

**Date: 20090806**

**Docket: IMM-3940-09**

**Citation: 2009 FC 803**

**Ottawa, Ontario, August 6, 2009**

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

**BETWEEN:**

**KYON ROGER MOORE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION  
AND  
THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS<sup>1</sup>**

**Respondents**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] An applicant for an equitable remedy must come before the Court with clean hands.

The well established principle "he is who has committed Iniquity ... shall not have Equity." *Jones v. Lenthall* (1669) 1 Ch. Ca. 154 needs to be applied in this case. I see no reason to extend equity to the Applicant in light of his deeds. It follows as a logical corollary that where the Applicant does not come with clean hands, the balance of convenience does not tilt his way.

It is obvious to me that the Court in exercising its discretion must have regard and must take into account a number of factors not the least of which is the public interest. Public policy dictates that I bar the plaintiff's claim. The maxim that "no one should take benefit from his own wrong" has been adopted and followed for

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<sup>1</sup> As both Ministers have been named in the proceedings, both appear on the Style of Cause.

centuries. This principle was enunciated quite succinctly in *Cleaver v. Mutual Reserve Fund Life Association*, [1892] 1 Q.B. 147 at 156, where Fry, L.J., said:

It appears to me that no system of jurisprudence can with reason include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person.... This principle of public policy, like all such principles, must be applied to all cases to which it can be applied without reference to the particular character of the right asserted or the form of its assertion.

(Reference is made to *Khalil v. Canada (Secretary of State)*, [1999] 4 F.C. 661, [1999] F.C.J. No. 1093 (QL) (C.A.); *Ksiezopolski v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1402, [2004] F.C.J. No. 1715 (QL); *Basu v. Canada*, [1992] 2 F.C. 38, [1991] F.C.J. No. 1272 (QL) (T.D.)).

[2] Mr. Kyon Roger Moore, the Applicant, a citizen of Jamaica, is a repeat criminal offender with eight criminal convictions in Canada since 2002. These convictions include violent and weapons related offences including breaking and entering. A deportation order for criminality was appealed to the Immigration Appeal Division (IAD); the IAD issued a stay of proceedings during which Mr. Moore re-offended and was again convicted of serious criminality. Pursuant to ss. 68(4) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), the stay of proceedings was terminated:

**68. ...**

Termination and cancellation

(4) If the Immigration Appeal Division has stayed a removal order against a permanent resident or a

**68. [...]**

Classement et annulation

(4) Le sursis de la mesure de renvoi pour interdiction de territoire pour grande criminalité ou criminalité est

foreign national who was found inadmissible on grounds of serious criminality or criminality, and they are convicted of another offence referred to in subsection 36(1), the stay is cancelled by operation of law and the appeal is terminated.	révoqué de plein droit si le résident permanent ou l'étranger est reconnu coupable d'une autre infraction mentionnée au paragraphe 36(1), l'appel étant dès lors classé.
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[3] Failure to appear for several immigration proceedings led to a warrant for Mr. Moore's arrest in March of this year. Mr. Moore remains in detention pending removal further to a negative Pre-Removal Risk Assessment (PRRA). The Applicant is scheduled for removal on August 7, 2009. A deferral of Mr. Moore's removal was refused by the Immigration Authorities.

[4] Mr. Moore is not entitled to the Court's discretion on the merits of the matter as he has come to Court with unclean hands due to serious criminality and disregard for Canada's immigration laws.

**JUDGMENT**

**THIS COURT ORDERS** that the matter not be heard on its merits as Mr. Moore does not come before this Court with clean hands.

“Michel M.J. Shore”

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Judge

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

**DOCKET:** IMM-3940-09

**STYLE OF CAUSE:** KYON ROGER MOORE v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION AND THE  
MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** August 6, 2009 (by teleconference)

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SHORE J.

**DATED:** August 6, 2009

**APPEARANCES:**

Mr. Waikwa Wanyoike FOR THE APPLICANT

Ms. Judy Michaely FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

WAIKWA WANYOIKE FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

JOHN H. SIMS, Q.C. FOR THE RESPONDENTS  
Deputy Attorney General of Canada