Federal Court | Cour fédérale

Date: 20120418

Docket: T-2022-10

Citation: 2012 FC 451

Ottawa, Ontario, April 18, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

TADELE WOROTA ADMASU

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision of the Minister of Public Safety and Emergency Preparedness (MPSEP) refusing to grant relief from forfeiture pursuant to section 29 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*Act*). For the reasons that follow the application is dismissed.

Facts

[2] On April 2, 2009, the applicant was stopped by a Canada Border Services Agency (CBSA) officer as he was boarding a flight bound for Amsterdam and onwards to Ethiopia. The officer explained that individuals carrying currency in excess of $10,000 Canadian must report it to customs officials. According to the officer the applicant reported he did not have currency in excess of that amount. However, a subsequent search revealed that he was carrying Canadian, US and Euro currency, with the equivalent value of $14,277.44 CDN. The officer concluded there were grounds to suspect that the currency was the proceeds of crime and therefore seized the currency. In reaching this conclusion, the officer noted:

a. The applicant's failure to report the currency;

b. His deceptive behaviour and failure to hand over all currency when asked;

c. His inability to explain where the money came from and what it was for;

d. His vague and contradictory explanation of his travel plans and the fact that the plane ticket was purchased by a third party the week before;

e. The fact that the amount of currency in the applicant's possession was not in keeping with his income and savings.

[3] On April 6, 2009, the applicant requested Ministerial review of the forfeiture pursuant to section 25 of the *Act*. He explained that he had been heavily medicated due to his disability (a serious injury to his arm from a workplace accident), which explained why he had not been more careful about the currency or able to explain its origins. Medication consistent with this explanation was uncovered in the search, although the officer did not consider this in reaching her conclusion.

He also explained that most of the money was from friends who asked him to carry it to their relatives in Ethiopia. In his request for review the applicant attached medical notes together with letters from his friends in Vancouver that purported to account for portions of the seized currency.

[4] The adjudicator wrote to the applicant explaining the reasons for the seizure and invited him to send further information and documentation which would establish the legitimate origin of the seized currency. The letter explained that he must identify the link between the currency and its origins, and establish its legality.

[5] Over the course of several months the applicant and the adjudicator communicated with one another as the adjudicator tried to obtain the necessary information. Despite requests for further documentation the applicant did not identify to the satisfaction of the adjudicator the legitimate source of all the currency. The applicant also failed to provide any evidence to support his claim that some of the currency was from his savings.

[6] The adjudicator provided a case synopsis and recommendation to the Minister's Delegate, dated August 17, 2010. The adjudicator summarized the history of events and found that a contravention of the *Act* had clearly occurred. The adjudicator reviewed the information and documentation submitted by the applicant. Since this information did not establish the legitimate origin of all of the currency, the adjudicator recommended that the seized currency be held as forfeit.

[7] By letter dated November 4, 2010, the Minister's Delegate informed the applicant of her decision that a contravention of the *Act* occurred and that the currency would be held as forfeit. The letter reviewed the facts and the grounds upon which the currency was seized. The letter also summarized the submissions made by the applicant in support of returning the seized currency.

[8] The Minister's Delegate noted that the applicant had failed to provide evidence of the legitimate origin of all the seized currency. She also explained that as the applicant's bank statements had never shown any savings and his credit line was used to the maximum, he had failed to explain how over $3000CND of the currency could have come from his savings. As a result, the Minister's Delegate declined to return the seized currency.

Standard of Review and Issue

[9] The issue raised by this application is whether the Minister's decision is reasonable: *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, [2008] FCJ No 1267 (CA) at para 25.

[10] The standard of review is informed or framed, in part, by the statutory provision allowing the Minister to grant relief from forfeiture. Section 29(1)(*a*) of the *Act* does not allow for partial relief in respect of seized currency:

29. (1) If the Minister decides that subsection 12(1) was contravened, the Minister may, subject to the terms and conditions that the Minister may determine,	**29.** (1) S'il décide qu'il y a eu contravention au paragraphe 12(1), le ministre peut, aux conditions qu'il fixe :
(*a*) decide that the currency or monetary instruments or, subject to	*a*) soit restituer les espèces ou effets ou, sous réserve du paragraphe (2), la

subsection (2), an amount of money equal to their value on the day the Minister of Public Works and Government Services is informed of the decision, be returned, on payment of a penalty in the prescribed amount or without penalty;	valeur de ceux-ci à la date où le ministre des Travaux publics et des Services gouvernementaux est informé de la décision, sur réception de la pénalité réglementaire ou sans pénalité;
[…]	[…]
(*c*) subject to any order made under section 33 or 34, confirm that the currency or monetary instruments are forfeited to Her Majesty in right of Canada.	*c*) soit confirmer la confiscation des espèces ou effets au profit de Sa Majesté du chef du Canada, sous réserve de toute ordonnance rendue en application des articles 33 ou 34.

[11] Section 29(1)(*b*) stands in contrast to section 29(1)(*a*), which allows for partial relief in respect of a penalty:

29. (1) […]	**29.** (1) […]
(*b*) decide that any penalty or portion of any penalty that was paid under subsection 18(2) be remitted; or	*b*) soit restituer tout ou partie de la pénalité versée en application du paragraphe 18(2);
[…]	[…]

[12] The applicant suggests that since he provided evidence of the legitimate origin of some of the currency, that portion should be returned to him. As the respondent submits, the *Act* does not contemplate return of a portion of the seized currency. Section 29(1)(*a*) states that the Minister may decide "that the currency or monetary instruments…be returned" or "confirm that the currency or monetary instruments are forfeited". In contrast, that section 29(1)(*b*) permits the Minister to remit "any penalty or portion of any penalty" [emphasis added].

[13] The Minister's decision is, therefore, an all or nothing proposition. There is no middle ground of partial relief from forfeiture. The reasonableness of the decision must be considered in the light of this statutory constraint.

Analysis

[14] Most of the applicant's submissions to the Court relate to the treatment he received by the CBSA officers when the currency was seized at the airport. As to the central question as to whether the Minister's decision was unreasonable, the applicant reiterates his allegation that the currency was given to him by friends to deliver to their relatives upon arrival in Ethiopia. The applicant also notes that while the adjudicator accepted that $5000 CND of the currency had a legitimate origin, none of the currency was returned to him.

[15] The discretion to return seized currency under section 29 only arises once the Minister has concluded that a contravention of section 12 of the *Act* has occurred. Therefore, as the Federal Court of Appeal stated in *Sellathurai* at para 34: "the starting point for the exercise of the Minister's discretion is that the forfeited currency…is, for all legal purposes, property of the Crown".

[16] The *Act* does not stipulate the factors that the Minister must consider in exercising his discretion. Given the objectives of the *Act* and the provisions governing forfeiture, it is evident that the applicant must persuade the Minister that the currency is not the proceeds of crime. As stated in *Sellathurai* at para 50:

> The only issue is whether the applicant can persuade the Minister to exercise his discretion to grant relief from forfeiture by satisfying him that the seized funds are not proceeds of crime. Without precluding the possibility that the Minister can be satisfied on this

> issue in other ways, the obvious approach is to show that the funds come from a legitimate source. That is what the Minister requested in this case, and when Mr. Sellathurai was unable to satisfy him on the issue, the Minister was entitled to decline to exercise his discretion to grant relief from forfeiture.

[17] The Court of Appeal also emphasized, at para 53, that there may be various approaches to this exercise of discretion, but so long as the discretion was reasonably exercised, there is no basis to intervene: see *Yang v Canada (Minister of Public Safety and Emergency Preparedness)*, [2008] FCJ No 1321 (CA); *Qasem v Canada (Minister of Public Safety and Emergency Preparedness)*, [2008] FCJ No 1489 (CA) for applications of this principle.

[18] In light of the principles articulated by the Federal Court of Appeal I find that the Minister's decision in this case is reasonable. As the respondent submits, the applicant was unable to satisfy the Minister that the currency had a legitimate source and therefore it was open to the Minister to decline to exercise his discretion to grant relief from forfeiture.

[19] The adjudicator made it clear to the applicant what was required of him. He had to identify the source of all the currency and provide evidence to link the currency to its legitimate origin (for example, income from employment). It was insufficient to supply only statements from the individuals or to substantiate the source of only portions of the currency. While evidence was provided in respect of $7,200 USD and $1,200 CND, the origin of all funds was not explained to the satisfaction of the Minister. In this regard, it must be remembered that $9,908 USD, $1,500 CND and €150 EUR was seized. The refusal to give relief from forfeiture was, in circumstances such as this where a significant percentage of the funds could not be explained, reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2022-10
STYLE OF CAUSE:	TADELE WOROTA ADMASU v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	Vancouver, BC
DATE OF HEARING:	April 2, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	RENNIE J.
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APPEARANCES:

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