IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000642

First-tier Tribunal Nos:
PA/53294/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21st of November 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

William Gadinala
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms R Chapman, instructed by Wilson Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer (25/05/2023) May 2023)
Mr T Melvin, Senior Home Office Presenting Officer (15 / 09/2023)

Heard at Field House on 25 May 2023 and 15 September 2023

DECISION AND REASONS

1. The Secretary of State appeals with permission against a decision of First-tier Tribunal Judge Head, promulgated on 6 January 2021 allowing Mr Gadinala's appeal against a decision to deport him from the United Kingdom.

2. I refer to Mr Gadinala as the appellant as he was before the First-tier Tribunal. I have discharged the anonymity order made as this is no longer

a protection case, and I am not satisfied that the need to maintain open justice is outweighed by any other factors in favour maintaining anonymity. In doing so, I note the submission by Ms Chapman to the contrary, and that anonymity is necessary to protect family members. I am not satisfied that is so, given that there is no need to name them, or to refer to any sensitive information about them as the facts are not in dispute.

3. On 7 June 2013, the appellant was convicted of aggravated burglary and on 24 September 2013, he was sentenced to 8 years imprisonment in a Young Offenders Institution (YOI). On 5 December 2014, the appellant was served with a decision to deport and on 18 February 2015, the appellant was served with a signed Deportation Order. On 3 June 2016 the appellant wrote to the Home Office stating that he was not willing to return to Zimbabwe. A protection claim was raised on 17 September 2016. The appellant attended substantive asylum interviews on 22 October 2016 and 12 September 2017. In a decision dated 23 November 2018, his asylum application was refused. A supplementary decision in relation to article 8 was issued on 8 February 2022.

4. The appellant's case before the First-tier Tribunal was that he has a well-founded fear of persecution in Zimbabwe, would be destitute on return, and that it would be unduly harsh on his partner and daughter for them to go to Zimbabwe, or for him to be deported there without them, his partner being very vulnerable and the appellant have an exceptionally close relationship with his daughter such that there are very compelling circumstances which outweigh the public interest in deportation.

5. The respondent's case is that the appellant is excluded from protection by operation of section 72 of the Nationality, Immigration and Asylum Act 2002. She was not satisfied that the appellant was at risk on return to Zimbabwe and concluded that he had fabricated his asylum claim.

6. The respondent also concluded that it would not be unduly harsh on the appellant's partner and their daughter if they were to remain in the United Kingdom after he was deported, nor that it would be unduly harsh for them all to go to live together in Zimbabwe. Further, it is her case that there are no very compelling circumstances in this case.

7. The judge concluded [51] to [57] that the appellant was not excluded from the protection of the Refugee Convention pursuant to Section 72 of the Nationality, Immigration and Asylum Act 2002 as he had rebutted the presumption that he is a danger to the community.

8. The judge accepted the appellant's account that his father was a known MDC supported [71] and his account of how he had been severely ill-treated and tortured while a child in Zimbabwe [72] but concluded that he did not have a well-founded fear or would be at real risk of mistreatment on account of his father or aunt's profiles on return [82]. She concluded also [83] that there would be no article 3 breach on return.

9. Having set out in detail the evidence regarding the appellant and his partner, noting that they are extremely vulnerable individuals [104], and the evidence of the strong bond between the appellant and his daughter, the judge concluded [121] that the effect of deportation would be unduly harsh. She did, however, find that the appellant could not meet the requirements of Exception 1 [124].

10. The judge then turned [125] to [136] to analysing whether there were very compelling circumstances over and above the two exceptions before balancing them [137] to [139], and concluding that the decision to refuse the human rights claim was disproportionate, allowing the appeal on that basis.

11. The Secretary of State sought permission to appeal on the grounds that the judge had erred by "making a material misdirection in law" in respect of the s 72 certificate and in "making a material misdirection of law/inadequate reasoning – compelling circumstances" (sic).

12. It is averred that the judge erred in her approach to the assessment of whether the appellant presented a risk, failing in particular to take into account the judge's sentencing remarks [4] and [5] that he had been assessed as a medium risk of causing serious harm.

13. It is also averred that, when assessing whether there are compelling circumstances outweighing the public interest, the judge had erred by focussing exclusively on factors in the appellant's favour, and had not weighing against him the severity of the offending, nor had she had regard to factors suggestive of him being able to establish himself in Zimbabwe given the extent of his rehabilitation. It is also averred that the judge failed to take into account that the appellant's family life was established while his presence in the United Kingdom was precarious.

14. On 13 March 2023 First-tier Tribunal Judge Khurram granted permission to appeal on all grounds.

The Hearing on 25 May 2023

15. Mr Lindsay accepted that there were difficulties in demonstrating that any error with respect to the section 72 certificate were material, given that the judge had concluded that the appellant was not a refugee, nor would his removal engage article 3 of the Human Rights Convention. He submitted, however, that the finding that the appellant did not constitute a danger to the public was flawed, and that this was material, given that it was a factor taken into account in the assessment of very compelling circumstances.

16. He did, however, submit that the judge's approach to the balance sheet was flawed, in that she had directed herself that the length of the sentence was the only indicator of the seriousness of the offence, failing to note also that there were several offences. He submitted also that the

judge had not taken into account that the sentence imposed on the appellant had included an extended licence.

17. Ms Chapman relied on her rule 24 response, submitting that the judge had not erred with respect to the section 72 certificate, having taken into account all relevant factors, including that family life had been developed when the appellant did not have leave to be here. She had been fully aware of the seriousness of the crime, concluding that the appellant was now a changed person. Had she found that he was a risk, then she would have taken that into account.

18. Ms Chapman submitted further that it could not properly be inferred from what the judge had written at [129] that she had not taken all the circumstances of the offending into account, and that the decision needs to be read as a whole.

19. I reserved my decision.

Evaluating the grounds of appeal

20. As a starting point in the evaluation of the grounds, it is important to bear mind the need to be cautious when considering whether to set aside a decision of the First-tier Tribunal. As the Supreme Court observed in HA (Iraq) v SSHD [2022] UKSC 22:

> 72. It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular:
>
> > (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently - see AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49; [2008] AC 678 per Baroness Hale of Richmond at para 30.
> >
> > (ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account - see MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49; [2011] 2 All ER 65 at para 45 per Sir John Dyson.
> >
> > (iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out - see R (Jones) v First-tier Tribunal (Social Entitlement Chamber) [2013] UKSC 19; [2013] 2 AC 48 at para 25 per Lord Hope.

21. Equally important is the need for those seeking permission to appeal to focus on errors of law.

Ground 1

22. Despite the warnings in Joseph (permission to appeal requirements) [2022] UKUT 00218, much of the respondent's grounds is taken up with disagreements over findings of fact. Further, despite the heading "Making a material misdirection of law", ground 1 does not even attempt to identify where in her determination the judge arguably misdirected herself in law. At best, what is pleaded is a failure to take into account relevant evidence or matters.

23. A further difficulty with ground 1 is that, as the judge concluded that the appellant did not have a well-founded fear of persecution, her conclusions as to whether or not section 72 of the 2002 Act applied did not affect the outcome as she dismissed the appeal on asylum grounds. At best, it could be argued that an error in the assessment of the risk the appellant presents could have affected the outcome of the balancing exercise undertaken in respect of article 8 of the Human Rights Convention.

24. In any event, there is no merit in what is averred at [2] to [5] of the grounds. In a careful and well-structured decision, the judge set out at length why she reached the conclusion she did as to the risk the appellant now poses. There is no proper basis identified as to how it is said the judge equated low risk with no risk, nor are the passages from MA (Pakistan) v SSHD [2014] EWCA Civ 163 of much assistance, given that they relate to a decision made under the pre 2012 provisions relating to deportation prior to the coming into force of sections 117A to D of the 2002 Act.

25. It is, in any event, clear from what the judge wrote at [49] and [50] that she considered the issue of risk carefully, and taking into account the evidence from the Probation Officer from September 2022, and gave cogent, detailed reasons for concluding that the appellant no longer presents a danger to the public which was what was in issue in the consideration of the section 72 certificate, not the wider considerations which inform an assessment of proportionality in respect of article 8.

26. Contrary to what is averred, the judge did have regard to the sentencing remarks. But, as she found, the appellant had become a changed person in the nine years after those were made. She sets out in significant detail the reasons for that finding, and was clearly aware of the extended period of licence. It is also plain on the face of the decision that she was aware of the appellant's good behaviour was while on licence [57], but equally she found no evidence of his involvement of criminality or misbehaviour in the 10 years since his conviction, 5 years of which were since his release. She also noted [54] the assessment that the risk of offending was below 3% and the presence of protective factors including a stable home life which mitigated any concerns.

27. Thus, for these reasons, there is no merit in ground 1.

Ground 2

28. The grounds fail to note that the evaluation of whether the appellant is a danger to the community is manifestly not the same test as whether, having had regard to the public interest and sections 117A to D of the 2002 Act, deportation is proportionate. The case law makes it clear that a lack of propensity to reoffend is not a factor which attracts much weight, albeit that the opposite would be relevant in conducting an analysis of very compelling circumstances exist. It is thus a much broader test than that applicable when considering section 72.

29. The submissions that the judge did not properly have regard to the fact that the appellant's private or family life was established while his situation was precarious are, in reality, submissions as to weight. As Mr Lindsay accepted, precariousness was not relevant in the case of the family life with his child. Further, the judge was manifestly aware of the precariousness as can be seen from her observation [122] that the appellant had not been lawfully resident had had been the subject of a deportation order since 2015. There is no proper basis for any assertion that the judge was unaware of the effect of the deportation order as regards leave to remain.

30. There is no merit in the submission that the judge did not have sufficient regard to factors suggesting that the appellant would be able to establish himself again in Zimbabwe. This is nothing more than an improper argument as to weight. Further, the judge sets out in considerable and cogent details why the appellant, who is vulnerable, would not be able to re-establish himself in Zimbabwe – see paragraphs [82] to [83], [96], [101]

31. There is no merit in what is averred at [8] for these reasons, and the final sentence of that paragraph flies in the face of the findings of fact at [102] as to the vulnerability of the appellant and his partner, and the effects there would be on the family unit [114]. This is just a disagreement dressed up as an error of law.

32. Paragraph 9 of the grounds adds nothing. Paragraph 10 is, again, simply disagreement with a finding of fact which, for the reasons set out above is sustainable.

33. There is, however, some merit in the submission that at [138], the judge has focussed exclusively on factors in favour of the appellant weighing against him the severity of the offending and matters in favour of deportation. That is not, however, a submission that relevant factors have not been taken into account; nor is it a submission that insufficient weight has been placed on the public interest. If that is what the respondent meant, then she should have pleaded it. And, as Ms Chapman submitted, what the judge wrote at [138] is a summary of the balancing exercise which needs to be seen in the context of the factors identified in the preceding paragraphs [127] to [136], clearly headed "public interest factors" and "private and family life factors".

34. There is, however, as Mr Lindsay submitted, a difficulty at paragraph [p129]:

> 129. Here the only indicator of the seriousness of the appellant's offending is the sentence imposed and the only conclusion which can sensibly be reached from the sentence of eight years imprisonment is that this was serious offending.

35. That passage must be read in the context of the earlier reference [127] to Zulfiqar v SSHD [2022] EWCA Civ 49 at [38] to [44].

36. The seriousness of an offence is material matter to be taken into account – see section 117C (2) of the 2002 Act; it is also consistent with the jurisprudence of the ECtHR.

37. How the seriousness of an offence is to be gauged was considered by the Supreme Court in HA (Iraq) at [60] to [71] where the court considered the Secretary of State's criticism of the Court of Appeal's judgment below placed undue emphasis on the sentence imposed as the criterion for establishing seriousness. The court held:

> 67. In practice, however, an immigration tribunal may have no information about an offence other than the sentence. If so, that will be the surest guide to the seriousness of the offence. Even if it has the remarks of the sentencing judge, in general it would only be appropriate to depart from the sentence as the touchstone of seriousness if the remarks clearly explained whether and how the sentence had been influenced by factors unrelated to the seriousness of the offence. In relation to credit for a guilty plea that will or should be clear. If so, then in principle I consider that that is a matter which can and should be taken into account in assessing the seriousness of the offence.
>
> 68. Underhill LJ appreciated "the logic" of this at para 147 of his judgment. He then, however, rejected it as involving an inappropriate "degree of refinement" and being inconsistent with the statutory provisions (relating to medium and serious offenders) which make no distinction between discounted and undiscounted sentences. I do not agree that this is simply a refinement. In relation to short sentences its impact may not be great, but in relation to longer sentences it may be considerable. Take, for example, a jointly committed robbery under which one offender receives a sentence of nine years and the other, after an early plea, receives a sentence of six years. The seriousness of the offence they jointly committed is the same, but if that is judged by the sentence imposed then there is a major disparity. Nor do I agree that much weight should be placed on the fact that no distinction for discount is drawn when distinguishing between medium and serious offenders. One can well understand that for those purposes a bright line rule was required. But, it is different when what is required is an assessment of how serious the offence is in order to gauge the level of public interest, as section 117C(2) mandates. Any evidence that bears on seriousness is relevant to that statutorily required assessment, not just the sentence imposed.

69. Underhill LJ also made the point that the fact that someone has acted responsibly and acknowledged guilt should be allowed to be put into the proportionality balance. In appropriate cases I agree that it may be relevant to rehabilitation. It does not, however, impact on seriousness.

70. The other issue raised in relation to the seriousness of the offence is whether it is ever appropriate to place weight on the nature of the offending in addition to the sentence imposed. Whilst care must be taken to avoid double counting, as this may have been taken into account in arriving at sentence, in principle I consider that this can be a relevant consideration. This is supported by the Strasbourg jurisprudence which refers to the nature and seriousness of the offence as a relevant factor. As stated in *Unuane* at para 87:

> "… the Court has tended to consider the seriousness of a crime in the context of the balancing exercise under article 8 of the Convention not merely by reference to the length of the sentence imposed but rather by reference to the nature and circumstances of the particular criminal offence or offences committed by the applicant in question and their impact on society as a whole. In that context, the Court has consistently treated crimes of violence and drug-related offences as being at the most serious end of the criminal spectrum."

38. Also of relevance is what the Supreme Court concluded in Sanambar v SSHD [2021] UKSC 30 at [51] to [52]:

51. Unlike in *Unuane* the Upper Tribunal gave careful consideration to the particular circumstances of the appellant's situation. It carried out its assessment of the decision to deport in accordance with the statutory criteria set out in the 2002 Act and the terms of the 2014 Rules. The statute and Rules provided that the public interest required his deportation unless the relevant exception applied or there were very compelling reasons to prevent his deportation. The first step was the consideration of the nature and seriousness of the offences. These were knifepoint robberies at night of victims aged between 15 and 18 years. The offences were pre-planned against vulnerable young victims who were likely to have goods of value. There was a background of previous offences by the appellant of attempted robberies and possession of an offensive weapon. Even though the offender was a youth he was sentenced to three years' detention. He would have received a much longer sentence if he was an adult.

52. It was recognised that although the 2002 Act and the 2014 Rules did not expressly require consideration of the circumstances of the offending it was necessary to do so in order to consider whether there were very compelling circumstances outside the exception which made it disproportionate to deport. The Upper Tribunal noted that the entirety of the applicant's offending occurred between the ages of 14 and 17 and that the most recent conviction was his first custodial sentence. These were, however, plainly very serious, violent offences which distinguished this case from *Maslov*.

39. Here, the judge had lengthy sentencing remarks before her, in which the judge explained that appellant's sentence was reduced by one third from 12 years down to 9 years with an extended licence period. But, and perhaps understandably, following what Underhill LJ held in HA (Iraq) v

SSHD in the Court of Appeal, she confined her consideration of seriousness to the length of sentence only. That, in my view, was a misdirection in law, and one which is capable of affecting the outcome, given the circumstances of the appellant's crimes as set out in the sentencing remarks.

40. Had the judge not used the word "only", there would be merit in Ms Chapman's submission that it could not be inferred that the judge had not taken into account the full circumstances of the offence, and of the fact that sentence has been reduced. It is evident from the decision that the judge was aware of the sentencing remarks, and had read them; they, in turn, set out the circumstances of the offences in detail.

41. The question then is whether this submission falls within the scope of the grounds as pleaded. Ms Chapman properly did not submit that they did not. I am in any event persuaded that submission with regard to the weighing of the factors in favour and against the appellant is wide enough to encompass the error of law identified at [39] and [40]. Further, I am persuaded that it is material; the wider circumstances of the offending were sufficiently serious that they could have affected the outcome.

42. Accordingly, I set aside the decision of the First-tier Tribunal on the basis that it involved the making of an error of law capable of affecting the outcome.

43. The findings of fact made by the First-tier Tribunal are preserved. The scope of the remaking is confined to the weighing of the factors identified in the decision of the First-tier Tribunal at with the addition of a wider consideration of the seriousness of the appellant's offending. To that end, directions for the remaking set out below are based on the assumption that it will not be necessary to receive any further oral or documentary evidence, and that the remaking will proceed on the basis of submissions only.

Remaking the Decision

The Law

Section 117C of the NIAA 2002 provides:

"117C Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
>
> (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."

44. In Binbuga (Turkey) v Secretary of State for the Home Department [2019] EWCA Civ 551 the Court of Appeal held at [57] that:

> "… cultural integration refers to the acceptance and assumption by the foreign criminal of the culture of the UK, its core values, ideas, customs and social behaviour. This includes acceptance of the principle of the rule of law."

45. In Zulfiqar v Secretary of State for the Home Department [2022] EWCA Civ 492, case law has identified three reasons why deportation of foreign nationals who commit such serious offences is in the public interest (i) the risk of re-offending; (ii) the need to deter foreign nationals from committing serious crimes and (iii) maintaining public confidence in the system (see [38]-[44] of Underhill LJ's judgment). These are all factors which must be given considerable weight in any assessment of proportionality.

46. In remaking this decision, I have also taken into account HA (Iraq) and Sanambar in assessing whether the very serious compelling reasons test is met. I have also taken into account Ms Chapman's detailed skeleton argument.

47. The starting point is the findings of fact reached by Judge Head, which are preserved Her finding that Exception 2 was met is preserved. It is appropriate to set those findings out in some detail.

48. At [101], the judge found:

> 101. As set out above, I accept the appellant's account of his traumatic childhood in Zimbabwe, I accept he has no known support, ties or connections, the

appellant has no money or knowledge as to how to navigate Zimbabwe as an adult, his last years of living there were as a homeless child subject to abuse and neglect. I find that the appellant's, as well as [his partner's and his child's] family and friends all live in the UK and are British citizens, there are no know ties to Zimbabwe. I find in light of their circumstances, they are likely to be destitute in Zimbabwe. I find that without any support network, unable to speak any tribal languages, without any connections to the country at all, it would clearly be unacceptable in all the circumstance for [his partner and child] to live there. In line with the country guidance, Zimbabwe is dangerous and unstable. It is clear in my judgement that it would be unduly harsh for [his partner and child] to relocate to Zimbabwe.

…

104. It is clear from the evidence presented that both the appellant and [his partner] are extremely vulnerable individuals. As set out above, I accept in full, the appellant experienced a considerable traumatic childhood, involving, abuse and torture at the hands of his parents and the police and experienced street homelessness. I have considered the unchallenged evidence in relation to [his partner's childhood]…

49. Having accepted the evidence of the social work as to the exceptionally close relationships that exist, the judge found [114]ff:

114. The account that there is an unusually deep connection between the appellant and his daughter and that [his partner] is particulalry vulnerable, is of course self-serving, it is important to recognise however, the transparency they showed when giving their evidence I found their evidence about their life together compelling and their evidence is supported by unchallenged independent evidence.

115. I note [the partner's] most up to date evidence is that she is particularly vulnerable and she gets a lot of support from William when it comes to looking after [their child]. …

116. [The partner] confirmed how she seeks to look after her family financially and that it is key for the appellant to look after [their child] when she is studying and starts working again.

117. I find that the evidence all indicates that the appellant has an especially close bond with his daughter and that having spent her life in close proximity of the appellant, she has a deep emotional attachment to him. There is a cogency and consistency about the evidence of this relationship which has not been undermined by the respondent.

…

118. On the facts as I have found them to be, [the appellant's daughter] is exceptionally close to, and emotionally dependant on, the appellant. Their relationship has in my judgement an extra protective layer when [the partner's] particular vulnerabilities are considered. [The child] was born after the appellant was released from the YOI and so the pair have been together for all of her life. The fact that the appellant has been unable to work has meant that he has been [the child's] primary carer with lots of

> time to give her close day to day emotional and practical support. To remove the appellant from [her] now and to deprive her of the daily support of the appellant would in my judgment result in a degree of harshness for [her] which reaches the high bar of being undue.

50. The judge then went on to explain why the prospect of the daughter having contact with the appellant by "modern means of communication" stating why that would not be reasonable given the need for physical proximity [120] and that:

> 119. … in the five years between his release from the YOI and this hearing, the appellant has had a British daughter with whom he has established an exceptionally close and positive relationship. Applying the guidance to the current case and in particular those factors identified by Underhill LJ and set out above, it is in my judgment clear that the effect of the deportation of the appellant to Zimbabwe is likely to be unduly harsh on his daughter and in turn his partner.

51. The judge also accepted that the appellant has a strong private life, although he had not been resident for more than half of his life and so Exception 1 does not apply [122], and that the appellant had made an early guilty plea, had shown remorse and had being re-integrated [123] and that there would be very significant obstacles to his reintegration into Zimbabwe.

52. The scope of the remaking is confined to the weighing of the factors identified in the decision of the First-tier Tribunal at 126 to 139.

53. I did not hear any further evidence, although it was drawn to my attention that the appellant has now had a third child who, at the day of hearing, was yet to be registered.

54. I heard submissions from both representatives. Ms Chapman relied on her skeleton argument submitting that in this case, despite the very serious nature of the appellant's offending, the particular circumstances of the family were such that the effect of deportation would be so great that the public interest in that would be outweighed.

55. Mr Melvin submitted that despite the findings of undue harshness and the preserved findings of fact, the seriousness of the offending in this case was so grave that the public interest remained in favour of deportation.

56. I accept the findings made by the First-tier Tribunal that, in summary, the appellant is a changed person since he committed his crimes in 2012 and has extricated himself from the world in which he was entrenched. He has now matured into a responsible father of now two children and I accept, had a very difficult childhood, spending a large amount of the years between age 7 and 14 living in an abusive family home and on the streets in Harare, in care and in government camps. He was severely physically maltreated by his parents, the police and others.

57. And, in the light of his particular vulnerabilities, returning to a place where he suffered abuse and neglect as a child without any support network and with no connections, home, family or friends. That would, I accept, be exceptionally detrimental to him.

58. I accept that he has a genuine and subsisting relationship with his daughter and partner and that to separate them would have a greatly adverse impact on him and the other members of the family. But also, it would not be acceptable for his partner and daughter to live in Zimbabwe without any support network and given the particular circumstances and difficulties that his partner, underwent which I accept that makes her an extremely vulnerable individual and I consider that it is important to note what the social worker, Peter Horrocks, said.

59. These are all points in the appellant's favour. He clearly meets exception 2 by a significant margin, and while not having spend half of his life here lawfully, is now integrated.

60. I now turn to the public interest factors to be weighed against him.

61. As Ms Chapman accepts, there are three elements making up the public interest, as can be seen from Zulfiqar. She accepted also that the more serious the offence, the greater the public interest in deportation and she accepts that there is a very strong public interest in the appellant's deportation given the nature of his serious offending.

62. It is at this point I consider it necessary to set out in some detail the sentencing remarks which describe in detail the extent of crimes committed. The judge said as follows:-

> You, William Gadinala were, as you have now admitted to the probation officer who prepared the most recent report, the main person in a series of planned, violent burglaries, in fact robberies in people's homes. You caused fear and a sense of violation of both persons and property. You knew weapons and firearms or objects having the appearance of firearms were to be used. It matters not who held them, who threatened, who used the actual violence. You are responsible for the actions of the others. And you, Kirby Moore and Shackel Brooks on the one occasion you were part of Gadinala's gang of criminals were equally responsible for what each of you did.
>
> In the first of these crimes, Gadinala, together with others on 15 February 2012… wen tto an address in ….South Lambeth… All of you were wearing balaclavas or scarves over you faces. The address in Claylands Road was a house in which a couple, Alex Kim and her husband were living. They had a number of guests from Korea staying with them.
>
> At about 8.30pm or so, so in the hours of the darkness of a February evening, you together with others knocked on the door of Alex Kim' s house and a black handgun or what appeared to be a black handgun was pointed at her face. She moved backwards and started to scream, collapsing backwards on to the floor. The gun was continued to be pointed at her and she was ordered not to scream. One of your gang then ran up the stairs and

the criminal with the gun went to the kitchen. Two of the guests from abroad were hiding on the other side of the conservatory. Other guests had locked themselves in the bedroom. Miss Kim's husband was confronted and put his hands over his head to indicate that he was not going to do anything fearing for his life and he was told not to move. Alex Kim was left crying in the front room whilst her husband Mr Donnelly was forced to flee from his own house leaving his wife and call for the police .

Five days later on 20 February, again in the darkness of a February evening and this time with three others another violent burglary took place at 17 Ebbisham Drive that was occupied by a number of young European men working in London.

And you and your fellow criminals Gadinala had armed yourself with a gun or something looking like a gun, no one was going to ask questions about it, and a knife. Once again scarves and hoods were used as a disguise. One of you knocked on the door. Mr Parchi (?) opened it. There were four young men, including you Gadinala. An excuse was made about requesting a bicycle in the back garden all part of a plan because that could not be seen from the front of the house. The occupant was threatened, the gun was pointed, he was pushed, there were demands for money made, there was a struggle, he was punched and an untidy search was made. Mr Parchi was petrified. Another resident was so terrified he locked himself in his room, and another resident had what he described as a pistol pointed at him and demands for money made

By 23 February 2012 , you had recruited your two co-defendants who sit in the dock before me. They were 16 at the time and it is a serious aggravating factor that at this time you were, although be it only just, an adult of 18 and you had recruited two 16 year olds to commit crime with you. You added a further corrupting element to their already disordered lives. At 9.00pm in the evening you three set out to commit violent burglaries yet again, yet again in your case, Gadinala. And the evidence in the first time in your case, Kirby Moore and Shackel Brooks.

Your first intended victim, not the subject of any particular count, was a lone woman at 25 St Stephen's Terrace. The trick which you decided to play, was to pretend to be delivering leaflets for a film event, and you Moore knocked on the door and in the course of delivering the leaflets asked your intended victim whether she was alone in the property. Sensibly but untruthfully she said that her boyfriend was in and closed the door. There was a further attempt with one or more of you saying, let's do it now, and you Kirby Moore attempted to get the door open again but she declined to do so.

Having failed at that the three of you then went to 29 St Stephen's Terrace, a house in multi -occupancy with students. You were armed with a weapon, which had the appearance to them, and to the witnesses in the case which I heard in your case Shackel Brooks appeared to them to be a black semi-automatic handgun. And also one of you had a large black handled kitchen knife. The door was opened upon your knocking by Sam Rickman. The door was forced back and he had the handgun pointed in his face. You demanded the property had come to steal by saying, "Where's your shit?" Mr Rickman in fear for his life emptied his pockets and handed over some cash and his mobile phone. He was forced to the floor. The female occupant of the

> accommodation came to the top of the stairs to find what was going on and one with you with a firearm went upstairs into a room and demanded property from her.
>
> Another occupant Sebastian Baker came out of his room and attempted to resist resulting being pistol whipped and causing some injuries with you shouting at him not to be a super hero. His iPod was snatched.

63. The judge then went on to consider the relevant sentencing guidelines, noting that although the maximum sentence was life, with an offence range of up to 13 years, and that it was accepted that one of the burglaries was a category 1 offence, with the starting point of 10 years custody, as were the other two offences to which the appellant pleaded guilty. The judge found that each of the offences was to the higher end of the range and that the multiple victims indicated a starting point at the very top of the range. Additional aggravating factors taken into account were previous convictions, a pattern of repeat offending, the use of a gun or imitation gun and sometimes repeated assaults.

64. The judge did note that the offences were committed of a short period of time and in the course of a chaotic lifestyle. Having considered the circumstances he was required to take int account, including a probation report which had assessed the appellant as presenting a high risk both harm and re-offending. The judge passed a sentence for the protection of the public, and concluded that he should be sentenced to eight years in prison, a sentence which would have been of 12 years imprisonment had he not pleaded guilty.

65. It is beyond argument that the violent burglaries and robberies of people's home were very serious as was the appellants culpability. As noted, a number of significant aggravating factors were applicable: previous convictions, the offences committed in a dwelling, committed at night, and as part of a group. The circumstances of this appellant's offending were, in my view, such as to make them significantly more serious than was reflected simply in the length of the sentence which had been reduced due to a guilty plea.

66. There are three elements to the public interest: in this case, the maintenance of confidence in the system and the deterrence of foreign nationals is perhaps greater than the other factor. But, the truly appalling nature of the appellant's serious crimes, and the harm they caused, increase the public interest significantly.

67. Given the nature of the public interest in its multiple facets, I am satisfied that on the particular facts of this case, that although there are significant compelling circumstances in terms of the effect that the appellant's deportation will have both on him and his family, and that close family bonds between husband and wife, and between father and young children, that the seriousness of his offending is such that the harm caused is proportionate to the public interest.

68. Accordingly, I am not satisfied that on the particular facts of this case, the public interest in deportation is outweighed that deportation would not be a disproportionate interference with article 8 rights. I therefore remake the appeal by dismissing it on all grounds.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remake the appeal by dismissing it on all grounds.

Signed Date: 14 November 2023

Jeremy K H Rintoul
Upper Tribunal Judge
Immigration and Asylum Chamber