Federal Court Cour fédérale

Date: 20100210

Docket: IMM-4171-09

Citation: 2010 FC 137

Ottawa, Ontario, February 10, 2010

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

BONIFACE KABURENTE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Boniface Kaburente, a citizen of Burundi, is a member of the Tutsi ethnic minority. He reported some wrongdoing committed by members of the local administration in the distribution of food aid, for which he was responsible. These members ordered him to help only the Hutus. He refused. He immediately started to receive insults and death threats. He claims to have been

kidnapped on July 25, 2007, and he claims to have been assaulted at his home and to have found a grenade in his garden in October of the same year.

[2] He left Burundi to come to Canada in December 2007 and filed his claim for refugee protection.

[3] Although the panel considered Mr. Kaburente to be credible and that he had a subjective fear of persecution, the panel found that the applicant was not a "Convention refugee" or a "person in need of protection".

[4] This is a judicial review of that decision. The decision will be set aside only if the Court finds that it is unreasonable (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

ANALYSIS

[5] The parties are of the opinion that there are two issues. The first is to determine whether there is an objective basis for the subjective fear of persecution. The second is to determine whether the applicant has met the burden of proving with clear and convincing evidence that he could not obtain state protection. For Mr. Kaburente to be successful, he must show that the decision was unreasonable with respect to both issues.

[6] I have my doubts regarding the panel's analysis of the objective basis. Although Mr. Kaburente left his job with the food-aid distribution program, he did make a complaint.

Although his neighbourhood was in a peaceful area, the assailants had no difficulty going to his home.

[7] It seems that Mr. Kaburente, as a Tutsi, has a generalized fear of the Hutus and of crimes in general. Following his complaints, the police nevertheless proceeded to arrest suspects.

[8] The incident of November 2007 was the tipping point that made Mr. Kaburente decide to leave his country to settle in Canada. He stated the following on his Personal Information Form:

> [TRANSLATION]
>
> [He was] …awoken by a noise from unknown persons who were trying to break through the front door of [his] house, but without success. When I realized that my house was being attacked, with the children, we called out for help, seeking assistance from the neighbourhood. Following [their] cries for help, the culprits had to abandon their plan of attack. However, before escaping, they threw stones at the windows and managed to break them.

[9] He called the police, who came to inspect the premises. They found a grenade in his yard. The police promised to investigate, but told him that they were unable to offer him individual protection.

[10] Although the police were unable to offer him individual protection, such as a bodyguard, this does not in any way indicate that the state is unable to offer him adequate protection.

[11] Another decision-maker could have reasonably arrived at the conclusion that there was an objective basis for Mr. Kaburente’s fear and that he was able to rebut the presumption of state

protection. Although there can be only one correct decision, there may be many reasonable decisions. Paragraph 47 of *Dunsmuir*, above, requires a court conducting a review to "inquire[] into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes":

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[12] In *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, Justice Iacobucci, on behalf of the Supreme Court, gives reviewing courts, at paragraph 80, a warning that applies upon review on a standard of reasonableness *simpliciter*:

> I wish to observe, by way of concluding my discussion of this issue, that a reviewer, and even one who has embarked upon review on a standard of reasonableness *simpliciter*, will often be tempted to find some way to intervene when the reviewer him- or herself would have come to a conclusion opposite to the tribunal's. Appellate courts must resist such temptations. My statement that I might not have come to the same conclusion as the Tribunal should not be taken as an invitation to appellate courts to intervene in cases such as this one but rather as a caution against such intervention and a call for restraint. Judicial restraint is needed if a cohesive, rational, and, I believe, sensible system of judicial review is to be fashioned.

This Court has no choice but to take such a warning into account in this case.

ORDER

FOR THESE REASONS;

THE COURT ORDERS that:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to be certified.

"Sean Harrington"
Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4171-09
STYLE OF CAUSE:	Kaburente v. MCI
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APPEARANCES:

William Sloan	FOR THE APPLICANT
Sherry Rafai	FOR THE RESPONDENT

SOLICITORS OF RECORD:

William Sloan Counsel Montréal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT