



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

Appeal Number: AA/03773/2014

THE IMMIGRATION ACTS

Heard at Field House

On 27th January 2015

**Decision & Reasons
Promulgated**

On 23rd February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**MISS AFUSAT OLABISI IBIKUNLE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Kiai - Counsel

For the Respondent: Mr P Nath - Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Miss Afusat Olabisi Ibikunle a citizen of Nigeria born 14th December 1976. She appeals against the determination of First-tier Tribunal Judge Beg issued on 28th October 2014 dismissing on asylum and human rights grounds the Appellant's appeal against the decision of the Respondent made on 21st May 2014 to refuse to grant asylum and to remove her from the United Kingdom.

2. Permission to appeal was granted on 12th December 2014 by First-tier Tribunal Judge Holmes. He said:
 - “2. As set out in ground 2 the decision makes no reference to the evidence of the expert witness on the issue of whether the Appellant’s account of inheritance amongst the Yoruba was as she claimed. That evidence was material and relevant because it went directly to the core of the issue of her credibility as her witness: this was one of only four points expressly taken by the Respondent in relation to her credibility. The Respondent had of course accepted as true a large part of the Appellant’s account.
 3. In the circumstances it is unnecessary to deal in any detail with each of the large number of other complaints raised concerning the Judge’s approach to the evidence and her approach to the credibility of the Appellant. All may be argued.”
3. The basis of the Appellant’s claim for asylum is that her father died in January 2001 and she and her mother believed that he had been poisoned by relatives who wanted his land. She claimed that she inherited the land after his death although her father’s relatives carried on growing crops on it. The relatives began to threaten her. She claims that she entered a relationship and suffered domestic violence. The Respondent rejected the Appellant’s claim on the basis that it does not engage the Refugee Convention. The Respondent raised credibility issues.
4. The grounds seeking permission in this case are unnecessarily detailed and verbose. Although each ground is given a heading, pointing to an error of law, it is very difficult to understand exactly what is being said. The grounds contain great tracts of case law and evidence which in my view are completely unnecessary as well as detailed criticism of many points made by Judge Beg.
5. I asked Miss Kiai if she could clarify and summarise the Grounds of Appeal for me. She did so.
6. Ground 1 is that the First-tier Tribunal breached the fundamental principles of natural justice in taking points against the credibility of the Appellant’s account which had not been taken by the Respondent and without giving the Appellant any notice of this. Examples are given of this.
7. The second ground is that in rejecting the Appellant’s claim to have inherited her father’s land the First-tier Tribunal failed to have regard to material considerations and/or failed to resolve a material conflict of evidence before it. Ms Kiai explained to me that the expert evidence was that the Appellant could have in law inherited the land. This was not addressed at all by the Judge.
8. The third ground is that the First-tier Tribunal failed to have regard to material evidence, acted unfairly and reached findings which were based

upon no evidence in relying on the Appellant's delay in claiming asylum as a factor adverse to her credibility. It is also submitted that an irrational approach was adopted to the risk that the Appellant's ex-partner would return to Nigeria.

9. The fourth is that the Judge failed to have regard to material evidence in relation to effective protection and internal relocation and erred in her approach to Article 8. As I said previously a vast amount of detail is given.
10. The reasons for the decision begin at paragraph 23 of the determination. Judge Beg noted the two grounds for claiming asylum. Firstly the Appellant fears that if returned to Nigeria her father's family will target her for the land that they want to take from her and secondly her former partner's family will target her or her former partner may himself return to Nigeria and either target her or seek custody of the children.
11. Judge Beg went on at paragraph 25 to discuss the Appellant's evidence that she had attempted to contact her mother but the telephone number no longer works, finding that she had "attempted to distance herself from her mother by falsely stating that she had not been able to contact her and that her maternal uncle's telephone number had been changed". She did not find it credible that relatives would threaten the Appellant and ask her to sign over the land to them, her reason for this being that they would have been well aware that she would not be able to do that without the title deeds. She noted that the Appellant had failed to provide specific documentary evidence to confirm that she inherited her father's land.
12. The position of Ms Kiai is that in making these findings the Judge ignored the evidence of the expert that the Appellant could have inherited the land and she had no basis on which to find that the title deeds would have been required to sign the land over to the family. She submitted too that in founding on the Appellant's delay in claiming asylum, the Judge indulged in speculation, in particular at paragraph 27 when she said that Mr Amusa who gave evidence before her would have been aware of the concept of asylum and would have made enquiries about the possibility of the Appellant making a claim for asylum once she told him that she feared returning to Nigeria. Ms Kiai submitted that this speculation continues in paragraph 28.
13. There was also, before the Judge, evidence of a complaint that had been made to the OISC about the Immigration Advisory Organisation who were advising the Appellant and her abusive former partner in an application for further leave to remain made in January 2010. This shows that the Appellant made an application to regularise her status and that she was the victim of seriously negligent advice and representation at that time. Despite this, Judge Beg said at paragraph 28 that the Appellant was not making a genuine application to regularise her stay and that she was not going through the proper channels for applying to the Home Office. Ms Kiai's submission is that these findings are wholly unsustainable in the light of the OISC evidence. Furthermore the Respondent had never made

any claim that a proper application had not been made. Judge Beg indeed went so far in paragraph 28 to find that the Appellant was well aware that she was paying significant funds to fraudulently obtain leave to remain instead of going through the proper channels of applying to the Home Office.

14. With regard to Article 8 it is submitted that there is no finding at all as to whether the Appellant's children enjoy family life with their father and Judge Beg failed to properly deal with the effect on the children of being removed to Nigeria with their mother. She failed to take account of the report from the independent social worker and did not properly assess the best interests of the children.
15. With regard to Article 8 the Judge said that the Appellant's children are young enough to adapt to life with their mother in Nigeria but with regard to their fortnightly supervised contact with their father she found that they could keep in contact with them from Nigeria as they get older. The children at the date of the hearing were only 6 and 4. The Judge did not consider how this contact could, at this point in time, be maintained given the young ages of the children particularly the younger one.
16. It was submitted that the issue of the Title Deeds was never raised at the hearing. The evidence of the expert Victoria Nwogu was that in the Yoruba community land would be inherited by a child rather than a widow. Rather than rely on this the Judge relied on her own view, that expressed in the refusal letter, that the land would have passed to her mother upon her father's death. No challenge had been made to the expert report by the Respondent. No consideration was given of the fact that her ex-husband is subject to a restraining order. She thus has some protection from him in the UK which she would not have in Nigeria. He has no leave to remain in the UK. There must therefore be a reasonable degree of likelihood that he will be removed to Nigeria in the foreseeable future.
17. At paragraph 33 of the determination there is no indication that he intends to return to Nigeria and no credible evidence that she would be targeted by him if he returned to Nigeria. It is difficult to see how that can be said when he is subject to a restraining order.

My Findings

18. It is very difficult to explain exactly what is wrong with this determination because on the face of it it appears that the Judge dealt with the evidence before her in the proper way, taking account of relevant factors and reached decisions that were open to her on the evidence before her for the reasons given. On closer inspection however it seems to me that the Judge failed to consider all the evidence in the round. She appears to have decided that the Appellant was not credible then looked at some of the evidence with that in mind. There is a great deal of speculation and points were taken against the Appellant that had not been raised by the Respondent and were not put to her at the hearing. In assessing credibility

the Judge made assumptions that were not supported by the evidence before her. The Secretary of State had not questioned the Appellant's claim to have been a victim of domestic violence. Clearly the findings of the Judge in relation to the children were made on the basis that their father, with whom they have only supervised contact on a fortnightly basis for two hours at a time, is going to be remaining in the UK but she did not consider how contact with him can be maintained and there is some merit in the submission that she did not properly consider the best interests of the children, particularly given their age, or the consequences for them of their father being removed to Nigeria. As is submitted in the grounds there are findings that are not supported by reasons based on evidence and although the Judge said she had taken the expert report into account it is arguable that she either misinterpreted it or chose to ignore the information in it. It may be that at the end of the day a different Judge will reach the same conclusion but I find that there are material errors of law in the determination and in light of the fact that I am not satisfied that the Appellant had her appeal properly considered by the First-tier Tribunal, it seems to me that it should be remitted to the First-tier Tribunal for a fresh hearing before a Judge other than Judge Beg.

Notice of Decision

The determination of the First-tier Tribunal contains a material error of law and is set aside with no none of the findings of fact preserved. The appeal is remitted to the First-tier Tribunal for a hearing de novo.

No anonymity direction is made.

Signed

Date: 19th February 2015

N A Baird
Deputy Judge of the Upper Tribunal