

Federal Court



Cour fédérale

Date: 20120118

Docket: IMM-4454-11

Citation: 2012 FC 68

Toronto, Ontario, January 18, 2012

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**FRÉDÉRIC FRANÇOIS NDONGALA MATONDO
LYDIE TOUSSOM
INES ROLLANDE TCHOKOUAHA TOUSSOM
ARIELLE ANNICK NGANGOM TOUSSOM
DONNA ADJANI NGAKO TOUSSOM**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Frédéric François Ndongala Matondo is a citizen of the Democratic Republic of Congo [DRC]. Lydie Toussom is a citizen of the Republic of Cameroon and is M. Matondo's common-law spouse. They seek judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board which rejected their claims for refugee protection.

[2] For the reasons that follow, the application will be dismissed as it relates to both claimants.

M. Matondo's Refugee Claim

[3] M. Matondo's refugee claim was based upon his alleged fear of persecution in the DRC because of his political opinion and his involvement with the Movement for the Liberation of Congo [MLC] party.

[4] M. Matondo claims that he was arrested on January 19, 2009, while he was participating in a recruitment campaign on behalf of the MLC in the Bas-Congo province of the DRC. He alleges that he was detained and brutally tortured by Congolese authorities over a five week period until his escape from custody on February 25, 2009.

[5] The Board explained why it found M. Matondo not to be a credible witness, and M. Matondo has not seriously challenged that finding.

[6] While it would have been preferable for the Board to specifically address a January 24, 2009 newspaper article ostensibly reporting on M. Matondo's activities with the MLC as well as his arrest by government authorities and his escape from custody, it is difficult to see how that article could have buttressed M. Matondo's credibility.

[7] Not only does the article purport to report on events that had not yet taken place, its description of M. Matondo as having been "chargé de propagande dans son parti" is at odds with his

own description of his role within the MLC. According to M. Matondo, he was a “simple militant” and did not occupy any position of responsibility within the MLC.

[8] It appears from the Board’s reasons that the only part of M. Matondo’s story that it believed was that he was member of the MLC. The Board explained why he would not be at risk of persecution in the DRC merely because of his MLC membership. This finding was reasonable, given that the MLC is the majority party in the Kinshasa area. Indeed, M. Matondo conceded at the hearing of this application that MLC members could live safely in Kinshasa.

[9] M. Matondo further submits that the Board erred by failing to address his claim to be at risk in the DRC because of his perceived involvement in the Bundu dia Kongo [BDK] party. He claimed that the individuals who had arrested him during his mission in Bas-Congo province perceived him to be a member of the BDK. The BDK is an illegal organization in the DRC, and there was evidence before the Board of the government’s persecution of BDK members.

[10] Given that the Board found that M. Matondo’s story of his mission to Bas-Congo and his subsequent arrest and detention was not credible, there was no need for the Board to address the perception of the individuals allegedly responsible for his arrest.

[11] Finally, M. Matondo argues that the Board’s finding that his failure to seek refugee protection in Cameroon indicated a lack of subjective fear on his part was unreasonable. His counsel offers a number of explanations as to why M. Matondo might not have wanted to claim refugee protection in Cameroon, including the fact that the protection afforded by the Cameroonian refugee

system is only temporary. According to counsel, M. Matondo preferred instead to try to regularize his status in Cameroon by marrying Mme Toussom.

[12] There are two difficulties with this argument. The first is that it relies on explanations for M. Matondo's behaviour that M. Matondo himself did not provide at his refugee hearing. The second difficulty is that there is no suggestion that M. Matondo took any steps towards marrying Mme Toussom during the time the couple spent together in Cameroon.

[13] M. Matondo's failure to take any steps towards regularizing his status in Cameroon through marriage with Mme Toussom is particularly problematic, given the couple's testimony regarding the difficulties that they were allegedly encountering at the hands of the Cameroonian authorities as a result of M. Matondo's lack of status in that country. I am thus not persuaded that the Board's finding of a lack of subjective fear on the part of M. Matondo was unreasonable.

Mme Toussom's Refugee Claim

[14] Mme Toussom argues that the Board erred in failing to address her claim to be at risk of persecution in Cameroon by reason of the political opinion imputed to her by Cameroonian authorities because of her relationship with M. Matondo.

[15] The applicants say that after M. Matondo came to Cameroon, they were arrested by Cameroonian authorities. In her Personal Information Form, Mme Toussom alleges that the individuals who arrested her accused her of harbouring a war criminal and being "la filière

camerounaise du Mouvement de Libération du Congo, d'être complice de Jean-Pierre Bemba et d'avoir participé à des crimes de guerre".

[16] I would start by observing that this aspect of the claim is significantly undermined by the fact that the Board reasonably found most of M. Matondo's story of involvement with the MLC and resulting persecution not to be credible.

[17] Moreover, while Mme Toussom did make passing reference in her testimony to the authorities having accused her of harbouring a war criminal, most of her testimony focused her allegation that she was arrested and detained for harbouring "un clandestin" or "une personne en situation irrégulière".

[18] This focus is also reflected in the submissions of Mme Toussom's counsel before the Board, which referred only to her having attracted the attention of Cameroonian authorities for having harboured "un clandestin". Indeed, no argument was advanced before the Board that Mme Toussom faced persecution in Cameroon because of the perception that she was an MLC sympathizer.

[19] In the circumstances, it was reasonable for the Board to focus on the aspect of Mme Toussom's claim relating to the risks resulting from her having harboured a person without status. It was also reasonable for it to conclude that any negative consequences flowing from M. Matondo having sought refuge with Mme Toussom did not amount to persecution, but instead constituted prosecution under a law of general application.

[20] Furthermore, the Board concluded that since Mme Toussom and M. Matondo are no longer living together, Mme Toussom would not suffer any negative consequences in the future as a result of her association with M. Matondo. This was a conclusion that was reasonably open to the Board. While the evidence on the status of the couple's relationship is not entirely clear, it should be noted that M. Matondo does not have status in Cameroon, and thus would not be returned there.

[21] Finally, the failure of the Board to refer to the newspaper article which Mme Toussom says documents her presence in the DRC is not a material error, given that her claim is asserted against Cameroon and not the DRC.

Conclusion

[22] For these reasons, the application for judicial review is dismissed.

Certification

[23] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4454-11

STYLE OF CAUSE: FRÉDÉRIC FRANÇOIS NDONGALA MATONDO
ET AL v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 17, 2012

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

DATED: January 18, 2012

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