



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/10527/2016**

**Appeal Numbers:**

**PA/10525/2016**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 17 September 2018**

**Decision & Reasons Promulgated  
On 01 October 2018**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**MS J M  
MS G A  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr V Jagadeshan, Counsel, instructed by Greater Manchester Immigration Aid Unit

For the Respondent: Mr A Tan, Home Office Presenting Officer

**DECISION AND REASONS**

1. Following a decision made by me on 14 August 2018 setting aside for material error of law the decision of Judge Brookfield, I directed that there be a further hearing in which “any examination of the evidence of the appellants can be confined to the issue of the circumstances of [the appellants’] release from detention”. In my decision at paragraph 10, I specifically preserved Judge Brookfield’s findings of fact that: the appellants had been arrested and detained at a high-profile political

convention (the Filimbie Convention); that the first appellant had attended this Convention as a journalist working for Forum des AS to write a report on the convention, and the second appellant to assist her with the photography equipment; that both had been interrogated and beaten; that the second appellant had been raped whilst still in custody and the first appellant had been sexually abused. I also expressly preserved the judge's findings regarding the mental health problems of the second appellant.

2. At the outset of the hearing Mr Tan asked whether my decision also intended to preserve the judge's findings that the appellants had left the DR (using false documents). I clarified that I had so intended. It is clear from my decision that I identified no legal error in the judge's findings at 11(xxiv) that "the appellants left the DRC using false passports provided by an agent". I also set out that I considered the fact of the appellants' case, in respect of document fraud, to require application of Tribunal country guidance as set out in **BM and Others** and **BM (false passport)**.
3. Following discussion between the parties it was agreed that the first appellant would be called to give evidence regarding the issue of the circumstances of her release from detention. Despite a Lingala interpreter being booked, none was available and it was agreed the first appellant would seek to give evidence in English, although if necessary I would consider convening a further hearing with a Lingala interpreter.
4. I then heard evidence from the first appellant. She confirmed that her witness statement of 23 June 2017 was true and correct, including as regards her statement that when she and her sister had been driven away from the detention centre in a jeep, there was only one man in the jeep. Mr Tan then asked her to explain why she had said at paragraph 140 of her asylum interview that there were two men in the jeep ["car"]. The appellant said that when in the back of the jeep she and her sister were blocked off from the front. Whilst she heard two voices she only saw one man.
5. I then heard submissions from the representatives, both well-presented.
6. I have concluded that I do not need to hold a further hearing to hear the first appellant give evidence through a Lingala interpreter. My reason for so concluding will be made apparent below.
7. Having considered the evidence as a whole I am satisfied to the lower standard of proof that the appellants have given a credible account of their experiences in the DRC. As noted earlier, it has already been found that the appellants arrested, detained and ill-treated following their attendance at the Filimbie Convention. I accept Mr Jagadeshan's submission that this in effect means that they have already been found credible as regards the core of their claim to have experienced persecution. Whilst the circumstances of their escape are pertinent to the issue of how they would be viewed on return, there is no disputing that

they suffered past persecution and that past persecution is a strong indication of future persecution unless there are good reasons to consider there would not be a repetition.

8. As regards the appellants' account of their escape, there are two aspects of importance. The first is that it is amply supported by the background evidence, in particular the Freedom from Torture report dated June 2014 stating that most of the women detained during this Convention were enabled to escape by someone in the detention facility. Mr Tan argued that this report stated that this assistance was based on guards recognising a common ethnic or tribal origin or tribal and family connection; however, this report says that this was "[m]ostly" the case, not that it was in all instances and the appellants would not necessarily have known if their guard was moved to assist them for reasons of tribe or ethnicity or simply because of their relatively young age. Second, although the first appellant's evidence before me was inconsistent as to whether there were one or two guards in the jeep, her more detailed witness statement at paragraph 36 does not say in terms that there was only one man; indeed her reference to "the man who brought me to the jeep opened the door ..." rather implies there was another man. In any event I am prepared to accept, given the accepted credibility of their account on their arrest and detention, that the first appellant really only knew for certain there was one man but could not exclude there was another (as indeed she said in her asylum interview when she did have interpreter assistance).
9. I have already noted external evidence supporting the plausibility of the appellants' account. Mr Tan has submitted that if there were two guards that doubled the risks to them of getting into trouble with their own superiors for letting them go. However, it is clear from the FT report that a number of guards were prepared to take that risk, so there is no good basis for finding the appellant's claim implausible for this reason.
10. Having found that the entirety of the appellants' account of their past experiences in the DRC is credible, I turn to consider whether they would be at risk on return. Applying the guidance set out in **BM 1** and **BM 2**, I have no hesitation in considering that they would be at risk. Clearly at a minimum they will be questioned on return, particularly given their use of a false passport to leave the DRC. At 119(iv) of **BM 1**, it was stated that the DRC authorities have an interest in certain types of suspected offenders, including those who committed document fraud when departing the DRC. Clearly, as well, the authorities will establish during their enquiries that the appellants were arrested and detained as a result of their attendance at a high-profile oppositionist political event and that they unlawfully escaped from detention. Paragraphs 17 and 119(iv) of **BM 2**, with reference to paragraph 31 of **BM 1**, indicate that the authorities will have an interest in persons who have escaped from prison. The political dimension to their original detention will only add to the reasons why the DRC authorities are likely to re-detain the appellants. It is not in dispute that if they are subjected to (further) detention this will give rise to

ill-treatment tantamount to persecution. The Refugee Convention reason of political opinion will clearly be engaged given the government's overt hostility to those involved in the Filimbie Convention.

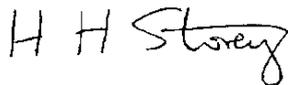
11. For the above reasons the decision I remake is to allow the appellants' appeal against refusal of their protection claims.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 26 September 2018



Dr H H Storey  
Judge of the Upper Tribunal