BETWEEN:

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Appellant

and

HERMAN EMMANUEL FANKEM

Respondent

JUDGMENT AND REASONS

[1] The Respondent, a person who at times claims to be Herman Emmanuel Fankem (the “Unknown Person”) has been in the custody of the Canada Border Services Agency [CBSA] for a period in excess of five (5) years. On June 22, 2018 the Immigration Division considered the reasons for the continued detention of the Unknown Person pursuant to section 57 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA] and ordered his release upon strict terms. The Applicant claims the decision to release was unreasonable in the circumstances

and seeks judicial review pursuant to subsection 72(1) of IRPA. The Unknown Person contends his release was “sound in both fact and law” and thereby meets the test of reasonableness. I disagree with the contention of the Unknown Person. At the close of the hearing, I advised counsel that the application for judicial review was allowed and that more formal reasons would follow. These are those reasons.

[2] The Unknown Person claims to be a citizen of the French Republic. He entered Canada on October 28, 2012 upon presentation of a French passport. He was allowed to stay in Canada until November 7, 2012. He did not depart Canada on that date. On April 9, 2013 the Unknown Person became the subject of a criminal investigation in Canada, which resulted in his detention by the CBSA.

[3] Subsequent to the Unknown Person’s detention, the CBSA learned that he is not a citizen of France, his name is not Herman Emmanuel Fankem and the passport he used to enter Canada was obtained by fraud. French authorities assert that while the Unknown Person’s identity remains unknown, he is also known under the alias “Febiebouon Emmanuel”, a citizen of Cameroon. In an effort to facilitate the Unknown Person’s deportation, CBSA has undertaken an extensive investigation to determine his true identity. That investigation has led to consultation with French, British, German, American and Cameroonian authorities. The investigation has revealed, among other things, that the Unknown Person has used the following names, in addition to those cited above: Febie Bouon Emmanuel of Cameroon, Herman Kemte of unknown nationality, Joseph James of Haiti, and Febibouon Joseph.

[4] The Unknown Person has amassed numerous criminal convictions in various countries. Furthermore, a criminal charge in Canada has been stayed in order to facilitate his deportation.

[5] Since his detention, the Unknown Person has demanded he be taken to the French Embassy in Ottawa and has refused to provide his fingerprints to CBSA officers. Furthermore, he has refused on at least 40 occasions to meet with CBSA officers, and, during a period of 54 months has refused to attend 51 detention review hearings held pursuant to subsection 57(3) of IRPA. Additionally, as at the time of the detention hearing under review, he continued to refuse attempts to facilitate a mental health assessment.

[6] The Immigration Division has twice named a Designated Representative to advance the interests of the Unknown Person and has appointed and financed counsel to appear before the detention reviews and this Court.

[7] During the course of the hearing before me, both counsel observed that this matter is complicated for all concerned. I disagreed. It may be complicated for detention review officers, lawyers, judges and CBSA officials. It appears not to be at all complicated for the Unknown Person. He insists he will be released into the Canadian population. That is his sole objective and the course upon which he has set himself. This Court's impression is that the Unknown Person considers himself to be the director of a play and Canadian authorities are but actors subject to his direction.

[8] In the decision under review, the Immigration Division concluded that the Unknown Person would not voluntarily present himself for removal from Canada. That conclusion, in my view, renders the decision to release the Unknown Person unreasonable within the parameters of *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 [*Dunsmuir*]. It strains all sense of logic to release someone into the Canadian general population when one, as a decision maker, has reached the conclusion that authorities will be required to investigate that person's whereabouts and undertake an arrest to ensure compliance with the release order. I make these observations in the context of a detention that meets *Charter* requirements (*Charkaoui v. Canada (Citizenship and Immigration)*, [2008] 2 SCR 326, 2008 SCC 38).

[9] I also conclude the decision does not meet the test of reasonableness given the Immigration Division's conclusion that the "only impediment" to removal is a lack of travel documents. The Unknown Person claims that, because he is not detained specifically pursuant to s. 58(1)(d) of IRPA, lack of identity cannot be a ground of continued detention. I disagree. Regardless of the initial reason for detention, I consider it unreasonable for any decision maker on a detention review to disregard the fact that identity is an issue. Fundamental considerations for the release of any person in lawful detention constitute his or her identity, flight risk, willingness to comply with court or tribunal orders, evidence of past compliance with such orders and public safety. Indeed, when applying the reasonableness standard, *Dunsmuir* requires the decision-making process to be justified, transparent and intelligible. Moreover, the decision must fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. In my view it is indefensible and unintelligible to state that the only impediment to removal is the lack of a travel document when identity is unknown.

[10] Both counsel advised the Court they have no question to propose for consideration by the Federal Court of Appeal. Furthermore, counsel for the Unknown Person advised her client wished the hearing to proceed in the English language and that the decision be provided in that language.

JUDGMENT in IMM-2918-18

THIS COURT'S JUDGMENT is that the application for judicial review of the June 22, 2018 decision of the Immigration Division is granted. The decision is quashed. In the circumstances, the matter is not remitted for redetermination. There is no order of costs.

No question is certified for consideration by the Federal Court of Appeal.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2918-18

STYLE OF CAUSE: MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS and HERMAN EMMANUEL
FANKEM

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 5, 2019

**REASONS FOR JUDGMENT
AND JUDGMENT:** BELL J.

DATED: FEBRUARY 12, 2019

APPEARANCES:

Sonia Bedard FOR THE APPELLANT

Swathi Visalakshi Sekhar FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada FOR THE APPELLANT
Montreal, Quebec

Swathi Sekhar Law Office FOR THE RESPONDENT
Toronto, Ontario