



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/09379/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice
Centre
On 6 June 2019**

**Decision & Reasons
Promulgated
On 25 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**L M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Royston of Counsel instructed by TRP Solicitors
For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Burns (the Judge) of the First-tier Tribunal (the FtT) promulgated on 3rd December 2018.
2. The Appellant is a male Zimbabwean citizen born 10th June 1986.
3. On 6th April 2018 the Respondent refused the Appellant's human rights application to remain in the UK and refused his application to revoke a

deportation order made against him on 13th September 2011. On 7th November 2018 the Respondent issued a supplementary refusal decision.

4. The appeal was heard by the Judge on 27th November 2018. The Judge considered the Appellant's claim that returning him to Zimbabwe would breach Articles 3 and 8 of the 1950 European Convention on Human Rights (the 1950 Convention). The Judge heard oral evidence from the Appellant's mother, sister and ex-partner. The Judge considered a bundle of documents submitted on behalf of the Appellant comprising sections A and B. This included a report from a consultant psychiatrist, Dr D Bell.
5. The Judge noted that the Appellant's Article 3 claim was put on the basis that firstly the Appellant is at risk of being ill-treated in a mental health institution in Zimbabwe, and secondly that he is at risk of suicide/self-harm and/or a serious deterioration in his mental health.
6. The Judge did not find that the Appellant was likely to be detained in a mental health institution in Zimbabwe, and found that there was anti-psychotic medication available in Zimbabwe, and was satisfied that there was outpatient treatment available for the Appellant in Zimbabwe. The Judge found the Appellant could expect to receive financial assistance from his family in the UK. The Judge did not find that the Appellant would be subjected to torture or inhuman or degrading treatment, and did not find that the Appellant was able to meet the very high threshold to show that he would be at risk of treatment that would breach Article 3 of the 1950 Convention.
7. With reference to Article 8, the Judge found the Respondent's decision to be proportionate.
8. The appeal was therefore dismissed on all grounds.

The Application for Permission to Appeal

9. It was contended that the Judge's approach to the medical and country evidence was materially flawed in four particular areas and reliance was placed upon Dr Bell's report.
10. It was submitted that the Judge had firstly erred in considering the risk of detention in Zimbabwe. It was submitted that the Judge had failed to address her mind to what would actually happen to the Appellant in the event of return and the likely impact upon his mental state.
11. Secondly, it was contended that the Judge had erred in considering access to treatment/medication in Zimbabwe. It was submitted that the Judge had failed to engage with the country evidence which demonstrated acute shortages in the supply of adequate medication, a severe lack of adequately trained personnel at all levels of psychiatric care, and a widespread pervasive stigma, with high levels of discrimination, of those found to be suffering from mental illness in Zimbabwe. There was no reference by the Judge to stigma/discrimination, although Dr Bell had identified it as representing a potential potent stressor.

12. Thirdly, it was submitted that the Judge had erred in considering the impact of removal upon the Appellant. The Judge had not considered the significance in terms of the Appellant's mental health of his relationships with his family in the UK, particularly his son. There was no assessment as to the prospective impact upon the Appellant's mental health of separation from his family although psychiatric evidence indicated that this would cause a serious deterioration in his psychiatric state.
13. Fourthly, it was submitted that the Judge had erred in considering a risk of suicide. The psychiatric evidence indicated the risk of suicide was currently low but this would be elevated to very high if the Appellant learned that he was to be removed to Zimbabwe. The Judge at paragraph 36 had recorded that she did not accept there was a real risk of suicide but provided no reasoning for that finding.
14. A second aspect of the application for permission to appeal related to the Appellant's claim that there were very compelling circumstances which would render his removal from the UK disproportionate. The Judge had erred in considering this aspect of the appeal, which was considered at paragraphs 58-73, by considering another Appellant, who apparently originated from Somalia. It was submitted that this was clearly a material error of law.

Permission to Appeal

15. Permission to appeal was granted by Judge Froom in the following terms;
 1. Permission to appeal is granted because it is arguable the FtT erred by referring in the section of her decision dealing with the Art 8 balancing exercise to another case involving a Somali Appellant (see [68] and [69]).

All grounds may be argued.

16. Following the grant of permission to appeal, directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

The Upper Tribunal Hearing

17. Mr Royston relied upon his skeleton argument dated 6th June 2019 and argued that the FtT decision should be set aside in its entirety and remitted to the FtT to be heard afresh with no findings preserved.
18. In summary Mr Royston firstly addressed paragraphs 58-73 of the FtT decision which appeared to deal with a completely different case. Reliance was placed upon ML (Nigeria) [2013] EWCA Civ 844. It was submitted that because of the significance of the error, fairness required the quashing of the FtT decision in its entirety. It was submitted that even if paragraphs 58-73 were cut and pasted in error, and the factual errors displayed did not consciously infect the reasoning in other parts of the judgment, the evidence of lack of care meant that neither the Appellant

nor any impartial observer could be confident that the Appellant had received a fair hearing.

19. With reference to the consideration by the Judge of the medical and country evidence and the submission that this consideration was materially flawed in four particular areas Mr Royston relied and expanded upon the grounds contained within the application for permission to appeal.
20. It was submitted that the Judge had not rejected a submission that a person with psychosis is likely to be deprived of liberty in Zimbabwe where there would be a real risk of a breach of Article 3, but the Judge had rejected the proposition that there was a real risk of the Appellant suffering psychosis in Zimbabwe. It was submitted that the Judge had failed to give reasons and consider evidence on this point. The Appellant's case was supported by a psychiatric report and no express reasons were given for rejecting the psychiatric opinion.
21. With reference to medication, it was contended that the Judge appeared to accept that the Appellant would need to continue taking anti-psychotic medication in Zimbabwe and when considering the availability of medication and treatment, the Judge had not addressed whether there was a real risk that the Appellant would not receive them. The Judge had not considered whether satisfactory treatment would actually be obtainable notwithstanding the theoretical availability of some treatment, and had not considered whether the Appellant would lack the insight into his condition to seek the necessary treatment, and had not considered that the Appellant's family would be unable to assist him from the UK.
22. Mrs Aboni, on behalf of the Respondent conceded that the Judge had materially erred in law in appearing to consider a Somalian Appellant from paragraph 58 onwards. It was accepted that the decision of the FtT must be set aside because of that material error of law.
23. However Mrs Aboni submitted that the error had not infected the reasoning of the Judge in relation to Article 3 and submitted that the findings made in relation to Article 3 should be preserved.
24. Mrs Aboni submitted that the Judge had considered the psychiatric report prepared by Dr Bell and on the issue of Article 3 and the availability of mental health treatment in Zimbabwe, the Judge had made findings and provided adequate reasons for those findings.

My Conclusions and Reasons

25. In my view the concession made on behalf of the Respondent that paragraphs 58-73 disclosed a material error of law is rightly made. The Judge has unfortunately referred to a different Appellant when considering the public interest considerations and the balancing exercise.
26. The Judge at paragraph 60 finds the Appellant is not able to speak English. The Appellant can speak English. At paragraph 63 the Judge refers to

reintegration to Somalia, with the Appellant speaking the language of Somalia and having retained his cultural ties. That does not apply to this Appellant who is from Zimbabwe.

27. At paragraph 68 the Judge makes reference to treatment being available in Somalia which could be paid for by the Appellant's clan. It is clear that cannot apply to this Appellant.
28. At paragraph 69 the Judge makes reference to the Appellant being apart from his mother for ten years, lacking a basic education, and having been away from Somalia for many years and not wanting to return. There is reference to the Appellant's mother being a British citizen with five small children. The Appellant's mother is not a British citizen and does not have five small children. There is further reference in this paragraph to Somalia.
29. At paragraph 72 there is reference to the Appellant being a young man previously of good character having committed only one offence. Again, it is clear that this description does not fit the Appellant, who has a significant number of criminal convictions.
30. As conceded by the Respondent, because of the material error, the decision of the FtT must be set aside.
31. I do not find that it is appropriate to preserve findings made in relation to Article 3.
32. I am persuaded that the Judge has erred in law in considering the medical and country evidence. With reference to detention the Judge finds at paragraph 32 that the Appellant would not be detained as he has been discharged from inpatient care in the UK despite the stress and certainly caused by the current immigration proceedings. The Judge also finds that the Appellant is not currently suffering from the positive symptoms of psychosis but is in a disassociated state.
33. In my view the Judge has erred by failing to engage with the psychiatric opinion of Dr Bell. Under the heading of "Consequences of Return" in the report Dr Bell at paragraph (i) gives the opinion that it is clear that return to Zimbabwe will cause a significant and serious deterioration in the Appellant's psychiatric state, and makes reference to the Appellant's relationship with his mother, siblings, cousin, and his son and concludes that the sudden breaking of these attachments would be experienced as a traumatic, violent event, sufficient to cause a serious deterioration in the Appellant's psychiatric state. At paragraph (ii) Dr Bell concludes that contact with the Appellant's family is a major factor in preventing further deterioration, and removal of that contact would act as a major factor in the deterioration in his psychiatric state.
34. The Judge errs by not analysing the opinion of Dr Bell and does not give adequate reasons for finding that the evidence does not indicate a real risk that the Appellant would suffer a further psychotic episode.

35. With reference to access to treatment, the Judge finds that there are a number of anti-psychotic medications available in Zimbabwe, but does not engage with the country evidence, which indicates acute shortages, a lack of adequately trained psychiatric personnel, and the stigma and discrimination of those found to be suffering from mental illness in Zimbabwe. A failure to engage with and make findings on evidence relied upon by the Appellant amounts to an error of law.
36. With reference to the risk of suicide, the Judge at paragraph 36 does not accept that there is a real risk of suicide, but does not provide reasons for that conclusion. Dr Bell's opinion was that currently the risk of suicide was low, but would be elevated to very high if the Appellant learned that he was to be removed to Zimbabwe.
37. For the reasons given above, I find that there are errors of law in the FtT decision, such that the decision must be set aside. I have considered paragraph 7 of the Senior President's Practice Statements and conclude that the appropriate course is to remit this appeal back to the FtT to be heard afresh with no findings preserved, because of the nature and extent of judicial fact-finding that will be necessary in order for this decision to be remade.
38. The appeal will be heard at the Birmingham Hearing Centre and the parties will be advised of the time and date in due course. The appeal is to be heard by an FtT Judge other than Judge Burns.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal with no findings of fact preserved.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. This direction is made because of the mental health issues suffered by the Appellant.

Signed

Date: 16th June 2019

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

I make no fee award. The issue of any fee award will need to be considered by the First-tier Tribunal.

Signed

Date: 16th June 2019

Deputy Upper Tribunal Judge M A Hall