

Federal Court



Cour fédérale

Date: 20110622

Docket: T-162-11

Citation: 2011 FC 752

Toronto, Ontario, June 22, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

DR. JULIUS EHIKWE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Respondent has brought a motion in writing for an Order dismissing this application or, in the alternative, for an extension of time to file its affidavit evidence. Each of the Respondent and Applicant has filed motion records including an affidavit from each party. I have read and considered all of this material.

[2] In the past, the Applicant has engaged in a practice of representing persons before the Immigration and Refugee Board of Canada. That Board made a decision dated 17 December, 2007 prohibiting the Applicant from practising before the Board for a period of three years from that date and requiring, before the Applicant appears before the Board again in any capacity, that he provide proof to the Board of successful completion of a professional ethics course. The Applicant in early 2008, filed a Notice of Application with this Court in which he sought leave to commence a judicial review of that decision. That application for leave was dismissed by an Order of this Court dated April 7, 2008, due to the failure of the Applicant to file an Application Record.

[3] In 2010, the Applicant wrote to the Board an undated letter entitled “Appeal for Recommendation of Refugee Decision Dated 17th December 2007”. There is no copy of this letter in the record. The Board responded by a letter dated November 25, 2010 stating that the prohibition would not be lifted. That letter also provided particulars of further allegations as to misconduct of the Applicant.

[4] The Applicant claims, although it is not in his affidavit, that he did not receive the Board’s letter of November 27, 2010 until January 27, 2011. The Applicant filed the present application on February 7, 2011. The Respondent filed an Appearance on February 15, 2011 and filed the present motion materials on March 21, 2011.

[5] The present application does not seek leave to bring an application for judicial review; it states:

APPLICATION

This is an application for judicial review in respect of the decision of the refugee Member/appeal Division suspending the appellant from the practice of Immigration Law with the Refugee board for three years effective from 17th December 2007. The Refugee appeal Member's letter was dated 25th November 2010 but was communicated and received on January 27, 2011. This application is for a judicial review pursuant to section 18.1(2) and 18.1(3) of the Federal Court Act against Refugee Panel decision who unlawfully conducted a secret trial and took a decision convicting the appellant without the due process of law.

THE APPLICANT MAKES AN APPLICATION FOR;

1. *A Declaratory Order nullifying the decision of Refugee Panel decision dated 17th December 2007 which suspended the appellant for three years and requesting for an ethical course to be completed and certificate to be submitted to the refugee board by the appellant.*
2. *An Order of Writ of Mandamus directing Immigration and Refugee Board to remove all internet and Government website publication of the same decision against the appellant.*
3. *A Declaratory order that special compensation should be paid to the appellant for this wrong decision published world wide without the due process of law.*
4. *The applicant's cost of this proceeding.*
5. *And for such relief as to this Honourable Court may deem just.*

[6] Respondent's Counsel wrote to the Applicant stating that the application should be filed as an application for leave and that the present application should be discontinued. The Applicant has not done so.

[7] The Applicant filed his own affidavit in his motion record. That affidavit states that he attempted to file an application for leave on 3rd February 2011, but that it was rejected by a Registry Officer. He says that the Registry Officer provided him with the Federal Court Rules and indicated to him that the decision which he was challenging was under section 159(2) of the *Immigration and Refugee Protection Act* (IRPA), SC 2001, c.27, and not section 72(1) of that *Act*. As a result, the Applicant filed this application.

[8] The decision of the Board dated 17th December, 2007, a portion of which is identified in the Applicant's affidavit and attached as Exhibit A, states:

Delegation of IRB Chairperson's Authority to make this Decision

[2] *The Chairperson of the IRB is charged with protecting the integrity of the proceedings of the Board.*

[3] *The Chairperson of the IRB delegated his authority to the undersigned to consider this matter pursuant to a letter dated 7 August 2007¹ (disclosed to Dr. Ehikwe on 27 August 2007).*

[4] *The delegation letter indicates that pursuant to section 159(2) of the Immigration and Refugee Protection Act (IRPA), I have authority to find facts with respect to the practice of Dr. Julius Ehikwe before the Board, as a result of allegations of charging a fee to represent claimants before the Refugee Protection Division and an appellant before the Immigration Appeal Division, in the matters of RPD case file numbers:*

[9] Section 159(2) of the IRPA permits, with certain exceptions not relevant here, the Chairperson to delegate any of his or her powers under that Act:

Delegation

159. (2) The Chairperson may delegate any of his or her powers under this Act to a member of the Board, other than a member of the Immigration Division, except that

(a) powers conferred under subsection 161(1) may not be delegated;

(b) powers referred to in paragraphs (1)(a) and (i) may be delegated to the Executive Director of the Board; and

(c) powers in relation to the Immigration Division may only be delegated to the Director General, directors or members of that Division.

[10] Section 72(1) of IRPA states that judicial review of any matter must be commenced by way of an application for leave:

Application for judicial review

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

[11] The present application is not directed in any way to the delegation by the Chairperson under section 159(2) of IRPA to a member of the Board to determine the matter resulting in the decision of 17th December, 2007. Even if it did, such a decision would have to be challenged by way of an application for leave under section 72(1) of IRPA.

[12] The relief sought in this present application, as previously set out, seeks several matters, none of which address or engage the delegation of the Chairperson to the member deciding the matter of 17th December, 2007. Whatever may be said as to any purported discussions with a Registry Officer, they are irrelevant.

[13] The present application seeks to “nullify” the decision of 17th December, 2007. The Applicant has already taken his opportunity to do so. His application was dismissed. Further, the period of the three-year suspension has expired; the Applicant may resume practice subject to successful completion of an ethics course.

[14] The present application seeks removal of publication by the Board of the decision of 17th December, 2007. There is nothing in the record to suggest the nature and extent, if any, or any publication or that the Applicant has asked the Board to remove it or what their response was.

[15] The application also seeks a Declaratory order as to “special compensation” for publication of the decision of 17th December, 2007. The purpose of such a declaration is unclear. Given the decision of the Supreme Court of Canada in *Canada (Attorney General) v Tele-Zone Inc.*, 2010 SCC 62, [2010] 3 SCR 585, it is unnecessary for a person to seek judicial review before commencing an action for damages against the Crown. If the Applicant seeks such “special compensation”, it should be dealt with by way of an action. In so stating, I make no finding as to the merits of such an action or the timeliness in commencing such an action.

[16] Therefore, this application will be dismissed, without costs.

ORDER

FOR THE REASONS PROVIDED:

THIS COURT ORDERS that:

The application is dismissed, without costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-162-11

STYLE OF CAUSE: DR. JULIUS EHIKWE

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

MATTER CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369

**REASONS FOR ORDER
AND ORDER:** HUGHES J.

DATED: JUNE 22, 2011

WRITTEN SUBMISSIONS BY:

Dr. Julius Ehiuwe

Victoria Yankou

FOR THE APPLICANT
ON HIS OWN BEHALF
FOR THE RESPONDENT

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ON HIS OWN BEHALF

FOR THE RESPONDENT