

Federal Court



Cour fédérale

Date: 20010305

Docket: IMM-4250-09

Citation: 2010 FC 257

Ottawa, Ontario, March 5, 2010

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

YVES KAMBALE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is challenging the legality of a decision rendered by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated August 12, 2009, rejecting his application for refugee protection by reason of his lack of credibility. For the following reasons, this application cannot succeed.

[2] The applicant states that he was persecuted in Rwanda because of his ethnicity. Let us begin by noting that the applicant was born on May 6, 1983, and that he is a citizen of Rwanda. His father is Congolese and his mother was a Rwandan citizen of Hutu ethnicity. His mother died on August 10, 1998. Even though his father is Congolese and he himself had lived in the Democratic Republic

of the Congo (DRC) for most of his life, the applicant is not a citizen of the Congo and cannot become one.

[3] The applicant's principal allegations can be summarized as follows.

[4] The applicant's mother had owned two houses in Kigali in Rwanda, and the applicant inherited both of them. When he returned to Rwanda, the applicant tried to collect rent from the tenants. It was at this time that his problems started. Tutsi officers from the Front Patriotique Rwandais (FPR) had been living in the houses in question. Up until 2007, they had allegedly paid their rent. However, in March 2007, it appears that the officers refused to pay him the rent they owed him, telling him that [TRANSLATION] "[the Hutu] reign was over and that it was now [the reign of the Tutsis]".

[5] According to the applicant, the officers in question threatened him. When the applicant appeared before a judge, he reportedly learned that his late mother had a case pending before the Gacaca courts and that it would be to his advantage to calm down; otherwise, he himself could be brought before those courts. After having consulted two lawyers who did not wish to take on his complaint concerning the FPR officers, the applicant purportedly returned to the university located in the city of Butare. At the beginning of July 2007, he was apparently informed that his scholarship would be cancelled as of August 2007. He suspected that the cancellation of his scholarship was directly linked to his complaint against the FPR officers. It was at that time that the applicant understood that his life would be in danger if he were to remain in Rwanda. Towards the end of

July, he returned to Kigali to obtain a visa for entry to the United States. On August 16, 2007, the applicant arrived in Canada.

[6] In determining that the applicant was not credible, the Board noted the following:

...the claimant provided evidence that was marked by a certain number of inconsistencies and misrepresentations, which undermined his credibility.

...

The panel asked the claimant whether he had evidence of the charges against his late mother. The claimant stated that he had no proof, but based himself on remarks that a judge examining his claim concerning the rent owed had apparently made. He did not see a copy of the indictment against his late mother and received no summons or notice to appear in connection with this case which allegedly concerned his mother who had been dead more than eight years.

The panel finds it implausible that the claimant could be prosecuted for events of which he is totally unaware, which unquestionably do not concern him, and which allegedly concern an individual who has been dead more than eight (8) years when the supposed recriminations were made against him, the son. When asked to explain, the claimant testified that he himself did not understand the scheme whose sole purpose was allegedly to create the conditions needed to imprison him and cause his death, as he was directly threatened, according to him... .

...

...The panel asked him whether he would have continued to study if his scholarship had been renewed as it was. The claimant replied that he would have continued to attend the same university if his scholarship had been renewed. The panel also asked him why he decided to leave his country. The claimant replied that he left because his scholarship was not renewed and because of the alleged threats against him, threats which, in the panel's opinion, did not prevent him, providing that his story is true, from continuing his studies at the same university and leaving only when he no longer had the means to pursue his studies and when he had satisfied the requirements to come to Canada.

The panel finds that the claimant is basing himself on personal assumptions throughout his testimony. He makes deductions based on his personal analysis of the situation, both in terms of the statement allegedly heard by him concerning the case of his late mother before the GACACA and in terms of the reasons behind the alleged cancellation of his scholarship. He also drew conclusions from the alleged visit of his friend, with whom he played soccer. According to the claimant, the fact that his friend came to inquire about him apparently implied that there was something not quite right.

Furthermore, given the claimant's testimony, his behaviour clearly indicates a lack of a fear of persecution. He acknowledged that he continued to attend his university and that he would have continued to do so if his scholarship had not been cancelled. He did not leave his country of citizenship because he allegedly lost his bursary, but because he personally drew conclusions from the facts, facts that do not withstand scrutiny because of their improbability.

...

[7] After the hearing held on July 16, 2009, counsel for the applicant sent a letter to the Board along with a supplementary affidavit. The people with whom the applicant had lived in Rwanda had telephoned to warn him that, on August 3, 2007, someone had tried to serve on him a notice to appear before the Gacaca court. The Board received the affidavit but refused to reopen the hearing, because the affidavit was in relation to [TRANSLATION] "a question that did [not] seem relevant".

[8] The applicant raises two arguments against the impugned decision:

- a) the Board erred when it failed to consider the evidence in the applicant's supplementary affidavit; and
- b) the Board erred when it concluded that it was implausible that the applicant was targeted by the Rwandan authorities for actions attributed to his late mother.

[9] It is the view of the Court that none of these arguments can succeed.

[10] First of all, the applicant submits that the supplementary affidavit corroborates the fact that he left Rwanda after having learned that the authorities had tried to serve on him a notice to appear on August 3, 2007, specifying that he was to appear before a Gacaca court. According to the applicant, the Board should have taken this important piece of evidence into consideration and explained in its decision why it dismissed this relevant evidence, which it did not do in this case.

[11] However, the Board has exclusive jurisdiction to assess the relevance and the probative value of the applicant's supplementary affidavit. It must be noted here that the supplementary affidavit comes from the applicant himself and that it is not supported by extrinsic evidence. At any rate, the affidavit adds nothing new, other than a date that the Board should have considered. In the case at bar, the applicant had already testified that the Rwandan authorities had officially sent him a notice to appear but that he had not been at home to receive it. The Board did not believe the applicant's narrative because of the implausibility it cited in its decision. In this respect, the applicant has not been able to explain why he would be personally targeted today for an accusation made against his mother, who has been deceased for eight years now, which leads me to examine the applicant's second argument.

[12] The applicant further submits that the Board erred by failing to consider the context of post-genocide Rwanda and the applicant's Hutu ethnicity. The applicant's story is not implausible. To

this effect, the applicant notes that “plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant” (*Valtchev v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at paragraph 7).

[13] Nevertheless, in the matter under review, the Court cannot conclude that the implausibility finding is unreasonable in the case at bar. The Board is in a better position than the Court to determine whether the applicant’s allegations are supported by the evidence or whether they are plausible under the circumstances. Since *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*), reasonableness is the applicable standard of review for questions of fact and questions of credibility (*Sukhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 427 at paragraph 15; *Khokhar v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 449 at paragraph 22). 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” (*Dunsmuir*, above, at paragraph 47).

[14] In this case, the Board’s finding that the applicant is not credible on a fundamental element of his claim in fact amounts to a finding that there is no credible evidence sufficient to justify the refugee claim in question (*Tsafack v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 506 at paragraph 3 (T.D.) (QL)). Furthermore, it is well established that the Board is

entitled to consider the claimant's behaviour when assessing his or her credibility (*Sainnéus v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 249 at paragraph 12; *Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 648 at paragraph 11) and that "[t]his assessment of personal demeanour ought not to be interfered with by this Court which lacks the advantages available to the triers of fact" (*Wen v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 907 at paragraph 3 (QL)).

[15] In the case at bar, the Board specifically noted in its decision that the narrative was inconsistent and that the applicant's testimony was characterized by prevarications which contributed to the negative credibility finding. The applicant was unable to provide any details or tangible evidence with regard to the accusations levelled against his late mother. According to the Board, the fear of persecution raised by the applicant is based solely on his own personal assumptions. Furthermore, after having been asked whether he would have remained in Rwanda had he not lost his scholarship, the applicant answered in the affirmative. The Board therefore noted that the applicant's behaviour "clearly indicates a lack of fear of persecution ... [because] he acknowledged that he continued to attend his university and that he would have continued to do so if his scholarship had not been cancelled".

[16] All things considered, the Board's decision is reasonable in the sense that the impugned decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[17] The application for judicial review must therefore be dismissed. No question of general importance was raised by the parties and none arises in the case at bar.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Luc Martineau”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4250-09

STYLE OF CAUSE: YVES KAMBALE
and
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 16, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** MARTINEAU J.

DATED: MARCH 5, 2010

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