



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

Appeal Number: LP/00023/2021 (V)
[PA/50298/2020]

THE IMMIGRATION ACTS

**Heard at : Manchester Civil Justice Centre
On : 12 November 2021**

**Decision & Reasons Promulgated
On: 26 November 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**KK
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Bednarek, instructed by Broudie Jackson Canter Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.
2. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision refusing her asylum and human rights claim.
3. The appellant is a citizen of Namibia from the Herero tribe, born on 27 November 1988. She arrived in the UK on 2 April 2019 claimed asylum on arrival. Her claim was refused on 28 May 2020 and she appealed against that decision.
4. The appellant's claim was based upon a fear of her father following her refusal to enter into an arranged marriage with her cousin. She claimed that, prior to that, she had had a child with her then partner in 2005 at the age of 17 and another child in 2007, and that the relationship had subsequently ended in 2008. She claimed that in December 2007 her father had suggested to her that he wanted to arrange a marriage for her but she did not take that seriously. She then had another relationship, with M, in 2016, but in December 2018 her father told her he wanted to arrange her marriage to her cousin, C, who lived in Botswana. She first met her cousin in January 2019. When she refused to marry him her father told her that it was a tradition in the Herero tribe and that she had to go through with the marriage. When she continued to refuse, her father became abusive. The abuse began when her father told her to meet her cousin again and she said that she would do so, but instead went to her boyfriend and told her father she had seen her cousin. He told her she was lying and he slapped her. In March 2019 her father attacked her with a belt which resulted in her having a broken nose and sustaining injuries to her back and chest. The appellant reported the first attack to the police who opened a case but took no further action. She reported the second attack to the police and had to lodge a new report and again the police took no action. After the second attack she went to her aunt's house and her aunt saw that she had been abused and rang her father who said that he should send her home and keep out of their business. Her aunt and her husband told her that it would be safer for her to go abroad and arranged for her to come to the UK. She left Namibia on 1 April 2019 and flew to the UK. In support of her claim, the appellant produced photographs of her injuries and three police reports.
5. The respondent did not find the appellant's claim to be credible and noted inconsistencies between the appellant's account and the information provided in the police reports. The respondent considered in any event that the appellant's father would not have any ongoing interest in her given that she had had no contact with him since March 2019. Furthermore, it was considered that there was support and protection available to the appellant in Namibia and that the state would provide her with a sufficiency of protection. The respondent considered further that the appellant could safely and reasonably relocate to another part of Namibia and that she would therefore be at no risk on return. It was considered that her removal to Namibia would not breach her human rights.

6. The appellant appealed against that decision and her appeal was heard by First-tier Tribunal Judge Alis. The appellant gave oral evidence before the judge, referring to three occasions on which she attended at the police station to report the abuse from her father, on 1 and 12 February 2019 and on 14 March 2019 following his attack on her. The judge considered that the appellant's account, of being forced into a marriage with her cousin when her elder sisters were not pressurised to do so and that it was not until December 2018 that her father started to pressurise her, was inconsistent with the account of the Herero tradition in relation to arranged marriages. As to the discrepancies between the evidence in the police reports and the appellant's statement and oral evidence, the judge did not accept the appellant's claim that her evidence was mis-recorded in the police reports and that there were language problems, noting that she had managed properly to engage in five interviews in the English language. The judge gave no weight to the appellant's medical records as evidence of the attack by her father and did not accept that the police reports showed that her father was trying to force her into marriage. He found further that the police reports demonstrated that there was protection available to the appellant and also considered that she could return home and stay with her aunt whom she accepted would support her. The judge rejected the appellant's claim to be at risk of persecution and dismissed her appeal on all grounds.

7. The appellant sought permission to appeal the decision to the Upper Tribunal on four grounds; firstly that the judge had failed to make findings on material evidence, namely the appellant's aunt's statement; secondly, that the judge had erred by making findings against the appellant for matters relating to decisions of a third party, namely her father; thirdly, that the judge had failed to provide sufficient reasons for rejecting the appellant's explanation for the discrepancies between the evidence in the police reports and her own statement and had failed to consider her explanation in the light of the background country information, so "putting the cart before the horse" contrary to the guidance in MT (Credibility assessment flawed *Virjon B* applied) Syria [2004] UKIAT 00307; and fourthly that the judge had misrepresented the appellant's evidence in relation to her ability to speak and understand English, her father's change in behaviour and the nature of the support which her aunt was offering and had failed to give proper consideration to the medical evidence of the scarring on her body.

8. Permission to appeal was granted by the First-tier Tribunal. The respondent produced a rule 24 response opposing the appeal and the matter came before me.

9. Mr Bednarek made lengthy submissions expanding upon the grounds. In response, Mr Diwnycz advised me that he did not resile from the rule 24 response but acknowledged that it appeared to have been prepared without the benefit of having sight of the appellant's evidence. He accepted that the judge may have descended into the error of "putting the cart before the horse" with regard to the appellant's evidence and the background evidence, as asserted in the grounds and submitted by Mr Bednarek and that there was therefore a "palpable hit" with that ground of challenge. He did not address the remaining grounds but left those for me to deal with as I saw fit.

10. In light of Mr Diwnycz's concession, and having considered the grounds of appeal myself, it seems to me that Judge Alis's findings and conclusions are simply not sustainable and that his decision cannot be upheld. Mr Diwnycz accepted that Judge Alis had "put the cart before the horse" when considering the appellant's evidence as against the background evidence drawing the adverse conclusions that he did from the discrepancies arising from the police reports, as asserted at [19] of the grounds. The judge's attention was drawn to background country evidence which it was submitted provided support for the appellant's explanation about the inconsistencies in the police reports. However, what the judge did was to dismiss the background evidence on the basis that the appellant had not provided credible evidence, rather than assess her evidence and make his credibility findings in the light of that country evidence. Given that the police reports provided a significant part of the appellant's evidence, that was clearly a material error which undermined and infected the judge's overall credibility findings. When taken together with the lack of findings on the statement from the appellant's aunt, it seems to me that the judge's credibility findings cannot be considered to be sound and that there is merit in the concerns raised in the grounds about the decision as a whole.

11. Accordingly it seems to me that the decision has to be set aside in its entirety. The appropriate course, given the nature of the errors, is for the matter to be remitted to the First-tier Tribunal for a *de novo* hearing with no findings preserved.

DECISION

12. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Alis.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: *S Kebede*
Upper Tribunal Judge Kebede

Dated: 15 November 2021