Federal Court Cour fédérale

Date: 20211029

Docket: IMM-7108-21

Citation: 2021 FC 1155

Ottawa, Ontario, October 29, 2021

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

MAJOK THON MAWUT

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] Mr. Mawut has been in immigration detention for close to a year, pending his removal to South Sudan. His counsel asked the Minister to disclose certain categories of documents, in particular communications between Canadian and South Sudanese officials regarding the issuance of travel documents. The Immigration Division [ID] refused to order disclosure, mainly because it already had enough evidence to justify continuing Mr. Mawut's detention. Mr. Mawut is seeking judicial review of this decision.

[2] I am granting Mr. Mawut's application, because the ID disregarded the recent decision of the Federal Court of Appeal in *Brown v Canada (Citizenship and Immigration)*, 2020 FCA 130 [*Brown*]. This decision imposed on the Minister a duty to disclose all relevant evidence it has in its possession in respect of the detention of a foreign national, including communications with foreign states. I am ordering the Minister to disclose communications with South Sudanese officials in respect of Mr. Mawut and to reassess the relevance of other evidence in its possession in light of these reasons.

I. Background

[3] Mr. Mawut was born in 1989 and came to Canada in 2000 from a refugee camp in Ethiopia where he spent most, if not all of his childhood. He came to Canada with persons who were then believed to be his parents and who were recognized as Convention refugees. However, there is evidence suggesting that these persons were actually his uncle and aunt. Nevertheless, the Canada Border Services Agency [CBSA] now asserts that they truly are his parents and is currently in contact with the putative father, who lives in Canada. Based on its view of the facts, CBSA asserts that Mr. Mawut is a citizen of South Sudan.

[4] Mr. Mawut has a lengthy criminal record. He committed very serious offences. In 2015, he was found guilty of armed robbery and was sentenced to five years in custody. He was then found to be inadmissible to Canada for serious criminality, pursuant to section 36(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. He was later found to be a "danger to the public" pursuant to section 115(2)(*a*) of the Act. As a result, there is an enforceable removal order against Mr. Mawut.

[5] When Mr. Mawut's criminal sentence ended in November 2020, he was detained pursuant to the Act. The Immigration Division [ID] of the Immigration and Refugee Board [IRB] has reviewed his detention periodically since then.

[6] One obstacle to Mr. Mawut's removal is South Sudan's longstanding refusal to issue travel documents to its nationals found inadmissible to Canada. However, recent discussions between the two governments have led South Sudan to change its position and declare itself ready to entertain applications for travel documents. An application in respect of Mr. Mawut was submitted during the summer of 2021, but no decision has been made yet.

[7] It appears that Mr. Mawut suffers from serious mental health issues. There is evidence that he suffers from an array of mental health conditions and was hospitalized several times. His behaviour in detention is erratic. His counsel states that it is impossible to obtain meaningful information or instructions from him. Given this situation, the ID appointed Mr. Norris Ormston as Mr. Mawut's designated representative, pursuant to Rules 18 and 19 of the *Immigration Division Rules*, SOR/2002-229 [the ID Rules].

[8] At the August 12, 2021 detention review, counsel for Mr. Mawut raised the issue of inadequate disclosure. While it continued Mr. Mawut's detention, the ID "strongly urge[d] the Minister to make a fulsome review of their file and disclose any relevant information," in particular regarding Mr. Mawut's parentage and the efforts to obtain a travel document.

[9] No further disclosure was made prior to the next review, which took place on September 8, 2021. On that occasion, counsel for Mr. Mawut raised the issue of disclosure again. A different member of the ID refused to make any order in this regard, asking instead for an itemized list of the evidence counsel was seeking.

[10] The next day, counsel for Mr. Mawut wrote to the Minister's representative, asking for a list of items including correspondence between Canadian and South Sudanese officials regarding Mr. Mawut's case, minutes of the meetings of the long-term detention committee regarding Mr. Mawut and other information. The Minister's representative replied a few days later and undertook to provide some of the information requested or to make inquiries. She refused, however, to disclose communications between Canadian and South Sudanese officials, as it was CBSA's position that this information was protected and not necessary for a fair hearing. The Minister also refused to disclose the minutes of the long-term detention committee, because they did not relate to a live issue in the proceedings and the request was akin to a fishing expedition.

[11] At the next detention review, which took place on October 8, 2021 before the same ID member as on September 8, counsel for Mr. Mawut argued that the Minister's disclosure was inadequate and asked the ID to order the Minister to disclose information. The precise scope of the request is not entirely clear. At the opening of the hearing, the ID reviewed the entirety of Mr. Mawut's list of requested documents. The ensuing discussion, however, focused exclusively on communications between Canadian and South Sudanese officials. In an earlier email sent to the ID, counsel for Mr. Mawut had also requested the minutes of the long-term detention

committee. In any event, the ID refused to order disclosure. The oral reasons given by the member are somewhat repetitive, but can be fairly summarized by the following sentence:

> So far, the evidence I find right in front of me, the evidence the Minister has disclosed so far, even without claiming diplomatic privilege, has shown to me that removal is possible, is ongoing, unless anything changes.

[12] Thus, in the member's view, no further disclosure was necessary if the ID was able, on the evidence before it, to make one of the findings required, namely that removal remained a possibility. Apparently by oversight, the member did not address Mr. Mawut's other disclosure requests, in particular in respect of the long-term detention committee minutes.

[13] Mr. Mawut applied for leave and judicial review of the ID's decision as it pertains to disclosure. He also sought interim relief, in order to have the matter resolved before the next detention review, and asked that leave be granted on the basis of the motion record and that the application be expedited. Upon reviewing the motion record, I suggested that the parties proceed directly on the merits of the application on the date set for the hearing of the motion. The parties accepted my suggestion. Thus, I will address the relief requested in the motion as if it were sought on a permanent basis.

II. Analysis

[14] Before addressing the main issue raised by the application, two issues can be quickly disposed of. There is no dispute between the parties in this regard.

[15] First, the matter raises issues of procedural fairness that are not subject to the reasonableness standard of review. Thus, my role is to decide whether the process before the ID was fair: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121. In making this assessment, I must make the decision that is correct in the circumstances, without the need to show deference to the ID's decision.

[16] Second, it is appropriate to appoint Mr. Ormston as Mr. Mawut's representative in this Court. Rule 115(1)(b) of the *Federal Courts Rules*, SOR/98-106, allows for such an appointment where the person concerned is "under a legal disability," or, in French, "*une personne n'ayant pas la capacité d'ester en justice*." Pursuant to Rule 18 of the ID Rules, the ID must have concluded that Mr. Mawut was "unable to appreciate the nature of the proceedings." Given the uncontested evidence before me and the ID's finding, I conclude that Mr. Mawut is under a legal disability within the meaning of Rule 115. It is also logical that Mr. Mawut be represented by the same person before the ID and this Court.

A. *Immigration Detention: The Legal Framework*

[17] The parts of the Act that provide for the detention of foreign nationals were thoroughly reviewed in *Brown*. For the present purposes, it is only necessary to emphasize certain basic features of the regime.

[18] Sections 55-61 of the Act set out the grounds for detention and the process for periodic review of detention and release of detainees. Where the ID reviews detention, subsection 58(1) provides that the person must be released unless one of the grounds for detention is established.

These grounds include the fact that the person is a danger to the public or that they are unlikely to appear for removal. In reaching this decision, the ID must take into account the factors set forth in section 248 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, which reads as follows:

248 If it is determined that there are grounds for detention, the following factors shall be considered before a decision is made on detention or release:	**248** S'il est constaté qu'il existe des motifs de détention, les critères ci-après doivent être pris en compte avant qu'une décision ne soit prise quant à la détention ou la mise en liberté :
(a) the reason for detention;	**a)** le motif de la détention;
(b) the length of time in detention;	**b)** la durée de la détention;
(c) whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;	**c)** l'existence d'éléments permettant l'évaluation de la durée probable de la détention et, dans l'affirmative, cette période de temps;
(d) any unexplained delays or unexplained lack of diligence caused by the Department, the Canada Border Services Agency or the person concerned;	**d)** les retards inexpliqués ou le manque inexpliqué de diligence de la part du ministère, de l'Agence des services frontaliers du Canada ou de l'intéressé;
(e) the existence of alternatives to detention; and	**e)** l'existence de solutions de rechange à la détention;
(f) the best interests of a directly affected child who is under 18 years of age.	**f)** l'intérêt supérieur de tout enfant de moins de dix-huit ans directement touché.

[19] More fundamentally, the Federal Court of Appeal noted that a person can only be detained where the detention is in furtherance of an immigration purpose. As the Court said in *Brown*, at paragraph 44:

> The power of detention will be exercised principally, but not exclusively, pending removal. Where detention is for the purposes of removal, and there is no longer a possibility of removal, detention on this ground no longer facilitates the machinery of immigration control and the power of detention cannot be exercised.

[20] According to the Federal Court of Appeal, an immigration nexus exists as long as removal remains a possibility: *Brown*, at paragraph 95.

B. *Brown*

[21] Before reviewing the passages of *Brown* that deal directly with disclosure, it is useful to set out briefly the context in which this decision was rendered. In recent years, immigration detention has been the subject of criticism, especially when it lasts for an extended period. In 2018, the IRB conducted an audit that found certain shortcomings in the manner in which the ID handled detention reviews. Some of these criticisms led a majority of the Supreme Court of Canada to hold that a person detained under the Act can apply for *habeas corpus* in a provincial superior court instead of following the detention review process set out in the Act: *Canada (Public Safety and Emergency Preparedness) v Chhina*, 2019 SCC 29, [2019] 2 SCR 467 [*Chhina*].

[22] In her dissent in *Chhina*, however, Justice Rosalie Abella stated that it was preferable to interpret the provisions of the Act in a manner that provides for the necessary procedural guarantees. At paragraph 74, she wrote:

> The better approach is to continue to read the language of [the Act] in a manner that is as broad and advantageous as *habeas corpus* and ensures the complete, comprehensive and expert review of immigration detention that it was intended to provide, as all of this Court's previous jurisprudence has done. It is far more consistent with the purposes of the scheme to breathe the fullest possible remedial life into the *Act* than to essentially invite detainees to avoid the exclusive scheme and pursue their analogous remedies elsewhere.

[23] In *Brown*, the Federal Court of Appeal took up Justice Abella's invitation and provided guidance as to how certain aspects of the detention review regime should be implemented, in order to ensure a higher degree of procedural fairness. One of those aspects pertains to the disclosure of evidence in the Minister's hands.

[24] Prior to *Brown*, the only disclosure requirement was found in section 26 of the ID Rules, which provides:

26 If a party wants to use a document at a hearing, the party must provide a copy to the other party and the Division. The copies must be received	**26** Pour utiliser un document à l'audience, la partie en transmet une copie à l'autre partie et à la Section. Les copies doivent être reçues :
(a) as soon as possible, in the case of a forty-eight hour or seven-day review or an admissibility hearing held at the same time; and	**a)** dans le cas du contrôle des quarante-huit heures ou du contrôle des sept jours, ou d'une enquête tenue au moment d'un tel contrôle, le plus tôt possible;

(b) in all other cases, at least five days before the hearing.	**b)** dans les autres cas, au moins cinq jours avant l'audience.

[25] This provision pertains only to evidence a party intends to file before the ID. It does not set out any requirement to disclose documents that a party possesses but does not intend to file.

[26] In *Brown*, the Federal Court of Appeal decided that section 26 does not exhaust the Minister's procedural fairness obligations. At paragraphs 142 and 145, it wrote the following:

> The need for detainees to know the case against them creates a disclosure obligation. To be meaningful, the disclosure obligation cannot be limited to information on which the Minister intends to rely. All relevant information must be disclosed, including information that is only to the advantage of the detainee. This includes information pertaining to the grounds for the detention, information pertaining to the section 248 criteria, the existence of an immigration nexus, and the factors that bear upon the judge's assessment whether continued detention is warranted and consistent with Charter and administrative law principles. While the disclosure obligation necessarily encompasses information that is helpful to the detainee, it is not unlimited. It is always tempered by the requirement that the information be relevant to the circumstances of the particular detainee.
>
> […]
>
> The legality of a detention order pending removal is underpinned by a finding, on the evidence, that removal remains a possibility. For this reason, disclosure of evidence concerning the likelihood of removal is also central to the legality of a detention order. This in turn requires the ID to assess the Minister's efforts respecting removal and the reasons for delay at each and every hearing. Detainees are entitled to know what evidence the Minister relies upon for an argument that removal remains a possibility. Subject to recognized public interest privileges arising under section 38.01 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5, relevant evidence of communications with a receiving country ought to be disclosed in advance of the hearing. Given the obligation imposed by section 248 of the Regulations, it would be a rare case where a member

> could properly exercise their discretion to continue detention in the absence of this evidence.

C. *Disclosure and Relevance*

[27] Before the ID, the Minister advanced various grounds to oppose disclosure of certain categories of information. In this Court, the Minister focuses only on relevance. He argues that the information requested by Mr. Mawut is not relevant, largely for the reasons mentioned by the ID member.

[28] In this regard, no one disputes that only relevant information need be disclosed. In *Brown*, the Federal Court of Appeal always qualified the duty to disclose by saying that it pertains to relevant information. The real issue is how relevance is to be assessed, and by whom. On this issue, the practice in other areas of the law may offer some guidance.

[29] In an adversarial system, pre-trial disclosure requirements facilitate the search for the truth by providing parties with access to evidence that may bolster their positions: *Imperial Oil v Jacques*, 2014 SCC 66 at paragraphs 25-26, [2014] 3 SCR 287 [*Imperial Oil*]. In many cases, a party has no other means of obtaining information about certain facts and testing assertions made by the other party. Such requirements are well known in civil and criminal law.

[30] In civil cases, the rules of court in most Canadian jurisdictions require the parties to disclose all relevant documentary evidence in their possession. At this early stage of the proceedings, "a broad range of information may be demanded": *Lac d'Amiante du Québec Ltée v 2858-0702 Québec Inc*, 2001 SCC 51 at paragraph 59, [2001] 2 SCR 743; *Imperial Oil*, at

paragraph 28. In this Court, this process is set forth in rules 222-233 of the *Federal Court Rules*. In particular, rule 222 provides that:

222 […]	**222** […]
(2) For the purposes of rules 223 to 232 and 295, a document of a party is relevant if the party intends to rely on it or if the document tends to adversely affect the party's case or to support another party's case.	**(2)** Pour l'application des règles 223 à 232 et 295, un document d'une partie est pertinent si la partie entend l'invoquer ou si le document est susceptible d'être préjudiciable à sa cause ou d'appuyer la cause d'une autre partie.

[31] In *Apotex Inc v Canada*, 2005 FCA 217 at paragraph 15, the Federal Court of Appeal held that the duty of disclosure extends to documents that "may fairly lead […] to a train of inquiry which may directly or indirectly advance their case or damage the defendant's case." See also *Novopharm Ltd v Eli Lilly Canada Inc*, 2008 FCA 287 at paragraphs 60-65.

[32] In criminal matters, the seminal case of *R v Stinchcombe*, [1991] 3 SCR 326 [*Stinchcombe*], established the Crown's duty to disclose all evidence in its possession, even if it does not intend to introduce it at trial. The Court made it clear that disclosure is the norm, and that "the Crown must err on the side of inclusion": *Stinchcombe*, at 339. Later cases emphasized that relevance, in this context, must be generously defined. For example, in *R v Taillefer; R v Duguay*, 2003 SCC 70, [2003] 3 SCR 307, the Supreme Court wrote, at paragraph 60:

> As the courts have defined it, the concept of relevance favours the disclosure of evidence. Little information will be exempt from the duty that is imposed on the prosecution to disclose evidence. As this Court said in *Dixon*, *supra*, "the threshold requirement for disclosure is set quite low. . . . The Crown's duty to disclose is therefore triggered whenever there is a reasonable possibility of the

> information being useful to the accused in making full answer and defence".

[33] Thus, in both civil and criminal law, the concept of relevance is defined broadly in the context of pre-trial disclosure. It is assessed though the lens of reasonable possibility, that is, by asking whether the information can possibly assist the other party in building its case. Thus, disclosure is required even if it is not certain that the evidence will advance the other party's case.

[34] Similar principles apply in the context of detention review proceedings. In *Brown*, at paragraph 137, the Federal Court of Appeal noted that a higher degree of procedural fairness is mandated in detention review proceedings, because individual liberty is at stake. It follows that, like in civil and criminal matters, relevance should be defined broadly when defining the scope of the Minister's duty to disclose evidence in its possession.

[35] As a practical matter, the Minister's representative should review the file and start from the premise that disclosure is the rule and withholding information, the exception. As the Federal Court of Appeal noted in *Brown*, at paragraph 142, the duty to disclose "is not unlimited" and is "tempered by the requirement that the information be relevant." Relevance should be assessed according to the principles set out above. An assessment of relevance, however, cannot be based on the Minister's representative's opinion as to what avenues the detainee's counsel should pursue, or the idea that the evidence already disclosed is overwhelming with respect to a particular issue or sufficient to justify detention.

[36] Given the nature of detention reviews, the Minister's duty to disclose is a continuing one. Therefore, as the situation evolves, the weight of each section 248 factor may vary. Nevertheless, information should not be withheld simply because the Minister's representative believes that information may only become relevant at a later stage.

[37] Adherence to the foregoing principles should go a long way towards preventing disputes regarding the scope of disclosure. Should an issue nonetheless arise, it should be brought before the ID.

[38] Where written communications with a foreign state are involved, the Minister suggested that it is not necessary to disclose the documents themselves, but that it is sufficient to provide a summary, for example through the statutory declaration of a CBSA official. I disagree. Where a disclosure obligation pertains to documents, there is no authority for the proposition that the obligation may be satisfied by a summary prepared by the disclosing party. The practice in civil and criminal matters is otherwise. In *Brown*, quoted above, the Federal Court of Appeal explicitly wrote that communications with foreign states ought to be disclosed. Nothing in this passage suggests that a disclosure obligation would be met by providing a summary of the communications.

[39] The Minister appears to be concerned that the disclosure of communications with foreign states may be forbidden under sections 38 to 38.12 of the *Canada Evidence Act*, RSC 1985, c C-5, and that this might cause delays in the detention review process. However, the Minister never claimed privilege under the *Canada Evidence Act* in relation to these proceedings. As a result,

the issue was not fully explored at the hearing of this application, as the Minister focused his submissions on the issue of relevance. In fact, the Minister did not argue that each and every communication with a foreign state gives rise to a privilege under section 38.

[40] I note that the Federal Court of Appeal considered this issue in *Brown* and indicated, in the excerpt quoted above, that disclosure is the rule and privilege, the exception, even where communications with foreign states are involved. Moreover, a claim under the *Canada Evidence Act* would not be grounds to adjourn or delay the periodic detention reviews. It would simply delay the disclosure of information subject to the claim, while reviews are held at the intervals provided for in the Act.

[41] The Minister also argued that *Brown* should be confined to its own facts, namely a situation in which a foreign state neglected to respond to a request for travel documents for a period of five years. I disagree. It is obvious that the Federal Court of Appeal intended to lay out general principles applicable to all detention reviews. In particular, its statement that communications with foreign states should be disclosed is not confined to situations of extreme delay.

D. *Application to This Case*

[42] In my view, the ID's refusal to order disclosure gave rise to a breach of procedural fairness. I will first explain why the ID's decision was flawed. I will then decide what should be done, to the extent that I am able to do so on the basis of the record before me.

(1) The ID's Decision

[43] The ID in this case failed to apply the principles outlined above. As a result, it simply disregarded *Brown*.

[44] The ID's fundamental error was to suspend the disclosure obligation established by *Brown* when it found that it had enough evidence to continue detention. In doing so, the ID confused the Minister's burden of proof with his disclosure obligation.

[45] There is always a disclosure obligation. It does not depend on whether the Minister failed to discharge his burden, on one's views of the merits of the case or on speculation as to what the evidence might reveal. The purpose of disclosure is to enable the detainee to challenge the Minister's position. It would be illogical to use the Minister's position, even if the ID accepts it, to curtail the scope of disclosure.

[46] Thus, it was an error for the ID to rely on its assessment that Mr. Mawut's removal was still a possibility, or that "everything is going on well" with respect to obtaining travel documents. That assessment was based solely on the evidence that the Minister chose to disclose and introduce in the ID's record. The ID's reasoning is circular: one cannot rely on the fact that the Minister has brought evidence sufficient to justify detention to foreclose the search for evidence that would lead to the opposite conclusion.

[47] The Minister is not exempted from his duty of disclosure by alleging that counsel for Mr. Mawut may contact the South Sudanese official who interviewed him to ask for additional information. A duty of disclosure exists even where a party might have other ways of accessing the information. Moreover, there are practical and ethical reasons why counsel would not contact foreign officials. See, by way of analogy, *Stinchcombe*, at 347.

[48] The ID also suggested that disclosure might be required at a later stage, if, for example, South Sudan refuses to issue travel documents to Mr. Mawut. This, however, falls in the same logical trap. It assumes that the duty to disclose arises only where there is a gap in the evidence filed by the Minister. I would also emphasize that Mr. Mawut has been detained under the Act for close to a year. The length of detention is clearly an issue and Mr. Mawut is entitled to receive all evidence that may help assessing the weight that should be given to this factor in the analysis prescribed by section 248 of the Regulations.

[49] The ID also gave an unduly restrictive interpretation to the reasons of the Federal Court of Appeal in *Brown*. At paragraph 145, which is quoted above, the Court stated that "relevant evidence of communications with a receiving country ought to be disclosed." According to the ID, the use of the word "ought," in contrast to "shall," means that this is merely a recommendation, not a duty. In my view, this is not a plausible reading of the Court's decision. The Court was describing what is necessary to ensure procedural fairness in a detention review. Procedural fairness is not optional, nor a simple recommendation. Other passages of the Court's decision, including one that I quoted above, make it clear that disclosure is an obligation, not a

recommendation, subject, of course, to a formal claim of privilege pursuant to the *Canada Evidence Act*.

[50] The net effect of the ID's approach is to return to a situation where the Minister's disclosure obligations do not extend beyond what Rule 26 of the ID Rules provides. Yet, this is exactly the situation that was found to be unsatisfactory in *Brown*. In this regard, *Brown* may well require participants in detention reviews to revisit existing practices.

(2) Assessment of Relevance

[51] As the issue of disclosure is reviewed on a standard of correctness, I may make my own assessment of the relevance of the information Mr. Mawut requests and make orders accordingly.

[52] The communications between Canadian and South Sudanese officials are relevant and must be disclosed. The possibility of removal is a live issue in Mr. Mawut's case. The process for issuing travel documents to South Sudanese nationals to be removed from Canada is a new one and Mr. Mawut is one of the first test cases. Despite the ID's view that things are "going on well" since the South Sudanese government accepted to consider Mr. Mawut's application for travel documents, there is still considerable uncertainty as to the outcome. This uncertainty is compounded by the doubts with respect to Mr. Mawut's parentage.

[53] I wish to add that in reaching this conclusion regarding relevance, I am not making any findings with respect to whether Mr. Mawut's removal remains a possibility. Indeed, this

application for judicial review does not challenge the ID's current conclusion in this regard. However, this finding should not be used, in a circular fashion, to deny the existence of a duty to disclose all relevant information.

[54] I am not, however, in a position to make a decision with respect to the minutes of the long-term detention committee or other information sought by Mr. Mawut. Given that the matter was argued on an urgent basis, I do not have enough evidence as to what items remain contentious, whether the information exists in written form and whether it has already been disclosed, or to assess its relevance.

[55] Nevertheless, in my view, the whole exercise proceeded on faulty premises. The Minister's representative did not appreciate the extent of the duty to disclose. Thus, the best way to proceed is for the Minister's representative to review the file anew to ascertain whether relevant documents have not yet been disclosed. In this process, the Minister's representative should be guided by the broad conception of relevance outlined above. In particular, evidence regarding Mr. Mawut's parentage or alternatives to detention should be considered relevant. If Mr. Mawut is not satisfied with the results of this exercise, he may ask the ID to review the issue.

III. Disposition

[56] For these reasons, I am allowing the application for judicial review. The Minister will disclose communications with South Sudan regarding Mr. Mawut. The Minister will also reassess its disclosure obligations with respect to other evidence in its possession regarding Mr. Mawut, having regard to these reasons.

[57] As this matter was argued on an urgent basis, the parties were not in a position to propose a question for certification. The parties will have seven days to do so.

JUDGMENT in IMM-7108-21

THIS COURT'S JUDGMENT is that:

1. Mr. Norris Ormston is appointed to represent the applicant in the present matter pursuant to Rule 115 of the *Federal Court Rules*.
2. The applicant is granted leave to apply for judicial review of the October 8, 2021 decision of the Immigration Division.
3. The application for judicial review is allowed.
4. The respondent is ordered to disclose all communications between Canadian and South Sudanese officials regarding the applicant.
5. The respondent is ordered to reassess the evidence in its possession regarding the applicant, having regard to the reasons given above, and to disclose evidence relevant to the present matter.
6. Nothing in this order prevents the Minister from claiming privilege pursuant to sections 38 to 38.12 of the *Canada Evidence Act*.
7. The parties may propose a question for certification, by way of informal letter, no later than seven days after the date of this judgment.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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