

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-5073

September Term, 2010

FILED ON: OCTOBER 25, 2010

UJUCHRIS OKEREH,

APPELLANT

v.

RAYMOND EDWIN MABUS, JR., SECRETARY, DEPARTMENT OF THE NAVY,

APPELLEE

Appeal from the United States District Court
for the District of Columbia
(No. 1:07-cv-01552-RJL)

Before: SENTELLE, *Chief Judge*, and ROGERS and GARLAND, *Circuit Judges*.

J U D G M E N T

This appeal from a judgment of the United States District Court for the District of Columbia was presented to the court, and briefed and argued by counsel. The court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED and **ADJUDGED** that the judgment of the district court be reversed and the case remanded.

The district court granted summary judgment in favor of the appellee on the ground – proffered by appellee to the district court – that the appellant’s Title VII claims were filed outside Title VII’s 90-day limitations period. *See* 42 U.S.C. § 2000e-5(f)(1); *id.* § 2000e-16(c). On appeal, the appellee has declined to defend the grant of summary judgment on that ground, stating that it was “incorrect.” Appellee’s Br. 8. The appellee contends, instead, that 5 U.S.C. § 7703 provides the correct, 30-day, limitations provision. In light of the appellee’s change of position, the judgment cannot be sustained on its original basis, and the case is remanded for further proceedings to address the appellee’s new limitations theory.

On remand, the district court should also reexamine the denial of appellant's *in forma pauperis* application, in light of Revised Form AO 240 (Rev. 06/09), now in use by the district court. The revised form seeks additional information relating to the applicant's monthly expenses, debts, and other financial obligations. *See generally Small v. Jones*, No. 06-5399 (D.C. Cir. Aug. 27, 2008) (citing *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1307-08 (11th Cir. 2004)).

The Clerk is directed to withhold the issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk