

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20150316**

**Docket: A-269-14**

**Citation: 2015 FCA 74**

**CORAM: NOËL C.J.  
PELLETIER J.A.  
GAUTHIER J.A.**

**BETWEEN:**

**ODA KAGIMBI**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Montréal, Quebec, on March 16, 2015.

Judgment delivered from the Bench at Montréal, Quebec, on March 16, 2015.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**GAUTHIER J.A.**

**Federal Court of Appeal**



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**BETWEEN:**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Montréal, Quebec, on March 16, 2015.)**

**GAUTHIER J.A.**

[1] Ms. Kagimbi is appealing from a decision of Justice Tremblay-Lamer of the Federal Court [the judge] dismissing her application for judicial review of a decision of a Public Service Labour Relations Board adjudicator [the adjudicator].

[2] In his decision, the adjudicator concluded, in the light of the evidence before him, that Ms. Kagimbi was on probation when she was dismissed and that her employer had shown unequivocally that it believed her to be incapable of performing the duties of a correctional officer (paragraph 73 of the decision). The adjudicator also concluded that Ms. Kagimbi had not presented any evidence to him that would suggest that her employer had used rejection on probation as a sham to camouflage another reason for the dismissal and had therefore acted in bad faith. Having reached this conclusion, the adjudicator, citing on this Court's decision in *Canada (Attorney General) v. Penner*, [1989] 3 F.C. 429 (F.C.A.) [*Penner*], stated that his role was limited to these findings and that he therefore did not have jurisdiction to hear the grievance on the merits.

[3] Before us, counsel for Ms. Kagimbi repeated the main thrust of the arguments he had made to the judge. The judge addressed each of those arguments in a detailed decision.

[4] In our opinion, the judge selected the appropriate standard of review and properly applied it to the issues before her. More specifically, it seems to us that counsel for Ms. Kagimbi does not accept the limits imposed by *Penner*, above, in the case of a termination while on probation. It is helpful to recall that the only issue in this case is whether the employer believed in good faith that Ms. Kagimbi was not up to the task.

[5] Ms. Kagimbi has not satisfied us that the judge erred in concluding that the adjudicator's decision was reasonable. The adjudicator was clearly well aware of all the evidence that was

raised before us to show bad faith on the part of the employer. In our view, there was not just one possible outcome in this case, as counsel for Ms. Kagimbi suggests.

[6] The appeal should therefore be dismissed with costs.

“Johanne Gauthier”

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J.A.

Certified true translation  
François Brunet, Revisor

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-269-14

**STYLE OF CAUSE:** ODA KAGIMBI v. ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MARCH 16, 2015

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL C.J.  
PELLETIER J.A.  
GAUTHIER J.A.

**DELIVERED FROM THE BENCH BY:** GAUTHIER J.A.

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