

Federal Court



Cour fédérale

Date: 20220614

Docket: IMM-4976-21

Citation: 2022 FC 894

Ottawa, Ontario, June 14, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JOEL MBUMBA NTOCO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] On May 12, 2022, the Applicant filed a motion in writing pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (the “*Rules*”) for an Order that this Court:

1. Grant the Applicant an extension of time to file an appeal from the Order of Prothonotary Coughlan, dated April 26, 2022, denying an extension of time to file the Record of the Applicant; and

2. Grant leave to the Applicant's solicitor of record to depose an affidavit and present argument based on that affidavit, pursuant to Rule 83 of the *Rules*.

[2] On May 19, 2022, the Respondent filed a Motion in Response, opposing the Applicant's request.

[3] The Applicant filed the underlying application for leave and judicial review on July 23, 2021. He did not submit his Application Record by the deadline prescribed by the *Rules*. On March 30, 2022, he brought a motion for an extension of time to file his Application Record. This motion was dismissed in the April 26, 2022 Order of Prothonotary Coughlan.

[4] It is well established by the jurisprudence of this Court that a Prothonotary's order refusing an extension of time to file an application record consists of an 'interlocutory decision'. Such an order is thus captured by the prohibition under paragraph 72(2)(e) of the *Immigration and Refugee Protection Act, SC 2001, c 27 ("IRPA")*, which indicates that "no appeal lies from the decision of the Court with respect to the application or with respect to an interlocutory judgment". As a result, the Federal Court has no jurisdiction to hear an appeal of a Prothonotary's order dismissing a motion for an extension of time to perfect an application for leave (*Yogalingam v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 540 at paras 6-12 aff'd: *Froom v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 331 at para 3; see also: *Khan v Canada (Citizenship and Immigration)*, 2008 FC 1331 at paras 2-4; *Patel v Canada (Citizenship and Immigration)*, 2011 FC 670 at paras 7-10; *Canada (Citizenship and Immigration) v. Jozepović*, 2021 FC 923 at paras 14-16).

[5] While paragraph 72(2)(e) of the *IRPA* does not apply where the Court “refuses to exercise its jurisdiction or commits a jurisdictional error” (*Canada (Citizenship and Immigration) v Goodman*, 2016 FCA 126 at para 3), this exception is not applicable in this case, as the alleged errors are factual or legal in nature. The Court therefore does not have jurisdiction to hear the Applicant’s motion to appeal the April 26, 2022 Order of Prothonotary Coughlan. As such, it is not in the interest of justice to grant the Applicant an extension of time to file a motion to appeal the April 26, 2022 Order.

[6] Furthermore, as was rightly noted by Prothonotary Coughlan, the Applicant’s counsel in this matter has been reprimanded repeatedly by this Court for his cavalier attitude towards meeting deadlines (*Idu v Canada (Citizenship and Immigration)*, IMM-658-18, unreported, Order dated May 17, 2018; *Tilahun v Canada (Citizenship and Immigration)*, 2019 FC 815, *Kiflom v Canada (Minister of Citizenship and Immigration)*, 2020 FC 205 (“*Kiflom*”), *Gafakyi v Canada (Minister of Citizenship and Immigration)*, IMM-4803-21, unreported, Order dated September 29, 2021). The present matter merits similar admonishment. As my colleague Justice Strickland remarked in *Kiflom*, “counsel for the Applicant is a senior member of the immigration bar and would be well aware of the strict timeline for filing applications for leave and judicial review of negative immigration decisions” (at para 43). By repeatedly failing to abide by the rules and timelines of this Court, counsel for the Applicant flouts his obligations towards the Court, and towards his clients, whose interests are at risk. The Applicant’s motion is dismissed.

ORDER in IMM-4976-21

THIS COURT ORDERS that:

1. The Applicant's request for an extension of time to file an appeal from the Order of Prothonotary Coughlan, dated April 26, 2022, is denied;
2. The Applicant's request for leave for the solicitor of record to depose an affidavit and present argument based on that affidavit pursuant to Rule 83 of the *Rules* is denied;
3. There shall be no order as to costs.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4976-21

STYLE OF CAUSE: JOEL MBUMBA NTOCO v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

**MOTION IN WRITING PURSUANT TO RULE 369 OF THE *FEDERAL COURTS*
*RULES***

ORDER AND REASONS: AHMED J.

DATED: JUNE 14, 2022

WRITTEN SUBMISSIONS BY:

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