Federal Court Cour fédérale

Date: 20160915

Docket: T-892-16

Citation: 2016 FC 1048

Ottawa, Ontario, September 15, 2016

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

ADE OLUMIDE

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA AND ATTORNEY GENERAL OF CANADA

Defendants

ORDER AND REASONS

[1] At the close of hearing of an appeal by Mr. Olumide of three decisions of Prothonotary Tabib, I said I would be dismissing the appeal, with costs in favour of the defendants in the amount of $700.00, the whole with reasons to follow. These are those reasons.

[2] As far as I can make out from the Statement of Claim, section 67(4) (c) of the *Canada Elections Act* is alleged to be unconstitutional, and, as a result, action lies against the Attorney

General for failure to remedy, or repeal, that legislation. Section 67(4)(c) provides that if running in an election for a political party, the nomination papers to be filed with the returning officer include "an instrument in writing signed by the person or persons authorized by the political party to endorse prospective candidates that states that the prospective candidate is endorsed by the party".

[3] Mr.Olumide wished to run for the Conservative Party but was not endorsed by it.

[4] This action was placed under special case management and Prothonotary Tabib was appointed as case manager.

[5] At issue is an order she issued August 16, 2016, not August 17th as alleged by Mr. Olumide, a Direction on August 18, 2016, and a further Order on September 6, 2016.

[6] Counsel for the respondents/defendants submitted that I should not hear the appeal as they had just filed a motion under section 40 of the *Federal Courts Act* to have Mr. Olumide declared a vexatious litigator and for an order than no further proceedings be instituted or continued by him in this Court, except by leave. Nevertheless, I decided to hear the appeal. The motion to have Mr. Olumide declared a vexatious litigator was made in writing pursuant to *Federal Courts Rule* 369. Mr. Olumide's delays to respond have not expired.

[7] I told Mr. Olumide at the outset that I would waive any procedural irregularities, any failure to file within time and would treat the Direction as an Order, as he was of the view that

Prothonotary Tabib had issued a Direction instead of an Order so as to shield her decision from the appeal process.

[8] In my opinion, all three decisions were well within the purview of the Case Management Judge. They were in essence scheduling Orders, and not vital to the outcome of the case. The decisions were not based on a wrong principle or upon a misapprehension of the facts (*Merck & Co v Apotex Inc*, [2004] 2 FCR 459).

[9] Furthermore, even if the decisions were vital to the outcome of the case, which they are not, the standard of review now to be exercised by the Federal Court on appeals from Orders of Prothonotaries is the same standard applied by Courts of Appeal in review of decisions of courts of first instance, i.e. the standard on pure questions of law is one of correctness and on findings of fact is that there can be no reversal unless the trial judge has made a "palpable and overriding error", as stated in *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235 (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215.).

[10] In her Order of August 16th, Prothonotary Tabib noted that the defendants had announced they might be bringing a motion pursuant to section 40 of the *Federal Courts Act*. Nevertheless, Mr. Olumide insisted that he should be allowed to proceed with a pending motion for default judgment under Rule 210 and for admissions of fact under Rule 256.

[11] She said:

> The present order strictly governs the schedule by which the parties' respective motions are to be brought and heard. This

> schedule is not intended to govern or restrict any other proceeding between the parties before this Court or any other Court.

[12] In her August 18, 2016 Direction, the learned Prothonotary instructed the Registry not to accept a document proffered for filing by Mr. Olumide as it did not conform with the Order of August 16th.

[13] The Order of September 6th deals with the stated intention of Mr. Olumide to forego his motion for default judgment under Rule 210 but rather to proceed on a motion for a determination of a point of law, i.e. the validity of section 67(4)(c) of the *Canada Elections Act*, pursuant to Rule 220. She then set out the history of the case pointing out that once the case is under case management, the deadlines applicable to the Statement of Defence are to be determined by the Case Management Judge. In the circumstances the pleadings were not closed because of a failure to file a Statement of Defence and that therefore a Notice to Admit pursuant to Rule 255 was premature so that the failure to respond does not trigger a deemed admission pursuant to Rule 256.

[14] The learned Prothonotary's reasoning is faultless.

[15] Mr. Olumide was self-represented, as was his right. The fact that he represented himself does not condone, or justify, his outrageous, unsubstantiated, allegations against all and sundry. He continued to allege that the Conservative Party was racist, notwithstanding that he was severely taken to task for that allegation by Madam Justice Trudel of the Federal Court of Appeal in *Olumide v Conservative Party of Canada*, 2015 FCA 218.

[16] He accused Prothonotary Tabib and other members of the Court of acting in a fraudulent and biased manner. According to him, Prothonotary Tabib has committed some twenty-seven acts of fraud.

[17] He threatened (or was it promised) to take me to the Canadian Judicial Council in the event I ruled against him. At the close of his submissions I informed counsel for the defendants that I did not need to hear him except on the question of costs. He made the very modest suggestion that costs should be awarded in the amount of $700.00. When invited to respond Mr. Olumide said I should not be awarding any costs to a bunch of crooks.

[18] I informed him that if he were a lawyer I would report him to the Law Society. He invited me to issue a show-cause order why he should not be found in contempt of court. I did not, but in retrospect, perhaps I should have.

ORDER

The appeal is dismissed with costs in favour of the defendants in the amount of $700.00 all inclusive.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-892-16
STYLE OF CAUSE:	ADE OLUMIDE v HER MAJESTY THE QUEEN IN RIGHT OF CANADA AND ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	SEPTEMBER 14, 2016
REASONS FOR JUDGMENT AND JUDGMENT:	THE HONOURABLE MR. JUSTICE HARRINGTON
DATED:	SEPTEMBER 15, 2016

APPEARANCES:

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Mr. Daniel Caron Department of Justice Ottawa, Ontario	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

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