Federal Court  Cour fédérale

**Date: 20150501**

**Docket: T-1433-14**

**Citation: 2015 FC 572**

**Toronto, Ontario, May 1, 2015**

**PRESENT: The Honourable Mr. Justice Diner**

**BETWEEN:**

**LAHAI KAMARA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

## I. The Facts

[1] The Applicant is a Canadian permanent resident, originally from Sierra Leone. He became a permanent resident in June 2008. He seeks Canadian citizenship, which is conferred in accordance with the *Citizenship Act* (RSC, 1985, c C-29).

[2] On August 26, 2013, the Applicant was charged with one count of assault with a weapon (*Criminal Code* s 267(a)), one count of mischief (*Criminal Code* s 430(4)), and one count of theft under $5000 (*Criminal Code* s 334(b)).

[3] On November 26, 2013, the Applicant was sent a letter from Citizenship and Immigration Canada [CIC] indicating that CIC needed documentation pertaining to the Applicant's pending criminal charge for assault with a weapon, including information on the nature of the offence (summary or indictable).

[4] The letter stated:

> If the case is still pending and the charge is Crown elect, we must know if the Crown has made a decision yet on how the case will proceed (i.e. summarily or by indictment). This information may be on the Court Information Sheet, or you may also have to send us your Charge Screening Form.
>
> (Applicant's Record, p. 34)

[5] On December 5, 2013, the Applicant's lawyer responded, indicating that the Applicant's charge for assault with a weapon pursuant to section 267(a) of the *Criminal Code*, (a hybrid offence) was still pending, and that the Crown had not yet indicated its election of whether to proceed summarily or by indictment.

[6] The Applicant attended a hearing before a Citizenship Judge [Judge] on February 11, 2014.

[7] At the end of the February 11 hearing, the Citizenship Judge gave the Applicant a two-page document entitled "Notice to the Applicant" [Notice]. This Notice advised the Applicant to provide documentary evidence within 45 days regarding the "outcome of pending criminal charges and whether the Crown proceeded by summary conviction or indictment."

[8] The Applicant did not provide any documentation and/or response to the Citizenship Judge or CIC, as required in the Notice, within the 45 day deadline.

## II. The Decision

[9] The Citizenship Judge refused the Applicant's application for citizenship on April 16, 2014 [the Decision]. The Citizenship Judge found that the Applicant had failed to provide, within 45 days of his hearing, documentation verifying the outcome of his pending criminal charge or whether the Crown was proceeding by way of summary conviction or by indictment. The Citizenship Judge therefore determined that the Applicant is a person currently charged with an indictable offence. The relevant part of the Decision is extracted below:

> "There is an indication on file that you have pending criminal charges against you, which gives rise to the application of Section 22 of the *Citizenship Act*, which provides, in part:
>
> *Despite anything in the Act, a person shall not be granted citizenship… or take the oath of citizenship… while the person is charged with, on trial for... an indictable offence under any Act of Parliament…*
>
> In your interview with me, you acknowledged you have criminal charges pending against you, and that your next court date is 1 May 2014. I asked you to provide, within 45 days of your hearing, documentation verifying the outcome of pending criminal charges and whether the Crown was proceeding by way of summary conviction or by indictment. Unless your trial date was moved forward and/or unless the Crown withdrew the charges, it would

> have been impossible for you to provide outcome documentation; however, information about how the Crown is proceeding might have been available. In any event, you have provided no documentary verification of any kind.
>
> In these circumstances, Section 22 of the *Citizenship Act* applies to your application for citizenship, and you do not meet the requirements of the *Citizenship Act*. I therefore cannot approve your application for citizenship."

III. Position of the Parties

[10] The Applicant raises two issues. First, he contends that the Citizenship Judge breached his rights to procedural fairness, particularly as a self-represented person.

[11] The gist of the Applicant's contentions in this regard is that the Judge provided to the Applicant the Notice in an envelope, and told him to provide it to his lawyer. The Applicant claims that the Judge had stated that all aspects of the application had been satisfied, but for the pending criminal charge.

[12] The Applicant was, despite his efforts, unable to meet his lawyer to present the envelope. He therefore missed the deadline of 45 days contained in the Notice, which required a response with respect to the outcome of the pending criminal charges, and whether the Crown had proceeded by way of summary conviction or indictment.

[13] Apart from arguing that it was unfair to provide a self represented litigant with a request that involved technical legal requirements, the Applicant argues that it would have, in any case, been impossible to meet the Judge's request within the time limit imposed, as the 45 day

deadline ended well before the criminal trial began. In previous correspondence to the CIC regarding the same citizenship application, the Applicant's criminal lawyer had indicated that an election (of summary conviction or indictment) would not be made by the prosecution before trial.

[14] The Applicant's second submission is that the Decision was illogical, and its reasons were inadequate in their sufficiency. The Decision lacked logic because it requested information that was simply not available - even if procedural fairness had been afforded to the Applicant, he would not have been able to provide a response to the Notice.

[15] Furthermore, the Applicant contends that the reasons provided by the Judge were grossly inadequate, and contrary to section 14(3) of the *Citizenship Act*. He further relies on *Via Rail Inc v National Transportation Agency* (CA), [2001] 2 FC 25 at para 22, which states:

> [22] The obligation to provide adequate reasons is not satisfied by merely reciting the submissions and evidence of the parties and stating a conclusion. Rather, the decision maker must set out its findings of fact and the principle evidence upon which those findings are based. The reasons must address the major points in issue. The reasoning process followed by the decision maker must be set out and must reflect consideration of the main relevant factors.

[16] The Applicant argues that the law is that when the Crown does not make an election, it is presumed that the Crown will proceed summarily (*R v Randell* [2001] CanLII 19855 (NL PC) at para 17; *R v Mitchell*, 1997 CanLII 6321 (ON CA) at p 145).

[17] The Respondent replies that there was neither any breach of fairness, nor inadequacy of reasons. The Respondent argues that the reasons were sufficiently clear, and consistent with the entire record.

## IV. Standard of Review

[18] The parties agree that procedural fairness issues are to be reviewed on a standard of correctness, whereas the other issues raise by the Applicant are to be adjudicated on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62; *Mission Institution v Khela*, 2014 SCC 24).

## V. Analysis

[19] The Applicant has failed to convince me that there was any occurrence of procedural unfairness, or that the decision was otherwise unreasonable.

[20] First, it is unfortunate that the Applicant was unrepresented when he went for his citizenship interview, and I note that he had some personal difficulties in the period after the interview, which were both given as reasons for not having read the Notice provided to him when he could not contact his lawyer. However, these were not relevant considerations in this instance. The Judge met his obligation to observe the principles of procedural fairness, including giving the Applicant an opportunity to (a) provide initial written submissions on his criminality

issues, (b) providing him a chance to present his views in an in-person citizenship interview, and (c) allowing for additional submissions in a follow-up written response after the interview.

[21] The Judge cannot be held responsible for the personal choices of the Applicant, who did not ensure that the Notice was sent to his lawyer, and did not read the letter himself when he realized that he would not be able to get the Notice to his lawyer within the 45 day deadline. Thus, that deadline was ignored.

[22] First, there are other means by which the Applicant could have communicated the Notice to his lawyer, given that he was not able to see him in person, such as by mail, fax, or email.

[23] Second, the Applicant was well aware that the pending criminal charges were an issue in finalizing his citizenship, as this was not the first time that he had been asked for an update by citizenship officials. A similar request for information was previously solicited from him by CIC, and he complied with the request. In other words, the Applicant was not unfamiliar with the nature of information being sought, and the means to obtain it. Accordingly, his rights to procedural fairness were not violated when he failed to respond.

[24] With respect to the other issue raised, that of inadequacy of reasons, I find them neither insufficient nor illogical. Section 22(1)(b) of the *Citizenship Act* makes it quite clear that a Judge cannot grant citizenship to a person who "is charged with, on trial for or subject to or a party to an appeal relating" to an indictable offence. Furthermore, the jurisprudence is also clear that until such time as a Crown election is made to proceed otherwise, a hybrid offence is deemed to be an

indictable offence in accordance with section 34(1)(a) of the *Interpretation Act*, RSC 1985, c I-21 (*R v Dudley*, 2009 SCC 58 at para 21; *Ahmed v Canada (Minister of Citizenship and Immigration)*, 2009 FC 672 at paras 38-40). At the time of the citizenship decision, the Crown had not elected which way it would be proceeding. Had the Judge utilized his discretion to delay his Decision until the beginning of the criminal trial, the outcome of this matter might well have been different.

## VI. Conclusion

[25] As stated during the hearing, while I may not have proceeded in the same manner had I been in the place of the Judge, that is not the role of this Court on judicial review. Rather, I am only tasked to examine whether the Decision was reasonable, and the process, fair. On both counts, I conclude in the affirmative.

## JUDGMENT

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed.
2. There was no question for certification proposed by the parties.
3. There will be no order as to costs.

"Alan S. Diner"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | T-1433-14 |
| **STYLE OF CAUSE:** | LAHAI KAMARA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | WINNIPEG, MANITOBA |
| **DATE OF HEARING:** | MARCH 25, 2015 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | DINER J. |
| **DATED:** | MAY 1, 2015 |

**APPEARANCES:**

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|---|---|
| Midori Adachi | FOR THE APPLICANT |
| Alexander Menticoglou | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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