



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

Appeal Number: PA/02871/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 5 January 2018**

**Decision & Reasons Promulgated
On 24 January 2018**

Before

**UPPER TRIBUNAL JUDGE GILL
DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

Between

**MNW
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Nnamani, Counsel instructed by OJN Solicitors
For the Respondent: Mr Wilding, Home Office Presenting Officer

Anonymity:

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. This appeal arises from a decision of the respondent of 7 March 2017 to refuse the appellant's claim for asylum. The appellant subsequently appealed to the First-tier Tribunal where his appeal was dismissed by First-tier Tribunal Judge Housego. The appellant is now appealing against the decision of the First-tier Tribunal, which was promulgated on 24 April 2017.

Background

2. The appellant is a citizen of Kenya born on [] 1986. On 16 May 2016 he travelled to the UK by plane with his wife and young child whereupon he lodged an application for asylum.
3. The basis of his claim, in summary, is that he faces a risk to his life from the authorities in Kenya because of comments he made in public on 23 April 2016 about the involvement of the police, Mungiki and Members of Parliament in the violence which took place in Navasha in 2008.
4. The appellant claims that on 23 April 2016 he spoke at a prayer meeting or rally for the victims of violence in Navasha in 2008 and that during his speech he said that police, Mungiki and Members of Parliament were involved. He claims that a few days after the speech, on 27 April 2016, he received a letter telling him to report to the police station within the next 24 hours, which he duly did, on 28 April 2016. He claims that after arriving at the police station he was put in the trunk of a police car and taken to a forest by three police officers, whose intention was to kill him. He claims to have managed to escape and to have hidden in a large cave. He claims that after leaving the cave he came across men loading a lorry who took him to a nearby town where he booked into a hotel and telephoned his wife who then stayed with him at several different hotels.
5. The appellant claims to have arranged a meeting for 5 May 2016 with a civil rights advocate, Jacob Juma, but that the advocate was killed before the meeting. He also claims to have had a meeting with a human rights lawyer called Paul Mwangi who advised him that there have been many cases of people going missing. The appellant then decided to leave Kenya.
6. The appellant's account of leaving Kenya is that he, his wife and his child were able to avoid the police at the airport with the assistance of his brother-in-law, a baggage handler at the airport, who inter alia enabled them to use the staff entrance. He smuggled them airside and checked them in.
7. The respondent did not accept the appellant's account of events in Kenya and rejected his claim to have a genuine and well founded fear of the authorities in Kenya. In the decision made on 7 March 2017, the appellant's application for asylum was refused.
8. The appellant appealed to the First-tier Tribunal where his appeal was heard on 21 April 2017 by First-tier Tribunal Judge Housego.

Decision of the First-tier Tribunal

9. The core issue before the First-tier Tribunal was the appellant's credibility. The judge did not find the appellant's account of events in Kenya credible. She gave the following eight reasons for reaching this conclusion:
- a) The judge found there to be an inconsistency between the appellant's witness statement and oral evidence as to how he made an appointment with the human rights lawyer Paul Mwangi (paragraph 52). In his witness statement, he said that he had booked an appointment in a telephone call. In his oral evidence, he said that there was no telephone call and that he had called in without an appointment and spoken to a secretary/receptionist.
 - b) The judge found there to be an inconsistency between the appellant's interview record and evidence at the hearing concerning his claimed escape from the three police officers who intended to kill him (paragraph 57). At question 46 of his interview, he said that he was led uphill in stages with the men going ahead, coming back after 8 minutes and then continuing to climb. At the hearing, he said that the men were expected to go for something like 25-30 minutes, and that, after about 10 minutes, he pushed the remaining policeman over and ran away. The judge said that this was a crucial part of the appellant's account which was not consistent.
 - c) The judge noted that there was no attempt to find the appellant or his wife which she said was unlikely given the narration of the threats (paragraph 58).
 - d) The judge found it damaging to the appellant's credibility that no evidence was adduced to corroborate his appointment with (or the existence of) Paul Mwangi (paragraphs 51 and 52). There were also two other aspects of the appellant's evidence that the judge considered at paragraph 51 which she found incredible. The first was the fact that an attempt to search for Paul Mwangi on the internet was only made over the lunch break on the hearing day (paragraph 35) whereas the lack of supporting evidence from Paul Mwangi had been raised in the decision letter some six weeks previously. The second was that, when the internet search on the hearing day revealed that there was a Paul Mwangi, the appellant said that this was not the lawyer he had seen whose address he said was different.

Plainly, the fact that there was a Paul Mwangi who was easily found on the internet raised the legitimate question why the appellant had not made any attempt to contact him. In that context, it is easy to understand why the judge, in considering the appellant's explanation that there was another lawyer by the same name in Nairobi, said that it was unlikely that there were two such lawyers in Nairobi.

- e) The judge found it damaging to the appellant's credibility that no evidence was submitted to prove that his brother-in-law was a baggage handler at the airport (paragraph 53).
- f) The judge found it damaging to the appellant's credibility that a statement was not obtained from any of the congregants who heard the appellant speak about the events in Navasha or from the pastor of the church who he claimed received the letter summoning him to attend the police station (paragraph 54).
- g) The judge noted that the appellant did not provide details of the hotel bookings he claimed to have made before leaving Kenya (paragraph 56).
- h) The judge found that the evidence of the appellant's wife only provided limited support because the appellant did not tell her many of the things he now says occurred (paragraph 55).

Grounds of Appeal and Submissions

10. The grounds of appeal argue that the sole reason the judge rejected the appellant's account was the absence of corroborative evidence and that this was an error of law. The grounds contend that rather than assessing the material that was before the Tribunal, the judge approached the claim as if corroborative evidence was necessary, and that the judge required corroborative evidence rather than undertaking an assessment of the consistency of the appellant's account and his general credibility.
11. The grounds also argue that the judge failed to follow the approach to corroboration set out in TK (Burundi) [2009] EWCA Civ 40.
12. Ms Nnamani argued that the appellant gave a detailed and internally consistent account of events. She noted that the judge stated at paragraph 59 that the appellant gave his account "with apparent sincerity, and some animation, and detail." She also stated that the appellant's wife gave evidence which was consistent with that of the appellant and that the judge had, at paragraph 55, found her evidence to be credible.
13. Ms Nnamani acknowledged that the judge stated in the decision on more than one occasion that there is no requirement for corroboration but she argued that notwithstanding this self-direction that is precisely what the judge had done. Ms Nnamani pointed to four instances in the decision where judge had rejected the appellant's account because of an absence of supporting material (these are summarised above, at paragraphs 9d, e, f and g) and argued that these findings were determinative of the overall credibility finding.
14. A further argument advanced by Ms Nnamani was that the judge's approach to corroboration was not consistent with TK (Burundi). She

submitted that, following TK (Burundi), the judge should have approached the issue of corroboration by asking herself: (a) whether the evidence was readily available; (b) what effect the evidence would have on the assessment of credibility; and (c) whether there was a credible explanation for the absence of the material. Ms Nnamani contended that by failing to follow this approach the judge had made an error of law.

15. Mr Wilding made two arguments.

- a) Firstly, he argued that the absence of corroboration was not the only reason the appellant's credibility was not accepted and that there were significant other reasons given by the judge to explain her rejection of the appellant's account. He pointed to the reasons summarised above, at paragraphs 9a, b and c.
- b) Secondly, Mr Wilding argued that where the judge took into account the absence of corroboration she did so in a way that was consistent with the approach delineated in TK (Burundi).

16. Mr Wilding also commented on the evidence of the appellant's wife, arguing that because she had very little first-hand knowledge of what occurred it was not capable of corroborating the core of the appellant's account. He highlighted the judge's summary of her evidence at paragraph 37, where, for example, she claimed to not have seen the letter summoning the appellant to the police station and that all her husband had told her was that he had been hijacked.

Assessment

17. The judge gave five distinct reasons for finding the appellant not credible that were unrelated to whether or not his account was corroborated.

- a) At paragraph 51, that his explanation, that there were two lawyers by the name of Paul Mwangi in Nairobi, was an attempt to explain away why, given that a lawyer by the name of Paul Mwangi who was easily found on the internet, he had not contacted the lawyer, an explanation which the judge said was not credible because she considered it unlikely that there were two lawyers by the same name in Nairobi.
- b) At paragraph 51, the judge also considered it incredible that an attempt to search the internet for a lawyer by the name of Paul Mwangi was only made at the hearing given that the respondent had raised the lack of supporting evidence from Paul Mwangi as an issue in the decision letter.
- c) At paragraph 52 the judge found the appellant to have given an inconsistent account of his claim to have seen the human rights lawyer, Paul Mwangi. In his witness statement the appellant stated

that he had booked an appointment with Mr Mwangi in a telephone call. However, in oral evidence before the First-tier Tribunal he claimed to have called in on the lawyer without an appointment and spoken to the secretary/receptionist.

- d) At paragraph 57 the judge found that there to be an inconsistency between what the appellant stated in the asylum interview and at the hearing with respect to what she described as a “crucial” part of the appellant’s account of how he was taken into the forest by the police officers and escaped from them.
- e) At paragraph 58 the judge described as “unlikely”, given the appellant’s account of the threat to his life, that there was not an attempt by the authorities to find him or his wife at their home.

18. In assessing the appellant’s credibility the judge has taken into account the internal consistency of the appellant’s evidence (paragraphs 52 and 57) and the plausibility of his account (paragraphs 51 and 58). It is therefore simply not the case, as argued in the grounds and maintained by Ms Nnamani, that the judge’s sole, or determinative, reason for rejecting the appellant’s account of events in Kenya was the absence of corroboration. Nor is it accurate to claim that the judge failed to assess the consistency of the appellant’s account when she explicitly did this at paragraphs 52 and 57. Accordingly, the appeal cannot succeed on this ground.

19. We now turn to the appellant’s contention that the judge’s approach to the absence of corroboration was inconsistent with TK (Burundi).

20. In TK (Burundi) the Court of Appeal held that:

“[W]here a Judge in assessing credibility relies on the fact that there is no independent supporting evidence where there should be supporting evidence and there is no credible account for its absence he commits no error of law when he relies on that fact for rejecting the account of an appellant.”

21. Although TK (Burundi) concerned evidence available from persons subject to this jurisdiction the same principles apply (and it was not argued otherwise by Ms Nnamani) to evidence outside the jurisdiction.

22. As succinctly summarised at the hearing by Ms Nnamani, before relying on the absence of independent supporting evidence as a reason to reject an appellant’s account, following TK (Burundi), there are three questions to consider:

- a) Is the independent supporting evidence readily available even though it is outside the UK?

- b) Would the evidence, if before the Tribunal, effect the assessment of credibility?
- c) Is there a credible explanation for the absence of the evidence?

23. The judge was aware - and had in mind - that the principles outlined in TK Burundi were applicable to the appeal before her. This is made clear at paragraph 50, which immediately precedes the part of the decision in which the lack of corroboration is considered (paragraphs 51-55), where the judge stated:

“While there is no requirement for corroboration in asylum appeals, there are in this case three matters where TK (Burundi) applies.”

24. The most significant of the judge’s findings against the appellant arising from the absence of corroboration is at paragraphs 51 and 52 of the decision, where judge found as “greatly damaging to the credibility of the appellant” that he did not submit any independent supporting evidence to show either that he met with Paul Mwangi or that Mr Mwangi exists notwithstanding the fact that this was clearly raised in the decision letter
25. Before reaching her conclusion that the absence of corroborating evidence about the meeting with Paul Mwangi damaged the appellant’s credibility, the judge considered a number of factors.
- a) Firstly, she considered whether evidence from (or about) Mr Mwangi would be readily available and concluded that if, as claimed by the appellant, Mr Mwangi was a reputable human rights lawyer with whom he had met, it would be easy to obtain an email confirming the appointment.
 - b) Secondly, the judge considered the effect Mr Mwangi’s evidence might have on the assessment of credibility and concluded that it would have “great evidential value”.
 - c) Thirdly, the judge considered the appellant’s explanation for the absence of material from Mr Mwangi and found it lacked credibility for the following two reasons: (1) the appellant gave conflicting evidence about whether he booked an appointment with Mr Mwangi as stated in his witness statement or merely dropped into his office as claimed in oral evidence (the latter presumably would explain the absence of a written record); and (2) when it was drawn to the appellant’s attention that there is a Paul Mwangi engaging in human rights work in Nairobi who is contactable through an internet search and website, the appellant’s response was that this was a different Paul Mwangi without providing any evidence to show the existence of the Mr Mwangi he claimed to have seen.

26. The analysis outlined above is entirely consistent with TK (Burundi). The judge has assessed the availability of the evidence, its significance to the

case, and the reasons advanced by the appellant for its absence. We are satisfied that, having carried out this analysis, it was open to the judge to rely on the absence of independent supporting evidence from, or about, Mr Mwangi, in rejecting the appellant's account.

27. The judge also, at paragraph 53, found damaging to the appellant's credibility that corroborating evidence was not submitted by the appellant to show that his brother-in-law worked as a baggage handler. Before relying on the absence of such evidence the judge considered whether it would be readily available and the lack of a credible account for its absence. Although the judge did not comment specifically on why evidence from the appellant's brother-in-law was relevant to credibility, the reason is clear: the appellant claimed that his brother-in-law helped him and his family evade detection at the airport when they fled Kenya. Accordingly, we are satisfied that the judge, for the reasons she gave, was entitled to rely on the absence of supporting evidence from the appellant's brother-in-law as a reason to reject the appellant's account.
28. Ms Nnamani argued that the judge's conclusion on credibility was undermined by his finding that he was not critical of the evidence given by the appellant's wife (paragraph 55) and that the appellant gave his evidence with "apparent sincerity, and some animation, and detail" (paragraph 59).
29. We do not consider there to be merit to this submission. Assessment of credibility is a highly fact-sensitive exercise where a judge will frequently need to take into consideration a range of factors, not all of which point in the same direction. In this case, as explained above, the judge gave multiple reasons for not finding the appellant credible. The judge also, as highlighted by Ms Nnamani, identified two factors that gave some (albeit limited) support to the appellant's account (namely, his wife's evidence and that he recounted his evidence in detail and with "apparent sincerity"). It was for the judge to decide upon the weight to attach to the various factors identified as relevant to credibility and she was entitled to find that the factors undermining the appellant's credibility outweighed those which supported it.
30. There are two further references in the judge's decision to an absence of independent corroborating evidence:
 - a) At paragraph 54, the judge found it damaging to the appellant's credibility that a statement was not obtained from any of the congregants who heard him speak about the events in Navasha or from the pastor of the church who he claimed received the letter summoning him to attend the police station.
 - b) At paragraph 56, the judge noted that the appellant did not provide details of the hotel bookings he claimed to have made before leaving Kenya.

31. The analysis of the judge in respect of these findings against the appellant's credibility is brief and it is not clear whether the judge has fully considered either the availability of the evidence or the appellant's explanation (if any) for its absence. However, given the multiple other material reasons that the judge gave for her adverse credibility assessment, we are satisfied that any error in relying upon the matters referred to at our paragraph 30 were not material to her overall credibility assessment on any legitimate view.

Notice of Decision

32. The appeal is dismissed.

33. The judge has not made a material error of law and the decision of the First-tier Tribunal stands.



Deputy Upper Tribunal Judge Sheridan

Dated: 22 January 2018