



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12485/2017

THE IMMIGRATION ACTS

Heard at Manchester

Decision Reason & Promulgated

On 9 June 2021

8 July 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

TPS

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs G Patel instructed by Saxon Solicitors Ltd

For the Respondent: Mr Bates Senior Home Office Presenting Officer.

DECISION AND REASONS

1. By her decision dated 18 September 2020 Upper Tribunal Judge Jackson set aside the decision of the First-tier Tribunal in this case. Following the making of a judicial transfer order the appeal comes back before the Upper Tribunal to allow it to substitute a decision to either allow or dismiss the appeal.

2. In defining the scope of this hearing and in setting out the findings of the First-tier Tribunal which were to be preserved Judge Jackson, at [19 – 20] of her determination, wrote:
  19. As part of her written submissions on the appeal, the Appellant submitted that if errors of law were found, the decision of the First-tier Tribunal should be set aside and the matter remitted to the First-tier Tribunal for rehearing. However, having regard to what is already a lengthy procedural history to this appeal and to the limited nature of the issues to be determined, it is appropriate to retain the appeal for remaking in the Upper Tribunal. There is no dispute or challenge to many of the findings of fact by the First-tier Tribunal, which are therefore preserved (as set out below) and it is anticipated that there will be limited further evidence and/or submissions on the only live issue to be determined as to the Appellant's home area and the option of internal relocation.
  20. The findings of fact which are preserved are as follows. First, that these three incidents in Chimoio involving the Appellant occurred, during the third of which the Appellant suffered burns (the detail of which is set out in the decision). Secondly, there is no dispute as to the medical evidence or the diagnosis of the Appellant's mental and physical health; nor to the finding that there would not on health grounds be any breach of Article 3 of the European Convention on Human Rights and findings in relation to these issues also stand. Thirdly, there is no challenge to the overall finding that the Appellant was specifically targeted or targeted as a member of the Ndaou tribe, nor that there was a lack of access to medical treatment. For this reason; such that these findings are also preserved. Finally, there is no challenge to the findings that the Appellant previously lived in Zimbabwe for a number of years and had since 2012 lived and worked in Maputo without incident; such that those findings are also preserved.
3. The appellant was only required to give limited additional oral evidence and no difficulties were observed in relation to her doing so or having to listen to the submissions made such that the proceedings were unfair or the evidence received cannot be properly assessed. The Joint Presidential Guidance in relation to vulnerable witnesses was considered in relation to the conduct of the appeal and has been factored into the decision-making process in light of the medical evidence dealing with the appellant's memory problems.

## **Background**

4. The appellant is a citizen of Mozambique born on 27 December 1970.
5. It is necessary to consider the situation pertaining at the date of the appeal hearing.
6. The Designated Judge of the First-tier Tribunal considered the evidence relating to the three incidents of harm relied upon by appellant and accepted they occurred. The first was on 23 December 2016 when the appellant was in Chimoio when the police rounded up individuals in the street, detained them and interrogated them at the local police station, but release them six or seven hours later. The appellant stated during the interrogation they were asked about the RENAMO rebels. The second incident was said to have occurred on 7 January 2017, when four armed police officers came into the hair salon in Chimoio where the appellant claimed to have been working, again asking questions about the RENAMO rebels. The appellant stated the police began to

prod the staff and customers with guns and accuse them of being supporters of the rebels because they were Ndau speakers and that when some of the women began to shout back the police grabbed the appellant's employee, threw her to the floor, and raped her. The appellant stated on that occasion when she confronted the police she was burned on her thighs and legs with a candle and on her forehead with a cigarette and burnt elsewhere using plastic wrappers. The third occasion occurred in March or May 2017, when the appellant claimed to have been detained on the streets and taken with others by the security services as a result of a roundup and questioned about RENAMO, which the First-tier Tribunal stated appeared to have been after specific incidents alleged to have been perpetrated by rebels.

7. Although the Designated Judge noted a number of discrepancies in the appellant's evidence it was accepted that the appellant was rounded up with others on the street on two occasions and was harmed on another occasion when the authorities entered the salon in which she was working. It is also clear that the three incidents complained of occurred when the appellant was in Chimoio which has been shown on the map provided by Mr Bates to be in the central area of Mozambique, and that the appellant does not complain of any similar incidents or having been targeted for any reason while she was in Maputo, the capital city of Mozambique, located in the south of the country, said in the earlier determinations to be over 760 km south of Chimoio and a place where the appellant lived and worked for four years in a senior position in a company in the city.
8. No language issues were raised before the Upper Tribunal and it noted that in addition to speaking very good English it was found the appellant also must have the ability to speak Portuguese to a reasonably high degree by the Designated Judge. The appellant's claim in her asylum interview that she was not fluent was not found to be credible. These findings were not challenged.
9. The appellant was asked in the hearing which area she considers to be her home area, which she stated was Chimoio. The appellant's evidence before the First-tier Tribunal was that her mother was living in Chimoio and that was the area to which she returned from Zimbabwe following the death of her husband in or about 2004. This was not challenged by Mr Bates and I accept that the first issue for the Tribunal to consider is whether the appellant faces a real risk of harm, sufficient to entitle her to a grant of international protection, in her home area.
10. The appellant's claim is to have been targeted as a result of her ethnic identity being a member of the Ndau tribe and through being in an area that was known to have supported the RENAMO political party in elections. Such a claim is credible and supported by the background evidence.
11. Resistência Nacional Moçambicana (RENAMO) was a political party formed in Mozambique in 1976 following the country's independence from Portugal and their founder's opposition to the Marxist FRELIMO party, which ruled Mozambique at that time.
12. The fact the authorities and security services in Mozambique would have taken such actions as described by the appellant is plausible in light of an insurgency by way of a guerrilla campaign by militants of the RENAMO party and one its

splinter factions in Mozambique, which resulted in renewed tensions between RENAMO and Mozambique's ruling FRELIMO coalition over charges of state corruption and the disputed results of the 2014 general elections.

13. Whilst there was a ceasefire between August 2014 and February 2015, between March 2015 and May 2018 there were renewed tensions and clashes, which included the leader of RENAMO once again threatened to seize control of six northern and central provinces in March 2016: Sofala, Tete, Niassa, Manica, Zambezia, and Nampula. Chimoio where the appellant lived is in Sofala, one of the central provinces.
14. The country information provided in the bundles for the Upper Tribunal shows that the situation at the date of this hearing is somewhat different.
15. On August 1, 2019, President Filipe Nyusi and RENAMO leader Ossufo Momade signed a peace agreement bringing an end to the six-year conflict. The signing of the peace took place at RENAMO's remote military base in the Gorongosa mountains after which the last remained RENAMO fighters surrendered their weapons. The peace agreement was confirmed in a second signing ceremony in Maputo's Peace Square on August 6, 2019.
16. It is accepted the events in 2019 did not completely resolve the conflict between all sections of RENAMO and the government, specific opposition to the peace agreement being demonstrated by the creation of a new group known as the "RENAMO Military Junta" (RMJ), a group of around 500 fighters which continued to operate in Sofala and Manica Provinces. The appellant's subjective fear of a risk of ongoing harm in her home area appears in 2019 to have been objectively well-founded as this is an area where insurgents and government/security force activities will have continued.
17. I find, however, that later developments mean that any subjective fear the appellant may have of a repeat of the incidence in her home area is not objectively well-founded. One of the key leaders of the RMJ surrendered to the government forces in late 2020, and by February 2021 most of the fighters and commanders of this group had laid down their weapons and attacks had ceased.
18. There is insufficient material in the appellant's bundle to establish an ongoing real risk of a repeat of the treatment she experienced at the hands of the authorities in the past. Notwithstanding previous agreements not bearing fruit and a return to tensions and incidents of armed conflict, the current peace agreement, accompanied by the cessation of hostilities and the surrender of weapons held by the RENAMO and RMJ fighters warrants a finding that the peace agreement is effective, realistic, and will have long-term effect. I do not find the appellant has established that she faces a real risk in her home area for the reasons she relies upon based upon her previous experiences.
19. Whilst in asylum law if a person has suffered acts of persecution previously, good reason is needed to be made out to establish why they are not likely to suffer such serious harm in the future, the developments between the RENAMO and government and the lack of country material supporting the appellant's claim of an ongoing risk, shows a sustainable material change warranting a finding that, even to the lower standard, there is no real risk of a re-occurrence sufficient to warrant a grant of international protection.

20. The appellant in her bundle has produced evidence of further difficulties of a differing nature in Mozambique as a result of attacks by a groups who refer to themselves as 'Al Shabab' even though it is not known whether this group are affiliated to others operating in Africa using this name. There is also reference to ISIS but this appears to refer to the same group.
21. The appellant claims in her latest witness statement of 27 May 2021 at [13]:
13. My friends and family in Mozambique informed me as to what is happening in the country. One of my friends who lives and works as a teacher at a local school in Gorongosa, which is close to Chimoi, stated that they are now given community and imposed curfews and certain times of the day to be able to walk in public. This is to avoid being caught by Al Shabab and being attacked by them. The same friend told me that one of the female students at the school was raped by a group of Al Shabab members. This is something Al Shabab commonly do; raping women and girls. Al Shabab have now spread across Mozambique and even into Zimbabwe. Their ever-growing power is yet another element of fear that has instilled into me in relation to the thought of returning to Mozambique.
22. It is not disputed that the group referred to by the appellant are present in Mozambique as press reports show that in August 2020 the insurgents occupied the port of Mocímboa da Praia, about 100km from the natural gas extraction plant of Palma, and that a swathe of coastal land extending from Mocímboa to Macomia in the south of this region was in de facto control of the group at that time, which rose to prominence in Mozambique at the end of 2017. Whilst Palma came back under government control in early 2021, there was a further attack by the terrorist group, leading to further casualties thereafter.
23. Both Palma and Macomia, lie within Cabo Delgado province in the north-east of Mozambique, on the border with Tanzania.
24. The country material provided referring to the attacks focuses predominantly upon this northern region and Al Shabab. The Human Rights Watch report dated October 2020, relied upon by the appellant, states at [9 - 10]:
9. Since October 2017, Cabo Delgado has been a centre of many battles between government forces and insurgents belonging to an Islamic armed group affiliated with the Islamic state, known locally as Al-Sunna wa Jama'a (ASWJ). Human Rights Watch and other groups have documented alleged human rights abuses by both sides in Cabo Delgado, including killings, kidnappings, arbitrary detention, and ill-treatment of detainees. No one has been held to account for these abuses.
10. In April 2020, media reported that members of security forces were beating and harassing residents of Pemba, the capital of Cabo Delgado, for walking on the streets in the evenings. In May, the Catholic Bishop of Pemba, Luiz Lisboa, said that security forces were using excessive force against displaced people who sought refuge in Pemba city, after their villages were attacked by insurgents. In September, videos and pictures emerged showing the attempted beheading, torture and other ill-treatment of prisoners by Mozambican soldiers in Cabo Delgado. Also in September, a video sent to Human Rights Watch showed men wearing army uniforms, summarily executing a naked woman near Mocimboa da Praia. The Mozambican Armed Defence Forces (FADM) released a statement calling the video footage "shocking and horrifying". Later, the Mozambican Defence Minister Jamie Neto said that the video was doctored.

25. It is not disputed that there is evidence of attacks by Al-Shabab in the north eastern province of Cabo Delgado, Mozambique, for the actions of groups of a similar name in Africa and elsewhere have included murders, physical harm, and rape. There may be many reasons why individuals are subject to a curfew within a country or even a specific area within the same, including due to the spread of Covid-19. What I do not find is that the appellant has established, even to the lower standard of proof applicable to an appeal of this nature, that Al Shabab or the group known as ASWJ are active to the extent she has claimed throughout Mozambique or Zimbabwe. I specifically find the appellant has not established that she will face a real risk from this or any of the Islamic militant groups in her home area of Chimoio in the central province of Sofala, and particularly not in the capital Maputo. I find the appellant's claim that she will face such a risk to be a gross exaggeration and opportunistic manipulation of the situation that exists within northern Mozambique concerning the Islamic groups mentioned in an attempt to enhance her claim, especially following the signing of the peace deal between the government and the RENAMO rebels referred to above.
26. I find the appellant fails to establish an entitlement to a grant of international protection as she has failed to establish there is a credible real risk of persecution for a Convention reason, for the reasons claimed or otherwise, in her home area, or that if returned there she shall be subject to ill-treatment sufficient to warrant a grant of Humanitarian Protection or for a grant of leave pursuant to article 3 ECHR on protection grounds. If the appellant did not want to return to her home area, I find she has failed to establish that she would face any risk if she relocated to the capital Maputo where she lived prior to leaving Mozambique; on the basis of the available evidence it is not established it would be unduly harsh or unreasonable for her to do so. I dismissed this element of the appeal.
27. In relation to the appellant's human rights claim, it is necessary to consider first paragraph 276ADE(1) which reads:

276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

- (i) does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and
- (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
- (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
- (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
- (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
- (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

276ADE (2). Sub-paragraph (1)(vi) does not apply, and may not be relied upon, in circumstances in which it is proposed to return a person to a third country pursuant to Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

28. The advocate's submissions focused on 276ADE(1)(iv) and the issue of whether there will be very significant obstacles to the appellant's integration into Mozambique if she is required to leave the UK.
29. Although the appellant spent a lot of time in Zimbabwe her evidence is that following the death of her husband in 2004 she lived in Mozambique and it was from Mozambique that she travelled to the United Kingdom.
30. The documentary evidence provided includes a copy of the appellant's application made on 24 January 2017 for a visit visa which was issued to her on the 27 January 2017. The application details record the appellant was seeking a visa to visit the United Kingdom for two weeks, that she is a widow, and has an income of 150K as an administrator at EP recruitment, and that Maputo Bank states they have seen payslip. In that application the appellant stated she was born in Manica, which is to the north-west of Chimoio and that she was issued with a passport by the authorities in Mozambique on 3 July 2015. The details on the Visa application form provide an address at which the appellant stated she had lived for two years and nine months in Maputo, and that on 28 March 2016 she took a holiday in South Africa. The appellant stated she was in full-time employment with EP Recruitment in the Human Resources Administration and Training Team which she started on 5 October 2015.
31. The appellant speaks the language and has knowledge of living within both Chimoio and Maputo. There is reference to family members in Mozambique in the appellant's evidence and she provides nothing in that evidence that would show that the family would not be willing or able to assist on return if required.
32. The appellant is clearly an intelligent woman, and it has not been made out that she would be unable to secure employment if returned to Mozambique and be able to earn enough to pay for her needs including medical treatment as she has in the past, in accordance with the norms of Mozambique society.
33. The appellant has only been in the United Kingdom for a limited period of time, having arrived on 25 May 2017. It was not made out that she has not retained the required cultural or other knowledge to enable her to reintegrate into Mozambique and continue to enjoy a reasonable standard of living there.
34. In *Treebhawon and Others* (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 13 (IAC) it was held that mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of "very significant obstacles" in paragraph 276 ADE of the Immigration Rules.
35. In *Parveen v SSHD* [2018] EWCA Civ 932 Underhill LJ commented on that observation " I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary

- of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant"".
36. As all other claims made do not support the appellants claims in this regard, the remaining element in relation to the assessment of very significant obstacles, together with the appellant's claim under the ECHR, is her medical condition and the holistic assessment of how this factors into the legal issues at large.
37. Judge Jackson at [20] of her decision stated that the finding the appellant's health would not breach article 3 ECHR on return is a preserved finding. In relation to the medical evidence the Designated Judge of the First-tier Tribunal wrote:
95. The appellant has made reference to her medical conditions, including her HIV, heart problems and hypertension. There is only the report from Dr Scotland. There is nothing to indicate whether the appellant could obtain medication in Mozambique. The appellant has suggested that any Ndau that went to a government hospital would be killed. However, she has specifically referred in her screening interview to seeing a doctor at a government hospital. Whilst subsequently she has changed that to suggest that Dr Phillips was only a local doctor and even in her evidence to Judge Robson suggested that he was not a hospital doctor, I do not accept what the appellant says. The appellant is clearly referred to Dr Phillips, working in a government hospital.
96. There is nothing in the background, evidence to indicate that members of the Ndau tribe were discriminated against and prevented from receiving treatment in hospital. I do not accept the appellant's claim that members of the Ndau tribe would not be treated in government hospitals or be killed if they attended at government hospitals.
97. Dr Phillips was willing to write prescriptions for medication for the appellant. It has to be accepted that such prescriptions had to be bought on the black market but the appellant has not indicated any problems with regard to obtaining the medication. Indeed, she was quite previously willing to travel to Tanzania or other areas in order to obtain medication if the need arose. However, that was long before the incidents that she describes subsequently. Having returned from Tanzania she has indicated that she was on medication for her HIV. The background reports do not indicate that the medicines the appellant is currently on would not be available in Mozambique. The evidence of the appellant was that she could buy the medicines on the black market. There is no reason to suppose that the appellant could not continue to buy the medicines that she requires. There is no indication that she could not obtain notes from doctors as to what medication she requires, and then buy the medicines. According to the appellant she has managed her condition from 2004 onwards to 2016 in Mozambique.
98. I accept that the appellant has HIV and hypertension. The evidence from the appellant was that she could get the medicines that she required. In any event, the medical condition of the appellant does not approach the level of conditions required to satisfy the tests in *N v SSHD* [2005] AC 296, *EA & Ors v SSHD* [2017] UKUT 445 and *AM (Zimbabwe)* [2018] EWCA Civ 64 or even *Paposhvili* [2016] CDR 1113.
38. Although the Supreme Court has reconsidered *AM (Zimbabwe)*, reported as [2020] UKSC 17, in which the Supreme Court in approving *Paposhvili* said that the reduction in life expectancy had to be substantial but what was substantial would depend on the person and their age. However, it did not mean simply imminence of death. An applicant had to adduce evidence capable of



demonstrating that there were substantial grounds for believing that Article 3 would be violated. This was a demanding threshold.

39. The reference to Paposhvili by the Designated Judge shows that test was properly considered, and the preserved findings remain sustainable in law.

40. In terms of the factual situation; the appellant has since the last hearing provided two letters relating to her medical condition. The first dated 12 February 2021 and the second 25 May 2021 are written by a Dr C S Babu, a Consultant in Genitourinary Medicine at the Manchester University NHS Foundation Trust, Integrated Contraception, Sexual Health and HIV Service. The letters are addressed to the appellant's solicitors and are in the following terms:

12 February 2021

...

Thank you for your letter regarding the above information; following are my answers to your questions:

1. How long [TPS] has had HIV and each (if any) specific complication(s);

**TPS was diagnosed with HIV around 2002 in Mozambique. She had to flee from Mozambique due to persecution and when her mental health had significantly suffered.**

**She first attended our clinic in July 2017 when she was already on treatment for her HIV.**

**She suffers from hypertension for which she is also on treatment.**

**TPS has also been noted to have raised liver enzymes, which we think are due to a combination of raised cholesterol and hypertension and which we continue to monitor.**

2. The treatment/medication that she has received/is receiving;

**Prior to moving to our clinic TPS was on a combination of Tenofovir/Lamivudine/Efavirenz, which she had from 2008 to 2017. Since moving to our clinic she has been on a combination of Tenofovir/Emtricitabine/Efavirenz and continues to be on the same. She is also on antihypertensive medication which she receives from her GP.**

3. Your opinion regarding TPS current HIV state and mental health; in your opinion, how a moved to Mozambique would impact upon her ability to cope with her poor state of health, and any reasons why you believe she would face significant difficulties living abroad in light of her medical conditions which could not be overcome or entail very serious hardship for her, such as, for example, the lack of adequate treatment that will be available to her in Mozambique.

**TPS HIV is currently stable on antiretroviral treatment but she continues to be under significant stress due to ongoing issues with her immigration status and would cope poorly if she was to be moved back to Mozambique from where she had to flee due to persecution. A move back to Mozambique would have a significant impact on her mental health, a deterioration in which would adversely affect her adherence to HIV medication. In absence of good adherence to her HIV medication, her disease will progress, and she will likely develop advanced HIV infection, with resultant poor help and prognosis. Over the past few years, she has developed a good relationship with both our clinic and her GP**

**and without this support network, her prognosis, both in terms of her physical and mental health would be extremely poor.**

25<sup>th</sup> May 2021

Thank you for your letter regarding the above lady. Since my last report in February 2021, there are no further updates.

Please see my answers to your questions as follows:

1. Any change in our client's health since the last report was provided.  
No
2. Any (if any) specific complication(s) arising from these changes.  
NA
3. The treatment/medication that she has received/currently receiving.

Antiretroviral medication with Tenofovir, Emtricitabine and Efavirenz; TPS also receives hypertensive Lisinopril from her GP along with double base gel and Mefenamic acid.

4. Opinion regarding TPS current HIV status and mental health.

As per my previous letter TPS's HIV is stable on antiretroviral treatment but she continues to be under significant amounts of stress due to ongoing issues related to her immigration status.

5. Dr Babu's opinion on how a move to Mozambique would still impact upon her ability to cope with her poor state of health, and any reasons why you believe she would face significant difficulties living abroad in light of her medical conditions which could not be overcome or entail very serious hardship for her, such as, for example, the lack of adequate treatment that will be available to her in Mozambique.

A move out of Manchester or the UK would have a significant impact on TPS's mental health as a result of which adherence to antiretroviral medication would suffer, resulting in deterioration in her physical health. It has taken a very long time for TPS to establish a good relationship with our clinic and her GP and in the absence of this support network, her prognosis is likely to be very poor. I also have doubts as to whether she will be able to access effective antiretroviral treatment in Mozambique, which is essential for her health and in the absence of which she would be susceptible to serious opportunistic infections and malignancies, resulting in her premature death.

41. Dr Babu's expertise is as a consultant in Genitourinary Medicine and there is no CV attached to either of the letters referred to above demonstrating training or relevant expertise in mental health issues or in relation to country conditions in Mozambique. Dr Babu is recorded on the GMC website as being a Specialist Registrar in Genito-urinary medicine from 9 April 2009.
42. As Mr Bates submitted, there is no evidence that the appellant, despite her earlier difficulties in Mozambique, failed to take the medication prescribed for her, nor anything in the reports provided to show that she was unable to access relevant HIV medication, from whatever source, or that such medication was not sufficient to meet her needs. The test is not whether the appellant will be able to obtain the same medication if returned to Mozambique that she receives in the United Kingdom and it is noted that two of the drugs that she was able to

gain access to in Mozambique are two of those she has continued to take in the United Kingdom. There is nothing in the reports or medical evidence provided to show that even if the appellant had to revert to her original cocktail of medication, which had been prescribed to her previously, that she would suffer in a manner sufficient to engage article 3, even in light of AM (Zimbabwe) in the Supreme Court.

43. There is insufficient credible evidence that the appellant has suicidal ideation and nothing advanced to suggest she could not gain access to medical services if required in Mozambique, for both her physical and mental health needs. Although Dr Babu refers to a significant impact upon the appellant's mental health if removed from the United Kingdom it is not made out she could not re-establish the relationship with the clinicians or the hospitals who assisted her in the past in Mozambique or establish a new support network to meet her medical needs.
44. It is also noted that the fifth question posed by the appellant's representatives in the letter of 26 May and the third question in the letter of 12 February 2021 suggests a lack of adequate treatment being available for the appellant in Mozambique, but there is nothing to suggest that this will be the case.
45. It is not disputed some residents of Mozambique are HIV positive. There are a number of initiatives to combat the effect of the virus upon the populace, including NGO's such as 'The Centers for Disease Control and Prevention' (CDC) which opened an office in Mozambique in August 2000. CDC supports the Mozambique Ministry of Health (MoH) by addressing their immediate needs and by building long-term capacity to mitigate the impact of HIV/AIDS. This organisation had by 2018 assisted in providing for more than 820,000 men, women, and children with HIV treatment, a number which will have increased since.
46. The appellant's evidence was that she was able to access medical care, and it has not been made out that antiretroviral drugs are not available at private hospitals and clinics in Mozambique rather than having to use the "black market" as the appellant claimed. It was not made out the appellant will not be able to obtain the relevant medical service or a prescription for the medication she will continue to require. An All-Africa news article dated 4 July 2012 refers to a factory producing anti-retroviral drugs, built in cooperation with Brazil, beginning its operations in that month in the southern Mozambican city of Matola, which is to the south west of the capital, Maputo. Even if the more effective source of obtaining the required drugs is the 'black market' or in neighbouring countries to which the appellant has access, this supports the fact the required drugs are available.
47. It is not made out the attitude in the appellant's home state is such as to deny the appellant access to the treatment and medication she requires and her claims

in the alternative are not made out. This is a further example of the appellant making claims which have no merit in an attempt to enhance her claim.

48. In *N v UK* [2005] UKHL 31, the House of Lords noted the European case of *Ameghian v Netherlands* No 25629/04 in which it was effectively held that the fact that treatment may be beyond the reach of the claimant in the receiving state was not to be treated as an exceptional circumstance. It may be different if it could be said that treatment was not available in the receiving state at all and the claimant was exposed to an inevitable risk due to its complete absence. In the current appeal treatment has been shown to be available and accessible.
49. In relation to the comparable treatment in Mozambique and the United Kingdom, in *GS (India) and Others* [2015] EWCA Civ 40, at paragraph 67, Lord Justice Laws endorsed the views in *N v UK* that "aliens who are subject to expulsion order cannot in principle claim any entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State".
50. In *AS v Switzerland* (Application No 39350/13) ECtHR (Second Section) 2015 it was held that the decision to remove an applicant suffering from a serious physical or mental illness to a country where treatment facilities were inferior to those in the Contracting State could raise an issue under Article 3 only in very exceptional cases where humanitarian grounds against removal were compelling.
51. To establish whether this case has any elements that enable it to be classed as a very exceptional case where humanitarian grounds against removal are compelling, it is necessary to consider the impact of the Covid-19 pandemic.
52. It was established at the hearing that the appellant has received the two recommended doses of the Astra Zeneca vaccination in the UK, the first dose having been given on 6 March 2021 and the second dose on 9 May 2021. It is also not disputed that vaccination does not give a person immunity from the virus but rather strengthens their ability to avoid the more serious consequences of contracting the virus as is regularly witnessed on the television and other news outlets in relation to those who have not had the benefit of the vaccination programme, or the statistics in relation to hospitalisation which, in the United Kingdom, recorded recently that none of those in hospital as a result of contracting Covid-19 had received both the vaccines indicating the effectiveness of the same in preventing the disease developing to the point where hospitalisation was required.
53. Available evidence in relation to the effectiveness of steps taken by the government of Mozambique include a report from the Mozambican Health Authorities who reported on 8 June 2021 that the total number of recoveries remained 69,687 which was about 98 per cent of all those diagnosed with Covid-19 in Mozambique.
54. According to a press release from the Health Ministry, one death from Covid-19 was reported on 8 June 2021. The victim was a 43 year old Mozambican woman

who died in Maputo city. The total Mozambican death toll from Covid-19 now stands at 839. Since the start of the pandemic, 561,992 people have been tested for the coronavirus that causes Covid-19, 811 of them in the previous 24 hours. Of the samples tested, 237 were from Maputo city, 184 from Tete, 117 from Sofala, 97 from Zambezia, 64 from Inhambane, 53 from Nampula, 19 from Cabo Delgado, 18 from Manica, 17 from Maputo province, and five from Gaza. No tests were reported from Niassa.

55. The recovery rate for those infected within Mozambique does not support the claim that even though the appellant is HIV positive, as a large number of individuals in Mozambique are, she will be exposed to a risk that could result in infection and serious illness leading to a breach of her article 3 rights if returned. Not only are the authorities in Mozambique aware of and taking steps to try and control the impact of the virus, the appellant has already received two doses of the vaccination, whereas in April 2021 the government of Mozambique was starting to roll out the second phase of the vaccination programme, meaning the appellant will have greater protection than most of her countrymen and women. As within the United Kingdom, as the rate of vaccinations increases the protective effect of the same becomes stronger. It was not made out either in the appellant's home area or the capital city that the appellant will not be able to function adequately as other members of that country do as a result of the Covid pandemic and reasonable precautions being taken to protect the population in relation to the same.
56. So far as article 8 medical issues are concerned, I note the comments made regarding the relationship the appellant has formed with those responsible for her treatment in the United Kingdom. Such will clearly form part of her private life.
57. The appellant's status in the United Kingdom has always been precarious and when section 117B Nationality, Immigration and Asylum Act 2002, is considered it is clear the appellant, although she possesses relevant language skills, is not financially independent, has a precarious immigration status, and her presence in the United Kingdom has resulted in considerable cost to the NHS to meet her health needs.
58. The appellant clearly had an effective relationship with her medical practitioners in Mozambique before coming to the United Kingdom, as evidenced by the diagnosis, treatment received, and lack of evidence to the contrary. It is not made out the appellant will not be able to re-form such relationships or that the need to change her treating physicians and professional support network is sufficient to make the decision disproportionate. I accept the appellant will not relish the prospect as it appears it took some time for her to form a relationship with those currently responsible for her care in the UK.
59. I do not doubt that the appellant would prefer to remain in the United Kingdom but article 8 does not give a person the right to choose where they wish to live. I do not find the appellant has made out that she can satisfy any element of the Immigration Rules, with particular reference to paragraph 276ADE. This is a factor that can be properly weighed against her when assessing how the facts

she relies upon compare to the public interest in her removal from the United Kingdom.

60. It is not made out on the evidence currently available that it is appropriate to depart from the preserved finding that the impact of the appellant's medical condition and evidence concerning availability of treatment on return to Mozambique will not lead to a breach of article 3 ECHR.
61. Having undertaken the necessary balance sheet approach and having looked with care at the arguments advanced by Mrs Patel on behalf of the appellant and Mr Bates on behalf of the Secretary of State, and having considered all the documentary and oral evidence given to this Tribunal, I conclude the Secretary of State has established that any interference with a protected right relied upon by the appellant is proportionate to the legitimate aim of effective immigration control, including the economic welfare of the United Kingdom. The reality for the appellant is the need for ongoing medical intervention is likely to be for the remainder of her life, which would be a considerable cost to the NHS, when the appellant has no right to be 'medicated' in the UK.

**Decision**

**62. I dismiss the appeal.**

Anonymity.

63. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 28 June 2021