



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

Appeal Number: PA/09539/2019

THE IMMIGRATION ACTS

Heard at Field House

On 16 December 2020

**Decision & Reasons
Promulgated**

On 26 February 2021

Before

**UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE STOUT**

Between

**MM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Nicholson, Counsel, instructed on Direct Access

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

**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 the appellant 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.

1. This is an appeal against the decision issued on 18 November 2019 of First-tier Tribunal Judge Monson which refused the appellant's asylum and Article 3 ECHR claims.

Background

2. The appellant is a citizen of Zimbabwe, born in 1948. She has visited the UK for many years to see three of her children who are resident here. The appellant last came to the UK on 24 October 2016 as a visitor and overstayed her leave.
3. On 8 May 2017 the appellant claimed asylum. Her claim was refused on 19 September 2019. She appealed against that refusal and her appeal came before First-tier Tribunal Judge Monson on 4 November 2019. As above, he dismissed the protection claim in a decision issued on 18 November 2019, at the same time allowing the appellant's Article 8 ECHR appeal.
4. The appellant appealed the refusal of her protection claim to the Upper Tribunal and in a decision dated 31 January 2020 the First-tier Tribunal granted permission to appeal. The hearing of the appellant's error of law challenge was then delayed as a result of the COVID-19 pandemic and came before us on 16 December 2020.

The Protection Claim

5. The appellant's core claim was that she would be at risk on return to Zimbabwe from relatives of her second husband, AB, and from the authorities as AB's relatives were connected to ZANU PF, the Central Intelligence Organisation (CIO) and the police.
6. The appellant set out that she separated from AB in 1995 but he had allowed her and their two children, S and A to carry on living in the house in Belgravia. AB transferred ownership of a valuable property in Harare to the two children in 2011 but with a clause indicating that the appellant was permitted to reside in the house until her death or remarriage. The appellant lived in the house after the children grew up and left but as it was too large for her and expensive to run, she rented it via an agency and the tenants turned the property into a restaurant. Members of AB's family, including EC and JB began to harass her, accusing her of allowing MDC activities to take place at the property in Belgravia. EC was the nephew of AB, who was a Deputy Intelligence Office in the CIO and was a war veteran. JB was a Superintendent in the police. They also had powerful connections in the government and she was contacted directly by a minister, C, about the use of the property.

7. In December 2015 the caretaker of the property informed the appellant that AB's son from a previous marriage, CB, had gone to the restaurant and forced the tenants to leave and then held a ZANU-PF youth meeting.
8. After AB died in January 2016, his relatives increased the pressure on the appellant to give them the original deeds to the property, maintaining that it belonged to them. The appellant could not comply with their demands as the property belonged to her children who were no longer in Zimbabwe and she had only a copy of the deed of transfer. AB's relatives maintained that the deed of transfer was not valid as AB had not had capacity when it was made. The tenants of the property were also harassed by AB's family and because they knew that the family was connected to ZANU-PF, the CIO and the police, agreed with their demands to pay them the rent rather than the appellant.
9. On 30 April 2016 EC and CB went to the appellant's home and demanded that she surrender the original deeds. The appellant was only able to show them a copy of the deed of transfer. She was very concerned that they had found her even though she had not told them where she lived. In August 2016 EC told the appellant that she and S and A had to attend a meeting at the High Court on 1 September 2016 and were required to bring with them the original title deeds of the property. The appellant was told that if she did not attend she "would die for the house". Neither the appellant nor S and A wanted to attend the hearing and, fearing mistreatment, the appellant left Zimbabwe, initially staying with another daughter in South Africa.
10. The appellant considered that the court claim was unfounded but given that AB's family had the backing of ZANU-PF and the CIO, she was afraid to defend the claim. She knew of cases where lives had been lost in inheritance disputes in Zimbabwe. It was her belief that if she returned to Zimbabwe she would have no choice but to stay in hiding because she would be found again by AB's family and harmed or would be persecuted by ZANU-PF because the family had made false allegations about her supporting the MDC. She therefore used her entry clearance to come to the UK and claimed asylum.

The Refusal Decision dated 19 September 2019

11. In the refusal decision dated 19 September 2019, the respondent accepted the appellant's account that she had been threatened on numerous occasions because of the property dispute with her late husband's family. It was also accepted that the family of AB had made allegations against her, maintaining that the property was being used for MDC and opposition activities. The respondent also accepted that AB's family had strong connections to ZANU-PF, including with a government minister, C, that EC worked for the CIO and was involved with the war veterans and that JB was a Superintendent in the police.

12. The respondent accepted that these matters supported the appellant's subjective fear of mistreatment on return but did not find that her fear was objectively well-founded. The appellant was not a political person. The country evidence indicated that there was significantly less politically motivated violence in Zimbabwe and that someone having no significant MDC profile would not be likely to face difficulties on return. The country guidance case of CM (EM country guidance: disclosure) Zimbabwe CG [2013] UKUT 00059 (IAC) indicated that the appellant could return to a medium density area of Harare or Bulawayo where she would not suffer adverse attention from ZANU-PF even if she had a significant anti-government profile. Any risk on return was also reduced as C, the minister who had been involved with AB's family had left the government after President Mnangagwa took power. This indicated that it was less likely that ZANU-PF could be influenced to act against the appellant. The family of AB had effectively taken control of the property and this reduced any motivation to harm her on return. It was not accepted that the appellant faced a risk as a lone woman or that she would be unable to seek protection if a risk did arise.

First-tier Tribunal Decision dated 18 November 2019

13. In the decision of 18 November 2019, First-tier Tribunal Judge Monson noted in paragraph 44 that the respondent "has made significant concessions in the RFRL with respect to the appellant's explanation for claiming asylum." He went on to state:

"It is not open to me to go behind these factual concessions and I do not propose to do so. However, I am not required to find the appellant credible on matters which fall outside the scope of the concessions, and which go to the disputed issue of whether her fear of persecution on return is objectively well-founded."

14. The judge went on in paragraphs 45 to 52 to find that the appellant's evidence appeared to refer to two different properties and not one property. He found in paragraph 52:

"52. The upshot of the above is that it has not been shown to the lower standard of proof that the Appellant's children by AB are the legal owners of the ... property; or that the original Title Deeds to this property are in their control or in the control of the Appellant, as opposed to being in the control of the relatives of AB who took over the property in 2016."

15. Having made this adverse finding, the judge continued:

"53. In any event, on the Appellant's account, the relatives have got what they wanted. They have control of the property, and they have been receiving rent from it since February 2016. Since there is no credible documentary evidence that either the Appellant or her two children have a legal claim to this property, there are not substantial grounds for believing that the relatives would be unable to sell the property if they wished to do so.

54. There are also not substantial grounds for believing that the family of AB would perceive the Appellant as returning to Zimbabwe in order to fight to get the property back. Firstly, the Appellant did not put up a fight for the property while she was there, and secondly, as her legally qualified daughter confirmed in her oral evidence, she does not have a legal claim to it anyway.
 55. For the above reasons, there is not a real risk of harm to the appellant on return to Zimbabwe on account of a past inheritance dispute. There are also not substantial grounds for believing that the Appellant faces a real risk of persecution or serious harm on account of being perceived as being opposed to ZANU-PF or the government. The Appellant was not accused by AB's family of being opposed to ZANU-PF. The accusation was that she has mismanaged the property by allowing her tenant to host opposition party meetings at the premises.
 56. On one version of events, the property is still let by [EC] to the same tenant. If so, this underscores the fact that the relatives did not genuinely care about the tenant hosting opposition meetings at the premises, but were just using this as an excuse to justify their seizure of the property."
16. The First-tier Tribunal therefore refused the asylum and Article 3 ECHR claims. The appeal under Article 8 ECHR was allowed as there were very significant obstacles to reintegration where it was accepted that the appellant's subjective fear would lead to her living alone in hiding in order to avoid the family of AB and adverse interest from ZANU-PF.

Appellant's Grounds

17. The appellant brought three main challenges to the decision of the First-tier Tribunal. The first ground maintained that the adverse finding on the facts of the appellant's claim was not open to the First-tier Tribunal where her account had been accepted by the respondent and was no longer in dispute. The second challenge was to the finding of there being no ongoing risk from the relatives of AB. The third ground maintained that the First-tier Tribunal erred when assessing the country evidence.
18. The first ground argued that the judge had made an error of fact in finding that there were two properties involved in the appellant's account and that this undermined her claim of past and future harm from the family of AB. This had never been a matter in dispute at any point, in the respondent's refusal letter or at the hearing. It was unfair of the judge to make this finding without allowing the appellant an opportunity to address any concerns where the appeal had proceeded on the basis that her account was credible.
19. The grounds also maintained that the judge did not provide adequate reasons for concluding that there would be no further risk of harm from AB's family on the basis that they were now in control of the property and they would not perceive her return to Zimbabwe as a bid to reclaim the property. The decision failed to take into account that the appellant

feared EC who, rather than becoming less powerful had become ambassador to Sudan under the Mnangagwa regime. JB remained in the police and CB remained connected to ZANU-PF. The claim involved imputed political opinion and not merely a property dispute, as the judge appeared to conclude.

20. The grounds also maintained that the judge failed to consider material aspects of the country evidence. EC remained in a high-ranking position within the Zimbabwe regime, had been in the CIO and this raised a risk that the appellant would be stopped at the airport on return. The respondent's Country Policy Information Note (CPIN) dated February 2019 showed that the CIO continued to monitor Harare Airport. The CPIN also showed that someone merely perceived as political could be at risk, paragraph 2.4.22 stating:

“During the January 2019 demonstrations, there have been reports that security services used excessive force on protestors and those in the vicinity. Those perceived to have been in opposition to the government at this time have faced harassment, arrest and ill-treatment including assaults, gunshot related injuries and at least eight deaths. Further direct targeting of the opposition (and perceived opposition) including NGOs continued after the initial violence, through house raids, arrests and detentions.”

The First-tier Tribunal had also erred in failing to address the extensive evidence on how widows and women in general are treated in Zimbabwe, the materials referring specifically to mistreatment because of property disputes after the death of a husband.

Error of Law Decision

21. Following the grant of permission to appeal and in response to directions from the Upper Tribunal, in a written submission dated 18 November 2020, the respondent made the following concession:

“There is a material error of law in the findings of Judge Monson and a misinterpretation of the appellant's evidence with regards to addresses in Zimbabwe.”

22. At the hearing on 16 December 2020, Mr Walker clarified that the respondent accepted that the decision disclosed a material error on a point of law as the First-tier Tribunal had made an impermissible adverse finding against the appellant. The judge had found that the claim concerned two properties, not one, when the respondent had accepted the appellant's claim that there had dispute over only one property and that the appellant had been threatened when AB's family had tried to secure ownership of that property. The appellant was not given any opportunity to address any concerns on the point. The adverse factual finding undermined the assessment of risk of return. Mr Walker submitted that the First-tier Tribunal decision should be set aside to be remade on the basis of the appellant's account being accepted at its highest, in line with the respondent's position in the refusal letter.

23. We found that the respondent's concession was made correctly. The First-tier Tribunal, without affording the appellant to address any concerns, made adverse findings against the appellant on matters that had been accepted by the respondent. These adverse findings undermined the assessment of risk on return from AB's family and the conclusions drawn from the country evidence. We found that the decision disclosed a material error on a point of law such that it had to be set aside for the assessment of risk on return to be remade on the basis of the agreed facts.
24. We therefore proceeded to hear submissions on risk on return from the representatives and reserved our decision.

Re-making of the Asylum and Article 3 ECHR claim

25. The appellant claims to be a refugee whose removal from the United Kingdom would breach the provisions of the Refugee Convention and Article 3 of the ECHR. We reminded ourselves that the burden was on the appellant to show substantial grounds for believing that she would face a real risk of persecution on return for a Refugee Convention reason or torture or inhuman and degrading treatment.
26. As before, the respondent does not dispute the appellant's claim or her subjective fear of the family of AB and the authorities. We noted that her fear is not only from the family themselves but from the authorities where the family, falsely, created a profile for her as a supporter of the opposition, their strong links inside the ZANU-PF regime and the security services enabling them to do so. Albeit the allegations were made because the family wished to obtain ownership of a valuable property, they leave the appellant as someone with an imputed political opinion as a supporter of the MDC. The risk to her from such a profile is a real one given the status of the family of AB, even though the allegations were false.
27. We also find that the evidence is sufficient to show that the appellant will face ongoing hostility from the family of AB on return. Their harassment of her in the past was over a period of years and escalated to the extent that her life was threatened. The family has not obtained the original title deed of the property and the history shows that they were not satisfied with merely being in receipt of the rental income, commencing court proceedings to gain ownership and threatening the appellant with physical harm if she did not co-operate in those proceedings. The family remain in powerful positions and with links to the security organisations including the CIO and war veterans. EC is in an even more senior position within the ZANU-PF regime, having become ambassador to South Sudan. As indicated in paragraph 2.4.13 of the respondent's CPIN dated February 2019, "there is a lack of clear and cogent evidence that the government has, in practice, fundamentally changes the political environment or how it treats those opposed to the state". It did not appear to us that the change of President and of some members of the ZANU-PF government showed

that the family of AB were less able to harm her on return. They remain able to use their positions to harass and threaten the appellant themselves and to promote her profile as an active MDC supporter.

28. We also found that the country evidence showed that the country situation remained poor. The US Department of State's Country Report on Human Rights Practices for 2019 issued in March 2020 sets out:

“Significant human rights issues included: unlawful or arbitrary killings of civilians by security forces; torture and arbitrary detention by security forces; harsh and life-threatening prison conditions; political prisoners; arbitrary or unlawful interference with privacy; serious problems with the independence of the judiciary; the worst forms of government restrictions on free expression, press, and the internet, including violence, threats of violence, or unjustified arrests or prosecutions against journalists, censorship, site blocking, and the existence of criminal libel laws; substantial interference with the rights of peaceful assembly and freedom of association; restrictions on freedom of movement; restrictions on political participation; widespread acts of corruption; crimes involving violence or threats of violence targeting women and girls; and the existence of laws criminalizing consensual same-sex sexual conduct between adults, although not enforced.

Impunity remained a problem. The government took very few steps to identify or investigate officials who committed human rights abuses, and there were no reported arrests or prosecutions of such persons.”

“The government often refused to abide by judicial decisions and routinely delayed payment of court costs or judgments awarded against it in civil cases. Judicial corruption was widespread, extending beyond magistrates and judges. For example, NGOs reported senior government officials undermined judicial independence, including by giving farms and homes to judges.

Magistrates heard the vast majority of cases. Legal experts claimed defendants in politically sensitive cases were less likely to receive a fair hearing in magistrates' courts than in higher courts. In lower courts justices were more likely to make politicized decisions due to the use of threats and intimidation to force magistrates, particularly rural magistrates, to rule in the government's favor.”

“Corruption in both the public and private sectors persisted. The country continued to experience both petty and grand corruption, defined respectively by Transparency International Zimbabwe as an “everyday abuse of entrusted power by low- to mid-level public officials” and “an abuse of high-level power by political elites.”

29. The 2019 Foreign & Commonwealth Office (FCO) Report issued in July 2020 sets out:

“The human rights situation in Zimbabwe deteriorated in 2019. The human rights monitoring group, Zimbabwe Peace Project, recorded 2,761 human

rights violations in the course of the year. This was more than a 10% increase on their figures for 2018.”

“In addition, the Zimbabwean government had yet to fulfil its commitment to implement in a meaningful way the Commission of Inquiry's recommendations following the violence on 1 August 2018, when members of the Zimbabwean Armed Forces opened fire on protesters killing 6 and injuring many more. The Commission made 24 recommendations, including that the police urgently complete their investigations to enable the prosecution of those responsible for all alleged crimes committed.”

“2019 witnessed backsliding on political freedoms in Zimbabwe. Using legislation, the Zimbabwe Republic Police (ZRP) issued prohibition orders against demonstrations by the opposition and by some civil society and teachers' groups. Where protests went ahead, the ZRP responded heavily-handedly, including with beatings. The Zimbabwe Human Rights NGO Forum reported 67 abductions, including of doctors, artists and civil society activists, and 21 civil society and opposition activists were charged with subversion on unclear grounds. None of the trials of the arrested activists had begun by the end of the year. In November, the Zimbabwean government replaced the repressive 'Public Order and Security Act' with the 'Maintenance of Peace and Order Bill'. This change was an improvement in some respects, particularly the requirement for presidential assent before the army could be deployed to quell disorder. However, we had yet to see meaningful implementation of the new legislation.”

“Zimbabwe experienced high rates of gender-based violence. There were reports of physical and sexual violence against women perpetrated by the security forces, particularly during the protests in January, and when the security forces were deployed in response to Cyclone Idai in March.”

30. Against that background, we found that the family of AB, still either working for the ZANU-PF regime or retaining links with the state security apparatus, remain in a position to cause serious harm to the appellant on return. The country evidence refers to abuse of power and impunity for members of the regime at different levels. The harassment concerning the disputed property is likely to reoccur together with the tactic of imputing an opposition profile to the appellant. The family were able to locate her in the past when she had sought to avoid them. It has already been accepted that the appellant would be forced to live in hiding on return as a result of her subjective fear. The very specific adverse interest in the appellant, the closeness of the family members of AB to the ZANU-PF regime and to the security services indicated to us that, as before, the appellant would be unlikely to be able to relocate to avoid them or those they sought to use in order to harm her. The country evidence on the abuse of power by members of the regime at all levels, the degree of impunity and corruption and politicisation of the legal system indicated to us that the appellant would be unlikely to be able to seek protection and would face significant difficulty in avoiding serious adverse interest from her husband's relatives, additionally so given her profile as a lone, older woman.

31. For all of these reasons we found that the appellant had shown that she would be at risk of serious harm if returned to Zimbabwe, would be unable to relocate or seek sufficient protection to avoid that harm and that her claims under the Refugee Convention and Article 3 of the ECHR must succeed.

Notice of Decision

32. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside for the appeal on asylum and Article 3 ECHR grounds to be remade.
33. The decision of the First-tier Tribunal allowing the appeal on Article 8 ECHR grounds shall stand.
34. We remake the appeal and her asylum and Article 3 ECHR claims are allowed.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 25 February 2021