Federal Court of Appeal Cour d'appel fédérale

Date: 20190612

Docket: A-206-18

Citation: 2019 FCA 178

[ENGLISH TRANSLATION]

PRESENT: DE MONTIGNY J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

LÉOPOLD CAMILLE YODJEU NTEMDE
MARLYSE MBAKOP

Respondents

Heard at Québec, Quebec, on May 16, 2019.

Judgment delivered at Ottawa, Ontario, on June 12, 2019.

REASONS FOR JUDGMENT: DE MONTIGNY J.A.

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REASONS FOR JUDGMENT

DE MONTIGNY J.A.

[1] The Attorney General of Canada (the applicant or Attorney General) is requesting that the respondents, Léopold Camille Yodjeu Ntemde and Marlyse Mbakop, be declared vexatious litigants under section 40 of the *Federal Courts Act,* R.S.C. 1985, c. F-7 (*Federal Courts Act*), and that certain related relief be granted. A similar application is also pending before the Federal Court (T-1323-18). For the reasons that follow, this application is allowed.

[2] It appears from the record filed by the applicant in this Court that the respondents have brought three cases before the Federal Court and twelve appeals before this Court since July 2014. Those proceedings gave rise to a multitude of motions (at least 83 at the time this application was filed by the Attorney General), requests for directions, and letters of all kinds. Reading the minute books relating to these cases gives one a grasp of the magnitude of the resources—those of the applicant, those of the Registry and those of the judges of both Courts—that dealing with all these proceedings has required. Although I only have before me the application to have the respondents declared vexatious litigants in the Federal Court of Appeal, I cannot disregard the broader context in which that application is made.

[3] All these proceedings stem from the initial rejection of Mr. Yodjeu's sponsorship application in support of the permanent residence applications of his wife, Ms. Mbakop, and their daughter, and also from the rejection of those applications themselves. Mr. Yodjeu's sponsorship application was rejected in August 2012 because he had failed to demonstrate that he had met the permanent residence requirements set out in sections 130 and 133 of the *Immigration and Refugee Protection Regulations*, SOR/2002-117. Since this sponsorship application was rejected and because there were no humanitarian grounds, the applications for permanent residence of Ms. Mbakop and her daughter were also denied in May 2013.

[4] The respondents being convinced that the permanent residence and sponsorship applications had been denied as a result of a conspiracy between Mr. Yodjeu's former supervisor and Citizenship and Immigration Canada (CIC) officers, Mr. Yodjeu filed an appeal against that decision with the Immigration Appeal Division on June 11, 2013. A discrimination complaint

was also filed with the Canadian Human Rights Commission (CHRC) in September 2013. Mr. Yodjeu's wife and daughter were nonetheless granted a temporary resident visa to come to Canada in September 2013. Their applications for permanent residence were ultimately approved on July 21, 2014, after new information regarding Mr. Yodjeu's status was provided to CIC (Applicant's record, page 57).

[5] The applicants consider that their rights were infringed and that they were subjected to unwarranted treatment, and they are claiming compensatory damages for the harm they allege they have suffered. Although the very great majority of their applications and motions have been dismissed, including the three Federal Court proceedings, the respondents persist in appealing to this Court against interlocutory decisions of the Federal Court.

[6] There is no need for a detailed examination of the various proceedings brought by the respondents. Suffice it to say that the three proceedings before the Federal Court—i.e., the application for judicial review of the CHRC's decision not to rule on the complaint filed by Mr. Yodjeu (T-1617-14), the action for damages against Her Majesty the Queen (T-1813-14) and the motion preliminary to the filing of an application for review under section 41 of the *Privacy Act*, R.S.C. 1985, c. P-21 (17-T-38)—were all dismissed. It was found that the first application had become moot and that the third was premature and unjustified. As for the action for damages, it was dismissed by summary judgment.

[7] As regards Mr. Yodjeu's twelve appeals to this Court, it should be noted that a number of them are against interlocutory decisions, and no appeal books have been filed to date. One need

only look at the minute books for each of those cases and at the number of entries that they contain to gauge the activity that they have generated.

[8] It is in this context that the Court must consider whether the respondents should be declared vexatious litigants, with the consequences attendant upon such a declaration.

[9] Pursuant to an order of the Chief Justice dated May 3, 2019, this application was set down to be heard on May 16, 2019 before the undersigned. The order specified that the parties could request leave to file any document that they considered useful for the purpose of the discussion at the hearing of the application. On that basis, the respondent Mr. Yodjeu presented two preliminary motions on the morning of the hearing, the first seeking the recusal of the undersigned and the second challenging the jurisdiction of a single judge to hear the applicant's motion.

[10] After hearing the representations of Mr. Yodjeu and the applicant on these two motions, I withdrew for a few minutes before informing the parties of my decision to dismiss the motions. On that occasion, I briefly stated the reasons that led me to rule as I had, and I indicated that more elaborate reasons would be provided regarding my decision on the merits of this application. The following paragraphs constitute those reasons.

[11] First of all, with respect to the motion for recusal, the respondent submitted that he did not believe me capable of impartiality toward him because I had in the past, alone or with certain of my colleagues, issued directions and orders that were unfavourable to him and because he had

consequently filed a complaint against me and those same colleagues with the Canadian Judicial Council.

[12] There is no doubt that impartiality is the very foundation of the trust that Canadian citizens have in our justice system and it is therefore of paramount importance to ensure that it is respected and maintained. It is the keystone and foundation not only of our judicial institutions, but also of our democratic and constitutional system. That said, judges are presumed to perform their functions without bias and to meet their ethical obligations. These obligations include the duty on judges to "be and . . . appear to be impartial with respect to their decisions and decision-making" (Canadian Judicial Council, Ethical Principles for Judges, Ottawa, 2004, at page 27). That is why the burden is on the party arguing for disqualification to establish that the circumstances justify the disqualification of the judge (*Wewaykum Indian Band v. Canada,* 2003 SCC 45, [2003] 2 SCR 259, at para. 59; *Collins v. Canada*, 2011 FCA 123 at para. 3).

[13] It is now well established that a judge must recuse himself or herself if the judge feels that he or she is not in a position to rule in all fairness and impartiality on the case before him or her. It is not enough, however, that justice be done. Perception is also important, and that is why justice must appear to be done. For that reason, the standard of reasonable apprehension of bias developed by the Supreme Court in *Committee for Justice and Liberty et al. v. National Energy Board et al*, [1978] 1 SCR 369, is the one that must be met in Canadian law. That standard was expressed by the Court as follows:

> . . . the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically—and

> having thought the matter through—conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly." (page 394).

[14] In this case, I told Mr. Yodjeu at the hearing, and I now reiterate in these reasons, that I have no prejudice against him, and that the decisions I have made in the past regarding any applications or motions that he had brought before the Court were made in good faith and based only on the facts before me and the arguments presented by the parties. Each case must be considered on its own particular facts, and it is thus with a completely open mind that I am approaching this application.

[15] With respect to the appearance of bias, I have come to the conclusion that a reasonable and informed person would not think that I, whether consciously or unconsciously, am not likely to render a fair decision. The fact that a judge may have rendered decisions unfavourable to one of the parties cannot be objectively sufficient to support a reasonable apprehension of bias. Indeed, it is a frequent occurrence that a judge must rule, by a directive or order, on applications made by a party before a case is heard, without that judge's impartiality being called into question. As stated by the Court of Appeal of New Brunswick in *Roy c. Cyr* (1996), 171 NBR (3d) 280, at page 285 (NBCA).

> [TRANSLATION]
>
> It would be very dangerous to conclude that an unsuccessful party may automatically raise the apprehension of bias when that party has to appear again before the same judge. Indeed, long-standing and recent case law indicates that the courts are very reluctant to accept the argument of apprehension of bias in such cases. [Citations omitted.]
>
> (See, similarly, *West v. Wilbur* (2002), 255 N.B.R. (2d) 227; *D.M.M. v. T.B.M.*, 2011 YKCA 8 at para. 39; *L.N. v. S.M.*, 2007 ABCA 258 at para. 92.)

[16] The respondent's second motion, concerning the composition of the Court for the hearing of an application under section 40 of the *Federal Courts Act*, must also be dismissed. Section 16 of the Act provides that in the case of final determinations on applications for leave to appeal, applications for judicial review, appeals and references, the hearing must take place before a panel of three judges. However, it specifies that "[o]therwise, the business of the Federal Court of Appeal shall be dealt with by such judge or judges as the Chief Justice of that court may arrange." The case law of this Court leaves no doubt on this point (see *Canada v. Olumide*, 2017 FCA 42 at para. 5 [*Olumide*]; *Keremelevski v. Ukrainian Orthodox Church of St. Mary*, 2018 FCA 218 at para. 6; *Simon v. Canada (Attorney General),* 2019 FCA 28 at para. 3 [*Simon*]).

[17] When I informed the parties of my decisions regarding the respondent's two motions, the respondent advised the Court that he did not intend to make submissions concerning the Attorney General's application, and that he would, rather, exercise his [TRANSLATION] "right to remain silent" as recommended by his Cameroonian legal advisers. It is therefore on the basis of the Applicant's motion record, as well as his written and oral submissions, that the decision herein was made. I note that the applicant's consent was filed in support of the application, in accordance with subsection 40(2) of the *Federal Courts Act*.

[18] The applicant argues that the respondents are abusing the justice system, as evidenced by the many proceedings they have instituted in recent years in both the Federal Court and the Federal Court of Appeal. The applicant also submits that the respondents display all the signs characteristic of vexatious litigants: filing frivolous and inconsistent proceedings, seeking relief or remedies outside the jurisdiction of this Court, making unfounded allegations of improper

conduct against the opposing party, that party's solicitors and the Court, failing to meet the deadlines and comply with the rules of the Courts, raising again questions that have already been decided, and non-payment of costs awarded against them.

[19] These behaviours are without doubt typical of a vexatious litigant (see *Olumide v. Canada*, 2016 FC 1106 at para. 10; also see *Antoun c. Montréal (Ville de)*, 2016 QCCA 1731 at para. 39; Yves-Marie Morissette, "Abus de droit, quérulence et parties non représentées", (2003) 49 R.D. McGill 23). Given the limited resources available to courts to deal with the cases before them, it is of utmost importance that such behaviour not be tolerated and that limits be placed on those who abuse the judicial system. After all, courts of justice are a public good, in the same way as health care, education and public transit. Abuse of these resources by some can only result in more limited access for the population as a whole. As my colleague Justice Stratas pointed out in *Olumide*, at paragraph 19:

> The Federal Courts have finite resources that cannot be squandered. Every moment devoted to a vexatious litigant is a moment unavailable to a deserving litigant. The unrestricted access to courts by those whose access should be restricted affects the access of others who need and deserve it. Inaction on the former damages the latter.

[20] Before going any further, it is important to point out that declaring a person a "vexatious litigant" does not mean that this person is prohibited from appearing before the Court that has issued the declaration. Such a declaration is intended only to enable the Court to control the use of its resources by certain persons, who have a propensity to abuse them, by requiring such persons to obtain leave of the Court to institute proceedings before it or to continue proceedings already instituted.

[21] The question that arises, therefore, is whether, given their conduct and past use of the Court's resources, requiring the respondents to obtain this Court's leave to institute new proceedings is justified. It goes without saying that the burden of establishing that this threshold has been crossed lies with the party requesting such a declaration (*Simon* at para. 20).

[22] Having reviewed the various proceedings brought by them in both the Federal Court and this Court, I have no hesitation in finding that the respondents have all the characteristics of vexatious litigants. This finding is based not only on the multiplicity of motions and requests for directions filed by the respondents, and their wording, but also on the orders that have been issued to date by many judges and prothonotaries of the Federal Court and by judges of this Court.

[23] To be convinced of this, one need only consider the summary judgment rendered by Justice Roy on April 16, 2018, dismissing Mr. Yodjeu's action for damages resulting from the handling of his sponsorship application and the application for residence of his wife and their daughter (*Yodjeu Ntemde v. Canada*, 2018 FC 410). In a substantial sixty-page judgment, Justice Roy sets out the history of this case and notes that it was "no simple matter" to hold a hearing for the summary judgment motion (at para. 2). He points out that, owing to the various delays that had slowed down the proceedings, Mr. Yodjeu had three years to flesh out his theory of the case and put his best foot forward in support of his action for damages (at para. 59). Yet, writes Justice Roy, Mr. Yodjeu had not in any way presented evidence that could support his argument (at para. 65). Quoting various excerpts from the pleadings before him, Justice Roy summarizes their content as follows:

> [64] It was based on . . . "accusations" that in his statement of claim, Mr. Yodjeu detailed a theory of a [TRANSLATION] "conflict of interest by an organized gang with international ramifications", including the "harassment and persecution of my family by an organized gang" and the "disclosure of personal and confidential information for the purpose of harming and impacting my family's safety".

[24] On this basis, Justice Roy finds without hesitation that "[a]ll things considered, this is a simple matter that has been made needlessly complex by baseless allegations" (at para. 65) and "the diversions in which the [respondent] too often lost himself" (at para. 60).

[25] With regard more particularly to the role played by a local employee of the Embassy in Dakar in the examination of Mr. Yodjeu's case, Justice Roy writes at paragraph 91 of his reasons:

> What is important is that the conspiracy theory put forward by the plaintiff is not only a diversion with respect to his inability to prove his residence in Canada at the prescribed time, but is also not supported by the evidence. It is nothing more than unlikely and unproven speculation. . . .

[26] Justice Roy finds that, far from demonstrating that the CIC employees who rejected his sponsorship application had acted so wrongfully as to render the Crown civilly liable (at para. 105), the evidence showed instead that Mr. Yodjeu failed to establish that he was a Canadian resident at the time he filed his sponsorship application. As a result, Justice Roy could do no other than conclude that the action brought by Mr. Yodjeu was "so unsound" that a trial was not justified (at para. 131). The following excerpt from his closing remarks could not, it seems to me, be more relevant in the context of this application:

> [128] . . . Mr. Yodjeu] had to show that [the Crown employees] committed a civil wrong . . . . He never did so, seeking instead to report problems or advance a mythical conspiracy theory, in which the co-conspirators were all Senegalese and which acted more as a diversion than anything else. [Mr. Yodjeu] even insinuated

> that vandalism on his automobile may have been linked to [TRANSLATION] "his complaint that is in progress against certain CIC officers." Those claimed problems came to a dead end. I repeat: the decisions to reject sponsorship and permanent residence proceeded from the documentation provided by Mr. Yodjeu, which led us to believe that he lived somewhere other than Canada for a portion of the prescribed period, from the filing of his application until the decision.

[27] Following this summary judgment dismissing their action, it might have been expected that the respondents would put an end to their guerilla campaign in the courts, and all the more so since the respondents have not appealed that decision, even though Mr. Yodjeu has filed a motion to quash it. However, far from giving up, the respondents have instead unleashed a barrage of proceedings and communications on the basis of increasingly implausible allegations. In his motion to quash, Mr. Yodjeu asked the Federal Court to penalize the applicant under the *Civil Code of Québec*, L.Q. 1991, c. 64, and to strike out the applicant's entire defence. On May 25, 2018, he also filed a motion seeking the suspension of the file relating to the action, despite the fact that the matter was terminated, and requesting that the Federal Court give the investigators of the Quebec police forces and possibly the Royal Canadian Mounted Police (RCMP) specific instructions with respect to criminal offences by CIC officers against him and his family.

[28] Similarly, on May 2, 2018, Ms. Mbakop filed a motion requesting that the Federal Court order an investigation or criminal trial on the basis of the denunciation of criminal offences allegedly committed by the CIC officers and the solicitors for the applicant. She also asked that she and her daughter be added as parties to docket T-1813-14 and that Mr. Yodjeu be named as their representative. That motion was in connection with another motion, which itself had been dismissed on October 2, 2017.

[29] Mr. Yodjeu also filed a [TRANSLATION] “Note accompanying the complaint filed . . . with the Limoilou Police as required by the [RCMP]” (the Note) in four cases in this Court and two Federal Court cases. He reiterates therein his accusations against the various CIC officers and the applicant’s solicitors. In addition, copies of the Note were sent to the Chief Justices of both Courts, the Canadian Judicial Council, the Barreau du Québec, the applicant’s solicitors and certain media.

[30] On October 18, 2018, the Federal Court’s minute book listed 598 entries in docket T-1813-14, a number of which were subsequent to the April 16, 2018 judgment by Justice Roy. An examination of the motions, letters and other types of communication reveals that the respondents had a tendency to make unfounded, frivolous and vexatious allegations, call into question final decisions, implicate third parties who were neither directly nor indirectly concerned by their allegations and launch multiple proceedings. This finding applies not only to files that have been opened in the Federal Court, but also to cases that are still pending before this Court, which for the most part involve appeals against interlocutory decisions of the Federal Court.

[31] It appears from the Court record that, far from having put an end to the carryings-on of the respondents, this application by the Attorney General has given rise to 124 entries, a number of which are even subsequent to the hearing held on May 16, 2019. In particular, Mr. Yodjeu sent a letter in response to that hearing, to which were appended the submissions he had made in connection with his request to the Commission d’accès à l’information du Québec. He also sought to file a motion to [TRANSLATION] “amend/quash” the May 16, 2019 order authorizing

the hearing of the Attorney General's application by a single judge. Finally, between May 29 and June 5, 2019, the Registry received three letters from Mr. Yodjeu regarding respectively the [TRANSLATION] "review by the Civilian Review and Complaints Commission for the RCMP", the [TRANSLATION] "persistent and ongoing slander that has been engaged in for seven years by Canadian agents for the sole purpose of persecuting the Yodjeu family in Canada", and his summons to appear at a [TRANSLATION] "preparatory session at the Criminal Division of the Superior Court of Québec in connection with this case". This shows, if any demonstration were needed, that the respondents have not understood the message that the various judges (and prothonotaries) of the two Courts before whom these files have come at one time or another over the last number of years were attempting to send them.

[32] In view of the foregoing, the applicant has discharged his burden of demonstrating that the respondents can be characterized as vexatious litigants and that they have exhibited quarrelsome conduct manifested not only in the multiplicity of proceedings brought before this Court, but also in the frivolous and unfounded nature of those proceedings, in the gratuitous accusations made against the representatives of the Attorney General and a number of agents of the State, as well as in their repeated refusal to comply with the rules of procedure, directions and orders of the Court. The respondents' abuse of the Court's resources and of its judges and registry officers cannot but have a negative impact on the access to the courts of other litigants, whose cases also deserve to be heard, which is precisely what section 40 of the *Federal Courts Act* is intended to ensure. It is therefore without hesitation that I allow the Attorney General's application and declare the respondents vexatious litigants.

[33] It is true that Mr. Yodjeu was the main player in most of the proceedings brought before this Court and the Federal Court. The fact remains, however, that his wife, Ms. Mbakop, was also actively involved in a number of her husband's proceedings. In particular, she filed a motion for leave to intervene in, or be named a party to, the proceedings in the action for damages filed by Mr. Yodjeu. In his November 18, 2016 order dismissing that motion, Justice LeBlanc noted that the motion had been filed two weeks before the hearing date for the motion for summary judgment. He also noted that Ms. Mbakop did not bring a perspective different from that presented by the parties, that her intervention essentially concerned new issues and that she did not appear at the hearing of her motion despite a clear direction to do so. Ms. Mbakop also filed, with her husband, a motion dated April 30, 2018 in which she raised again an issue already decided by Justice Roy. Finally, the notice of appeal in docket A-301-17 involves Ms. Mbakop insofar as it is directed against an interlocutory judgment ordering that her motion to quash Justice LeBlanc's order on the intervention be dealt with pursuant to section 369 of the *Federal Courts Rules*, SOR/98-106. In short, there is every reason to believe that both Mr. Yodjeu and Ms. Mbakop are participants in the judicial saga that has been going on in the Federal Courts for more than five years now and that Ms. Mbakop would take over from Mr. Yodjeu if he alone were to be declared a vexatious litigant.

[34] For all of these reasons, the two respondents are declared vexatious litigants and consequently cannot bring new proceedings before this Court without this Court's leave. Again, the object is not to deny the respondents access to this Court, but to control such access and to make it conditional on the obtaining of leave so as to ensure that the Court's limited resources are not squandered on frivolous or vexatious applications. Proceedings already instituted by the

respondents and now before the Court are stayed, and this stay will be lifted only with the leave of this Court. Finally, the Registry will neither accept nor file any document from the respondents, unless it be a notice of motion in due form under section 369 of the Rules seeking leave to commence or continue proceedings before this Court. A copy of the judgment and these reasons will be filed in each docket involving the respondents in this Court, that is, in dockets A-269-16, A-398-16, A-402-16, A-120-17, A-298-17, A-299-17, A-301-17, A-297-17, A-177-18, A-236-18, A-3-19 and A-150-19. Costs are awarded to the applicant.

"Yves de Montigny"

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-206-18
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA v. LEOPOLD CAMILLE YODJEU NTEMDE, MARLYSE MBAKOP
PLACE OF HEARING:	QUÉBEC, QUEBEC
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