



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

**Appeal Number: UI-2022-000136
On appeal from PA/52957/2021
[IA/00812/2021]**

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On the 15th September 2022**

**Decision & Reasons Promulgated
On the 31 October 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**DK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A Bradley, A J Bradley & Co

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

DECISION AND REASONS

1. The First-tier Tribunal ("FtT") has made an anonymity order and for the avoidance of any doubt, that order continues. DK is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the

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

2. The appellant is a national Namibia. She arrived in the United Kingdom on 22nd August 2017 and was granted leave to enter as a visitor. She remained in the UK unlawfully after the leave granted to her expired. On 4th January 2019, she was charged with the use of a false passport for the purposes of working illegally in the UK. She was served with a removal notice for overstayers (RED.0001). She claimed asylum on 25th January 2019. Her claim was refused by the respondent for reasons set out in a decision dated 11th November 2020. The respondent accepts the appellant is a national of Namibia and of Herero ethnicity. The respondent does not accept the appellant was a victim of forced marriage and domestic violence. The respondent concluded that in any event, the authorities in Namibia are able to provide the appellant with effective protection.
3. The appellant's appeal against that decision was dismissed by FtT Judge Komorowski ("Judge Komorowski") for reasons set out in his decision dated 6th January 2021. The appellant attended the hearing of her appeal and gave evidence with the assistance of an interpreter. The appellant's claim for international protection is summarised in paragraph [6] of the decision. At paragraphs [13] and of his decision, Judge Komorowski said:

"13. The evidence in support of the appellant's claim consists of her own personal testimony (during her screening and substantive interviews, in her written statements, and her oral evidence at the hearing). In addition, there is documentation:

- (i) relating to hospital treatment for a "car accident" in October 2001 (49th, 51st-52nd pages),
- (ii) relating to her marriages to J.Ka on 26 February 2006 (54th page) and D.M on 14 June 2014 (55th page);
- (iii) a photograph of the appellant in bridal dress (56th page).

To that must be added the general evidence regarding the prevalence of abuse of women in Namibia, including forced marriage. I also note that the appellant has been diagnosed with depression (53rd page),

which is consistent with her having suffered traumatic experiences that might have precipitated such an illness, albeit there may be some other cause. Her mental health also means appropriate caution is required when considering whether any difficulty in her personal testimony might be attributable to her mental health rather than a lack of honesty.

14. I accept that the appellant's account is consistent with what is known commonly to occur in Namibia. It has not been suggested to be implausible. Although the usual invitation was advanced to assess the documents in light of Ahmed (Tanveer) (Documents Unreliable and forged) [2002]UKIAT 00439, no criticism was advanced of the documents in the respondent's review or put in cross-examination nor articulated in oral submissions. Accordingly, I proceed on the basis that J.Ka attacked and injured the appellant by driving at her with a motor car in October 2001, and that she was married to J.Ka in February 2006 and to D.M in June 2014. If she has told the truth regarding these elements of her account, it potentially adds credence to other aspects of her account."

4. At paragraph [15], Judge Komorowski noted that it is open to him to accept the evidence of a witness on some matters and yet reject it on others. At paragraph [16] he said:

"The appellant's claim for international protection is predicated upon her fearing a continuation of violence from D.M. It is only her own personal evidence that directly supports the contention that D.M subjected her to violence and has sought to find her. I am not satisfied that the indirect support of her account provided by the matters I have described above is sufficient with her personal testimony to establish a reasonable degree of likelihood that she will be harmed by D.M on return."

5. At paragraphs [17] to [38] Judge Komorowski sets out his reasons for making adverse credibility findings and for rejecting the core of the appellant's account that she will be at risk upon return, and harmed by DM. At paragraphs [39] to [46], Judge Komorowski addresses the best interests of the appellant's daughter who was born on 11th September 2019, and concludes that the refusal of leave to remain is proportionate.
6. The appellant claims the decision of Judge Komorowski is vitiated by a material error of law. She claims there is no clear finding as to whether or not she is a victim of domestic violence. She claims that was the central core of her account and it was incumbent on the FTT to make a clear finding in that regard. The appellant claims that had the FTT

considered that the earlier attack in which the appellant was hospitalised, was an act of domestic violence, it may well have affected the Tribunal's consideration of the account of domestic violence at the hands of DM. It is said women who suffer domestic violence early in life may well fall into a pattern in their later relationships. Domestic violence is often linked to trauma. The effects of trauma can also vary widely between individuals as responses to stress, age, frequency and severity of abuse. Furthermore the appellant claims that had a finding been made as to whether she was a victim of domestic violence, this may have affected the judge's consideration of her evidence. It is well known that victims of domestic violence suffer a loss of self esteem. Women can be left feeling a shadow of their former selves when constantly worn down by abusive comments that attack every aspect from their appearance to their personality. It is said the appellant suffered from depression and mental health issues. Had a clear finding been made as to whether she was a victim of domestic violence, this may well have affected the assessment of her evidence and actions. The appellant claims objective evidence lodged with the FTT prior to the appeal hearing, included a report from UNHCR Immigration and Refugee Board in Canada regarding forced marriages in Namibia from 2011. The report indicated that arranged marriages and forced marriages for young women are common practice in some communities in Namibia. Alternatively, the appellant claims that any finding that the appellant was not a victim of domestic violence is inadequately reasoned, given the positive findings as to certain aspects of her account, and the objective evidence. A trauma led approach to the overall evidence was appropriate.

7. Permission to appeal was granted by Designated Judge Shaerf on 16th February 2022. He said:

“... It is arguable that the Judge erred in law in giving in adequate or insufficiently focused reasons for his extensive adverse credibility finding and why even if he rejected the Appellant's claim that her husband continued looking for her after she left, that she would not be

at risk as a single woman on return to Namibia. Permission to appeal on all grounds is therefore granted.

The Appellant clearly has significant issues relating to the consistency and plausibility of her evidence which goes at least in part to her credibility. I should add that the grant of permission to appeal is no indication that the appeal will be successful”

8. Before me, Mr Bradley submits the appellant was a victim of domestic violence and she should have been treated throughout as a vulnerable witness. He accepts there was no evidence before the Tribunal regarding the appellant’s vulnerability beyond a letter from ‘Birmingham Healthy Minds IAPT Service’ dated 8th January 2021 that was addressed to the Laurie Pike Health Centre. Notwithstanding the reference to “anxiety”, Mr Bradley submits Judge Komorowski accepted the appellant has been diagnosed with depression and, he submits, the Judge should have treated the appellant as a vulnerable witness and had regard to her vulnerability when considering the appellant’s evidence. He submits a trauma led approach should have been taken in the assessment of the evidence. Mr Bradley refers to the respondent’s published guidance; ‘Gender issues in the asylum claim, version 3.0, published on 10 April 2018’ which confirms that gender-based violence at a later stage in the asylum process should not automatically count against an individual’s credibility. The guidance confirms that there may be a number of reasons why a claimant may be reluctant to disclose information, and that in order to elicit information there must be a reassuring environment. Mr Bradley submits that is relevant here, because at paragraphs [25] to [34], Judge Komorowski refers the appellant’s account having developed in two significant ways. Mr Bradley submits that in his analysis of the claim Judge Komorowski did not make any allowance for the fact that the appellant may have been a victim of domestic violence or a vulnerable witness and failed to adopt a structured approach to the credibility findings.
9. In reply, Mr Bates adopts the respondent’s rule 24 response dated 23rd March 2022 and submits that the focus of the submissions made by Mr Bradley before me appear to be that the judge failed to have proper

regard to the appellant being a vulnerable witness. He submits the appellant was represented at the hearing of her appeal before the FtT and there is no suggestion that the appellant's vulnerability was a particular concern during the course of the hearing. He submits the judge's reference to the appellant suffering from depression appears to be a mistake of fact, because the medical evidence before the Tribunal such as it was, taken at its highest, simply refers to the appellant having presented with 'anxiety'. He accepts the respondent did not raise that or challenge the finding made, in her Rule 24 response. In any event, any treatment or therapy the appellant received ended in January 2021 and there was no evidence of any ongoing treatment before the FtT. Mr Bates submits that in paragraphs [13] and [14], Judge Komorowski acknowledged the general evidence regarding the prevalence of abuse of women in Namibia, including forced marriage and accepted that the appellant's account is consistent with what is known commonly to occur in Namibia. The judge went on to address the appellant's claim and at paragraph [37], made it clear that having assessed the evidence as a whole, he was unable to place any credence on the appellant's own account of events, where that was not supported by other reliable evidence. Mr Bates submits the judge went through the evidence of the appellant, and he gives reasons for rejecting the appellant's account that were open to him. The judge did not accept the claim was established, even to the lower standard. The judge said, at [45], that he was not satisfied that the appellant has given a truthful account as to her recent life in Namibia and "*.. That the appellant might be married to D.M does not, in itself, tell us anything as to the circumstances of that relationship...*". Mr Bates submits that in granting permission, Designated Judge Shaerf referred a failure to explain why the appellant is not at risk as a single woman on return to Namibia. That was not a ground of appeal raised by the appellant, but in any event, the appellant has an adult son in Namibia, and she would have his support. Furthermore, the father of the appellant's daughter who was born in the

UK in September 2019 is a Namibian national and it appears he has no entitlement to remain in the UK.

Discussion

10. The Judge found the appellant has not discharged the burden of proof that is upon her, to establish that she is entitled to the grant of international protection. Reading the decision as a whole it is clear in my judgment that Judge Komorowski was mindful throughout, of the background to the appellant's claim for international protection and her claim that she had been subjected to domestic violence. There is no suggestion that the Judge did not conduct the hearing properly, or make any reasonable adjustments he was invited to, to accommodate the appellant during the course of the hearing.

11. Beyond the appellant's claim that she was a victim of domestic violence in Namibia, there was very little evidence to support the appellant's claim regarding her vulnerability and the impact it would have upon her evidence and ability to recall matters. The letter from 'Birmingham Healthy Minds IAPT Service' dated 8th January 2021 that was addressed to the Laurie Pike Health Centre and is referred to in paragraph [13] of the judge's decision states the appellant "*..has now completed treatment with Birmingham Healthy Minds..*" and summarises the care and treatment provided. The letter states the appellant's presenting problem was "*anxiety*" and that she had "*one to one telephone sessions*". The letter confirms the appellant engaged well with sessions and has completed therapy. She had been discharged from the service back to the care of her GP with no current risks reported. That was some eight months before the hearing before the FtT and there was no evidence before the FtT that the appellant had experienced any material difficulties in presenting her account previously to the respondent at interview and/or when interacting with her representatives. There was equally no evidence that the appellant would have difficulty presenting her account before the FtT. Judge Komorowski noted, at [13] that the

appellant has been diagnosed with depression and he clearly noted that *“Her mental health also means appropriate caution is required when considering whether any difficulty in her personal testimony might be attributable to her mental health rather than a lack of honesty”*.

12. I am quite prepared to accept, as the respondent does, that gender-based violence at a later stage in the asylum process should not automatically count against a person’s credibility. Here, Judge Komorowski said, at [24], the timing of the asylum claim does not necessarily preclude the sincerity of the appellant’s claimed fear. He recognised that a person might initially put off claiming asylum because they prefer to take their chances living illicitly rather than trust in the authorities of the United Kingdom agreeing that they are at real risk of serious harm. Here, it is clear that Judge Komorowski carefully considered the appellant’s account of events, and in particular, her oral evidence before the Tribunal before reaching his decision. There was no evidence that any difficulties the appellant may have in recalling events is the result of cognitive limitations or mental health challenges caused by claimed events in Namibia.

13. I reject the claim made by the appellant that the Judge failed to have regard to the appellant’s claim that she was previously a victim of domestic violence in his analysis of the evidence and failed to make a finding as to whether the appellant was subjected to domestic violence by DM. In his assessment of the evidence, Judge Komorowski was clearly aware that the appellant’s account is consistent with what is commonly known to occur in Namibia. That is not to say the judge was bound to accept the appellant’s account. In cases (such as the present) where the credibility of the appellant is in issue judges adopt a variety of different evaluative techniques to assess the evidence. The judge will for instance consider: (i) the consistency (or otherwise) of accounts given to investigators at different points in time; (ii) the consistency (or otherwise) of an appellant's narrative case for asylum with his actual conduct at earlier stages and periods in time; (iii) whether, on facts

found or agreed or which are incontrovertible, the appellant is a person who can be categorised as at risk if returned, and, if so, as to the nature and extent of that risk (taking account of applicable Country Guidance); (iv) the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the appellant should be able to adduce in order to support his or her case; and (v), the overall plausibility of an appellant's account.

14. Judge Komorowski carefully considered the appellant's account of the risk upon return because of her relationship with DM at paragraphs [26] to [30] of his decision. It was undoubtedly open to the judge to conclude that the account is strongly suggestive of embellishment made to enhance the prospect of gaining asylum, rather than being a true account of events. Judge Komorowski was clearly prepared to accept those aspects of the appellant's claim that were supported by other verifiable evidence. He accepted that the appellant was attacked and injured by J.Ka in October 2021. There was medical evidence to support that claim. He accepted the appellant was married to J.Ka in February 2006 and to D.M in June 2014. Again, those claims were supported by verifiable evidence. He properly noted, at [14], the truth regarding those elements of her account, potentially adds credence to other aspects of her account. He went on to carefully consider the appellant's account of events, noting, at [16], that it is only the appellant's personal evidence to directly support her claim that she was subjected to violence at the hands of D.M and that he has sought to find her. The judge carefully considered the evidence before the Tribunal and it was undoubtedly open to the judge to conclude that the applicant's personal testimony has no significant evidential value, and to reject her claims for the reasons set out. The judge did not accept the appellant had been subjected to domestic violence by DM. The decision might have been better expressed, but it is not a counsel of perfection.
15. As Brooke LJ observed in the course of his decision in **R (Iran) v The Secretary of State for the Home Department [2005] EWCA Civ**

982, “unjustified complaints” as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded.

16. The Court of Appeal held that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. A finding that is "perverse" embraces findings that are irrational or unreasonable in the *Wednesbury* sense, and findings of fact that are unsupported costs which you are all such by the evidence. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really could not understand the original judge's thought process when he was making material findings.
17. It is clear from a careful reading of the decision that the Judge considered the appellant's account of events and carried out a careful analysis of that evidence. The Judge made findings that are adverse to the appellant having had the opportunity to see and hear the appellant give evidence and having noted, at [13], that the appellant's mental health means appropriate caution is required when considering whether any difficulty in her personal testimony might be attributable to her mental health rather than a lack of dishonesty. The appellant disagrees with the findings and conclusions reached by the Judge, but the findings are not irrational or unreasonable in the *Wednesbury* sense, or findings that are wholly unsupported by the evidence. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence either individually or cumulatively, was a matter for him.

18. It follows that in my judgment, the decision of the FtT does not contain a material error of law and the appeal is dismissed.

Notice of Decision

19. The appeal before me is dismissed and the decision of the First-tier Tribunal shall stand.

Signed **V. Mandalia**
September 2022

Date 15th

Upper Tribunal Judge Mandalia