Federal Court  Cour fédérale

Date: 20140131

Docket: IMM-12682-12

Citation: 2014 FC 117

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 31, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

GUY NDAMBI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Guy Ndambi, the applicant in this case, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act). He is arguing that the Refugee Protection Division of the Immigration and Refugee Board (RPD) denied him protection under sections 96 and 97 of the Act. The applicant claims to be a Convention refugee (section 96) and a person in need of protection (section 97). In both

instances, the RPD found that the applicant did not qualify. In my view, that decision is not unreasonable.

Facts

[2] The events experienced by the applicant, who is part of the Tutsi community in Burundi, began in March 2011, but originated long before that.

[3] In fact, the incidents in 2011 are related to property that the applicant apparently acquired in 1998 from the government of the day in the middle of the civil war but was purportedly transferred only in 2003. In the record, there is a document entitled [TRANSLATION] "Contract of Sale" dated June 25, 2003, between the State of Burundi and the applicant for property designated for residential use. The document has only five articles, and one of them, article 3, stipulates that the owner cannot change the purpose of the property, which is stated in the contract. It declares that [TRANSLATION] "in particular, any use that could be commercial or industrial in nature, including growing crops or raising livestock, is prohibited". Nevertheless, in his affidavit, the applicant stated the following:

> [TRANSLATION]
>
> 9. Since 1998, I have farmed the land and it has fed my family given that my family income was not sufficient enough to feed my large family;

[4] The record does not contain any copy of the land title. It contains only a land ownership certificate signed by the mayor of the city of Bujumbura. The said certificate was supported by an agreement under private writing dated October 17, 1998 and a certification of sale dated August 26, 2002.

[5] In any event, the applicant claims that Pastor Samuel Bucumi of the Hutu community appropriated that landholding in March 2011. He claims that he tried to get his property back by appearing before the neighbourhood chief with all of his ownership documents. That did not produce the desired results. The applicant allegedly then sent a demand letter to the Pastor, who he claimed had already started to build on the property. The applicant was apparently chased by some militias.

[6] The applicant claims that he was summoned to the national intelligence unit and that he was incarcerated for seven days, during which time he was tortured and beaten.

[7] The record consists of a handwritten [TRANSLATION] "prescription" dated 6/6/200? (the year is illegible). There is a stamp on the prescription suggesting that it is from the "KIRA" health centre and the content of the prescription indicates that the applicant [TRANSLATION] "was admitted to [the] health centre from May 20 to June 6, 2011". It says that he [TRANSLATION] "was hospitalized for the above cited period for beatings and injuries". No details were given.

[8] The applicant was purportedly attacked on June 21, 2011, while on his way home. The vehicle he was sitting in was apparently attacked and the driver of the said vehicle was allegedly fatally wounded. Paradoxically, the Personal Information Form filled out on September 12, 2011, by the applicant shows that he heard [TRANSLATION] "gun fire"; yet, in his affidavit dated January 28, 2013, the applicant indicated the following at paragraph 19: [TRANSLATION] "Shortly afterwards, I was attacked with a grenade, a driver who was with me died on the spot." The RPD

had before it two written versions of the tragic event, and an essential element did not seem to match.

[9] The applicant then chose to hide but was allegedly found on July 18, 2011. The applicant claims that [TRANSLATION] "while the parents were out, people killed the child of the family that put him up; the child was around 12 years old". But no details were provided.

[10] The applicant then approached the Belgium and American embassies to obtain visas. The visas were apparently granted on August 1 and 4, 2011, but it was not until August 18, 2011, that the applicant left Burundi for the United States. He arrived in Canada on August 24, 2011, the date on which he claimed refugee protection, after travelling from Washington DC, which was his point of arrival in the United States.

The decision

[11] Confronted with that version of the facts, the RPD had to find that the applicant cannot avail himself of sections 96 and 97 of the Act. With respect to the part of the claim on section 96, the RPD found that a dispute about a property does not meet the matters set out in the Act. As such, the opening words of section 96 read as follows:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention – le réfugié – la personne qui, craignant avec raison qu'elle soit persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

[12] The RPD stated the following at paragraph 26 of its decision:

> [26] The panel is of the opinion that a right to property is not a human right, and if the claimant can live without persecution or without risk in his own country simply by giving up his property, then he must do so before he seeks international protection.

[13] Regarding section 97, which addresses persons in need of protection because they face a certain risk, the RPD simply found that the applicant failed in his attempt to demonstrate a subjective fear.

Standard of review and analysis

[14] In my opinion, even if the grounds for the decision given by the RPD are no model of clarity, the applicant failed to discharge his burden of demonstrating that the decision is not reasonable. Regarding questions of fact, it has been clear since *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, (*Dunsmuir*) that questions of fact are subject to the reasonableness standard. With respect to questions of law, the standard of correctness is reserved for questions of jurisdiction and certain other questions of law. It is important to note the following passage from *Information and Privacy Commissioner v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654:

> [34] . . . However, in the absence of argument on the point in this case, it is sufficient in these reasons to say that, unless the situation is exceptional, and we have not seen such a situation since *Dunsmuir*, the interpretation by the tribunal of "its own statute or statutes closely connected to its function, with which it will have particular familiarity" should be presumed to be a question of statutory interpretation subject to deference on judicial review.

[15] Thus, the Court gives deference to the RPD's finding that ownership rights do not constitute human rights. The issue of the applicant's ethnic origin is an underlying component, but it was never demonstrated that the source of the difficulties was anything else other than the ownership of a property acquired without great transparency, and he seems to have used it for a purpose other than the one stated in the contract. The RPD confined itself to this. The applicant had to demonstrate that that finding is unreasonable.

[16] It seemed completely reasonable to me that the RPD found that the problems encountered by the applicant in Burundi stem from him acquiring a plot of land at some point between 1998 and 2003. He was expropriated of it and conflict seems to have ensued. Unfortunately, as is often the case, the factual record is incomplete. However, that is the record from which the matter must be examined. The documentary evidence indicates that, in Burundi, there are frequent conflicts involving properties that are to be granted. But section 96 of the Act is clear: a person is a refugee only when he or she is persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion. No such demonstration was made here. At best, the applicant suggests that he [TRANSLATION] "is a member of a particular social group of expropriated land owners seeking to reclaim their land, their property rights". It was open to the RPD to make the finding that it did, by not accepting that argument, which is also not supported by any authority.

[17] Regarding the claim based on section 97 of the Act, the RPD had ample proof to conclude that the subjective fear was not present. In any event, the onus was on the applicant and he failed to discharge it.

[18] I have some sympathy for the applicant when he argues that the RPD's statement that he should have tried to go to Belgium because he must have friends there is not very realistic. Indeed, the applicant lived in Belgium in the late 1970s during his studies. To think that friendships could have lasted until today, without concrete evidence, does not seem anything other than speculation to me. I would not hold it against the applicant that he did not choose Belgium as a place of refuge. What this would demonstrate, at best, is a certain familiarity with Belgium. But the fact that the applicant obtained a visa while still in Burundi, that he chose to wait more than two weeks to leave after the visas for the United States and Belgium were issued and that he did not claim refugee protection after arriving in the United States seem to be a solid reasons for the RPD to conclude as it did.

[19] The applicant stated in his affidavit dated January 28, 2013, that he chose to come to Canada because his nephew lives here. That is more of a choice that was made consciously for immigration purposes than a decision to find refuge wherever he could. The RPD also noted the decision by Justice Rothstein, then of this Court, in *Mohamed v The Minister of Citizenship and Immigration* (April 9, 1997), IMM-2248-96, at paragraph 9:

> The Geneva Convention exists for persons who require protection and not to assist persons who simply prefer asylum in one country over another. The Convention and the *Immigration Act* should be interpreted with the correct purpose in mind.

Thus, the RPD made the following finding with respect to section 97 of the Act:

> [39] The failure to claim refugee protection in Belgium and the United States indicates that the claimant has little subjective fear, because it is not a matter of choosing the best country to receive us, but rather protecting one's physical integrity by seeking

> protection from the authorities at the earliest opportunity and in the first country entered. The panel finds that the failure to claim refugee protection in Belgium and the United States undermines the claimant's credibility and his subjective fear.

[20] In my view, the RPD's decision in that respect is reasonable. As noted by the Supreme Court in *Dunsmuir*, above, tribunals have a margin of appreciation within the range of acceptable and rational solutions. Thus, "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision making process and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (at paragraph 47). It was up to the applicant to show that the decision was unreasonable considering the evidence submitted. That was not done.

[21] As a result, the application for judicial review is dismissed. There is no serious question to certify.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. There is no serious question to certify.

"Yvan Roy"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-12682-12

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