



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07620/2019 (V)**

THE IMMIGRATION ACTS

**Heard at Field House
On 27th October 2020**

**Decision & Reasons Promulgated
On 02nd November 2020**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**SM
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Mukherjee, of Counsel, instructed by Jerry Clore Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Kenya born in 1987. She came to the UK and applied for asylum on 15th September 2018. The application was refused on 26th July 2019. She lodged an appeal, which was dismissed on protection and human rights grounds in a decision of First-tier Tribunal Judge Lever promulgated on 25th February 2020.

2. Permission to appeal was granted by Upper Tribunal Judge Kopieczek on the 15th July 2020 on all grounds but principally on the basis that it was arguable that the First-tier Tribunal had erred in law in failing to consider the witness evidence when concluding that there was no evidence that the appellant was at risk from Ahmed and that he was linked to Al Shabab.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law. The hearing was held at a remote Skype for Business hearing in light of the need to reduce the transmission of the Covid-19 virus, and in light of this being found to be acceptable by both parties, and being a means by which the appeal could be fairly and justly determined. There were no significant issues of connectivity or audibility with the hearing.

Submissions – Error of Law

4. In grounds of appeal to the Upper Tribunal, drafted by Mr Mukherjee for the appellant, and in oral submissions from Mr Mukherjee it is argued for the appellant, in summary, as follows.
5. It is argued firstly that the First-tier Tribunal errs in law in finding that it is pure speculation on the part of the appellant that her former partner, Ahmed, was a member of Al Shabab and in finding that the appellant did not leave Dubai out of fear of him. The grounds identify a section of the appellant's statement from the appellant's bundle at paragraph 45 to 55 and the statements of her witnesses, JK and RK, as relevant to this issue. It is said this detailed evidence gives proper reasons to believe that this was the case going beyond speculation, and that insufficient reasoning is provided for disbelieving the history in the decision of the First-tier Tribunal.
6. Secondly it is also not the case that the appellant returned to Dubai at the point when all of the key events that lead to her asylum claim had taken place, as is argued by the First-tier Tribunal, although she was concerned about a risk to her life and had decided to leave Dubai as a result. At the point when she returned to Dubai the killing of her friend M had, for instance, not taken place. The return trips to Dubai are not, therefore, a reason to disbelieve the appellant's history as argued by the First-tier Tribunal.
7. Thirdly it is argued that the finding of the First-tier Tribunal at paragraph 23 of the decision that there is no link between the appellant and the killing of the lady called M is flawed as this ignores the evidence from a newspaper article in The Nation, a well-known Kenyan newspaper, that the murder investigation into M's death had moved to Kenya and that an associate of Ahmed, Joseph I, was charged with her murder. There is no suggestion that the newspaper is a forgery. It is argued that overall the decision is unsafe due to insufficient reasons and a failure to consider relevant evidence.

- 8.** In a Rule 24 response from Mr C Avery, Specialist Appeals Team, dated 24th August 2020 it is argued that the grounds only amount to a disagreement with the conclusions of the First-tier Tribunal. It was open to the First-tier Tribunal to conclude that the evidence that “Ahmed” was involved with Al Shabab was based on part over-heard conversations and documents in a language which the appellant did not fully understand. It was also open to the First-tier Tribunal to conclude that the behaviour of the appellant did not show that she was afraid of Ahmed. The newspaper article does not include any explicit link between the appellant and the lady M who was murdered. Mr Melvin accepted that the reasoning with respect to why the links with Al Shabab were speculative is not actually set out in the decision, but argued that this was a case involving non-state actors and so there would be issues of sufficiency of protection to be explored and the appeal was therefore not going to succeed in any case so any errors were not material.

Conclusions - Error of Law

- 9.** The appellant claims that she is at real risk of serious harm from two men in Kenya, both non-state agents. The first is her ex-husband C, who is also said to be trying to take her older disabled son K (who remains in Kenya) from her, but the grounds of appeal raise no challenge to the conclusions at paragraphs 20 and 21 of the decision that the appellant has not made out a well-founded fear of persecution from him, although it is found that he may have been an unpleasant and violent man.
- 10.** The threat from the second man, Ahmed, a former partner, is dealt with very briefly at paragraphs 22 to 25 of the decision of the First-tier Tribunal. Three issues are said to tell against the history of risk from this man being well founded: the fact that his links with Al Shabab are “purely speculative”; the fact that the appellant returned to Dubai twice after supposedly becoming afraid of Ahmed; and the fact that there was no credible link between the appellant and the killing of the woman M set out in the newspaper reports.
- 11.** The First-tier Tribunal, at paragraph 17 of the decision, states that all of the evidence in the case has been carefully considered. However, I find that the statement that Ahmed is a member of Al Shabab is “purely speculative” at paragraph 22 of the decision is entirely unreasoned, and that there is insufficient engagement with the detailed evidence in the witness statements. In short summary this evidence is as follows. That the appellant saw that Ahmed held three different passports, a small gun and had photographs of armed Jihadi fighters; and the evidence of her mother, JK, that the appellant had told her she was worried about Ahmed being in Al Shabab in July 2018 for these reasons. Further the witness statement of the appellant’s friend RK, describes Ahmed wearing white Islamic style robes and that she and the appellant were

detained by the CID in Dubai because of Ahmed and his group of friends.

- 12.** The analysis of the two returns to Dubai the appellant made in August and September 2018 telling against the appellant, showing that she was not afraid of Ahmed fails, as Mr Mukherjee has argued, to consider the full time-line of events in the appellant's lengthy statement. At the time she returned for these two trips to Dubai the appellant's evidence is that she was afraid and felt a need to put distance between herself and Ahmed, first applying unsuccessfully for a visa to the US and secondly making a successful visa application for the UK through an agent (based in part on false documents), but it was only after she arrived in the UK that her mother received a call making a threat against the appellant's life from Dubai and suffered a serious fire at her home she believes to be arson, and only later still had men coming to her house asking about the appellant's whereabouts; and that her friend M was killed. Again, I find that the reasoning with respect to the issue of the appellant's flights between countries is insufficient to find that this shows that she is not credible in her claim to have a well-founded fear of serious harm from Ahmed.
- 13.** The First-tier Tribunal finds that there is no credible connection between crimes committed against M, namely her killing, and the appellant at paragraph 23 of the decision with no further explanation or reasoning. This matter is returned to again at paragraph 25 of the decision, but simply with a statement that what happened to M had no link or relevance to the fears of the appellant. Again, I find that the evidence needed to be carefully considered and reasoning set out dealing with the newspaper and witness on this issue. There is substantial newspaper evidence that M was killed and that Joseph I is the main suspect and had been charged with murder. Joseph I is said to be close friend of Ahmed by the witness RK, and the appellant is said to be a close friend of M by the witness CW. The First-tier Tribunal errs in law again by failing to engage with the evidence and provide sufficient reasoning for the finding.
- 14.** I also find that there was a failure to consider relevant evidence from the Refugee Council, Bristol Refugee Rights and Avonmouth Community Centre Association that the appellant has anxiety, depression, night terrors, panic attacks and symptoms of post-traumatic stress disorder and takes medication for anxiety and depression in the context of her claim to be at real risk of serious harm.
- 15.** I do not agree with Mr Melvin's submission that because this appeal involves non-state agents it would be bound to fail in any case due to issue of sufficiency of protection. If it were believed that Ahmed was a member of Al Shabab with an intention to harm the appellant, and had already had involvement in the killing of her friend M and arson and threats against her mother, then it is possible that this would be a case where a Tribunal might find that there is no sufficiency of protection.

- 16.** I find that the appeal should be remade in the First-tier Tribunal because it will involve extensive fact finding. I preserve only the findings that the appellant is not at real risk of serious harm from her ex-husband C. The appeal with respect to the question of whether she is at real risk of serious harm from Ahmed must be remade de novo, in its entirety, with no findings preserved. It is remitted to be heard in Newport by any First-tier Tribunal Judge other than Judge lever with a time estimate of three hours. No interpreter is required.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal dismissing the appeal and all of the findings of the First-tier Tribunal.
3. I remit the remaking of the appeal to the First-tier Tribunal.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 28th October 2020