

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200227

Docket: A-280-19

Citation: 2020 FCA 57

[ENGLISH TRANSLATION]

**CORAM: BOIVIN J.A.
DE MONTIGNY J.A.
RIVOALEN J.A.**

BETWEEN:

**JEAN PIERRE MARTIN SIBOMANA, JEANNETTE MUKASINE,
CHANTAL UWIDUHAYE, RUTIGUNGA HERVÉ SIBOMANA,
ITUZE LOIC SIBOMANA, ISHEMA TRACY SIBOMANA**

Appellants

and

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
OFFICER FRANÇOIS JOBIDON, OFFICER ÉMILIE AUDET, VISA OFFICER
N. M. EGAN, CIC-BUFFALO, AMBASSADOR OF BELGIUM RAOUL DELCORDE,
BELGIAN CONSUL HUBERT ROISIN, BELGIAN POLICE OFFICER
PATRICK STEVENS**

Respondents

Heard at Quebec City, Quebec, on February 27, 2020.

Judgment delivered from the bench at Quebec City, Quebec, on February 27, 2020.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the bench at Quebec City, Quebec, on February 27, 2020.)

BOIVIN J.A.

[1] The appellants are appealing a judgment rendered by Justice St-Louis of the Federal Court (the motions judge) on July 17, 2019, granting the respondents' motion for summary judgment (2019 FC 945).

[2] We are all of the opinion that the appeal cannot succeed.

[3] The standard of review in this case is that of palpable and overriding error for the questions of fact and questions of mixed fact and law and of correctness for the questions of law (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[4] The motions judge correctly stated the law and the principles applicable to summary judgments (sections 214 and 215, *Federal Courts Rules*, S.O.R./98-106). More specifically, she reiterated that, in a motion for summary judgment, each party must rely on evidence, not mere allegations, and the evidence must be adduced in the form of affidavits and examinations out of Court. As noted by the motions judge, the appellants filed no affidavits in support of the reply to the respondents' motion and simply made allegations. The motions judge addressed each allegation and found that the plaintiffs' (appellants') statement of claim raised no genuine issue for trial and did not deserve consideration at a future trial. She therefore dismissed the plaintiffs' (appellants') action.

[5] In light of the evidence in the record and the arguments presented before the motions judge, we cannot find, as requested by the appellants, that the motions judge, by deciding the motion as she did, committed an error that would warrant our intervention.

[6] Moreover, at the hearing before us, the appellants made new arguments, which were absent from their memorandum. For example, they raised a new theory of the case that is not supported by the evidence. Furthermore, a number of the arguments put forward, particularly

with regard to prescription, have no basis in law. These arguments were presented for the first time at the hearing, which is not appropriate.

[7] For these reasons, the appeal will be dismissed with costs.

“Richard Boivin”

J.A.

Certified true translation
Janine Anderson, Revisor

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-280-19

STYLE OF CAUSE: JEAN PIERRE MARTIN
SIBOMANA, JEANNETTE
MUKASINE, CHANTAL
UWIDUHAYE, RUTIGUNGA
HERVÉ SIBOMANA, ITUZE LOIC
SIBOMANA, ISHEMA TRACY
SIBOMANA v. HER MAJESTY
THE QUEEN IN RIGHT OF
CANADA, OFFICER FRANÇOIS
JOBIDON, OFFICER ÉMILIE
AUDET, VISA OFFICER N. M.
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AMBASSADOR OF BELGIUM
RAOUL DELCORDE, BELGIAN
CONSUL HUBERT ROISIN,
BELGIAN POLICE OFFICER
PATRICK STEVENS

PLACE OF HEARING: QUEBEC CITY, QUEBEC

DATE OF HEARING: FEBRUARY 27, 2020

REASONS FOR JUDGMENT OF THE COURT BY: BOIVIN J.A.
DE MONTIGNY J.A.
RIVOALEN J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

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