Federal Court  Cour fédérale

**Date: 20221122**

**Dockets: IMM-8016-21**
**IMM-8024-21**

**Citation: 2022 FC 1599**

**Ottawa, Ontario, November 22, 2022**

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

**Docket: IMM-8016-21**

**BETWEEN:**

**ABDULBASIT ADEREMI AKINWUMI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**Docket: IMM-8024-21**

**AND BETWEEN:**

**EFE GREGORY EJINYERE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The leave judge ordered these applications for judicial review to be heard together. One set of reasons is being provided and will be filed in each matter.

[2] Mr. Akinwumi (IMM-8016-21) and Mr. Ejinyere (IMM-8024-21) claim to be same-sex spouses. They both challenge their respective negative Pre-Removal Risk Assessment [PRRA] decisions, both dated August 18, 2021, and both made by the same senior immigration officer [the Officer].

[3] In both decisions, the Officer found that the applicant did not establish his sexual orientation or conjugal relationship with his purported same-sex spouse. The Officer held that while "conditions are poor for sexual minorities in Nigeria," having failed to establish their sexual orientation, neither faced a risk in returning to Nigeria.

[4] Initially both men were represented by the same counsel; however, days before the hearing, the Court granted an Order removing her as counsel for Mr. Akinwumi. That Applicant did not appear at the hearing. The Court relies on the written material filed prior to the Order removing counsel. In the end, nothing turns on this and Mr. Akinwumi was in no way prejudiced by the Court proceeding in his absence.

[5] Both men entered Canada as students to study at Thompson Rivers University in Kamloops, British Columbia. In 2020, both were reported as inadmissible for failing to meet all

of the conditions of their study permits and both subsequently received an exclusion order. In January 2021, both submitted an application for a PRRA. It is noted that each prepared the PRRA application personally and without the benefit of counsel.

[6] After the PRRA applications were refused, they were issued with Directions to Report for Removal on May 25, 2022. Each sought a deferral of their removal order and when denied, each sought a stay of removal from this Court based on the negative deferral decisions. Both motions were dismissed with one set of reasons: *Akinwumi v Canada (Minister of Public Safety and Emergency Preparedness)*, 2022 FC 754.

[7] Both failed to appear for removal.

[8] The Minister submits that these men come before the Court seeking an equitable discretionary remedy but do so with unclean hands and on this basis alone the Minister urged the Court to dismiss their applications. In support, the Minister referred to the Supreme Court of Canada judgment in *Homex Realty v Wyoming*, [1980] 2 SCR 1011, wherein the court at page 1035 writes:

> The principles upon which *certiorari,* and now the modern order in judicial review, have been issued have long included the principle of disentitlement where a court, because of the conduct of the applicant, will decline the grant of the discretionary remedy.

[9] The Minister also noted judgments of this Court refusing to hear the merits of applications on the basis of the clean hands doctrine because applicants failed to appear and became subjects of arrest warrants: *Wong v Canada (Minister of Citizenship and Immigration)*,

2010 FC 569; *Ngo Sen v Canada (Minister of Citizenship and Immigration)*, 2020 FC 331; *Wu v Canada (Minister of Citizenship and Immigration)*, 2018 FC 779; *Bradshaw v Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 FC 632.

[10] Counsel for Mr. Ejinyere submitted that these cases are distinguishable because in none was the decision under review the only assessment made of the applicant's risk. She further noted that the leading authority is *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14 [*Thanabalasingham*]. Therein at paragraph 10 the Federal Court of Appeal outlined the principal factors to be considered before dismissing an application for judicial review because the applicant has unclean hands:

> In exercising its discretion, the Court should attempt to strike a balance between, on the one hand, maintaining the integrity of and preventing the abuse of judicial and administrative processes, and, on the other, the public interest in ensuring the lawful conduct of government and the protection of fundamental human rights. The factors to be taken into account in this exercise include: the seriousness of the applicant's misconduct and the extent to which it undermines the proceeding in question, the need to deter others from similar conduct, the nature of the alleged administrative unlawfulness and the apparent strength of the case, the importance of the individual rights affected and the likely impact upon the applicant if the administrative action impugned is allowed to stand.

[11] Counsel candidly acknowledged that her client's conduct was serious. She emphasized that neither man had his risk assessed by the Refugee Protection Division or the Refugee Appeal Division. The decision under review was the only risk assessment and she submitted that there were serious issues advanced pointing to the unreasonableness of that decision. Moreover, she pointed out that these men, as homosexuals, faced harsh consequences given that same-sex relationships are illegal in Nigeria.

[12] Counsel offered her view of why they failed to report for removal as directed. However, it is mere speculation. Neither man offered his personal explanation for flaunting the removal order. Moreover, neither committed that he would attend for removal if his application for judicial review was dismissed on the merits. Frankly, the Court has no reason to believe that either will ever voluntarily attend for removal.

[13] The Court has read the record with care, and particularly examined the decision under review. The Court does not agree with counsel that there are serious deficiencies in that decision that point to it being unreasonable. In the Court's view, based on the record, it is not reasonably likely that the application would succeed on the merits. This is not a strong case.

[14] Accordingly, the Court dismisses these applications because the Applicants have not come to the Court with clean hands. Deterrence of misconduct by others is an important consideration. The strength of our immigration system depends on adherence to the law. Condoning misconduct sends the wrong message to those who respect and observe the law even when their claims have been unsuccessful.

[15] No question will be certified.

**JUDGMENT in IMM-8016-21 and IMM-8024-21**

**THIS COURT'S JUDGMENT is that** these applications are dismissed and no question is certified.

"Russel W. Zinn"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-8016-21 |
| **STYLE OF CAUSE:** | ABDULBASIT ADEREMI AKINWUMI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **AND DOCKET:** | IMM-8024-21 |
| **STYLE OF CAUSE:** | EFE GREGORY EJINYERE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | NOVEMBER 14, 2022 |
| **JUDGMENT AND REASONS:** | ZINN J. |
| **DATED:** | NOVEMBER 22, 2022 |

**APPEARANCES:**

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| Natalie Domazet | FOR THE APPLICANT, EFE GREGORY EJINYERE |
| Charles Jubenville | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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