



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: **UI-2024-000780**  
**PA/52112/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 12<sup>th</sup> of June 2024**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**  
**DUT JUDGE FARRELLY**

**Between**

**Ms HNN**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Amanda Jones, Counsel, instructed by Srihans Solicitors  
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

**Heard at Field House on 16 April 2024**

**DECISION AND REASONS**

Introduction

1. The Appellant is a Kenyan national, born in December 1970. She is from the Kikuyu tribe.
2. She flew from Kenya via Qatar to the United Kingdom on the 18th of January 2019. She used a six-day business visa for entry clearance, arriving in Manchester on the basis she was going to a conference there. She claimed protection on the 20th of February 2019.
3. She told the respondent that she married in 1994. She said her husband is a member of the Mungiki gang or sect. She said he was abusive towards her, and she feared him. She said she left him in 2013, taking their children with her and

went to her brother's house. Some six months later, on the 27th of February 2014, she went to Saudi Arabia, working as a domestic. Her four children remained in Kenya, cared for by her parents and brother. She said the family she worked for were abusive towards her. She then returned to Kenya in May 2017.

4. She indicated that she had been trafficked into Saudi Arabia. A referral was made to the Competent Authority on the 21st of March 2019 who made a positive conclusive grounds decision on the 14th of October 2021.
5. She advised immigration officials that she had undergone genital mutilation when she was 15 years of age.

#### The respondent's decision

6. The respondent considered her claim on the basis she potentially had been trafficked and was a victim of modern slavery. The respondent also considered whether she was a member of a particular social group because of the genital mutilation. She also had said she feared her husband if returned.
7. Her claim was refused on the 20th of March 2023. The respondent accepted she had undergone genital mutilation and had been trafficked to Saudi Arabia where she had been abused. However, the respondent concluded she did not form part of a particular social group in Kenya, sharing innate or immutable characteristics with a distinct identity in the country. Her fear of her husband did not engage the Convention.
8. Her credibility was challenged based on inconsistencies about her account of living apart from her husband, particularly as in her visa application she stated they were together. In her asylum interview she said that an agent had completed the application, and she was unaware of its content. However, at an earlier interview she confirmed she had filled in the application herself. The respondent considered she had failed to provide sufficient detail in relation to her claim that her husband continues to seek her out intending to do her harm.
9. In support of her claim, she had submitted a medical report purporting to be from the Kenyan police. It was noted the report carried the date the 8th of December 2012 on the first page and the 8th of February 2012 on the second page. The respondent did not consider the document was reliable.
10. The refusal decision raised Section 8(2)(a) and (b) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, pointing out she gained entry using a business visa. At interview she indicated that when she entered, she did not intend to leave, contrary to the terms of the visa.
11. Regarding her claimed fear of her husband, the respondent was of the view there was sufficiency of protection for her in Kenya. It was also felt there was a reasonable option of relocation, for instance, to Mombasa.
12. The refusal was maintained on review. It was noted the skeleton argument on behalf of the appellant did not suggest she was at risk of re-trafficking. The review also said that the objective evidence produced did not demonstrate her husband was associated with or a member of the Mungiki sect. The sect has been outlawed and the appellant could seek protection from the police. Extracts from her medical records had been provided and on review it was concluded the high threshold for a claim to succeed on Article 3 had not been reached.

### The First-tier Tribunal

13. The appellant's appeal was heard before First tier Tribunal Judge Sweet and was dismissed. The appellant was represented by counsel and there was a presenting officer in attendance. The judge found the appellant's oral evidence evasive and vague. The judge referred to her ability to remain in Kenya for over six months before coming to the United Kingdom without claiming difficulties from her husband. Her delay in claiming protection went to her credibility. The judge rejected her claim of being unaware of the process. The judge also referred to the details in the business visa application wherein she indicated she was coming to the United Kingdom for a six-day conference in Manchester. The application indicated she was living with her husband, and she was employed. The judge found this information to be false. Regarding the medical report from the police, the judge pointed out this was a copy and was largely illegible. The judge concluded by finding the appellant was not at risk on return and that she could relocate if there were any risk. There was also sufficiency of protection. No breach of her article 8 rights was found.

### The Upper Tribunal

14. The appellant appeals with permission against the decision of First-tier Tribunal Judge Sweet on three grounds. The first of these was that the judge made no findings on certain historical matters. There was no specific finding in relation to the claim that the appellant feared violence from her husband, a member of the cult Mungiki. There were no findings in the determination on the appellant's claim that in December 2012 she was a victim of spousal rape and sustained serious injuries. The appellant's account was that she reported this to the police, but they did not act, and she was left with no option but to return to her husband.
15. The second ground was that the judge, when considering her credibility, failed to consider that much of her account had been accepted by the respondent. It was accepted she was a victim of trafficking following a conclusive decision.
16. The final ground was the judge failed to consider the background country evidence in relation to the Mungiki when considering the question of sufficiency of protection.
17. At hearing the appellant's counsel referred us to paragraph 10 and the judge's findings at paragraph 19, submitting that this was a relatively brief decision.
18. We were referred to paragraphs 19 through to 21 of the decision. It was argued the judge made little findings in relation to the abuse claimed from her husband or the culture of domestic violence. There was no finding in relation to the appellant's account that she had been raped by her husband. She had suffered abuse from her spouse and then she went to live with her brother who lived about an hour away. She then referred to travelling to Saudi Arabia and in her skeleton argument had claimed that she feared re-trafficking to Saudi Arabia. It was however accepted by the appellant's counsel that this first ground of appeal was not material and could not succeed unless there was also an error of law on the third ground.
19. The appellant's counsel then referred to findings made by the judge at paragraph 22 to 25. It was highlighted that there was agreement by the respondent about significant parts of the appellant's claim, but the First-tier Tribunal decision only

focused on negative matters without balancing these against the parts which were accepted as credible.

20. It was further submitted that the judge failed to highlight what had been agreed and in commenting on the visa application should have referred to the fact she was a victim of trafficking .It was relevant that she had already been found to be credible on this point .In that context, it would not be a stretch to find as plausible a fabricated visa application was made on her behalf .
21. The appellant’s counsel then referred to the third ground advanced which related to the objective evidence about the Mungiki which was not specifically considered in the decision at all. Specific reference was made to two articles in the bundle of evidence which were relied upon in general (rather than any specific parts) which showed the escalation of power and sinister links of the Mungiki, as well as increasing use of violence and attacks on police officers. It was accepted that these articles did not contain any evidence of the ability of individual members of the Mungiki using their connections as such to take revenge on specific individuals.
22. In response, the presenting officer, Mr Wain, submitted there was nothing to indicate the appellant had a fear of being re trafficked, on which there was no reference in her written statement. The risk alleged came from her husband. However, paragraph 22 to 24 of the decision the judge had rejected her claim of abuse in its entirety. He submitted the judge did not need to go through every single point that had been mentioned. Regarding the second ground advanced, he referred again to the appellant’s visa application and the fact she had no intention of returning when she passed through entry clearance and that the judge had expressly considered and rejected the appellant’s explanation for the incorrect details on her application.
23. In relation to the third ground of appeal, Mr Wain referred us to the objective evidence of pages 204 to 209 of the bundle, which were not expressly cited in the appellant’s skeleton argument before the First-tier Tribunal. In any event, these were considered in paragraph 27 of the decision and in fact supported the conclusions that there was a sufficiency of protection available to the appellant in Kenya.

### Consideration

24. It is important to consider the decision in its entirety. Paragraphs 1 to 7 succinctly and accurately sets out the issues. We consider the first two grounds of appeal together. At paragraph 19 the judge records the appellant’s claim to have been abused by her spouse. It is our view it was not necessary for the judge to determine specifically whether this included spousal rapes given the overall rejection of the claim that she would be at risk on return from her husband, as well the availability of internal relocation and a sufficiency of protection.
25. In making that assessment, the judge considered the following. At paragraph 22 the judge recorded that the appellant’s evidence was evasive and vague. The judge had the advantage of hearing and seeing the appellant. The judge commented on the fact that the appellant was able to return to Kenya and lived there trouble free for over six months before coming to the United Kingdom. This was a relevant consideration when assessing any risk from her husband.

26. The judge noted the medical evidence submitted in respect of the claimed physical and psychological trauma, as well as the positive grounds decision. The fact that some parts of the claim were accepted by the respondent was not determinative of the credibility of the appellant's claim that she was unaware of the details on her visa application form. The judge commented on her delay in claiming protection and the deception involved in passing through entry clearance on a business visa, in which she had claimed that she was residing in Kenya with her husband. These were relevant considerations in assessing the appellant's credibility. It was rationally open to the judge to find that deception had been used in the visa application and that its contents undermined the claimed risk from her husband.
27. On the third ground of appeal, the judge concluded by finding the appellant was not at risk on return. This was a factual finding open to the judge on the evidence. Although there was no express reference to five specific pages in the bundle of evidence before the First-tier Tribunal (which were not directly relied upon at the time) these pages could not have materially affected the overall finding given that the articles were of a high level and general nature about the Mungiki without any detail that specifically supported the appellant's claim to be at risk from her husband because of his membership of the Mungiki. This evidence did not in any way undermine the points expressly made by the judge; which included that if there were a risk it would be reasonable to expect relocation by reference to the CPIN report of 2018 at 3.1; that familial support was available on return and there would be sufficiency of protection by reference to the CPIN report at 2.3.3. These were findings which were rationally and lawfully open to the First-tier Tribunal.
28. In summary, the judge correctly identified the issues and assessed the evidence. It was not necessary for the judge to go into detail on all points arising provided the essential features were noted and dealt with. We find this to be the case. For all of these reasons, we find no error of law in the decision of First-tier Tribunal Judge Sweet.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

*Farrelly.*

*Francis J*

DUT Judge of the Upper Tribunal  
Immigration and Asylum Chamber