**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: PA/03328/2015**

**THE IMMIGRATION ACTS**

| **Heard at Glasgow** | **Decision & Reasons Promulgated** |
|---|---|
| **on 3 July 2017** | **on 5 July 2017** |

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**ABDULRAHMAN R A OMAR**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms N Loughran, of Loughran & Co, Solicitors
For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals against a decision by First-tier Tribunal Judge David C Clapham SSC, promulgated on 24 January 2017, dismissing his asylum appeal.

2. It is common ground that the appellant is a citizen of Sudan, that he was recognised as a refugee in Kenya, and that if the issue was return to Sudan, rather than to Kenya, he would be entitled to recognition as a refugee in the UK.

3. The grounds are rather over-lengthy. Their essence is that the judge "adopted the wrong burden and standard of proof, above the reasonable degree of likelihood", in failing to recognise the following: in Kenya the appellant was permitted to reside only in Kakuma UNHCR refugee camp; the government intended to close refugee camps on national security grounds; there was a risk of *refoulment* to Sudan; conditions in the camp infringed article 3 of the ECHR; the appellant would not be permitted to re-enter Kenya; if he was permitted to do so, he would not be able to relocate to avoid real risk, or undue harshness.

4. At ¶38 of his decision the judge said that "life may not be particularly comfortable for refugees in the Kakuma camp", but that was not a reason to grant asylum. The judge granting permission to appeal observed that might imply that the judge had not applied the

lower standard of proof on which he directed himself at ¶4. That was not specifically part of the grounds and Ms Loughran (rightly, in my view) did not adopt the suggestion as part of her submissions. The only sensible construction is that the judge (rightly or wrongly) did not find difficulties in the camp to reach as high as article 3 or undue harshness.

5. Ms Loughran submitted that as the appellant was acknowledged to be a refugee, the test for conditions elsewhere was undue harshness, as defined in *Januzi*. She said that there was no case on the point.

6. The issue is not one of relocation within the country of possible persecution. I think that the tests would be risk or persecution or of ill-treatment at the level of article 3, which is equivalent, not the different and somewhat lower test of undue harshness. I do not think the point is a decisive one, as the outcome would be the same, on the evidence, by either test.

7. Ms Loughran made her submissions by careful reference to the evidence which was before the FtT about conditions in the camps and the intentions of the Kenyan authorities. It is sufficient to record that none of it disclosed that conditions, although difficult, reached the thresholds such as to require the judge to have found that a need for international protection outside Kenya was disclosed. Nor did the evidence show that the Kenyan authorities, although they had considered the matter, had made the ultimate decision, or taken any action, to expel refugees from Kenya.

8. Parties were not aware of any subsequent evidence that the Kenyan authorities had taken a decision to expel, or conducted expulsions, matters which might be expected to become rapidly and widely known; but in any event, that would be a foundation for a fresh claim, rather than a finding of error on a point of law by the judge.

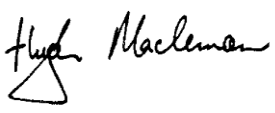
9. The appellant's solicitors had written to the Kenyan authorities about his re-entry, and he had been to the Kenyan Embassy. There was no response to the letter, and nothing illuminating emerged from the appellant's evidence about his visit. If the respondent proceeds to attempt to remove the appellant to Kenya, and that encounters difficulties, other issues may emerge; but that is for the future. There is nothing to show that the judge erred by failing to find that a case of refusal of re-entry had been established.

10. The judge did not get the burden of proof wrong. There was no issue between the parties in that matter.

11. The judge did not get the standard of proof wrong. The grounds use that heading as a way of dressing up disagreement on the facts.

12. The decision of the First-tier Tribunal shall stand.

13. No anonymity direction has been requested or made.



4 July 2017
Upper Tribunal Judge Macleman