



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

Appeal Number: PA/05934/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 14th January 2020**

**Decision & Reasons Promulgated
On 3rd February 2020**

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL
G A BLACK**

Between

**MS GK
ANONYMITY ORDER MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative

For the Respondent: Miss Pettersen (Home Office Presenting Officer)

DECISION AND REASONS

1. This is a rehearing following a decision promulgated on 14.11.2019 by Upper Tribunal Judge Rintoul, who found an error of law on procedural grounds in the decision of the First-tier Tribunal (Judge Alis) (FTJ) and set aside the decision to dismiss her protection and human rights claims. The FTT decision was promulgated on 9.8.2019. The appellant did not have an interpreter at the FTT hearing. The history of the proceedings is fully set out in the decision of UTJ Rintoul.

Background

2. The appellant is a citizen of Kenya. She claimed asylum on the grounds of political/religious opinion. She claimed that her husband was a member of the Mungiki, a secret sect, and that in 1997 he decided to leave that group in order to become a Christian. This decision led to the appellant and her family suffering from persecution. She argued that on return she faced a risk of ill treatment at the hands of her in laws, his family had disowned her and her husband had suffered from a stroke as a result of beatings. She had suffered from numerous beatings and had fractured her wrist and sustained other injuries. She had adult children who had suffered beatings and harassment remained living in Kenya. She entered the UK in April 2018 as a family visitor but remained after her visa expired.

Reasons for refusal - 7th June 2019

3. The respondent refused the application, whilst accepting that the appellant had established a subjective fear. It was initially accepted that there was a Convention reason, but at the FTT hearing that concession was withdrawn citing (**JA** (Mungiki - not a religion) Kenya [2004] UKIAT 00266). There was a sufficiency of protection and/or the appellant could relocate to another area. There was a delay in making the claim for asylum. The documentary evidence was not reliable.
4. Miss Pettersen confirmed the respondent's position that there was a Convention reason of imputed political opinion and that the appellant had established a subjective fear based on historic account of the actions of the Mungiki. It remained the respondent's position that she could return to Kenya as there was no present risk and/or that there was a sufficiency of protection and relocation was an option.

Hearing

5. The appellant was not represented at the hearing. I heard oral evidence from the appellant who gave evidence at the hearing with the assistance of an interpreter in the Kikuyu language. I was satisfied that there were no difficulties with the interpretation and that the appellant was fully able to engage in the proceedings. The appellant relied on the bundle (including a reference from Christ-Embassy Bolton, letter from Kiambu District hospital, letter from Ministry of interior & letter from Christ committed gospel church 15.7.2019) that she provided for the previous hearing. She had submitted further evidence in the form of Curriculum vitae of the

young people that she had helped, which were included in the respondent's bundle. The appellant also produced a number of articles detailing the re-emergence of the Mungiki in Kenya dated 2018/2019.

Submissions

6. At the hearing before me Ms Pettersen and the appellant made submissions which are set out in detail in the record of proceedings.

The appellant's evidence

7. The appellant relied on her witness statements, her screening interview and the substantive interview. The details of her oral evidence are set out in the record of proceedings.

Findings of fact and conclusions

8. The appellant gave evidence that was broadly consistent with her witness statement and the interview record. In the screening interview the appellant stated that she was in fear of her in laws and that there were fights over land. There was no mention of the Mungiki at that point. I have considered all the evidence in the round in reaching my findings. I have looked at the documentary evidence having regard to **Tanver Ahmed (2002) UKIAT 00439**. I have taken into account the background material in particular the CPIN 2018 and I have read the article provided by the appellant. The respondent in a request for information described the Mungiki as a "politico-religious group that was outlawed by the government of Kenya following atrocities committed against its victims. The disciples of the Mungiki claim it is a "homegrown" religious organisation committed to upholding the traditional "African way of worship, culture and lifestyle." There is no recent CG relating to the Mungiki other than that relating to FGM and I find no objective evidence that the group is targeting Christians.
9. Given the concession by the respondent I am prepared to find that the historic account was established namely that the appellant's husband had been a former member of the Mungiki and that he had left that group in 1997 in order to become a Christian. The appellant is a Christian. I accept that he suffered from a stroke and remained bedridden for 13 years. I accept that the appellant's husband has since died in 2011. There is no reliable evidence to show that the cause of the stroke was from beatings suffered at the hands of the Mungiki or his family. I accept that there may well have been disagreements or family disputes over land and that the appellant's in

laws disowned her. I place little weight on the letter from the Ministry of Interior. There is no evidence to show how the appellant came to have this letter nor to confirm the identity of Patrick Waithaka. There is no evidence as to the role played by the Ministry of Interior nor why the appellant has not been provided with assistance by the authorities. There is no independent evidence to show that any family members died as a result of the actions of the Mungiki. It is reasonable that the appellant would have been able to produce death certificates or reports from the police were that to be the case.

10. As to the account of other more recent incidents claimed to be at the hands of the Mungiki I find that appellant's account is not credible. I find that her account lacks detail and is vague as to important details. The appellant described a number of incidents in which masked men regularly infiltrated her property and beat her and the children. I find that there is no reliable evidence to show that these assailants were members of or identifiable as the Mungiki. The appellant relied on a medical report in which it is confirmed that she suffered a fractured wrist on 4.5.2016 after an attack by thugs. The evidence fails to show any link that the assailants were members of the Mungiki. The appellant gave evidence of another incident when she was attacked at a cash point. Whilst she believed that the assailants were Mungiki she could give no explanation in support or any detailed information as to the identity of the assailants. I accept that she was assaulted on those occasions but find that there is no reliable evidence to show that she was attacked by or targeted by the Mungiki. In addition I find that the appellant did not report the assaults or go to the police with her fears about the Mungiki, which in my view damages the credibility of her account. She claimed that her children remained in Kenya living with her sister for some time and had moved from place to place in order to hide from and avoid harassment from the Mungiki. There was no evidence from any of the children who are adults aged 17,27,24,30,32, 36 years of age or her sister and it is reasonable that she could have provided statements in support. In addition there was no up to date supporting evidence from the pastor who it was claimed looked after the "children" and had given the children a safe house in the church after July 2019. It is reasonable that the appellant could have asked him to provide a further statement. She claimed that her son had been held in protective custody for a period of time in 2018 following being targeted by the Mungiki. There was no independent evidence to support this aspect of her claim. It is reasonable that she would have been able to obtain evidence from the police or from her son. The appellant provided no independent or other evidence to show the identity of her in laws and that they were members or "leaders" of the Mungiki and/or that they had the means and resources to be able to track her down in Kenya. I find that the appellant failed to provide any clear account as to how and why she believed that she remained at risk from either her in laws or the Mungiki. Her account was vague unsubstantiated and generalised.

11. I find that the appellant is aged 60 years old, a Christian and a member of the Kikuyu. She has adult children and grandchildren living in Kenya. I find that the appellant was not involved in converting young people to Christianity or away from the Mungiki sect. I place no weight on the evidence of a number of CV's which the appellant claimed belonged to young people who she had converted from the Mungiki. The CV's were not accompanied by any witness statements and contained no relevant evidence to support the appellant's claim.
12. I have considered the background material which confirms that the Mungiki are a criminal group outlawed by the Kenyan authorities in 2003. The police have the primary responsibility for law enforcement and the force has been reformed and increased in recent years (CPIN 2018). It is acknowledged that the police force has functional problems including poor casework, incompetence and corruption which has undermined prosecutions, but I conclude that there is a system in place that provides protection against such outlawed organisations such as Mungiki. The appellant failed to report any of the serious incidents to the police and has not sought protection. The appellant has failed to show a sustained and systematic failure of state protection on the part of the authorities in Kenya. The appellant has failed to show that the non-state agents have any influence over the State. In some of the news articles provided by the appellant it is clear that the police and the authorities are actively tackling the problems presented by criminal gangs.
13. In terms of relocation I conclude that the appellant has adult children living in Kenya and I find no credible evidence that they are being targeted by the Mungiki. The country is large and I am satisfied that there would be places where the appellant could relocate outside of her home area or places where she had lived previously. She has lived in Kenya since 1959 and was last working as a house girls agency worker. She also has adult siblings including 4 sisters and 7 brothers. There is no reliable evidence to show that either the appellant's in laws are Mungiki or that they have the power and influence to locate her in Kenya. Or that there is any reason why they would wish to do so since her husband died in 2011.
14. I have considered Article 3 and 8 and conclude that there is no evidence to show that either are engaged. The appellant has no family life in the UK. She has lived in the UK since 2018 and overstayed since her family visit visa expired. I conclude that she fails to meet the private life requirements under paragraph 276ADE. The appellant has lived for the majority of her life in Kenya where she was educated to degree level, has worked and has immediate and extended family members. She has failed to show that she is in need of international protection and or that she faces very significant obstacles on return. I find that the appellant has suffered from depression and poor health, although there was no medical evidence

before me. I find that she would be able to work and that some form of support would be available from her children who she accepted had been able to work and with whom she had been in recent contact. I further conclude that her return would not result in unjustifiably harsh consequences such as to engaged Article 8 outside of the Rules, and/or that the decision would be disproportionate.

Decision

15. The appeal is dismissed.

Signed

Date 29.1.2020

GA Black

Deputy Judge of the Upper Tribunal

ANONYMITY ORDER

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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 their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

NO FEE AWARD - the appeal is dismissed and so there is no fee award payable.

Signed

Date 29.1.2020

GA Black

Deputy Judge of the Upper Tribunal