



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

Appeal Number: PA/12340/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28<sup>th</sup> March 2019**

**Decision & Reasons Promulgated  
On 20<sup>th</sup> June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**BG  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. T Nyawanza, Solicitor acting as an agent for CB Solicitors

For the Respondent: Mr Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. The First-tier Tribunal (“FtT”) did not make an anonymity order but as the appeal is one that concerns a claim for international protection, it is appropriate for a direction to be made. BG is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the

appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellant is a Somalian national. He claims to have arrived in the United Kingdom on 16<sup>th</sup> April 2016 and he has claimed asylum. The appellant's claim for asylum was refused by the respondent for the reasons set out in a decision dated 17<sup>th</sup> November 2017. The appellant appealed to the First-tier Tribunal ("FtT") and his appeal was heard on 20<sup>th</sup> April 2018 by FtT Judge Smith. The appeal was dismissed for the reasons set out in a decision promulgated on 26<sup>th</sup> April 2018. It is that decision that is the subject of the appeal before me.
3. In the decision of 17<sup>th</sup> November 2017, respondent accepted that the appellant is a national of Somalia. The respondent did not challenge the appellant's claim that he is a member of the Ajuran (or "Ujuuran") clan but rejected the claim that that is a minority clan. The respondent noted that the Ajuran are a "minority within a majority", and the appellant is therefore a member of a sub-clan of a majority clan group. The respondent noted the appellant's claim that in 2012, he moved to Halgan, an area 30km from Booco where he had previously lived. The respondent accepted that the appellant had been targeted by members of Al Shabaab in his local area because of perceived un-Islamic behaviour, and because he was suspected of working with the Ethiopian forces. The respondent concluded that the appellant could relocate to Mogadishu where he would be able to avoid the further attention of Al Shabaab.
4. A summary of the events relied upon by the appellant in support of his claim for international protection is set out at paragraphs [7] to [8] of the decision of the FtT. The findings and conclusions are set out at paragraphs [16] to [31] of the decision. The Judge noted, at [21], that it was accepted by the respondent that the appellant was targeted by Al Shabaab in his local area, but rejected the appellant's account that he had been subjected to torture whilst in detention, or that he did not know that he was travelling to the UK. At paragraph [20], the FtT Judge stated:

“.. Having listened carefully to the appellant I do not accept his account of the events of his journey to the UK not least in the airport he flew from. I do not accept that he was in possession of a photograph that showed another person and I do not accept that he remained in the airport for only 20 minutes. I do not accept that he was unaware of which airport he was in, and I do not accept he did not know the country of his destination. In his screening interview, which has not been disputed, the appellant (q3.2) was asked why he came to the UK. He replied *“I was threatened because my dad was killed they said that you are next so I fled all the way here so that I can claim asylum and help my siblings and mum”*. I am satisfied that it was the intention of the appellant to travel to the UK and claim asylum and therefore I am satisfied that section 8 applies to him as a person who has tried to conceal the truth.”

5. The FtT Judge considered the issue between the parties as to whether the appellant’s tribe is part of the majority Hawiya tribe as contended by the respondent, or is a tribe that was formally part of the Hawiya tribe that had detached from them, in the late 17<sup>th</sup> to early 18<sup>th</sup> century. Having considered the material relied upon by the parties, at paragraph [27], the FtT Judge concluded as follows:

“I am satisfied that there is very little difference between the document produced by Mr Petrzyn and the document relied upon by Mr Kumar. I am satisfied that the only reading possible is that the Ajuran Tribe are a minority clan of the majority clan, the Hawiye, and whilst there may have been some divergence many years ago they are identified even as late as August 2016, as the Ajuran being a sub-clan of the Hawiye. The burden of proof is upon the appellant and even taking into account the low burden, I am satisfied the appellant has not discharged the burden of proof and established that the Ajuran Tribe is not regarded as part of the major Hawiye Tribe.”

6. The FtT Judge went on to address the risk upon return in two short paragraphs. The FtT Judge stated:

“28. ... In MOJ and Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) it was held that a person returning to Mogadishu will firstly look to his nuclear family and then his Tribe.

29. In his evidence to me the appellant said that he had not spoken to his mother and sisters since leaving however, that is inconsistent with the purpose of travelling to the UK which was to seek safety for his mother and siblings (see screening interview 3.2). I do not accept that he does not know where they are but it does not follow that he will be able to seek assistance from them. However, as a member of a majority Tribe which has a considerable presence in Mogadishu the appellant can seek their protection and assistance.

7. The FtT Judge concluded that he was not satisfied that the appellant has discharged the burden of proof, and established that he is unable to return to Mogadishu.

#### Error of Law

8. In the grounds of appeal advanced by the appellant it is claimed that the FtT Judge erred in his assessment of credibility and the risk posed by internal relocation.
9. Permission to appeal was granted by FtT Judge Scott Baker on 4<sup>th</sup> June 2018. In granting permission, FtT Judge Scott Baker noted it was open to the FtT Judge to reject the claim that the appellant is a member of a minority tribe and to find that the Ajuran Tribe is a sub clan of the majority Hawiye Tribe. However, the FtT Judge arguably failed to correctly apply MOJ, because a careful assessment of all his circumstances is required. The matter comes before me to consider whether or not the decision of the FtT involved the making of a material error of law, and if so, to remake the decision.
10. At the hearing of the appeal before me, Mr Nyawanza accepted that on the evidence before the FtT, it was open to FtT Judge Smith to conclude that the Ajuran Tribe is a sub-clan of the Hawiye. For his part, Mr Clarke conceded on behalf of the respondent, that the FtT Judge did not

undertake a proper assessment of the risk upon return to Mogadishu, as required under the country guidance set out in MOJ. He accepts that the reasons set out by the FtT Judge at paragraph [29] of the decision are insufficient, noting in particular that the appellant had not said that his family are in Mogadishu.

11. Having carefully read the decision of the FtT Judge for myself, in my judgement the concession made by Mr Clarke is entirely appropriate. The country guidance decision of MOJ & Others requires there to be a careful assessment of all the circumstances, but that careful assessment is not apparent at paragraph [29] of the decision. In the circumstances, I have no hesitation in concluding that the decision of FtT Judge is infected by a material error of law and must be set aside. I informed the parties of my decision to set aside the decision of FtT Judge Smith at the hearing before me, and informed the parties that I would remake the decision.

#### Re-making the decision

12. I pause at this juncture to record that following the grant of permission to appeal to the Upper Tribunal, directions were issued to the parties making it clear that there is a presumption that, in the event of the Tribunal deciding that the decision of the FtT is to be set aside as erroneous in law, the re-making of the decision will take place at the same hearing. The directions issued, make it clear that the fresh decision will normally be based on the evidence before the FtT and any further evidence admitted, together with the parties' arguments. The parties are warned that they must be prepared accordingly, and Rule 15(2A) is highlighted. The directions issued to the parties make it clear that a failure to comply with Rule 15(2A) will be regarded as a serious matter and may result in fresh or further evidence not being considered by the Tribunal. A timetable is set out in the directions, again making it clear that any notice by the appellant pursuant to Rule 15(2A) must be sent ten working days before the hearing of the appeal at the latest.

13. No Rule 15(2A) application has been made identifying the nature of any further evidence to be adduced and explaining why it was not submitted to the First-tier Tribunal. No further witness statements or hearing bundle has been prepared by the appellant's representatives. I did however hear submissions on behalf of the parties.
14. On behalf of the appellant Mr Nyawanza submits that in his witness statement dated 11<sup>th</sup> April 2018, the appellant explains that he was an easy target for bullying, and that the whole of his family faced problems when they were living in an area called Booco in the Hiran region in Somalia. He claims that he cannot relocate to Mogadishu as Al Shabaab will pursue him there, just as they have done previously, when he was in Somalia. He claims that he is a target of Al Shabaab and wherever he goes, he will be killed by them as long as Al Shabaab has a presence in Somalia. It is common ground that the appellant was targeted by Al Shabaab in his home area. His clan, the Ajuran, does not have a significant presence in Mogadishu, and he does not have any family in Mogadishu. His evidence is that he would not be offered support because he is not a member of the majority clans, and not a member of the Hawiya clan. Mr Nyawanza submits that in his screening interview, at 4.1, the appellant explained that he is the eldest in his family. His father was killed in 2009, and he was threatened so he had to flee.
15. Mr Nyawanza submits that applying the country guidance in MOJ and Others, the appellant could not internally relocate to Mogadishu because he has never previously lived there, he has no nuclear family or close relatives in the city to assist him in establishing himself there, has no remittances to call upon, and no clan associations to call upon. As an asylum seeker in the UK, he relies upon the limited support that is provided to him. Mr Nyawanza submits that the appellant is an individual who is perceived as having worked for the Ethiopian forces, and the fact that he has been targeted in the past, is a good indication that he will be targeted again in the future. He refers me to paragraph 6.3.1 of the respondent's "Country Policy and Information Note: Somalia; (South and

Central): Fear of Al Shabaab – July 2017”, which confirms that the main Al Shabaab targets are federal state officials, high ranking politicians, clan leaders supporting the federal government, AMISOM, and SNA. The report confirms that Al Shabaab may also target cleaning staff and other low ranking staff at government and AMISOM facilities. It is said that “UN staff and staff of international organisations at all levels, are also a target”.

16. In reply. Mr Clarke submits that the respondent has accepted that the appellant was targeted in his home area, but importantly, all of the appellant’s problems with Al Shabaab occurred in that area, and there is no basis upon which it can be said that the appellant will continue to be targeted in Mogadishu. He submits that insofar as any risk from Al Shabaab is concerned, in MOJ and Others, the Upper Tribunal concluded, at headnotes (iv), (v) and (vi), as follows:

*“(iv) The level of civilian casualties, excluding non-military casualties that clearly fall within Al Shabaab target groups such as politicians, police officers, government officials and those associated with NGOs and international organisations, cannot be precisely established by the statistical evidence which is incomplete and unreliable. However, it is established by the evidence considered as a whole that there has been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al Shabaab’s resort to asymmetrical warfare on carefully selected targets. The present level of casualties does not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk.*

*(v) It is open to an ordinary citizen of Mogadishu to reduce further still his personal exposure to the risk of “collateral damage” in being caught up in an Al Shabaab attack that was not targeted at him, by avoiding areas and establishments that are clearly identifiable as likely Al Shabaab targets, and it is not unreasonable for him to do so.*

*(vi) There is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including for recent returnees from the West.*

17. Mr Clarke submits that the FtT Judge found, and it is now accepted by the appellant, that the Ajuran Tribe is a sub-clan of the majority Hawiye clan. He refers to the remaining guidance set out in MOJ and others:

*(vii) A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.*

*(viii) The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.*

*(ix) If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:*

- circumstances in Mogadishu before departure;*
- length of absence from Mogadishu;*
- family or clan associations to call upon in Mogadishu;*
- access to financial resources;*
- prospects of securing a livelihood, whether that be employment or self-employment;*
- availability of remittances from abroad;*
- means of support during the time spent in the United Kingdom;*
- why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.*

*(x) Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that*



*have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.*

*(xi) It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.*

*(xii) The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.*

18. Mr Clarke submits that at paragraphs [344] of MOJ and Others, the Upper Tribunal considered the economic boom in Mogadishu that was described as “remarkable”, considering what is known about conditions in the city since the civil war began in 1991. At paragraphs [349], the Upper Tribunal found:

“... The evidence is of substantial inward investment in construction projects and of entrepreneurs returning to Mogadishu to invest in business activity. In particular we heard evidence about hotels and restaurants and a resurgence of the hospitality industry as well as taxi businesses, bus services, drycleaners, electronics stores and so on. The evidence speaks of construction projects and improvements in the city’s infrastructure such as the installation of some solar powered street lighting. It does not, perhaps, need much in the way of direct evidence to conclude that jobs such as working as building labourers,

waiters or drivers or assistants in retail outlets are unlikely to be filled by the tiny minority that represents “the elite.” ...”

19. Mr Clarke submits that the appellant has suffered no adverse circumstances in Mogadishu previously, and that the length of his absence from Somalia is irrelevant. He has an association with a majority clan, and he is likely to have access to financial resources from relatives in Somalia. He submits that the evidence is that the appellant’s mother and sisters remain in Somalia, and the FtT Judge did not accept that he does not know where they are. Mr Clark submits that there is no evidence as to how the appellant has supported himself in the UK, and there is no evidence that the appellant could not secure a livelihood and take advantage of the economic boom. He is a young adult male, with no health problems, and there is no evidence that internal relocation to Mogadishu would be unduly harsh in the circumstances.
20. The country guidance in MOJ and others was concerned with the issues of whether those returning or relocating to Mogadishu could succeed in claims for refugee status, humanitarian protection or protection against refoulement under Articles 2 or 3 of the ECHR, solely on the basis that they were civilians without adequate protection. The scope of the country guidance in MOJ and others is identified in paragraph [1] of the decision in the following way:

*“... the Upper Tribunal addresses the current situation in Mogadishu in order to determine the individual appeals and to give guidance limited to the following issues:*

*Whether the current situation in Mogadishu is such as to entitle nationals of Somalia whose home area is Mogadishu or whose proposed area of relocation is Mogadishu to succeed in their claims for refugee status, humanitarian protection status under Article 15(c) or protection against refoulment under Articles 3 or 2 of the ECHR solely on the basis that they are civilians and do not have powerful actors in a position to afford them adequate protection.”*

21. In my judgement, there is no evidence that the appellant will continue to be targeted in Mogadishu by Al Shabaab. The appellant was targeted in his home area, because of perceived un-Islamic behaviour, and because he was suspected of working for the Ethiopian forces. The appellant's father was killed in 2009 and the appellant claims that between 2009 and 2012 he was forced to carryout work for Al Shabaab. He was however, able to live in Halgan and open a tyre repair business, that he ran until 2016, when the Ethiopian military left the area, and Al Shabaab returned. He was able to live in Halgon and earn a living between 2012 and 2016 without being targeted by Al Shabaab.
22. Mr Nyawanza referred me to paragraph 6.3.1 of the respondent's "Country Policy and Information Note: Somalia; (South and Central): Fear of AlShabaab - July 2017", in support of the claimant that the appellant remains at risk from Al Shabaab. That information note draws upon the Danish Immigration Service report "Security situation, Al-Shabaab Presence and Target Groups of March 2017" and confirms that sources agreed that the main targets are federal state officials, high ranking politicians, clan leaders supporting the federal government, AMISON and the Somali national army. The appellant does not fall within any of these categories. The country guidance establishes that there has been durable change in the sense that the Al Shabaab withdrawal from Mogadishu is complete, and there is no real prospect of a re-established presence within the city.
23. The report relied upon by the appellant indicates that Al Shabaab may also target cleaning staff and other low ranking staff at government and AMISON facilities, UN staff, and staff of International organisations at all levels, but that is not to say that the appellant would be employed in any such capacity, and would therefore be at risk. MOJ and others confirms that it is open to an ordinary citizen of Mogadishu, as the appellant here would be in Mogadishu, to reduce his personal exposure to the risk of "collateral damage" in being caught up in an Al Shabaab attack that is not targeted at him, by avoiding areas and establishments that are clearly

identifiable as likely Al Shabaab targets, and it is not unreasonable for him to do so. There is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including for recent returnees from the West.

24. In his asylum interview, (Q.5), the appellant confirmed that his mother and two younger sisters are in Booco and that he has no other extended family in Somalia. He explained, (Q.68), that he was in contact with his family occasionally when he was living in Halgan and (Q.109) that he had an aunt in Halgan (*although he claims that she is now in a Refugee camp in Kenya*). The appellant claimed in that interview (Q.86), that he contacted his mum shortly before he left Halgan and (Q.102), that the arrangements for him to leave Somalia were made by his mother. He stated (Q.158) that he has had no communication with his family since coming to the UK. He claimed (Q.105), that he cannot return to an area that is not under Al Shabaab control, such as Mogadishu, because he does not have any family there, and he is scared of the big tribe members.
25. I have carefully considered the content of the appellant's witness statement and the answers that he gave in interview. The appellant's claim that he has not had any communication with his mother and sisters since his arrival in the UK, is simply incredible. The appellant was in contact with his family whilst he was living in Halgan, and on his own account, he contacted his mum shortly before he left Halgan, and the arrangements for him to leave Somalia were made by his mother. Against that background, there is no reason why the appellant has been unable to remain in contact with his family and I reject his bare assertion, without any explanation, that he has had no communication with his family since coming to the UK. That assertion is all the more incredible when considered against the backdrop of his claim in the screening interview (Q.4.1) that he is the eldest in his family, that there is "*no one to help my family ...*" and (Q.3.2) that he had come to the UK because he was threatened and so that he can "*... claim asylum and help my siblings and mum.*".

26. The current whereabouts of the appellant's family is unclear. His evidence that he has lost contact with them is not credible. However, even on the premise that the appellant has no family or close relatives in Mogadishu, it is clear that he has clan associations to call upon in Mogadishu. The appellant is from the Ajuran Tribe that is a sub-clan of the majority Hawiye clan. In MOJ and Others, the Upper Tribunal confirmed that the evidence establishes clearly that, in Mogadishu, there is no inter-clan violence taking place, and no real risk of serious discriminatory treatment being experienced on the basis of clan. For a returnee to Mogadishu, clan membership is not a potential risk factor, but something which is relevant to the extent to which he will be able to receive assistance in re-establishing himself on return, especially if he has no close relatives to turn to upon arrival. There is no evidence before me to suggest that the appellant would be unable to receive assistance from the majority Hawiye clan, of which the Ajuran is a sub-clan, in establishing himself.
27. In MOJ and Others Upper Tribunal considered evidence to show that those returning from the West may have an advantage in seeking employment in Mogadishu because they are likely to be better educated and considered more attractive as employees. The fact that a person has had a long period of absence from the city and had no experience of living there as an adult, were not sufficient factors, in themselves, to make the prospect of return unreasonable or unacceptable. I note in particular the reference at paragraph [351] of MOJ and others;

“Further, there is evidence before the Tribunal, identified by Dr Mullen, to the effect that returnees from the West may have an advantage in seeking employment in Mogadishu over citizens who have remained in the city throughout. This is said to be because such returnees are likely to be better educated and considered more resourceful and therefore more attractive as potential employees, especially where the employer himself or herself has returned from the diaspora to invest in a new business.”

28. Between 2012 and 2016, the appellant established a tyre repair business. He has at least some entrepreneurial skills that he would be able to call upon in Mogadishu. In MOJ and others, the Upper Tribunal noted the inward investment in Mogadishu and of entrepreneurs returning to invest in business activity including, as taxi businesses, and bus services. The skills that the appellant used to establish a tyre repair business would no doubt assist him to take advantage of the business opportunity that this creates, and of securing a livelihood. In any event, he is a young adult male with no health issues and he is well placed to take advantage of the economic revival of Mogadishu. The economic boom has resulted in jobs such as working as building labourers, waiters or drivers or assistants in retail outlets, any which of the appellant is plainly capable of securing.
29. There is no reason why the appellant could not seek unskilled employment in Mogadishu. There is no evidence to establish, even to the lower standard, that if returned to Mogadishu, the appellant will become destitute. There is no evidence before me as to how the appellant has supported himself in the UK. He has demonstrated a certain degree of resilience in his ability to travel from Somalia to the UK and support himself with some limited assistance. He would undoubtedly be able to draw upon that same resilience upon return to Somalia, where it would be possible for him to live in safety, in Mogadishu. If he has received support from family and friends in the UK, there is no reason for me to believe that such support would not be provided to assist the appellant re-establish himself in Mogadishu. There remains the possibility of him being able to turn to his mother in Somalia, and in any event, he could rely upon financial assistance from the Facilitated Returns Scheme as a means of sufficient support while he establishes himself in Mogadishu.
30. Having carefully considered all of the evidence before me, in my judgement, the appellant has not established, even to the lower standard required that internal relocation to Mogadishu would not be possible or that it would be unduly harsh. The appellant has not established that it is

unreasonable in all the circumstances for him to be returned to Mogadishu in light of the factual matrix of this case, relevant country information, and country guidance case law.

31. It follows that in my judgment his appeal falls to be dismissed on asylum and humanitarian protection grounds. FtT Judge Smith had dismissed the appeal on human rights grounds and the appellant did not seek to challenge those conclusions. For the avoidance of doubt, in my judgment, the appellant's claim cannot succeed on Article 3 and Article 8 grounds for the reasons already given by the FtT Judge.

### **NOTICE OF DECISION**

32. The decision of FtT Judge Smith promulgated on 26<sup>th</sup> April 2018 is set aside

33. I remake the decision and;

- a. The appeal is dismissed on asylum grounds
- b. The appeal is dismissed on humanitarian/subsidiary protection grounds under the Immigration Rules and Qualifying Regulations
- c. The appeal is dismissed on human rights grounds.

Signed	Date	17 <sup>th</sup> May 2019
Deputy Upper Tribunal Judge Mandalia		

### **FEE AWARD**

I have dismissed the appeal and there can in any event be no fee award.

Signed	Date	17 <sup>th</sup> May 2019
Deputy Upper Tribunal Judge Mandalia		

