Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03830/2012

THE IMMIGRATION ACTS

Heard at North Shields
On 21st August, 2013

Determination Promulgated
On 30th September 2013

Before

Upper Tribunal Judge Chalkley

Between

AHMEDI KAAYA
(No anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss M Rasoul, instructed by Miles Hutchinson & Lithgow Solicitors
For the Respondent: Hilary Rackstraw, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Uganda who was born on 12th April 1981.

2. The appellant left Uganda on a direct flight to the United Kingdom, arriving on 10th March, 2005. He was arrested during a joint police/UK Borders Agency visit to a carwash business in London on 26th April, 2010.

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3. The appellant claimed asylum on his arrest, but his claim was rejected by the respondent who, on 29th March, 2012, decided to remove him from the United Kingdom as an illegal entrant. The appellant appealed that decision and his appeal was heard by First-tier Tribunal Judge Bircher on 15th May, 2012. She dismissed his appeal under the Refugee Convention, the Human Rights Convention and against the refusal of the respondent to grant him humanitarian protection.

4. On 20th September 2012 Upper Tribunal Judge Spencer granting permission to appeal to the Upper Tribunal said this:

> "I take the view that it is arguable that the First-tier Tribunal judge's treatment of the report of Dr Warrington, a Medical Foundation doctor, amounted to an error of law. She appeared to give it little weight because she had already rejected the credibility of the appellant's account and wrongly thought that Dr Warrington expressed the opinion only that the scars which the appellant bore were consistent with the account of how they were inflicted, given by the appellant, when in fact there were three scars which were diagnostic of the attributions given, ten scars which were typical of the attribution given and twenty-two scars which were highly consistent with the attribution given, besides twenty-seven scars which were consistent. Dr Warrington's opinion was that the total picture of the scars was strong evidence of torture. All of the grounds may be argued.
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> NOTE: For the reasons set out above I have taken the provisional view that the appeal to the Upper Tribunal should now be allowed and the Upper Tribunal should proceed to a hearing to re-make the decision of the First-tier Tribunal at which none of the findings made by the First-tier Tribunal are to be preserved. Any submissions to the contrary must be made to the Upper Tribunal (Immigration and Asylum Chamber), Field House, 15 Breams Buildings, London EC4A 1DZ, marked for the urgent attention of Upper Tribunal Judge Spencer, within 28 days of the date of this Order."

5. No submissions to the contrary were received and the matter was set down for hearing on 21st August, 2013, before me in North Shields.

Oral Evidence of the Appellant

6. The appellant was called. The interpreter and appellant both confirmed to me that they understood each other. The appellant told me that he was born on 12th April, 1981 and that he was a Ugandan citizen.

Evidence-in-Chief

7. The appellant told me that he was unmarried but does have a child in the United Kingdom who is now aged 1 year and 8 months. He is in a current relationship with his son's mother, who is Ugandan citizen. The appellant's son lives in London and the appellant sees him roughly once a month.

8. While living in Uganda, the appellant attended university and studied religious studies and history. He did not complete his degree.

9. The appellant left Uganda in 2005, because he thought that he was about to be arrested by the government. He supported Dr Besigye. The appellant had

supported him from 1999. The appellant was not a member of a political party at that time, but later he joined Reform Agenda, which later become FDC. The appellant claimed to have joined Reform Agenda in 2002. The appellant said that during the campaign Reform Agenda's theme was to reform the political agenda in Uganda.

10. I made a brief note in my Record of Proceedings that the appellant was not answering the questions he was asked, but appeared to be obfusticating. There was nothing unusual or difficult about the questions.

11. The appellant said that he joined FDC and was the secretary and organiser and a mobiliser. This was for Bulo Town Council.

12. In 1999 he was arrested and taken to a police cell. He told me that the cell was 8′ by 10′ and there were eight people in it. He was held in this cell for further days. The appellant was asked why he had been arrested and his reply was that he had been arrested because, "I was mobilising the youth" and he was supporting the new leader. He gave no details of what he had actually been doing that caused him to be arrested and was, I believed, another example of his obfustication.

13. The appellant told me that his cell was dirty and a bucket was used as a toilet which was never emptied. The occupants of the cell were fed once a day and they were all being beaten almost all the time. Dirty water was thrown at them and the appellant told me that he was kicked in several places. They were not provided with any medical treatment. The appellant was stripped naked and had nothing to cover himself. There was no bed to lie on. When he was being beaten he was told that he should not, "mess around with the government". It was the police officers who beat him who had said this.

14. The appellant received his injuries during this time. He has scars on his legs and had bruises on his back and swelling on his chest and mouth. He bled and vomited blood. He received no treatment in custody.

15. On his release, the appellant said that he received treatment from hospital. He was in hospital for three days. His father got him a doctor and eventually he got better.

16. The appellant told me that it took him a long time to recover, almost seven months. After his release he continued with his political activities. He was asked what he actually did and he said that he, "continued to mobilise people" until the 2001 elections, but he gave no details. The appellant had on several occasions been asked questions which called for him to give an explanation of what his political activities consisted of and he appeared to either be reluctant to tell me, or was simply not able to tell me.

17. The appellant said that he was arrested and imprisonment because of his support for Dr Besigye in 2001. He was at the university at the time. He took part in a debate when riot police came and he was arrested.

18. The appellant said that he was hurled to the ground, handcuffed, thrown into a pickup truck and the police sat on him. He did not know where he was.

19. The place was pitch black and there was no light and there was a lot of torture when he was in that place.

20. The appellant said that "they" used electric shock "and a gun butt" and he was held for seven days. He was told that he would be killed if he did not give up his political activities.

21. The appellant said that after his release he become politically involved again.

22. The appellant told me he would never give up. If he were to return to Uganda now he would carry out political activities. He did not suggest what they might consist of.

23. The appellant claimed to have been in hiding until his departure and had no more problems. The Ugandan government did not like people questioning their authority.

14. The appellant left Uganda because the situation had become more dangerous. He was assisted by his parents and took their advice that he should claim asylum.

25. The appellant said he left Uganda because of the situation and because of what he had been through. He had become "strongly opposed" to the government.

26. Before he left Uganda, he had been studying at university and had been involved in a debate at university on an earlier occasion. Between 2003 and 2004 he stood up at Freedom Square with youth from UYD. UYD jointly with the Besigye supporters were speaking out and the riot police again attacked people. The appellant said he escaped.

27. If he were to return to Uganda now he thought he would be arrested and imprisoned, because the current situation in Uganda means that the government do not allow assemblies of more than four or five people. As a result, the appellant cannot talk to people. He told me, "We need change in the country".

28. The appellant was shown a photocopy of a Forum for Democratic Change membership card in his name dated 10th May, 2007. He told me that the card had been sent from Kampala. He had bought the card from the head of the party. He was then shown a letter dated "5th, 05, 2010" which said that it was from the secretary of the party. It had been sent by facsimile and the original was in Kampala. He told me he was still a member of the FDC.

29. The appellant was then shown a letter dated 11th March, 2001 signed by Major General Katumba Wamala. He said it was sent by one of his friends he had stayed with in Kampala. His friend is not a policeman, but he has contacts with the police.

30. The letter claimed that the appellant was wanted by the police in Uganda for crimes committed *during* the 2001 elections. It was pointed out to the appellant that the letter was dated the day *before* the election. He said he could not remember the date. The campaigning had carried on since 1999. He was arrested and had been held.

31. The appellant said he left Uganda in 2005. The police letter is dated 2001 because the police had not arrested him. They had not arrested him because he was hiding and avoiding places where he thought that the police might get hold of him. He was studying at the time. He attended evening lectures.

Cross-examination

32. The appellant confirmed that he left Uganda in 2005 after his father had suggested he should claim asylum. He did not claim asylum on arrival, because he did not know the procedure. He was in fear because of what he had gone through and did not know what might happen to him. When he was arrested by police and UK Border Agency officials, he was taken to Oakington. He was booked on a flight. Someone in Oakington was claiming asylum and they helped him make a claim.

33. The appellant was referred to the medical report. The appellant said he had not told the doctor that he was a keen footballer. He said that he watches a lot of football but does not play football now. He used to as a child. He told me he had not coached in football. Between the date of the incident at the university and leaving Uganda the appellant had not been employed.

34. He was referred to the three documents he had produced and explained that he did not have the originals. He believed that his friends in Uganda may have been scared to send them to him.

Re-examination

35. In 1999 the appellant had been held in detention but then found himself in hospital. He discharged himself and went home. After his 2001 detention he was simply abandoned on the street.

36. The appellant then told me that it had been the military police who had detained him.

37. The appellant confirmed that he was not married to his son's mother although he would like to get married when his case is resolved. He told me he did not know if his son's mother had a visa to be in the United Kingdom but he thought her leave had expired.

Submissions

38. I then heard submissions from the Home Office representative who told me that she relied on the Reasons for Refusal Letter. She asked me to note that the five years delay in claiming asylum was despite the fact that the appellant claimed that his

father had advised him to claim asylum. She asked me to bear in mind that this was a man who had been educated at university and was clearly intelligent. She asked me to make adverse findings on the appellant's credibility and to attach no weight to the documents he produced.

39. Counsel reminded me that the appellant's delay in claiming asylum had been lengthy, but it had to be borne in mind that he was frightened of uniforms and particularly of people in authority. The documents on which the appellant seeks to rely actually support the appellant's claim, as does the medical evidence. Counsel addressed me at some length referring to the objective evidence submitted and invited me to allow the appeal.

40. I reserved my determination.

The Law

41. In asylum appeals the burden of proof is on the appellant to show that returning him to Uganda will expose him to a **real risk** of persecution for one of the five grounds recognised by the 1951 Refugee Convention or to a breach of his protected human rights. The question of whether a person has a well-founded fear of persecution for a Convention reason has to be looked at in the round in the light of all the relevant circumstances and judged against the situation as at the time of the appeal. In human rights appeals, if it is established that there will be an interference with the appellant's human rights and the relevant Article permits, then it is for the respondent to establish that the interference is justified.

42. The standard of proof in asylum appeals as regards to both the likelihood of persecution and the establishment of past and future risks, is a **real risk**. In Kacaj v Secretary of State for the Home Department (01/TH/0634*) it was held by the Immigration Appeal Tribunal that the standard of proof in human rights appeals is the same as that in asylum appeals.

Background Evidence

43. I confirm that I have carefully read and examined the background evidence. I have of course paid particular attention to those parts of the background evidence that Counsel drew my attention to, but I must make it clear that I considered it all.

44. I noted the *Voice of America* report of Peter Clottey dated 4th February 2013. He referred to a prominent Ugandan political activist asking the International Criminal Court to investigate alleged human rights abuses. Dr Kizza Besigye was reported as saying:-

> "There are widespread crimes and atrocities that have been committed and the important thing is that the criminal justice system in the country presently is incapable of handling these cases because of the compromised [state] of the criminal justice system."

45. The next document was a report of *Human Rights Network For Journalists – Uganda* dated 6th February, 2013, and referred to the police having arrested nine anti-

corruption activists for distributing anti-corruption materials at Makerere University. The report said that it was the third time that members of an anti-corruption civil society group had been arrested and questioned by the police for distributing anti-corruption news bulletins.

46. In a subsequent *Human Rights Network For Journalist* report dated 8th February, 2013, it was said that journalists continue to be attacked by security agencies, mainly the Ugandan police, and verbal threats of arrest and closure of media houses which "sabotaged the government" continue.

47. The next document in the appellant's bundle was the UK Border Agency *Operational Guidance Note* of 20th March 2013. This referred to the UNHCR registering a total of 1,021 new complaints on human rights violations during 2011, a 28% increase over 2010. There was also a 22.2% increase in the number of claimants to UNHCR relating to the right to a fair and speedy trial. The constitution and law provide for an independent judiciary and the report spoke to the government generally respecting this provision in practice. Judicial corruption was said to be a problem. The slow pace of civilian justice also violated human rights law. Detainees remain in custody for several years pending trial and many, including those accused of serious crimes, face long remand times and lack legal representation or the ability to apply for bail. Executive influence was said not undermine judicial independence. The prison system is reportedly operating at only three times its intended capacity.

48 Mr Rasoul drew my attention to paragraphs 3.10.4 to 3.10.11 which I set out below:-

> "**3.10.4** Power of incumbency - Many observers argued that the National Resistance Movement (NRM) had switched its tactics to massive payments to voters, pointing to large supplementary appropriations that had been passed by Parliament shortly before the elections.25 Each party received an inadequate official financial allocation for its campaigns based on the number of its representatives in Parliament, a policy that advantaged the NRM. NRM candidates, particularly the president, tapped state funds for their races. Parliament passed a supplemental budget of $260 million in January 2011 that observers believed was largely spent on campaigns. Further, the NRM mobilized far more contributions from foreign and local business interests than other parties.26
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> **3.10.5** Space for opposition - Approximately 38 political parties were registered. The ruling NRM party operated without restriction, regularly holding rallies and conducting political activities. Authorities occasionally restricted some activities of the main opposition parties by refusing permission for them to hold public demonstrations and preventing opposition leaders from appearing on local radio stations.27 This was particularly the case in rural areas. Many candidates were threatened, had business loans recalled, had tax bills hiked, and found it difficult to get time on radio and TV stations.28
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> **3.10.6** While the constitution provides for freedoms of assembly and association, the government did not respect these rights in practice. The UPF continued to require advance notification and approval for public gatherings, despite a 2008 Constitutional Court decision nullifying section 32(2) of the Police Act and the requirement to obtain written police approval for any assembly of 25 persons or more. During the year the UPF routinely restricted the right to assemble freely. Opposition parties and civil society organizations critical of the government that sought UPF authorization for public gatherings often received no official response or were instructed not to assemble. Police often met attempts to assemble by these groups with excessive and brutal force.29

3.10.7 The government‘s respect for the rights of freedom of association and assembly deteriorated over the past few years. Political and civil society activists were frequently attacked, arbitrarily arrested, and held for long periods without trial. The police prevented or aggressively broke up several rallies in which demonstrators were demanding a change in the membership of the Electoral Commission in 2009 and 2010. In 2011, police tried to prevent the ―Walk to Work ‖ demonstrations. In doing so, the security forces killed at least ten protestors and repeatedly arrested scores of others, including many civil society activists and politicians. To prevent Kizza Besigye, a main opposition candidate, from ―walking to work the police confined him to his home while refusing to charge him. In several recent cases, while attempting to maintain political order, police have killed both demonstrators, including students protesting conditions in their schools, and bystanders.30

3.10.8 The government maintained its intolerance for opposition for the rest of the year. In September, Vincent Nzaramba, the author of a book advocating peaceful protest to overthrow Museveni, was detained for several days and said he was physically abused in custody. Attempts to renew the April–May protests in October led to 40 arrests and treason charges—which can carry the death penalty—for three of the organizers. The charges were pending at year's end.31

3.10.9 While there were no reports of political prisoners during the year, hundreds of opposition politicians, supporters, civil society activists, journalists, or others critical of the government were detained on politically motivated grounds for short periods. Many of these individuals were released without charge. Others were released after being charged with crimes such as treason, inciting violence, and promoting sectarianism. None of the hundreds of people arrested for protesting rising prices during the walk-to-work campaign were convicted of an offense, and courts dismissed all walk-to-work related cases brought to trial by the DPP for lack of evidence.32

3.10.10 Conclusion. Despite Uganda allowing the registration of opposition political parties, some opposition political groups continued to face restriction on their ability to assemble and their supporters were subjected to political violence, harassment and sometimes ill treatment by the authorities. Some opposition supporters were detained by the security forces and some face charges of treason. However, others who were similarly detained were released without charge.

3.10.11 Each case must be decided on its individual facts to determine whether a particular applicant is at risk. In some cases, particularly those of prominent members of political parties or those accused of treason who have been detained for long periods of time and who have suffered at the hands of the Ugandan authorities, a grant of asylum or Humanitarian Protection may be appropriate. However, in other cases such as that of a low level activist detained for a few days and then released without charge, the harassment suffered will not reach the level of persecution or breach Article 3 of the ECHR and therefore they will not qualify for a grant of asylum or Humanitarian Protection."

49. The *Human Rights Watch World Report 2013* for Uganda reported increasing threats to freedom of expression, assembly and association as raising concerns about Uganda's respect for the rule of law. The security forces continue to enjoy immunity for torture, extrajudicial killings and the death of at least 49 people during protests in 2009 and 2011.

50. Police interference in unlawful obstruction of public gatherings remains a significant problem often accompanied by arrests and detentions of organisers and participants.

51. The police leadership described the police rapid response unit in December 2011 explicitly because of its poor human rights record renaming it the "Special

Investigations Unit". However the police have failed to investigate abuses committed by Rapid Response Unit officers or ad hoc operatives, some of whom continued to work in the Special Investigation Unit. Four members of the Forum for Democratic Change appeared before court charged with treason. They complained of torture in detention having been detained by the SIU for fourteen days.

52. Electoral violence was said to have marred six of the nine parliamentary bi-elections held between February and September 2012.

53. I also read the *US State Department Report* for 2013 which also spoke of the constitution and law prohibiting cruel, inhumane or degrading treatment or punishment. It referred to parliament having passed an anti-torture bill to criminalise torture. Anyone committing an act of torture faces up to fifteen years imprisonment and a fine equivalent to US$2,860 or both. The penalty for aggravated torture is life imprisonment.

54. Prison conditions remain poor and in some cases life threatening. Arbitrary arrests during police swoops also remained a problem as did arbitrary arrests based supposedly on sedition, treason, promoting sectarianism, incitement of violence or terrorism charges. There were reports of political prisoners during the year and in addition the authorities detained several opposition politicians and more than twenty supporters on politically motivated grounds for short periods.

55. While the constitution provides for freedom of assembly and association, the government was said not to have respected these rights in practice. The UPF routinely restricted the right to assemble freely and police officer meet attempts to assemble by opposition activist students and workers with excessive and brutal force. Police arrested hundreds of persons for allegedly participating in unlawful assembly. During the year none of the hundreds of protestors arrested during the 2011 "walk to work" events, protests that began against the country's soaring fuel and food prices, had been convicted of any offence.

56. According to "*New Vision Uganda*" dated 10th January 2001, 48 supporters of presidential aspirant Nasser Ntege Sebaggata were remanded in Luzira prison for allegedly taking part in the previous Monday's riots at Ntinda, a Kampala suburb.

57. I was provided with a copy of a similar document dated 3rd March 2001 comprising an interview with a former major Okwir Rabwona. I also read the report of *Voice of America* dated 20th March, 2001 referring to Besigye being questioned after a series of violent attacks following the presidential elections. I also read the Voice of America Report of 10th March, 2011 written shortly before the presidential elections, the report of 20th November, 2000 referring to Ugandan opposition policies bracing for a confrontation with the security forces following an order from the police to stop the ongoing campaign and rallies by various aspirants who have had declared an interest in contesting the presidential elections and I read the *US State Department Report* for 2009 and the *US State Department Report* for 2003. Also included within the report was an *Amnesty International Report* for 2000 and an *Amnesty International Report* for 2001 but my attention was not drawn to anything in particular in either of

those documents. Finally I confirm that I have read the *Freedom of the World* 2011: Ugandan paper dated 12th May 2011 which added littlie to the information I gleaned from the earlier documentation.

Medical Report

58. Included within the bundle was a medical report following an examination of the appellant by Dr S Warrington on 10th September 2010, 6th October, 2010 and 22nd October, 2010. Dr Warrington recorded numerous scars on the appellant that she saw during her examination. Two scars, one on his right arm and one on his left arm were attributed by the appellant to his elbows being tied behind his back. The doctor referred to the marks as being diagnostic of prolonged application of tight ligatures. She said that it was difficult to imagine any trauma of this nature occurring in everyday life. Two further scars on his arms were attributed by the appellant to being dragged on the ground. These were also said to be consistent with the attribution given. A scar on the appellant's right arm and right leg were said to be typical of a burn with a hot object and that on his leg was highly consistent with a stab wound. Other scars were attributable to being beaten with cables. The linear nature of the scars was said by the doctor to be highly consistent with beatings with a cable. The appellant attributes one scar on his arm, a cut with a stick which was found to be consistent, but it was pointed out that it may have been sustained by any sharp object. Further scars were consistent with being caused by cables but it was said that they could have been caused by any form of sharp instrument. Two scars were said to be caused by beatings with sticks or beatings with cables and they were consistent with the attribution given.

59. Further scars were said to be caused by beating as a result of the appellant using his arm to protect his face. Those scars were highly consistent with the attribution given. The appellant attributed a scar on his leg to a burn as he withdrew from a hot knife. The scar was cyclical of contact with a hot object and the well demarcated line suggested that contact was more prolonged than that resulting from an accidental brief contact. There are other scars which are unattributable which were also said to be consistent with the history given of severe beatings and ill-treatment. A scar on the appellant's back was attributed to being beaten with sticks and the scars were said to be highly consistent. A further scar on his back was attributed to being beaten. The report points out that its location means that it is very unlikely to have been accidental in nature and was highly consistent with trauma such as being beaten. Scars on his trunk were said to be consistent with the claimed beatings as were scars on his legs. There were further scars attributed to being kicked by the appellant which were found to be consistent and scars caused by burns, also said to be consistent.

60. The appellant attributed one scar to being stabbed with a knife and another to being stabbed but the implement used was not identified. The wounds were said to be typical. The doctor attributed four scars to bayonet stab wounds which were said to be indicative and typical of stab wounds. The doctor pointed out it was difficult to envisage accidental causes for the four deep penetrating wounds. The appellant had other scarring which were found to be consistent and the doctor found that scars or

his ankle were diagnostic of prolonged application of tight ligatures. It was stated by the doctor that it is difficult to envisage any sort of trauma occurring in everyday life to produce these appearances. The appellant attributed scars on his leg to being burned with hot water and an irritant chemical. The scar was said to be the typical of a burn and was in a highly unusual place for an accidental burn. Two further scars were also said to be in unusual locations for an accidental trauma. They were also said to be highly consistent with deliberately inflicted traumas such as beatings.

61. I have not sought to detail every scar identified by the doctor, but I have very carefully read the report in full. In her conclusion Dr Warrington says:-

> "[the appellant] is a 29 year old man from Uganda who describes two detentions in 1999 and 2001 during which he was beaten with sticks and electric cables, kicked, slapped and burned. He was forcibly restrained, stabbed with bayonets and knives and immersed in human waste. The medical evidence gives me no reason to doubt Mr Kaaya's history of his ill-treatment.
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> He is suffering from significant and chronic psychological stress related to his experiences. I believe that he is suffering from PTSD as a result of what he has been through.
>
> In my examination I have documented three scars that are diagnostic of the attributions of torture given and ten scars that are typical of attribution of torture given. He has 22 scars that are highly consistent with the attribution of torture given and 27 scars that are consistent, bearing in mind that a number of scars had been grouped together for ease of description. Given the total picture of the scars, these scars in fact constitute strong evidence of the torture as described i.e. they are typical rather than only consistent. Ultimately, it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story.
>
> The number of scars themselves is significant. When taken together, and having observed Mr Kaaya's affect, demeanour and responses throughout, it is difficult for me to reach a conclusion that they were caused in any innocent manner. "

62. It was in the light of the background evidence and Dr Warrington's medical report I considered the evidence before me and made my findings of fact.

<u>Findings of Fact</u>

63. Before reaching any conclusions on the evidence, I examined it all carefully in the round. The fact that I have dealt with my findings in the order I have is ***not*** to be taken as an indication that I have first looked at one piece of evidence and reached a conclusion on it, without considering all the evidence. I first considered it all and in the round. I have been careful to set the evidence into context against the background evidence and I bore very much in mind the report of the highly experienced doctor who carried out an examination of the appellant.

64. I make the following findings of fact and give my reasons for those findings:-

    (1) The appellant is a citizen of Uganda, who was born on 12th April, 1981.

(2) The appellant arrived in the United Kingdom on his own passport on 10th March, 2005. He claimed asylum following his arrest by police and UK Border Agency officers on 26th April, 2010.

(3) I was left with the very clear impression of the appellant being someone who appeared to me to be politically naïve.

(4) I thought it curious that whenever the appellant was asked what he did he declined to give specific examples, instead making vague claims about, "bringing the youth together to get involved in current affairs in order to achieve democracy in Uganda".

(5) He claimed to have been, "stopping the mistreatment of people", of trying to "limit the level of unemployment", of "stopping the government from harassing people", of "fighting for a better life". But when he gave oral evidence he gave no examples at all of precisely work he did on behalf of the party. I was left with the very distinct impression that the evidence the appellant was giving me was made up and bore no relationship to the truth.

(6) I did not believe that if the appellant had been politically active in Uganda he would have found it so difficult, when giving oral evidence, to have given me examples of what he actually did. He gave me only one answer where he actually described what it was that he had done, but not in giving oral evidence. He was specifically asked at his interview how he motivated the youth to become involved with the FDC and he replied:

> "We introduced football games with trophies from village to village including both boys and girls. We awarded different trophies so we could meet and introduce our reasons and to inform everybody."

(7) The appellant claimed that he was arrested by police officers in 1999 and held for fourteen days in Bulo village. He did not tell me what he was actually doing which lead to his arrest, but he was asked.

(8) During his detention, he claims that he was beaten severely. He claims that he was electrocuted and kicked. He was slapped and punched. His hands were tied by behind him and his legs were tied and he was repeatedly kicked. He refers to hot metal being placed on his right thigh and to being cut. He was hit with metal on the left leg and beaten and water was poured over him. He was hit with a gun. He was punched, kicked and he confirmed that he was never officially charged. He was asked if he was released after fourteen days and he replied that he was not taken to court. He claims that "they took me to hospital for three days. On the fourth day they took me back home and then my father obtained a doctor and treated me whilst I was at home".

(9) The appellant claimed that attended at a university at Makerere and claims that in 2001, during a public political debate, the police came and arrested people. He did not explain why he was arrested. When asked he simply said it because of his support for Dr Besigye in 2001.

(10) He claimed that he was taken to an unidentified location and beaten. He had said he was pulled after he fell to the ground and beaten father and his thigh was burned with hot metal. His head was placed under a small chair with his hands tied behind him while he was kicked and beaten with guns. Later he was kicked in the stomach and genitals. He was held for seven days with eleven others. When he was released he was told not to talk about the government again. He was not charged. The appellant then claimed that in 2003, 2004 while at university he was attending a debate on the current state of affairs in the country and the police raided the meeting and he dispersed. He went back to his hall of residence. He was chased by officers and the appellant ran to the second floor where he lived. His room was tear-gassed and he managed to run away. The appellant was asked why, if the last problem he had was in 2003 or 2004, he had not decided to come to the United Kingdom until 2005. He explained that he was still a supporter of the FDC and his problems had not stopped. He said he was fed up with being tortured and, "my life was in the line of being arrested and killed, for I was still insisting in belonging to a party that fights to topple the government".

(11) The appellant did not claim that he feared being arrested following the events of 2003 or 2004. He told me that he had been in hiding and yet, at the same time, he attended evening lectures.

(12) I did not believe that the appellant had been in hiding between 2003 or 2004 (whichever it was) and when he left in 2005. I did not think it credible that if he was being actively sought by the Ugandan police, he would have been able to attend lectures without being arrested.

(13) The appellant left Uganda on his validly issued passport. I did not believe that he would have been able to obtain a Ugandan passport in his own name if he was actively being sought by the police at the time.

(14) It was only during the hearing that the appellant suggested that the police officers who arrested him may not have been police officers, but people dressed up as police officers. He alluded to this when it was pointed out to him that the letter from FDC dated 5th 05 2010 spoke about him being kidnapped by "plainclothes military intelligence officers". At his interview he simply referred to them as being "the police".

(15) At the hearing the appellant was specifically asked to describe the releases from his detention. He said that in 1999 he found himself in hospital and was discharged and taken home. In 2001 he was simply abandoned on the street. I do not believe that either is credible if he was treated the way he described and if he was genuinely thought to have been wanting to bring down the government as he claims.

(16) I am prepared to accept that there is a real likelihood that the appellant has, at sometime in the past, been detained and that he may even have been detained in Uganda. I am even prepared to accept that he may well have been detained

on more than one occasion, but I do not accept that this appellant was detained for political activities and neither do I accept that he was necessarily detained by the Government of Uganda. He was able to describe his claimed political activities to me other than is the vaguest of terms and when giving evidence was reluctant to answer simple questions put to him without going off at a complete tangent in his answer. He gave me the very clear impression of making up his evidence as he was giving it. I believe that he was vague because he was anxious not to be caught out contradicting himself. I do not believe that the events he described actually happened.

(17) The appellant claims that he fears he is going to be arrested if he returned to Uganda, but he appears to have lived without difficulty between either 2003 or 2004, and when he left in 2005. He claims that he was in hiding, but I do not believe him. He claims that he was attending evening lectures. I believe that if he had been actively sought by the police (or some other government agency) he would not have been able to attend university lectures. The authorities had, according to the appellant, broken up a meeting at the university. The first place they would have started looking for the appellant would have been at the university, if they had truly been interested in detaining him.

(18) I believe that it has wholly undermines the appellant's credibility that having been advised by his father in 2005 to leave the country and seek asylum elsewhere, the appellant came to the United Kingdom and waited until after he was arrested, five years later, before claiming asylum. He is an intelligent and educated man. I did not believe that he could possibly have not known how to claim asylum, if he had been advised by his father to leave the country and to seek asylum elsewhere.

(19) Applying the low standard of proof to which I have earlier referred, I am prepared to accept that the appellant has, at some stage in the past, been the subject of mistreatment, but who was responsible and in what circumstances, it is impossible for me to say. I am left in no doubt, however, that it was not sustained in the manner in which he describes.

(20) Even if I had believed that the appellant had been detained and ill-treated by the authorities, (and in case there is any doubt about it, I wish to make it perfectly clear that the evidence before me is such that it is insufficient to allow me to say that I believe that there is a real risk that he was detained and ill-treated by the Ugandan Government or their agents) the fact is that he had subsequently been released. I do not condone torture or ill-treatment, but the appellant remained in Uganda for four years after his last arrest.

(21) The documents on which the appellant relies simply further undermines the appellant's claim. The FDC card is actually dated 10th May, 2007 by which time he was already in the United Kingdom. It refers to him being aged 28 years and being in the Kampala district, the Kawembe-South constituency and the Kawempbe sub-county and the parish is described as being Makerere University. The appellant was born in 1981. When he arrived in the United

Kingdom, it was just before his 24th birthday. The card is dated 10th May, 2007, but at that time the appellant would only have been 26 years of age, not 28 years of age. It was clearly issued to him when he was in the United Kingdom.

(22) The next letter purports to be signed by a Major General Katumba Wamala, Inspector General of Police and purports to come from the Central Police Station Kampala. It is headed "Re Wanted" and says:-

> "This is to notify authorities and the public that Kaaya Muhamed is wanted by the Central Police Station Kampala – Uganda to be charged for inciting violence against the government of the Republic of Uganda.
>
> He did this crime in the 2001 presidential elections, he is a renowned Forum For Democratic Change (FDC – leading opposition party) Youth Wing leader (Makerere University Branch) and he used his position to incite violence.
>
> If anyone knows his whereabouts/traces, he should notify/help the police. Help the police and help you.
>
> Yours in service."

(23) The letter is dated 11th March 2001, one day *before* the 2001 presidential elections. Apart from being a very curious document to issue in the first place, I did not believe that if the appellant was genuinely wanted by the police, he would be describes as being "a renowned Forum For Democratic Change (FDC-leading opposition party) Youth Wing leader". I did not believe that a police office anxious to arrest someone who wanted to bring about the down-throw of the Ugandan Government would actually describe it as, "renowned". Similarly I thought it curious that the letter referred to FDC - "leading opposition party" and the fact that it described him as being a "Youth Wing leader (Makerere University Branch)" simply gave some further cause to doubt its authenticity. I believe that the penultimate sentence includes a typing error. I believe that the words "way about" is intended to be "whereabouts" and this further undermined the authenticity of the letter. I concluded that it was not a document on which I could place any reliance.

(24) I then considered the letter from the FDC Kampala. The date was stated to be 5th, 05, 2010 and it was addressed to the UK Border Agency. Unfortunately the copy supplied to me appeared to be sent by facsimile on several occasions and was very poor. In parts it was barely legible. It said

> "I hereby introduce you to the above gentleman who is presently in UK. Mr Kaaya Ahmed was among our leading Makerere University campus working as a secretary for youth and [indecipherable] in Reform Agenda (FDC). During presidential [illegible] election Mr Kaaya was kidnapped by a plainclothes as a [indecipherable] of military intelligence (CMI) officers and was incarcerated without the reassurance that people were aware [indecipherable]. He was interrogated, tortured and detained in different cells [indecipherable safe].
>
> After a certain period Mr Ahmed was abandoned along the road during the night due to ditorship and poor governance we have here in Uganda. [indecipherable]

> was advised to leave the country and to seek a political [indecipherable]. We [Kampala District FDC office] hereby recommend him/her for a political asylum."

(25) Quite apart from the obvious fact that the letter did not give any indication as to how the author (who signed his name in handwritten print) was aware of the information contained in the letter, the fact that it was dated May 2010 indicated to me that it was written after the appellant's arrest in the United Kingdom. It was clearly written at the request of the appellant and again I felt unable to place any weight on it.

(26) The appellant had clearly been in possession of a UK multi-entry visit visa granted to him in Kampala when he entered the United Kingdom.

(27) As a further example the appellant's lack of credibility, I noted that when he was asked by Ms Rackshaw on more than one occasion if he had ever played or coached football, he said he had never played football, except as a child. However, at his asylum interview the appellant claimed that he was mobilising the youth to become involved with the FDC by introducing football games with trophies from village to village to both boys and girls, suggesting that even if he was not actually involved in playing football, he had on his own account been organising football games. Quite why he felt unable to give an honest answer to the Presenting Officer I did not know.

<u>Credibility</u>

65. I do not believe that the appellant is a witness of the truth. I have no doubt at all that he has completely fabricated his claim to be in need of international protection. He is not a credible witness and I did not believe anything he had said which was material to his claim to be in need of international protection.

66. I do not believe that the appellant left Uganda in 2005 after having spent time hiding from the authorities in Uganda. I do not believe the authorities, be they the Ugandan police, military intelligence officers, or anyone else in authority in Uganda, have any interest at all in the appellant. He may very well have been detained and ill-treated at some stage in the past and it might even possibly have been in Uganda, but the circumstances of such detention and mistreatment were not as he described to me. I do not believe there is any likelihood that on his return he will face any serious harm or ill-treatment.

67. I **dismiss the appellant's asylum claim.**

<u>Humanitarian protection appeal</u>

68. Since the appellant's humanitarian protection claim and Article 8 and 3 the European Convention for the Protection of Human Rights and Fundamental Freedoms claims are based on the same factual matrix, **I dismiss that also**.

Human rights appeal - Article 8

69. The appellant did not make a claim that on his removal his rights under Article 8 of the European Convention would be breached. However, given that the appellant has been in the United Kingdom since 2010 and given also that the First-tier Tribunal Judge dealt with the appellant's Article 8 rights, I consider that I should consider whether the appellant's removal would cause the United Kingdom to be in breach of the appellant's Article 8 rights.

70. The appellant cannot bring himself within the requirements of the Immigration Rules (Statement of Changes in Immigration Rules, HC 395, as amended). It is necessary for me to consider his rights under Article 8 jurisprudence *(see MF (Article 8 - new rules) Nigeria* [2012] UKUT 393 (IAC)).

71. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for respect for a person's private and family life, their home and correspondence. The appellant has to show that the subject matter of the Article 8 subsists and that the decision of the respondent will interfere with it. If he does so, it is for the respondent to show that the decision is in accordance with the law, that it is one of the legitimate purposes set out in Article 8(2) in this case for the economic well-being of the country, for the prevention of disorder or crime and for the protection of the rights and freedoms of others, and that it is necessary in a democratic society, which means that it must be proportionate.

72. At paragraph 17 of *Razgar v Secretary of State for the Home Department* [2004] UKHL 27, Lord Bingham of Cornhill said this:

> "17. In considering whether a challenge to the Secretary of State's decision to remove a person must clearly fail, the reviewing court must, as it seems to me, consider how an appeal would be likely to fare before an adjudicator, as the tribunal responsible for deciding the appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be answered by an adjudicator. In a case where removal is resisted in reliance on article 8, these questions are likely to be:
>
> (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
>
> (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
>
> (3) If so, is such interference in accordance with the law?
>
> (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
>
> (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?"

73. Undoubtedly the appellant has a well established a private life in the United Kingdom even having been here for some eight years. Unfortunately I have very little information about his private life. The appellant does appear to have a family life but gave me very little information about it apart from the fact that he has a son who is now 1 year 8 months old. The child's mother is a citizen of Uganda and according to the appellant, her visa has expired. I am satisfied that the appellant does enjoy a family life, at the very least with his son and possibly also with his son's mother, and the respondent's decision does amount to an interference with it. I believe that such interference does have consequences of such gravity as potentially to engage the operation of Article 8; the threshold for which is not especially high (*see paragraph 28 of the judgement of Sedley LJ in AG (Eritrea) v Secretary of State for the Home Department* [2007] EWCA Civ 801).

74 In the leading case of *Huang* [2007] UKHL 11, [2007] 2AC 167 Lord Bingham said at paragraph 20:

> "In an article 8 case where this question [i.e. the question of proportionality] is reached, the ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices to the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by article 8. If the answer to this question is affirmative, the refusal is unlawful and the authority must so decide."

75. The interference is in accordance with the law and is necessary in a democratic society for the economic well-being of the country; for the prevention of disorder or crime; and for the protection of the rights and freedoms of others; the question is whether or not interference is proportionate. I have to bear in mind in considering the appellant's Article 8 appeal the fact that there is only one family life and that it is necessary to look at the family as a whole and to regard each affected family member as a fiction (*see Beoku-Betts v Secretary of State for the Home Department* [2008] UKHL 39). I must also have regard to the best interests of the appellant's child in the way required by paragraph 29 of the judgements in *ZH (Tanzania)* [2011] UKSC 4. There are no considerations inherently more significant that the best interests of children.

76. I have very little information concerning the appellant's son, but it must be in the child's best interests to live with both his parents although at the moment his is living only with his mother. Since his mother, apparently, has no right to remain in the United Kingdom, there would appear to be no reason at all why she should not return to Uganda with the appellant, if she and the appellant wish to be together. In any event, she has no right to remain in the United Kingdom.

77. The appellant chose not to give any evidence relating to his private life and appeared to be very reluctant to tell me anything at all about his family life or about his relationship with his son's mother. I accept that he sees his child once a month, but his mother is also a citizen of Uganda and if they wish to live together and bring up

their child together, there would appear to be no reason why they could not do that in Uganda.

78. I concluded that the appellant's removal from the United Kingdom was an entirely appropriate response on the part of the Secretary of State. **This appeal is dismissed**.

Summary

The appellant’s asylum claim is dismissed.

The appellant’s humanitarian protection claim is dismissed.

The appellant’s human rights appeal claim is dismissed.

Upper Tribunal Judge Chalkley