Federal Court  Cour fédérale

Date: 20230831

Docket: T-1227-22

Citation: 2023 FC 1181

Ottawa, Ontario, August 31, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

COLLINS NJOROGE

Applicant

and

ROYAL CANADIAN MOUNTED POLICE

Respondent

ORDER AND REASONS

I. Overview

[1] Meritless allegations that judicial officers are biased are to be strongly discouraged. So are meritless appeals, such as the one currently before the Court. The applicant's motion appealing the Order of Associate Judge Trent Horne, acting as Case Management Judge, dated July 31, 2023 (2023 FC 1047) [July 31 Order], is dismissed, with costs payable forthwith by the applicant to the respondent in the amount of $1,500.

II. Background to the Appeal

(1) The underlying motion

[2] In November 2022, the applicant brought a motion seeking an order disqualifying the Case Management Judge from involvement in four matters the applicant has before the Court, on grounds of a reasonable apprehension of bias [Disqualification Motion].

[3] In bringing the Disqualification Motion, the applicant purported to rely on facts set out in two appeals he had filed of other decisions by the Case Management Judge. In one of those appeals, the applicant alleged procedural unfairness. In the other, he alleged bias on the part of the Case Management Judge.

[4] Both of these appeals were dismissed by Justice Lafrenière in December 2022: *Njoroge v Canada (Attorney General)* (December 9, 2022), File No T-1417 (FC) [*Njoroge #1*]; (*Njoroge v Canada (Attorney General)*, 2022 FC 1769 [*Njoroge #2*]. In the latter decision, Justice Lafrenière directly addressed the applicant's bias allegations, finding they were no more than "bald allegations of bias" that were made "[i]n the absence of any evidence": *Njoroge #2* at para 68. The applicant appealed the decision in *Njoroge #1* to the Federal Court of Appeal, but the appeal was dismissed on July 25, 2023, before a hearing on the merits. The applicant did not appeal *Njoroge #2*.

[5] After the decision of Justice Lafrenière in *Njoroge #2*, the Case Management Judge issued a Direction giving the applicant an opportunity to file further submissions on the Disqualification Motion. Although Justice Lafrenière had found there was no evidence to support

the applicant's allegations of bias, the applicant pursued his motion and "object[ed]" to the Direction on the meritless grounds of "lack of jurisdiction and procedural (un)fairness," declining to file further substantive submissions.

(2) The July 31 Order

[6] In his reasons for the July 31 Order, the Case Management Judge addressed the procedural history, the applicant's allegations of bias, and the governing law. Having reviewed the evidence, the law, and the arguments, he concluded that the test for a reasonable apprehension of bias had not been met. The Case Management Judge found, as had Justice Lafrenière, that the applicant had filed no evidence to substantiate his allegations of bias.

[7] The Case Management Judge therefore dismissed the motion. He also concluded the situation warranted elevated costs, awarding $1,870 in favour of the respondent.

III. Standard of Review

[8] The Court will review the July 31 Order on the appellate standards, namely correctness on issues of law, and palpable and overriding error on issues of fact and mixed fact and law: *Commanda v Algonquins of Pikwakanagan First Nation*, 2019 FCA 76 at para 9, citing *Housen v Nikolaisen*, 2002 SCC 33; *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at para 79.

IV. Analysis

[9] The applicant presents limited arguments on this appeal. They merit only limited analysis.

[10] The applicant's written representations on the appeal are four paragraphs in length. The first identifies the nature of the appeal and the decision under review. The second states that the applicant "relies on facts and law gleaned from" three letters the applicant wrote to the Court, and two oral directions issued by the Case Management Judge. The third states that the "alleged errors of jurisdiction and law are, or ought to be, apparent," and makes general reference to various sources of authority. The last restates the order sought.

[11] I have reviewed the July 31 Order, the parties' written arguments, and the letters and directions the applicant refers to. I see no error in the July 31 Order. The Case Management Judge thoroughly and correctly set out the applicable legal principles and governing case law with respect to allegations of a reasonable apprehension of bias and motions for recusal. He considered and analyzed the limited arguments and evidence the applicant put forward. His conclusions that the applicant had not demonstrated a reasonable apprehension of bias, and that he should therefore not recuse himself, were not in error. Indeed, they were inevitable on the record.

[12] As the Case Management Judge correctly stated, the onus of demonstrating a perceived bias lies with the person alleging it, and the threshold is high: *ABB Inc v Hyundai Heavy Industries Co, Ltd,* 2015 FCA 157 at para 55. The applicant has filed no evidence, and made no

reference to conduct or decisions of the Case Management Judge that could come remotely close to satisfying this onus. Rather, he relies on bald assertions that have no basis in law or in fact. The applicant's motion, and this appeal, are wholly without merit.

[13] The applicant identifies no errors in the Case Management Judge's statement of the law or his application of it. To the extent that the applicant believes there are errors of jurisdiction or law that "are, or ought to be, apparent," he is mistaken. No such errors are apparent to the Court.

[14] The burden is on an appellant to identify and demonstrate an error in the decision under appeal: *Southpark Estates Inc v Canada*, 2006 FCA 153 at para 58. That burden is not met by simply stating that the errors in the decision are "apparent." The applicant has not identified any error on the part of the Case Management Judge, let alone one that would merit intervention on appeal.

[15] Despite receiving two decisions from this Court underscoring the seriousness of allegations of bias against members of the judiciary, the applicant has continued to pursue his unwarranted and unsubstantiated allegations. This Court must therefore repeat its conclusions as clearly as possible. There is no evidence whatsoever of a reasonable apprehension of bias on the part of the Case Management Judge. The Case Management Judge made no errors in refusing to disqualify or recuse himself. The fact that a judicial officer makes one or more decisions that go against a party does not mean they harbour any bias against that party. Allegations that a judicial officer is biased against a party are serious allegations that must only be made where they are justified.

[16] The applicant's appeal is therefore dismissed.

V. Costs

[17] In considering an award of costs, the Court may consider various factors, including the result of the proceeding; the conduct of the parties; whether any step taken was improper, vexatious, or unnecessary; and any other relevant matter: *Federal Courts Rules*, SOR/98-106, Rule 400(1), (3)(*a*), (*i*), (*k*)(i), (*o*). The applicant was unsuccessful on this appeal. There is no reason not to apply the usual rule that the successful respondent should be awarded costs.

[18] Unwarranted allegations of bias are an attack upon the Court and the judicial system itself: *Abi-Mansour v Canada (Aboriginal Affairs)*, 2014 FCA 272 at paras 12, 23. Such allegations may rise to the level of an abuse of process, and they merit sanction by the Court in the form of elevated costs awards: *Rodney Brass v Papequash*, 2019 FCA 245 at paras 17–19; *Abi-Mansour* at paras 12–15, 23. Although the applicant's motion was not lengthy or particularly complex, it required response by the respondent. Considering all of the circumstances of the matter and the wholly meritless nature of the appeal, I consider an award of costs in the amount of $1,500 to be just and appropriate in the matter.

[19] Rule 401(2) provides that where the Court is satisfied that a motion should not have been brought, it shall order that the costs of the motion be payable forthwith. This appeal motion falls squarely in the category of a motion that should not have been brought. The foregoing costs will be payable forthwith.

ORDER IN T-1227-22

THIS COURT ORDERS that

1. The applicant's motion on appeal of the decision of Associate Judge Horne dated July 31, 2023, is dismissed.
2. The applicant shall pay the respondent costs in the amount of $1,500, payable forthwith.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1227-22
STYLE OF CAUSE:	COLLINS NJOROGE v ROYAL CANADIAN MOUNTED POLICE

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	MCHAFFIE J.
DATED:	AUGUST 31, 2023

WRITTEN REPRESENTATIONS BY:

Collins Njoroge	ON HIS OWN BEHALF
Akkila Thirukesan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT