

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CHUKWUMA E. AZUBUKO,)
)
 Plaintiff,)
)
 v.) 1:06-cv-00152-JAW
)
 DEDHAM MASSACHUSETTS)
 POLICE COMMISSIONER,)
 et al.,)
)
 Defendants.)

ORDER ON MOTION TO AMEND JUDGMENT

On December 6, 2006, Chukwuma E. Azubuko and Precious Okereke filed suit in this Court against the Dedham Massachusetts Police Department and the unnamed owner of Parkway Towing.¹ *Compl.* (Docket # 1). On December 8, 2006, the Magistrate Judge issued a Recommended Decision, recommending the denial of the *in forma pauperis* application and the dismissal of the Complaint. *Decision Recommending Denial of In Forma Pauperis Mot. and Summary Dismissal of Compl.* (Docket # 3). The Magistrate Judge observed that all the parties were from Massachusetts and the event about which Mr. Azubuko was complaining took place in Massachusetts. *Id.* at 2. On December 28, 2006, the Court adopted and affirmed the Recommended Decision. *Order on Report and Recommended Decision*

¹ The Magistrate Judge noted that Precious Okereke, a co-plaintiff, had not signed the Complaint or signed the motion to proceed without payment of the filing fee. *Order on Report and Recommended Decision* at 1 (Docket # 5). She wrote that if Precious Okereke wishes to pursue this action, she would need to file a complaint and motion. *Id.* at 3. There is no indication that she ever did so and the Court treats the pending motion as Mr. Azubuko's alone.

On January 8, 2007, Mr. Azubuko appealed. *Notice of Appeal* (Docket # 7). On August 5, 2008, the Court of Appeals for the First Circuit summarily affirmed judgment. *J.* (Docket # 10). The First Circuit wrote that it did so “for essentially the reasons stated by the magistrate judge in her recommended decision (which the district judge adopted).” *Id.* at 1. The appellate court also wrote:

In particular, it is plain that the only reason that appellant filed the case in the Maine district court was to avoid the restrictions that had been placed upon him by the federal district court in Massachusetts, and such a filing therefore was frivolous.

Id.

The case remained fallow until June 2, 2011 when Mr. Azubuko filed this motion for relief from judgment or order. *Pl.’s Mot. for Relief from J. or Order (FRCP 60(b)(5))* (Docket # 11). Mr. Azubuko says that he is moving for relief under Rule 60(b)(5), which provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.

FED. R. CIV. P. 60(b)(5). On its face, Rule 60(b)(5) does not apply to Mr. Azubuko’s motion.

In view of the fact Mr. Azubuko is acting *pro se*, the Court reviewed his motion to assess whether it states a claim not only under Rule 60(b)(5), but also under any other provision of Rule 60. He has not. Mr. Azubuko filed his motion long after the one year period under Rule 60(b)(1), (2), or (3), and his motion under

any of those subsections would be barred as untimely. *United States v. Marin*, 720 F.2d 229, 231 (1st Cir. 1983). Furthermore, a careful review of Mr. Azobuko's motion reveals no legitimate basis for such a late-filed challenge to the final judgment in this case or, for that matter, for any challenge at all.

His motion does not address the bases of the rulings of this Court and of the First Circuit Court of Appeals. As an action by a Massachusetts resident against a Massachusetts police department for an incident that allegedly took place in Massachusetts, venue does not rest and never has rested in the District of Maine. There is no reason to disturb the final Judgment.

The Court DISMISSES Chukwuma E. Azubuko's Motion for Relief From Judgment or Order (FRCP 60(b)(5)) (Docket # 11).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 7th day of June, 2011

Plaintiff

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Plaintiff

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V.

Defendant

**DEDHAM MASSACHUSETTS
POLICE COMMISSIONER**

Defendant

**PARKWAY TOWING, OWNER
OF**