

Federal Court



Cour fédérale

**Date: 20220606**

**Docket: IMM-634-22**

**Citation: 2022 FC 831**

**Ottawa, Ontario, June 6, 2022**

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

**BETWEEN:**

**ETHEL SAMANTHA MAGAYA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

**UPON** a motion by Ethel Samantha Magaya (“Ms. Magaya”) seeking a stay of her removal from Canada which is scheduled to occur on June 7, 2022, pending the hearing of a judicial review application from a negative Pre-Removal Risk Assessment made on December 21, 2021;

**AND UPON** a review of Ms. Magaya’s history in Canada, I note the following;

[1] On April 22, 2017, Ms. Magaya was granted entry to Canada at the Pearson International Airport in Toronto. She held valid visitor status until October 21, 2017. On June 27, 2017, she

applied for refugee protection pursuant to s. 99 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [“*IRPA*”] and was issued a conditional departure order as contemplated by s. 44(2) of the *IRPA*. On June 15, 2018, she withdrew her application for refugee protection. On August 6, 2018, the conditional departure order became a deemed deportation order.

[2] Ms. Magaya failed to respect Canadian immigration laws in relation to the following incidents:

1. On June 12, 2019, she failed to appear at the Winnipeg International Airport for her removal from Canada. As a result, an arrest warrant was issued;
2. Ms. Magaya remained at-large within Canada until March 24, 2021. During that time she made no effort to reach out to Canadian immigration authorities;
3. On March 24, 2021, the Winnipeg Police Service arrested Ms. Magaya on the strength of the arrest warrant;
4. Ms. Magaya was released from custody on various terms and conditions shortly after her arrest;
5. Since her release, she failed to report as required by the terms of her release on 18 occasions, specifically:
  - August 23, 2021
  - August 30, 2021
  - September 6, 2021
  - September 27, 2021
  - October 4, 2021
  - October 11, 2021

- November 8, 2021
- November 29, 2021
- December 20, 2021
- January 4, 2022
- January 22, 2022
- February 1, 2022
- February 15, 2022
- February 18, 2022
- April 15, 2022
- April 22, 2022
- April 26, 2022
- May 13, 2022

[3] In an around May 16, 2022, Ms. Magaya re-located to Toronto, Ontario, again contrary to the terms of her release, without first advising the Canada Border Service Agency. This resulted in the issuance of yet another warrant for her arrest.

[4] At the outset of the hearing I enquired of counsel for Ms. Magaya why I should hear this matter given the clean hands doctrine. Essentially, those seeking the equitable jurisdiction of the Court must come to the Court with clean hands (*Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52, [2006] 2 SCR 612 at para 22; *Erhire v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 941 at para 42). I am clothed with the discretion to refuse to hear a motion where the moving party comes to the Court with unclean hands (*Ratnam v. Canada (Public Safety and*

*Emergency Preparedness*), 2022 FC 372 at para 16; *Arturo v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 766 at para 10; *Devilmé v. Canada (Citizenship and Immigration)*, 2011 FC 1470 at paras 13 to 15).

[5] After hearing from counsel for both parties, I exercised my discretion to refuse to hear the within motion. To have heard this matter would have, in my view, sent the message that one may refuse to comply with Canadian immigration law, yet seek the benefit of that same law when it suits one's purpose. That is not, in my view, a message the Courts should be sending.

**ORDER IN IMM-634-22**

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

1. I decline to hear the Applicant's motion for a stay of removal.

"B. Richard Bell"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-634-22

**STYLE OF CAUSE:** ETHEL SAMANTHA MAGAYA v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**ORDER AND REASONS:** BELL J.

**DATED:** JUNE 6, 2022

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT