

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150325

Docket: A-193-14

Citation: 2015 FCA 83

**CORAM: PELLETIER J.A.
WEBB J.A.
BOIVIN J.A.**

BETWEEN:

**KIDANE HAGOS AND SHAMAR
MAINTENANCE INC.**

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on March 25, 2015.
Judgment delivered from the Bench at Ottawa, Ontario, on March 25, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on March 25, 2015).

BOIVIN J.A.

[1] This is an appeal from a decision of Justice Roy of the Federal Court (the judge) dated March 7, 2014. The judge dismissed an application for judicial review of a decision of the Canadian Human Rights Commission (the Commission) refusing to deal with a complaint made

to it by Mr. Kidane Hagos and Shamar Maintenance Inc. (the appellants), pursuant to s. 41 of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 (the Act).

[2] The individual appellant, Mr. Kidane Hagos (Mr. Hagos) is also the CEO of the corporate appellant, Shamar Maintenance Inc. (Shamar). Shamar held seven maintenance contracts with Public Works and Government Services Canada (PWGSC) from 1999 to 2011. Six of these contracts were not renewed, and one was terminated in January 2011.

[3] The appellants submitted a complaint to the Commission alleging that the non-renewals and the termination are due to discrimination based on race, national or ethnic origin, or colour. The complaint was received on September 28, 2011. On October 20, 2011, the Commission requested a position statement from the appellants regarding whether their complaint fell within the Commission's jurisdiction, which was provided by counsel for the appellants on November 19, 2011. On March 9, 2012, the Commission produced a Section 40/41 Report (the Report), recommending that the Commission decline to address the complaint as frivolous under paragraph 41(1)(d) of the Act. The parties were invited to make further submissions on the Report in April and May 2012. On June 13, 2012, after considering the Report, the original complaint, and all the parties' submissions, the Commission decided not to deal with the complaint as recommended by the Report.

[4] The Commission's decision held that Shamar did not have standing as it is a corporation and cannot be subject to discrimination under the Act, and that Mr. Hagos' individual complaint

did not disclose a prohibited ground of discrimination under the Act. The complaint was therefore “frivolous” as per paragraph 41(1)(d) of the Act and would not be pursued.

[5] The appellants filed for judicial review before the Federal Court in July of 2012.

[6] The relevant provisions of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6 read as follows [Emphasis added]:

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered

...

7. It is a discriminatory practice, directly or indirectly,

...

(b) in the course of employment, to differentiate adversely in relation to an

3. (1) Pour l'application de la présente loi, les motifs de distinction illicite sont ceux qui sont fondés sur la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'orientation sexuelle, l'état matrimonial, la situation de famille, l'état de personne graciée ou la déficience

[...]

7. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :

[...]

(b) de le défavoriser en cours d'emploi.

employee, on a prohibited ground of discrimination.

...

14. (1) It is a discriminatory practice,

...

(c) in matters related to employment, to harass an individual on a prohibited ground of discrimination.

...

40. (1) Subject to subsections (5) and (7), any individual or group of individuals having reasonable grounds for believing that a person is engaging or has engaged in a discriminatory practice may file with the Commission a complaint in a form acceptable to the Commission.

...

41. (1) Subject to section 40, the Commission shall deal with any complaint filed with it unless in respect of that complaint it appears to

[...]

14. (1) Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait de harceler un individu :

[...]

(c) en matière d'emploi.

[...]

40. (1) Sous réserve des paragraphes (5) et (7), un individu ou un groupe d'individus ayant des motifs raisonnables de croire qu'une personne a commis un acte discriminatoire peut déposer une plainte devant la Commission en la forme acceptable pour cette dernière.

[...]

41. (1) Sous réserve de l'article 40, la Commission statue sur toute plainte dont elle est saisie à moins qu'elle estime celle-ci irrecevable pour un des

the Commission that

motifs suivants :

...

[...]

(c) the complaint is beyond the jurisdiction of the Commission;

c) la plainte n'est pas de sa compétence ;

(d) the complaint is trivial, frivolous, vexatious or made in bad faith[.]

d) la plainte est frivole, vexatoire ou entachée de mauvaise foi[.]

[7] On appeal from an application for judicial review, our Court must determine whether the reviewing court appropriately selected and properly applied the standard of review: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-47; *Telfer v. Canada Revenue Agency*, 2009 FCA 23, 386 N.R. 212 at para. 18.

[8] Applying *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, and *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, the judge held that the reasonableness standard applied to the decision of the Commission, and that its reasons were adequate as per *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708.

[9] The judge thoroughly reviewed the facts, the evidence and the parties' submissions and held that the Commission's decision was reasonable.

[10] In this appeal the appellants are not appealing the judge's finding that the Commission was not biased and that its process was procedurally fair. Counsel for the appellants further

agrees that Shamar does not have standing to file a complaint pursuant to the *Canadian Human Rights Act*. The appellants rather contend that the judge erred in finding that the Commission's decision to decline to deal with Mr. Hagos' complaint pursuant to section 41(1)(d) of the Act was reasonable.

[11] However, and with respect, we are of the view that the judge committed no reviewable error.

[12] More specifically, in the circumstance, the Commission was within the bounds of reasonableness to conclude as it did that the complaint disclosed no discriminatory practice. The complaint does not allege that there was an employment relationship between PWGSC and Mr. Hagos for the purpose of the *Canadian Human Rights Act*. The issue of such a relationship was raised for the first time before this Court. The Commission was not asked to rule on this issue. It could not have been unreasonable for it not to do so. It follows that it was therefore appropriate for the judge to conclude that the Commission reasonably decided that it was plain and obvious that the complaint could not succeed.

[13] For these reasons, the appeal will be dismissed with costs in the amount of \$3 000 all inclusive.

“Richard Boivin”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-193-14

STYLE OF CAUSE: KIDANE HAGOS AND SHAMAR
MAINTENANCE INC. v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: MARCH 25, 2015

REASONS FOR JUDGMENT OF THE COURT BY: PELLETIER J.A.
WEBB J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

APPEARANCES:

William N. Fuhgeh FOR THE APPELLANTS
KIDANE HAGOS AND
SHAMAR MAINTENANCE INC.

Max Binnie FOR THE RESPONDENT
ATTORNEY GENERAL OF
CANADA

SOLICITORS OF RECORD:

Fuhgeh Law Office FOR THE APPELLANTS
Ottawa, Ontario KIDANE HAGOS AND SHAMAR
MAINTENANCE INC.

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada ATTORNEY GENERAL OF
CANADA