Federal Court Cour fédérale

Date: 20240202

Docket: IMM-8513-23

Citation: 2024 FC 170

Ottawa, Ontario, February 2, 2024

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

MOUSSA DIAKITÉ

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Defendant

ORDER AND REASONS

I. Overview

[1] In the context of the present motion for a stay of execution of a removal order to Mali, the issues before this Court are whether (i) the motion should be heard; (ii) the underlying application for leave and judicial review [ALRJ] should be struck as an abuse of the process of this Court; and (iii) costs should be awarded in favour of the Respondent against the Applicant and his counsel, Me Salif Sangaré. While the first issue does arise from time to time, the

questions of whether to strike an ALJR and award costs against an applicant and/or their counsel are comparatively rare.

[2] During the hearing of the motion, I informed the parties of my decision that the Applicant's motion for a stay of execution of the removal order was denied. I declined to hear the merits of the motion, the primary reason being that, one month earlier, the Applicant had sought a stay of execution of a removal order that was denied by this Court because he had failed to demonstrate irreparable harm. In this stay motion, his second, he did not disclose the prior motion to the Court or the Respondent. Moreover, his written submissions on irreparable harm were identical to those in the first motion. In addition, certain evidence and documentation found problematic, deficient and contradictory by my colleague Justice Martine St-Louis during the course of the first motion were removed from the record for the second motion. The motions were brought under two different Court file numbers, meaning there was a risk that the presiding judge for the present motion would not be aware of the first motion. Me Sangaré was counsel of record for both motions.

[3] Despite declining to hear the merits of the present motion, I nonetheless opted to hold a hearing in order to provide the parties with an opportunity to be heard on the remaining issues raised in the Respondent's written representations, being the request to strike the underlying ALJR and the request for costs against both the Applicant and his counsel. Me Sangaré was made aware of the possibility of an award of costs payable by him personally both by way of the Respondent's written submissions and during the hearing of this matter. At the conclusion of the hearing, I reserved my decision on the request to strike the ALJR and the issue of costs.

[4] As to the issue of costs, the facts and the circumstances of the present matter, notably the conduct of both the Applicant and his counsel, Me Sangaré, is such that an award of costs against each of them is warranted. The Applicant and Me Sangaré have misled the Court. Moreover, this is not the first time either of them have failed to be candid with, and have misled, the courts and administrative decision makers before whom they have appeared.

[5] Me Sangaré, as a lawyer, has an overriding duty of candour, meaning he must ensure, among other things, that he provides accurate information to the Court. Our justice system functions in large part because lawyers are officers of the Court and thus the Court should be able to rely on the representations they make. Where a lawyer misleads the Court, this not only adversely affects the administration of justice, this also serves to erode the public confidence in the legal profession.

[6] As shall be explained in detail below, this Court and a number of administrative decision makers have spent a considerable amount of time and resources on the Applicant’s claims and the various proceedings involving Me Sangaré. Every moment spent is time that is unavailable to a deserving litigant or is not devoted to an administrative task that has yet to be performed. Consequently, I am choosing to write a widely accessible Order and Reasons rather than a less accessible order. This Court wishes to give the judges and associate judges of this Court, the judges of other courts, and administrative decision makers, notice of the fact that both the Applicant and Me Sangaré have been given a strong warning in relation to their conduct.

[7] Me Sangaré pleads that a cost order against him would have a chilling effect on members of the immigration bar, leading them to turn down mandates for stays of removal orders. I disagree. The vast and overwhelming majority of counsel, namely those who adhere to their professional obligations contained in the applicable provincial code of conduct, should have no cause for concern. On the other hand, any counsel who may be tempted to mislead the Court and/or not adhere to their obligations as an officer of the Court should take notice that serious consequences can follow.

[8] As to the second issue, while I condemn the conduct of the Applicant and Me Sangaré, I was not prepared to strike the underlying ALJR. In the present case, I found it more appropriate that a decision on the underlying ALJR be made at the leave stage. This in fact took place and leave was denied. The order was rendered on November 17, 2023, and certified on January 3, 2024.

[9] For the reasons that follow, the Respondent’s request to strike the ALJR is denied and costs are awarded against Me Sangaré and the Applicant.

II. Background

[10] The Court has before it the record in the present case (IMM-8513-23), the record before Justice St-Louis in the prior motion for a stay of removal (IMM-11369-23), and additional material provided by the Respondent that includes several decisions from the Disciplinary Council of the Barreau du Québec and the Professions Tribunal of Québec pertaining to Me Sangaré.

[11] Turning first to the Applicant, it is evident from the record that credibility, veracity, and compliance with the law have proven to be a challenge for him. By way of background, the Applicant had applied for a visitor visa to the United States three times, all of which were refused. He then applied for, and received, a visitor visa for Canada. In 2015, two months following his arrival in Canada, he lodged a refugee claim. The member of the Refugee Protection Division [RPD], Negar Azmudeh, now a Justice of this Court, denied his claim in 2016.

[12] The Applicant has been arrested and detained several times. He has a history of failing to report to the Canada Border Services Agency [CBSA] as required. He has also been convicted of criminal offences, notably, criminal harassment, failure to comply with probation orders, failure to appear, and assault. Procedures for his removal were initiated in 2020, and he was offered a Pre-Removal Risk Assessment [PRRA]. In 2022, the PRRA officer concluded that he was not at risk. In 2023, he filed for Canadian permanent residence based on humanitarian and compassionate [H&C] grounds, as well as under the Canadian spousal regime, following his receipt of a notice to appear for a removal interview. Following his removal interview, he sought an administrative deferral of his removal to Mali. This request was refused in August 2023. He provided further documentation, namely medical notes, in September 2023, but the deferral officer maintained the refusal to defer his removal. In July 2023, he filed the ALJR of his PRRA decision (IMM-8513-23) and in September 2023, he filed another ALJR in respect of the refusal to delay his removal (IMM-11369-23).

[13] Having reviewed the significant volume of material before me, I find it is worthwhile to provide a number of examples of the contradictions, deficiencies and credibility issues present in the record. Before the RPD, the Applicant pled that he was at risk of being recruited by fundamentalist Islamic jihadists as the son of a chief in a village close to the Mauritanian border. While in his PRRA application, he claimed he was at risk of persecution from the Dogon people on the basis that he is Fulani (Peul in French). During his refugee hearing, he also claimed he was at risk because he had been a victim of the Tuareg rebellion in northern Mali in 2012.

[14] The RPD had found that the Applicant had not credibly established his name, age, or birthplace. The Applicant had insisted that he was born in Nara, which was central to his allegation that he was targeted by jihadists, and provided a birth certificate stating that his birthplace was Nara. The RPD, however, had noted that certain documentation listed his birthplace as Bamako. When applying for his Canadian visitor permit, the Applicant had provided a birth certificate stating that he was born in Bamako. I note that in his PRRA application he states that his birthplace is Bamako.

[15] When applying for his United States' visitor permits, he had used a different name and identity, where the birth year differed by almost a decade. He had not declared his prior United States' applications to the Canadian authorities, but when confronted with them by the RPD, he denied knowledge of the applications. The RPD did not find this credible given he was interviewed for each application, three in total. When asked questions by the RPD about what age he was when certain events took place, he provided answers that were off by several years – presuming he had been born on the date that he had provided to the Canadian authorities. The

RPD noted the presence of fake documents, flagrant contradictions, unreasonable explanations, an overall lack of credibility, and concluded that the Applicant had not proven his identity. In addition, the RPD concluded that he had not provided sufficient credible evidence of persecution.

[16] There are many other examples of contradictions in the record. In support of his argument concerning mental health challenges, he submitted evidence dated August 23, 2023, that states that his father, mother, and sister are deceased, thus he wishes to stay in Canada as he has no one in Mali. In a letter dated September 14, 2023, from a social worker in support of his deferral, it states that after he left Mali, his mother and sister were murdered by terrorists in the north of Mali. On the other hand, in a pre-removal meeting with CBSA on September 14, 2023, when asked if he contacted anyone in Bamako for his arrival, he answered that he spoke with his sister and she will arrange a pick-up. In his H&C application, received June 26, 2023, he indicates that his parents are deceased but that his sister is alive.

[17] In support of his request for deferral, the Applicant submitted that he was the sole financial provider for the family. On the contrary, in a letter from a psychologist dated August 22, 2023, concerning his wife's mental health, it stated that she had anxiety because, among other things, she was the one who had to work because the Applicant had not regularized his status.

[18] In his H&C application, received June 26, 2023, he submitted that if his application is not granted, his wife cannot stay by herself and has no option but to leave with him, thereby putting

her at risk of kidnapping in Mali. Whereas in the psychologist's letter, dated August 22, 2023, in support of his deferral request, it states that she cannot return with him to Mali as she has built up a life here. In a pre-removal meeting on September 14, 2023, when asked if he has already sold everything he needed to, he confirmed that he did not sell his car as his wife and child will stay in Canada and will need it.

[19] In support of his deferral request and his motion for a stay before Justice St-Louis, the Applicant submitted documents pertaining to his employer that contained numerous inconsistencies. The Applicant had submitted these documents in support of his argument that his removal would cause irreparable harm and damage to the company for whom he worked. For example, there were inconsistencies with the corporate name when comparing the documents as well as between the phone numbers in the corporate stationary. Moreover, the residential postal code in the affidavit of his employer did not entirely match the postal code contained in the photocopy of his driver's licence. In his written submissions on irreparable harm before Justice St-Louis and before me, he refers to two companies belonging to his employer that would go bankrupt because his management procures close to $100,000 per week for the two companies. Elsewhere in the submissions, however, he refers to three companies.

[20] In the Applicant's H&C application, his submissions stated that he had been employed by his employer since 2018 and earns a salary in excess of $55,000 per year. The deferral officer noted that the Applicant did not obtain a valid work permit until June 7, 2021. The Respondent has highlighted that the Applicant did not declare any revenue to the tax authorities for 2018, 2019, and 2020. He declared $18,310 in 2021 and $20,970 in 2022. The Respondent further

highlighted that his cumulative revenue for the year from his pay stub dated June 16, 2023, is $5,800, meaning by the end of the year his annual income would be slightly over $10,000 – and well short of $55,000. The Respondent also underscored that it was curious that he presented himself as the sole financial provider for the family, but had very little declared income, and yet was somehow able to qualify for a mortgage of $830,000 from the Royal Bank of Canada on May 20, 2023.

[21] Before Justice St-Louis, the Respondent had raised these contradictions and pled that one is not in a position to determine what is truthful and authentic when it comes to documents and submissions by the Applicant. Rendering her decision on the Applicant's stay motion, Justice St-Louis agreed, highlighting the deficiencies, contradictions, uncertainties noted by the Respondent and the deferral officer, the majority of which remain unexplained. Consequently, in her order dated September 19, 2023, she found the evidence did not constitute credible evidence of irreparable harm and dismissed the stay motion [Order of Justice St-Louis].

[22] The original removal date was scheduled for September 20, 2023. The airline company, however, cancelled the flight and the removal was rescheduled for October 25, 2023. On October 19, 2023, the Applicant filed his second motion for a stay of his removal, being the present one.

[23] This is the point in these reasons where the focus shifts from the representations of the Applicant to the actions of Me Sangaré, who, as I noted above, was also counsel for the first stay motion. To be clear, one can sympathize with the Applicant for wanting a second kick at the can. A removal invariably brings separation and heartache. It is understandable that an applicant will

want to exhaust any recourse available to them in order to avoid or delay removal. It was up to Me Sangaré, however, to educate his client. Rather than refraining from bringing a second motion, Me Sangaré wasted the time and expense of all involved. Not only did Me Sangaré bring a fruitless motion containing almost identical submissions to those before Justice St-Louis on the determinative issue, he chose to not disclose to the Court that Justice St-Louis had heard the Applicant a month prior. As will be discussed further below, he also removed documentation from the record found to be problematic by Justice St-Louis.

[24] Upon receiving the motion, I was not aware that, only a month earlier, Justice St-Louis had considered the same irreparable harm arguments. Given the different Court file numbers, I was not aware of the Order of Justice St-Louis. Following the receipt and an initial review of the motion record, it was by pure coincidence that I learned there might have been another motion for a stay of removal. Having been alerted to the issue by a member of the Court, I was able to conduct a search and retrieve the Order of Justice St-Louis along with the record upon which it was based.

[25] As I understand it from the Respondent, there was an element of happenstance there as well. Counsel for the Respondent, Me Mario Blanchard, was on duty. Me Blanchard was also the counsel for the Respondent who happened to appear before Justice St-Louis on the first stay motion. Had it been another counsel, the Respondent submits that another counsel may not have been made aware of the first stay motion given the short time in which one has to respond to such a motion.

[26] There was therefore a risk that both the Court and the Respondent would have been unaware that Me Sangaré was relitigating the same issue.

[27] The Respondent has drawn to the Court's attention that this is not the first time Me Sangaré has misled a court and has submitted several decisions from the Disciplinary Council of the Barreau du Québec and the Professions Tribunal of Québec. Beginning in 2015, Me Sangaré has faced disciplinary procedures at least six times. He has had a series of warnings and formal warnings; has had his licence suspended on six counts of 12 months each, to be served concurrently (under appeal); has fines of $5,000 (under appeal); has had his licence suspended for 6 months (under appeal); and has been declared guilty of a breach of his professional obligations but is awaiting a sanctions hearing. The Bureau du syndic of the Barreau du Québec has conducted numerous investigations on Me Sangaré of which the complaints included failure to adhere to deadlines, failure to respond despite having accepted payment, negligence, falsification of facts, failure to provide updates, failure to be truthful, lack of professionalism, appropriating property, failing to appear at hearings despite having notice of the same, and misleading the Court. In each of these instances, the outcome of the investigation was a warning or a sanction.

[28] The Respondent provided the decisions for context and to support the concerns they raised during the hearing regarding Me Sangaré's adherence to his professional obligations, his duty of candour, and his obligations as an officer of the Court.

[29] Turning back to the Applicant, as noted above, he has been incarcerated and detained, both by reason of his criminal convictions and his failure to report to the CBSA. For the last detention, he was released upon the payment of a cash bond and provision of a guarantee. On October 25, 2023, following my dismissal of the Applicant's motion for a stay of removal, the Applicant failed to present himself for his removal. The Respondent provided an update to the Court, along with a sworn declaration from a CBSA officer.

III. Analysis

A. *Costs against Me Sangaré and the Applicant are warranted*

[30] The Respondent submits that costs against Me Sangaré and his client are justified given the reprehensible, troubling, and deplorable circumstances of the present motion. The Respondent states that the present motion is purely dilatory in nature given that the Applicant made submissions as to alleged errors in the PRRA decision during the first motion (even though the underlying decision was a deferral decision) and included in that motion record the PRRA decision and the record upon which it was based. The Respondent pleads that not only was the PRRA decision considered by Justice St-Louis during the first motion for a stay and addressed in the Order of Justice St-Louis, the arguments on irreparable harm for both stay motions are the same. The present motion is, in the Respondent's view, abusive, especially given the first stay motion was rejected on the basis of a lack of credibility and an absence of irreparable harm. The Respondent further highlights the Applicant has a history of being neither credible nor truthful in terms of his representations to this Court and to administrative decision makers.

[31] The Respondent states that nothing in the intervening month had changed in terms of the Applicant's situation – other than the fact that his removal was delayed due to the flight being cancelled. Moreover, the Applicant does not even allege, in his motion record, that there have been any intervening events.

[32] The Respondent notes that the first stay motion was not mentioned at all in the Applicant's motion record for the present stay. This omission to advise the Court is wholly unjustified, in the Respondent's view. The first stay motion could have been raised in the affidavit and/or the submissions – both of which were amended. Not only did the Applicant and his counsel fail to fully and candidly disclose the prior stay motion, the Respondent submits that their conduct was outrageous and scandalous when one takes into account the overall circumstances of the present case.

[33] The Respondent notes that two of the affidavits were amended for the purposes of the present motion, and certain documentation that was found to be contradictory and/or problematic by Justice St-Louis was removed from the present record. The Respondent submits that given that Me Sangaré has previously been criticized for misleading the Court, he ought to have been well aware of the conduct that was expected of him as an officer of the Court.

[34] The Respondent refers both to the disciplinary proceedings detailed in Section II (Background) above, and to *Toure v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 237 [*Toure*], in which both Me Sangaré and Me Blanchard were counsel. The issue before Justice Michel Shore in *Toure* was whether the applicant had misled the Court, following a

motion by the Respondent pursuant to subsection 399(2) of the *Federal Courts Rules*, SOR/98-106 [Rules] where it was alleged the applicant obtained a judgment through fraud. Justice Shore concluded that the applicant had misled the Court on a determinative and central aspect of his application for judicial review that resulted in a judgment in his favour (*Toure* at para 11). Justice Shore highlighted the need for disclosure, set aside the judgment, and awarded costs in favour of the Respondent. Costs were later assessed at $12,896.84 (Order dated January 24, 2017, in Court File IMM-8426-13).

[35] Me Sangaré, on the other hand, pleads that the two stay motions are “not at all the same” (pas du tout les mêmes). During the hearing, Me Sangaré at first insisted that Justice St-Louis had not considered the PRRA. However, both the Court and the Respondent indicated to him that it was in fact pled and ultimately referenced in the Order of Justice St-Louis.

[36] I acknowledge that in the present motion, the underlying decision is the PRRA decision, whereas before Justice St-Louis, the underlying decision was a deferral decision. The first limb of the tripartite test for an injunction is whether there is a serious issue to be tried – that is, that the underlying ALRJ raises a serious issue (*RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311; *Toth v Canada (Minister of Employment and Immigration)*, (1988) 86 NR 302 (FCA); *R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 12). In addition, when the underlying ALJR relates to an enforcement officer’s decision to refuse to defer a removal, a higher threshold of “likelihood of success” or “quite a strong case” is to be applied because the stay, if granted, effectively grants the relief sought in the underlying application (*Wang v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 148 at paras 9-11; *Baron v Canada*

(Minister of Public Safety and Emergency Preparedness), 2009 FCA 81 at paras 66-67). Given that two different decisions were at issue, based upon a threshold that differs, there ought to have been a marked difference between the submissions in the first stay motion and the present motion for the first limb of the tripartite test.

[37] As to the Applicant's submissions on a serious issue before me, he makes a general statement that (i) there were errors in the PRRA decision because the Applicant's fear of persecution was not considered by an impartial decision maker; (ii) the PRRA officer failed to appropriately weigh the evidence; (iii) the resulting decision was contrary to the objectives of the IRPA; and (iv) the PRRA officer adopted the RPD's conclusions. With the exception of what follows, there are no specific errors that are alleged on the part of the PRRA officer. Moreover, I reiterate that one would have expected the submissions before me to differ markedly from those before Justice St-Louis given the circumstances. In fact, the remaining paragraphs of the Applicant's submissions on serious issue in the present motion, were copy/pasted from his submissions before Justice St-Louis (IMM-8513-23 submissions at paras 22, 23, 24; IMM-11369-23 submissions at paras 45, 46, and 47). Both sets of submissions state that the officers acted unreasonably by not deferring the removal in light of jihadist attacks in Mali. Both sets of submissions also fault the officers for minimizing the articles speaking to war and insecurity in Mali and ignoring a report from the International Federation for Human Rights (known by its French acronym FIDH).

[38] Surprisingly, both the submissions before Justice St-Louis and those in the present motion state that "the serious issue that is raised in the present case is whether the deferral officer

committed an unreasonable error in refusing to defer the Applicant's removal." (La question grave qui est soulevée en l'espèce est de savoir si l'agent de renvoi a commis une erreur déraisonnable en refusant de reporter le renvoi de la partie demanderesse) (IMM-8513-23 submissions at para 21; IMM-11369-23 submissions at para 17). Me Sangaré ought to have known that, aside from the general statement, the serious issue he was purporting to raise was not only a copy/paste from the submissions before Justice St-Louis, it was not applicable to the PRRA decision.

[39] In any event, the determinative issue before Justice St-Louis was the absence of irreparable harm, the second limb of the tripartite test. The tripartite test is conjunctive, meaning that, to be entitled to relief, an applicant must satisfy all three elements of the test (*Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 14) and the "failure of any of the three elements of the test is fatal" (*Canada (Citizenship and Immigration) v Ishaq*, 2015 FCA 212 at para 15; *Western Oilfield Equipment Rentals Ltd v M-I LLC*, 2020 FCA 3 at para 7).

[40] Me Sangaré argued in the present motion that the focus for irreparable harm was on the economic harm that would be suffered by the Applicant's employer, which is not the same as the arguments before Justice St-Louis. I disagree. The vast majority of the written submissions before Justice St-Louis were simply copy/pasted into the record before me. In the first stay motion, the Applicant had alleged that the companies belonging to his employer would go bankrupt and included documentation in support of this allegation. This is reflected in the Order of Justice St-Louis which states that one of the bases of the allegation of irreparable harm is that the company for whom the Applicant works would go bankrupt.

[41] In the present motion, certain documentation that was found to be problematic and contradictory in the first stay motion before Justice St-Louis was not included in the record. Section II (Background) of these reasons outlines a number of these issues. Instead of the several statements and letters from the president of the Applicant's employer contained in the record before Justice St-Louis, the present motion record contains a sworn statement by the Applicant's employer. Unlike in the record before Justice St-Louis, a copy of the driver's licence of the president of the Applicant's employer, over which a concern was raised by the Respondent, was also not included in the present stay record.

[42] I find it misleading for Me Sangaré to seek to convince me that he did not previously make the same argument about economic harm to the Applicant's employer when he did in fact raise it before Justice St-Louis. What he has done is he has sought to improve the evidence upon which this argument is based, all the while concealing that this is the second time around. When asked if anything whatsoever has changed in terms of the Applicant's circumstances in the intervening four weeks, Me Sangaré was unable to provide a satisfactory answer. There is nothing in the sworn statement from the president of the Applicant's employer that indicates that any of the information provided is recent and would not have been available four weeks prior.

[43] The Applicant has also provided an updated affidavit in the present motion, albeit the vast majority of the content is a copy/paste from his affidavit in support of the first stay motion. References to the PRRA decision have been added and references to the refused deferral request and the prior removal date have been removed, in addition to certain paragraphs that contradicted other evidence in the record. The paragraphs concerning economic prejudice to his employer

have been retained from the prior affidavit, however, an additional sentence was added to the effect that he is attaching a declaration from his employer on irreparable harm.

[44] The basis for Me Sangaré's position that the present motion is "not at all the same" as the first stay motion are the two points I have just addressed above, namely, a different underlying ALJR, and the sworn declaration from the president of the Applicant's employer. Given the contents of the present motion record when compared to the motion record in the first stay motion, Me Sangaré's position is wholly unfounded.

[45] When questioned as to why he did not disclose the existence of the first stay motion and the Order of Justice St-Louis to the Court, Me Sangaré, at first, argued that it was disclosed in the submissions. When asked by the Court for the page reference, Me Sangaré was unable to provide one. Upon having been given time during the hearing to review the motion record, Me Sangaré then insisted that the first stay motion had been disclosed to the Court because paragraph 18 of the Applicant's affidavit states that he has "commenced two proceedings before this Court, bearing Court files IMM-8513-23 and IMM-11369-23" (J'ai déjà déposé devant cette honorable cour deux dossiers portant les numéros IMM-8513-23 et IMM-11369-23), without any further detail or explanation. In the entire motion record, this is the sole mention of the existence of another Court file.

[46] The Respondent argued that this explanation cannot stand and that Me Sangaré is not adhering to his professional obligations. The Respondent underscored that Me Sangaré has a

history of such behaviour and ought to be well aware of the consequences of misleading the Court, given his involvement in the *Toure* case (discussed in Section II (Background) above).

[47] In the context of his reply, Me Sangaré continued to insist that the reference to the Court file number in the Applicant's affidavit, with nothing more, was sufficient and complete disclosure to the Court of the first stay motion. To find otherwise, in Me Sangaré's view, would effectively muzzle members of the immigration bar and who would then decline to accept mandates for applicants.

[48] Judges ought to be able to rely on the representations that counsel make as officers of the Court. As noted above, our justice system functions in large part because the Court expects to be able to trust and rely on the representations made by officers of the Court. While a lawyer shall seek to fearlessly advocate for their client, they must do so honourably, in compliance with the law, and in a manner that complies with their professional obligations. This includes their duty of candour to the Court. Counsel must never mislead or attempt to mislead the Court. If counsel has inadvertently done so, then counsel must correct it the moment it comes to their attention.

[49] A motion for a stay of removal is a high stakes motion. The consequences for the person involved and those around them are significant and often heartbreaking. The pressure upon counsel to prevail is no doubt intense. The same can be said, though, of criminal cases where a liberty interest is at stake or family law cases where the custody of one's child is at issue.

[50] Practicing law is an honour and a privilege but it comes with significant responsibilities. High stakes situations are a reality that every litigation counsel must contend with to the best of their abilities. A high stakes situation, however, is no justification for counsel to mislead the Court. It is no excuse that the lack of candour inured to the benefit of one's client. When counsel fails in their duty of candour or seek to mislead the Court, the integrity of the legal profession and the administration of justice is compromised. A legal system in which the Court cannot trust an officer of the court to be candid and honest has little hope of maintaining the respect of the public or administering true justice.

[51] In the present matter, I am satisfied that the actions of Me Sangaré were not inadvertent. There is no evidence whatsoever that the Applicant's situation has in any way changed since the first stay motion. References to the deferral agent, her decision and the previous removal date were removed from the motion record. Much of the content of the Applicant's affidavit and his written representations were copy/pasted from the first stay motion, however, a number of the documents and statements that were problematic were also removed. A number of additions were made to the Applicant's affidavit and written representations, which aimed to address concerns raised by Justice St-Louis regarding the evidence of irreparable harm. Letters from the Applicant's employer that were problematic during the first stay motion were removed from the record and replaced by a sworn statement, containing further detail.

[52] The Court was not inadvertently misled. Me Sangaré had personal knowledge of the first stay motion but chose not to disclose it to the Court. He failed in his duty to be candid with the Court about a significant event, which was directly related to the issues in the present stay

motion. The fact that the two Court file numbers are listed in the Applicant's affidavit does not serve to excuse this glaring omission on his part. In my view, Me Sangaré and the Applicant were seeking to take advantage of a situation, namely the cancellation of the first flight to Mali, in order to improperly relitigate issues decided by Justice St-Louis, hoping for a different result.

[53] It is unfortunate, as the hearing could have been an opportunity for Me Sangaré to attempt to alleviate, somewhat, the negative impression left by the present motion record when read in conjunction with the motion record before Justice St-Louis. He did not do that. On the contrary, he began by misrepresenting to the Court what was in the present motion record. He then sought to mislead the Court as to what was pled before Justice St-Louis. Me Sangaré attempted to convince the Court that the issue of irreparable harm as contained in the present motion record is not at all the same as in the first stay motion. This submission, in my view, is not reflective of the reality of the records before me. I find it to be disingenuous and misleading.

[54] I turn now to Me Sangaré's argument that he did in fact disclose the first stay motion to the Court simply because both Court file numbers were listed in paragraph 18 of the Applicant's affidavit. This does not, under the circumstances, constitute disclosure. Nowhere in the record is the first stay motion mentioned (despite Me Sangaré's initial statement that it was). Me Sangaré has a continuing obligation of candour that he has failed to comply with. He chose not to inform the Court of a significant event. He is now seeking to obscure that fact by emphasizing paragraph 18 of the Applicant's affidavit. Me Sangaré's insistence that he did disclose the first stay motion is not credible. He is seeking to convince the Court that something was done when in fact it was not done.

[55] Me Sangaré is a member of the Barreau du Québec. I agree with the Respondent that his conduct in the context of the present proceedings is a marked departure from the professional standard that I would expect from a member of the bar and an officer of the Court. I note that article 112 of the *Code of Professional Conduct of Lawyers*, chapter B-1, r 3.1, provides for the duty of candour, while article 116 stipulates that a lawyer must not mislead or attempt to mislead the court.

[56] As to the present stay motion, I agree with counsel for the Respondent that it is abusive and should not have been brought. Me Sangaré is an experienced member of the immigration bar and he ought to have known better. It is not a coincidence, in my view, that any indicators of the first stay motion, and thus the abusive nature of the second stay motion, have been removed from the present motion record. Had Me Sangaré not brought this stay motion, much time and effort would have been saved and the drain on the resources of his client, the Respondent and the Court would have been avoided.

[57] I agree with the Respondent that costs against Me Sangaré and the Applicant are justified under the present circumstances. In the context of immigration proceedings, costs are not ordinarily awarded by this Court. Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [IRPR] provides:

Costs	**Dépens**
22 No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the	**22** Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des

Court, for special reasons, so orders.	présentes règles ne donnent pas lieu à des dépens.

[58] The term "special reasons" is not defined in the IRPR nor is there a set definition in the jurisprudence (*Lesi v Canada (Citizenship and Immigration)*, 2016 FC 441 at para 48 [*Lesi*]; *Ndungu v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 208 at para 6). The threshold for establishing such circumstances is high, and each decision will turn on its own particular circumstances (*Dhaliwal v Canada (Citizenship and Immigration)*, 2011 FC 201 at para 30 [*Dhaliwal*]; *Ibrahim v Canada (Citizenship and Immigration)*, 2007 FC 1342 at para 8; *Balepo v Canada (Citizenship and Immigration)*, 2017 FC 1104 at para 38). This Court has found "special reasons" to exist where a party acts in a manner that may be characterized as unfair, oppressive, improper or actuated by bad faith (*Dhaliwal* at para 31). This is also the case where there has been reprehensible, scandalous or outrageous conduct on the part of a party (*Toure* at para 16).

[59] I note that strictly speaking, Rule 22 of the IRPR refers to an application for leave, an application for judicial review, or an appeal under the IRPR. Before me is a motion. Nevertheless, I find myself guided by Rule 22 and find that "special reasons" exist in the present case. A finding that "special reasons" for an award of costs exists triggers the Court's discretionary power over the amount and allocation of costs under Rule 400 of the *Federal Courts Rules* (*Lesi* at para 48; *Almrei v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1002 at paras 64-65).

[60] The Court has broad discretion over costs. Subsection 400(1) of the Rules provides that the Court has full discretionary power over the amount and allocation of costs and by whom they are to be paid. The threefold objective of costs is, first, providing compensation, second, promoting settlement, and third, deterring abusive behaviour (*Air Canada v Thibodeau*, 2007 FCA 115 at para 24; *Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at para 19 [*Allergan*]). When exercising its discretion to award costs, the principal factors that the Court may consider are set out in a non-exhaustive list in subsection 400(3) of the Rules (*Allergan* at para 29). The list includes whether the conduct of any party tended to unnecessarily lengthen the duration of the proceeding; whether any step was improper, vexatious, unnecessary; or taken through negligence, mistake or excessive caution (Rule 400(3)(i) and (k)). Pursuant to subsection 400(4), the Court may award a lump sum in lieu of, or in addition to, any assessed costs.

[61] Section 404 of the Rules permits the Court to award costs against counsel personally where:

Liability of solicitor for costs	**Responsabilité de l’avocat**
404 (1) Where costs in a proceeding are incurred improperly or without reasonable cause or are wasted by undue delay or other misconduct or default, the Court may make an order against any solicitor whom it considers to be responsible, whether personally or through a servant or agent,	**404 (1)** Lorsque, dans une instance, des frais ont été engagés abusivement ou sans raison valable ou que des frais ont été occasionnés du fait d’un retard injustifié ou de quelque autre inconduite ou manquement, la Cour peut rendre l’une des ordonnances suivantes contre l’avocat qu’elle considère comme responsable, qu’il s’agisse de responsabilité personnelle ou de responsabilité du fait de ses préposés ou mandataires :

(a) directing the solicitor personally pay the costs of a party to the proceeding; or	**a)** une ordonnance enjoignant à l'avocat de payer lui-même les dépens de toute partie à l'instance;
(b) disallowing the costs between the solicitor and the solicitor's client.	**b)** une ordonnance refusant d'accorder les dépens entre l'avocat et son client.

[62] No order of costs shall, however, be made against counsel personally unless counsel has been given an opportunity to be heard. In the present case, as noted above, Me Sangaré was made aware in advance that costs against him personally were being sought and he was provided with the opportunity to make submissions on this issue at the hearing.

[63] Given the conduct of Me Sangaré in bringing the present motion and his representations during the hearing, as have been discussed in detail above, it is appropriate to award costs in favour of the Respondent against Me Sangaré personally. In my view, Me Sangaré has sought to mislead the Court. He has failed to disclose material information of which he was aware (*Akinsola v Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 5573). He had conducted himself improperly and in a manner that is not in keeping with his obligations as an officer of the Court and as a member of the legal profession. In light of the first stay motion, there is no merit in the present motion and it should never have been brought (*Hafeez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8188). His actions have not only wasted the time of the Court and the Respondent, but also have wasted, presumably, the resources of his client.

[64] As noted above, the Court's attention has been drawn to the case of *Toure* and Me Sangaré's numerous dealings with the Bureau du syndic of the Barreau du Québec, along with the published decisions by the Disciplinary Council of the Barreau du Québec and the Professions Tribunal of Québec. The existence of these prior decisions does not factor into my decision of whether to award costs against Me Sangaré personally. This decision is based on his conduct in the present proceedings, taking into account the proceedings before Justice St-Louis. This is in keeping with the factors in subsections 400(3) and 404(1) of the Rules, albeit I note that the list of factors in subsection 400(3) is non-exhaustive.

[65] That is not to say, however, that Me Sangaré's history is irrelevant. If he had been a junior member of the bar with no history of complaints for misleading a court, I may have opted to be lenient with the quantum of costs. Given the number of formal warnings Me Sangaré has received, including for misleading a court, I find that there is no reason that I can discern to be lenient. Me Sangaré ought to have known better.

[66] Costs in the amount of $2,500, payable forthwith, against Me Sangaré personally are warranted. This amount has both a compensatory element for the Respondent and a deterrent element for Me Sangaré. As the costs are awarded against Me Sangaré personally, he shall not seek to recover this amount from his client, the Applicant. I consider it appropriate that a copy of the present Order and Reasons be sent to the president of the Barreau du Québec for their information (*N'Takpe v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 978).). In accordance with Rule 404(3), Me Sangaré is ordered to provide a copy of this Order and Reasons

to the Applicant. I also find it appropriate, under the circumstances, that a copy equally be provided to the Applicant's wife, Hawa Ballo.

[67] I turn now to the Applicant. While his conduct does not, in my view, reach the level of Me Sangaré's conduct, I nevertheless find it appropriate to grant the Respondent's request for costs. I have outlined in detail in Section II (Background) the myriad of deficiencies, contradictions and credibility issues that are present in the record. I note the Respondent's submission that one is not in a position to determine what is truthful and authentic when it comes to documents and submissions by the Applicant. I agree. Moreover, the finding that the present motion is abusive does also apply to the Applicant, albeit to a much lesser extent. Finally, each of his motions for a stay of removal were dismissed. Nevertheless, he took it upon himself to obtain the relief that the Court declined award, by failing to present himself for his removal on October 25, 2023. Costs in the amount of $750, payable forthwith, against the Applicant are therefore warranted.

[68] As a final point, I return to Me Sangaré's submission that a cost order against him effectively muzzles members of the immigration bar, leading them to turn down mandates. I disagree. The vast and overwhelming majority of counsel, namely those who adhere to their professional obligations contained in the applicable provincial code of conduct, should have no cause for concern.

[69] This Order and Reasons should be a warning to only those counsel who may be tempted to mislead the Court. Any such counsel should be aware that the Court takes these matters very

seriously. It has happened, as in this case, that counsel have misstated the contents of a record and/or asserted as true a fact when its truth cannot reasonably be supported by the record. This constitutes misleading the Court. Counsel should not, under any circumstances, be behaving in this manner as such behaviour runs counter one's obligations as an officer of the Court and, ultimately, does not serve the interests of one's client nor the administration of justice.

B. *The underlying ALJR shall not be struck*

[70] The Respondent highlights that the Court may, at any time, order that a pleading be stuck if it is an abuse of the process of the Court (Rule 221(1)(f)). The Respondent submits that the underlying ALJR ought to be struck because the Applicant has failed to disclose the relevant facts to the Court. Rather, the Applicant has provided contradictory evidence and untruths.

[71] As noted above, there are a myriad of deficiencies, contradictions and credibility issues that are present in the record. While not all of them are directly applicable to the record before the PRRA officer and the resulting PRRA decision, there is nevertheless a significant number.

[72] Despite the forgoing, I was not prepared, in the present circumstances, to strike the underlying ALJR. I found it more appropriate that a decision on the underlying ALJR be made at the leave stage. This is what took place and leave was denied. The order was rendered on November 17, 2023, and certified on January 3, 2024.

IV. Conclusion

[73] For the foregoing reasons, the Respondent's request to strike the ALJR is denied and costs are awarded against Me Sangaré and the Applicant. This follows my decision rendered orally at the hearing denying the Applicant's motion for a stay of his removal to Mali.

ORDER in IMM-8513-23

THIS COURT ORDERS that:

1. Me Salif Sangaré shall personally pay to the Respondent, forthwith, lump sum costs in the amount of $2,500;
2. Me Salif Sangaré shall provide a copy of this Order and Reasons to the Applicant and his wife, Hawa Ballo;
3. The Applicant shall pay to the Respondent, forthwith, lump sum costs in the amount of $750;
4. The Respondent's request to strike the application for leave and judicial review is denied; and
5. The Respondent shall send a copy of the present Order and Reasons to the president of the Barreau du Québec.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8513-23
STYLE OF CAUSE:	MOUSSA DIAKITÉ v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP,
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 24, 2023
ORDER AND REASONS:	ROCHESTER J.
DATED:	FEBRUARY 2, 2024

APPEARANCES:

Me Salif Sangaré	FOR THE APPLICANT
Me Mario Blanchard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Me Salif Sangaré Avocat Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT