



**The Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/02933/2016

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 21st June 2017**

**Decision & Reasons  
Promulgated  
On 01 August 2017**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY**

**Between**

**MR.PKI.**

**(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

**Representation:**

For the Appellant: M. S.Rogers of IAC Ltd.

For the Respondent: Mr Diwnycz, Home Office Presenting Officer.

## **DECISION AND REASONS**

### Introduction

1. The appellant has been granted permission to appeal to the Upper Tribunal the decision of First-tier Tribunal Judge Hands, dismissing his appeal.
2. He is a national of the DRC. He said he worked for a government agency involved with family welfare. He claimed protection on the basis he would be at risk on return from the authorities because he reported a mass grave at Maluku to an NGO. The suggestion was that the bodies were of people who had taken part in demonstrations in January 2016 and had been killed by government agents. Objectively, a mass grave existed but the government explanation was that it was the overflow of unclaimed bodies from a morgue.
3. In the First tier hearing both parties were represented. The appellant gave evidence and adopted his statement. There was background material provided in support of the claim, including a newspaper article on his disappearance.
4. The judge did not find the appellant credible. She referred to background information showing growing instability in the country because of attempts by President Kabila to change the Constitution. Given the appellant was a government employee this impacted upon his employment. The judge concluded he had decided to leave at this unstable time and had fabricated a claim around real events.
5. Permission to appeal was granted by a judge of the Upper Tribunal. It was arguable whilst the judge gave a number of reasons for rejecting the appellant's credibility she did not give prominence to whether the appellant had established he, along with three women, had reported the mass grave to an NGO. Arguable in analysing the background information the judge unduly picked certain aspects.
6. By way of a rule 24 response the respondent opposed the appeal, contending that the judge made a thorough and detailed assessment of the claim and provided numerous reasons for rejecting it. The consideration of the evidence about the grave was only part of the credibility assessment.
7. At hearing, the appellant's representative referred to the judge's comments at paragraph 33 about the absence of reports of a smell. The appellant's representative said the articles submitted did refer to concerns over smells. The judge's view on this issue then led to a

catalogue of rejections. It was submitted the reasoning at paragraph 34 and 35 was infected by this.

8. At paragraph 34 the judge referred to the suggestion that the burials occurred between the 18th and 19 March 2015. Reports indicated intelligence officers might have been in the area at 5 AM on the 19th. The appellant had referred to residents hearing the noise of trucks and noticing a bad smell. The judge concluded it was unlikely trucks would have been heard on more than one occasion. This was on the basis the bodies were buried over one night. She rejected the appellant's account of investigating a bad smell.
9. At paragraph 35 the judge posed in the alternative there being smells which caused the appellant to have concerns. If this were so, she did not accept it was not within his remit to report this to his own agency. It was submitted the appellant had explained why he did not go to his own agency: namely, he did not trust the government authorities.
10. The presenting officer relied upon the original refusal of permission to appeal wherein a First-tier Judge concluded the decision was comprehensive and well reasoned and engaged with the evidence.
11. In response, the appellant's representative contended it was unreasonable to expect the appellant to be named in the country information.
12. Both representatives agreed that if an error of law was found in the appropriate course was to remit the appeal for hearing de novo.

### Consideration

13. The country information clearly indicates a mass grave was found in Maluku. The appellant's bundle contains numerous references to this from reliable sources. There is an article from ONUSCO, part of the United Nations body tasked with monitoring abuses in the DRC. There is a report at page 68 of the appellant's bundle which refers to the grave. Footnote 72 refers to the discovery of the grave by members of the Municipality of Maluku. There was reference to 421 bodies. Page 121 is a Human Rights Watch report referring to the grave. There is a Voice of America report, dated April 2015, referring to the discovery of the grave believed to have been created on 19 March 2015. A Human Rights Watch report of 8 June 2015 goes into detail. It refers to the unusual circumstances of the burial suggested by the authorities. It refers to a woman from Maluku telling Human Rights Watch that at

2 AM she was returning from her church when she noticed a large truck and a dozen or so men in uniform. There was also reference to a farmer who at 5 AM noticed a truck. He was subsequently questioned by government agents about what he saw and was threatened. There was reference to the suspicious death of the person in charge of the mortuary; Mr. Claude Kafese. The reported account was that he died in a drunken driving incident. Other reports referred to him having been shot. There was also reference to the January 2015 demonstration at which 32 protesters were shot dead by government agents.

14. The information suggests the discovery of the mass grave was widely reported in the media, with calls by family members and political groups for exhumations and investigations. The government had promised this.
15. The appellant's claim is that he caused ONUSCO to learn of what has happened. His account of screening was that he was in the area speaking to women about family planning. He asked them if there any other issues and they referred to noise and a noxious smell. On his account he went to investigate the source of the smell, located it, and discovered blood. He then said he took the three women to ONUSCO's offices; spoke to an official and gave his details; and left the women to pass on their concerns. He then went home. He then gives an account in his substantive interview of men coming to his house on 26 June 2015 looking for him. This prompted him to run away, stay with a friend, and then leave his home country.
16. Consequently, the issue arising was whether the appellant had been instrumental in its expose and consequently at risk or whether he had woven an account to fit into a widely reported incident.
17. The reason for refusal letter questioned why on the account there would have been such a delay on the part of the authorities pursuing the appellant. His account of people coming to his home lacked detail.
18. His credibility was the central issue for the judge. His oral evidence and his statement referred to government officials coming to his place of work and that he was taken away and kept overnight. He was then released but required to return. He said this is why when he saw the people approaching his house on 26 June 2015 he knew they meant to do him harm. This was not referred to in his substantive interview. His explanation was that he had not been given the opportunity to fully answer.

19. The judge has accurately recorded the claim made by the appellant. A summary is provided at paragraph 2 and further details given at 17 through to 22. At paragraphs 33 onwards the judge reaches conclusions on the appellant's credibility and sequentially poses matters in the alternative. The judge recorded the existence of the mass grave was well reported.
20. The judge records there was no reference in the background material of the appellant or the three women reporting the mass grave. In fact in the Human Rights Watch there is a reference to a local woman and a farmer reporting the matter.
21. The judge is speculating at paragraph 34 in stating it was unlikely there would have been blood once the bodies were being buried. The same applies in relation to the comment about the lorries and the number of journeys.
22. The judge then went to consider the alternative whereby there was a smell and the appellant was concerned for the health of the women in the neighbourhood. The judge concluded in this situation he could have reported it to his own agency. The appellant had explained that he did not trust the government which would include his own agency as it was part of the State.
23. Again, in the alternative, the judge accepted that it was more likely the appellant went to the area to speak to women in the course of his work connected with family planning rather than to investigate any mass grave. The judge did not accept his account of events following the visit of going to a non-government agency.
24. At paragraph 37 the judge refers to lack of mention in the substantive interview of detention and interrogation on 19 June 2015. The judge rejected the claim he was not given an opportunity. At question 40 he was asked if he had any problems at work between 3 April 2015 and 25 June 2015 and he said not. The judge concluded it was unlikely would have forgotten being taken from work and placed in a cell overnight. The judge concluded the appellant had embellished his account in order to explain his claim of running away when he saw officials approaching his home on 26 June 2015. Furthermore, the judge made the point that if government agents wanted to harm him they could have done so if he was in custody a few days earlier. Furthermore, the judge commented that it was likely they would maintain surveillance on his house. The judge pointed out there was no claim his wife and children subsequently suffered.
25. The judge went on to referred to section 8 issues and did not accept the appellant's claim he did not know what third country he was in. The same applied in relation to his account of

documentation being taken by the agent rather than destroyed by him.

### Conclusions

26. Going through the judgement individual aspects can be faulted. The comments about smell and blood are open to criticism. The judge also does not comment on the purported newspaper report of the appellant's absence. However, when the decision is read as a whole; bearing in mind the evidence that was before the judge, the judge was entitled to reach the conclusion made. The primary conclusion was that the appellant had fabricated the account of being responsible for the discovery of the grave. Consequently, he was not wanted by the authorities. When the decision is read in its entirety it is comprehensive and engages with the evidence. I find no material error of law established.

### Decision.

No material error in the decision of First-Tier Judge Hands has been established. That decision, dismissing the appellant's appeal, shall stand.

Deputy Judge Farrelly

28<sup>th</sup> July 2017

