IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001562

First-tier Tribunal No: DC/00133/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17 August 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

STELLA MAUREEN SHYANGUYA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms V Easty of Counsel, instructed by Solomon Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard by remote video at Field House on 4 August 2023

DECISION AND REASONS

1. By the decision of Upper Tribunal Judge Blundell dated 19.7.22, the appellant has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Caswell) promulgated 30.12.21 dismissing her appeal against the respondent's decision of 26.11.19 to deprive her of British citizenship under s40(3) of the British Nationality Act 1981.

2. The appellant's lengthy immigration history is set out in detail in the respondent's decision and need not be repeated here. In summary, the respondent's decision was made on the basis that the British citizenship granted in 2008 had been obtained by fraud, the appellant falsely claiming to be a French national when she applied for naturalisation in 2007. In fact, in 2000 she was removed from the UK to her home country of Kenya following her conviction and sentence for smuggling Class A controlled drugs. The fraud was only discovered in 2008, when the appellant applied for a British passport. She was later convicted of possession of a false identity document (the French passport) and sentenced to a term of two years' imprisonment.

3. In addition to the case documents, the Upper Tribunal has the respondent's Rule 24 reply of 29.9.22, the appellant's (undated) skeleton argument, and the respondent's skeleton argument, dated 3.8.23, all of which have been carefully considered.

4. Following the helpful submissions of the two legal representatives, I reserved my decision to be provided in writing, which I now do.

5. The appellant's case is that once she became a British citizen, she automatically by law lost her Kenyan citizenship so that she would be stateless if deprived of British citizenship. The appeal before the First-tier Tribunal in December 2021 was also advanced on alleged breach of article 8 private and family life grounds if deprived of her British citizenship, and also relying on mental health grounds.

6. The appellant claimed to fear persecution and mistreatment in Kenya as a bisexual woman, which claim had been refused by the respondent and dismissed in an earlier protection appeal - on the basis that she was a British citizen. However, Judge Caswell observed that protection grounds were not advanced before her, and that the Tribunal was not asked to make findings in relation to any aspect of the protection claim but noted that a "strong indication" was given at the hearing that the appellant would make a further asylum claim if she lost the deprivation appeal.

7. The First-tier Tribunal accepted that the appellant would be stateless if deprived of British citizenship but found that she could apply for restoration of her Kenyan citizenship, the law in respect of which had changed to enable this. To the claim that she would be unwilling to apply because of alleged mistreatment on grounds of her sexual orientation, the judge noted that the mistreatment was inflicted by her former husband, not the Kenyan state. The judge accepted that she is suffering from physical and mental disabilities, including a major depressive disorder and PTSD, and was said to be at medium risk of suicide. However, the judge found that she has the support of her brother and others and is able to manage her mental health "to some extent" despite declining counselling and other therapies. Having regard to the public interest, the judge took all factors relied on into account but concluded that the proportionality balancing exercise fell in the respondent's favour and dismissed the appeal.

8. The grounds argue that the appellant's brother has now passed away and is unable to support her as the First-tier Tribunal had concluded. The appellant also attempted to intervene during Mr Melvin's submissions to make the same point. However, as Ms Easty accepted, that sad event is not material to whether there is an error of law in the decision of the First-tier Tribunal, which was based on the facts as they then were, with the brother alive.

9. The First-tier Tribunal could not consider the assertions made about a claim of past or future risk of persecution in Kenya, there being no protection claim before the Tribunal and the judge was not asked to making findings on anything other than the article 8 claim based on private and family life grounds, to include the appellant's mental health.

10. As to statelessness, whilst these grounds were not abandoned, Ms Easty did not address them to any degree. Unarguably, the appellant is able to apply for restoration of her Kenyan nationality and it is not now challenged that this is legally open to the appellant. Her unwillingness to do so, based on subjective fears, is not a rational ground for her refusal to make the application, as doing so does not necessarily mean that she will be returned to Kenya. That she feared "men in uniform" or that the authorities would be hostile to her sexual orientation, was considered but is not a rational reason for not re-obtaining

Kenyan citizenship. As the judge observed, if her fears are genuine, it will be open to her to make a further protection claim in which the factors she relies on and about which the First-tier Tribunal could make no findings in December 2021 will be fully considered.

11. It follows that the judge was entitled to proceed on the basis that if deprived of British citizenship, this would be no more than a temporary state pending her reclaiming her Kenyan citizenship.

12. The grounds also argue that the First-tier Tribunal failed to take statelessness into account in the article 8 proportionality assessment but it is clear that the judge did give careful consideration to this factor, providing cogent reasons for the findings made. In any event, little weight could be given to a period of only temporary statelessness. In the circumstances, I am satisfied that there is no merit in these first two grounds.

13. In respect of the third ground, failure to take into account evidence as to the consequences of the deprivation for the appellant's mental health, Upper Tribunal Judge Blundell was only "just persuaded" to grant permission, considering it arguable that the reasons for concluding that the evidence was "insufficient to establish that the appellant's mental health would deteriorate markedly if she were deprived of citizenship," were arguably insufficient when set against the medical evidence.

14. The grounds in this regard argue that the finding is difficult to sustain given the evidence that in the event of deprivation her mental health would "undoubtedly decline" and the risk of suicide would increase from medium to high if returned to Kenya, and that the prospect of deprivation is making her "intensely fearful." This was accepted at [34] of the decision. To some extent the opinion that mental health would decline if returned to Kenya is to engage in the same form of speculation the judge is accused of as, as explained above, it does not necessarily follow that she would be returned to Kenya on deprivation. However, Ms Easty pointed to the evidence that the decline was also attributed to the anticipation of return, but the judge clearly took this into account at [34] of the decision.

15. I am satisfied that the First-tier Tribunal Judge had more than adequately summarised the mental health aspect of the appellant's case at [8] and [9] of the decision, including the claim that she will suffer substantial harm to her mental and physical wellbeing if returned to Kenya. At [35] the judge gave "appropriate weight" to the medical evidence but found at [37] that with support from several sources she was "managing her mental health to some extent," before concluding that there would be no marked deterioration of her mental health on deprivation.

16. I am satisfied that the medical evidence was adequately considered; that the findings were entirely open on that evidence and justified by cogent reasoning. It was not necessary for the judge to set out the evidence in any more detail. In essence, much of this ground is little more than a complaint as to weight given to the medical evidence. As explained in Herrera v SSHD [2018] EWCA Civ 412, the Court of Appeal said that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors. It is well-established law that the weight to be given to any particular factor in an appeal is a matter for the judge and will rarely give rise to an error of law, see Green (Article 8 -new rules) [2013] UKUT 254.

17. Reliance in the grounds is also placed on loss of support and accommodation about which prospect the appellant would experience "worsening anxiety." This assertion as to decline in mental health is based on fear of being a step closer to return to Kenya but also in part based on the consequent withdrawal of her state benefits and loss of entitlement to accommodation. However, there was no evidence that she would in fact lose her accommodation. There was no oral evidence from the appellant, or evidence from either her brother, or anyone from the Catholic Church about accommodation or related issues of support. Despite that, the grounds take the argument that the judge should have proceeded on the basis that she would in fact lose both her state benefits and accommodation on the basis that it would be illegal to provide the latter. I am not satisfied that there is sufficient evidence to justify the assertion that she would be homeless if deprived of British citizenship.

18. Much of Ms Easty's submissions dwelt on the fourth ground and an issue which overlapped with the third ground. It was argued that the judge fell into error by taking into account in the article 8 assessment that the appellant would likely make a protection claim, during which time she would not be removable from the UK. Whilst, according to the grounds, the prospect of such a claim is not disputed by the appellant, the grounds argue that the Tribunal was obliged to limit its analysis to the reasonably foreseeable consequences of deprivation and should have avoided 'proleptic' analysis of events yet to take place. It is also submitted that the prospect of making a protection claim is not relevant to an analysis of the reasonably foreseeable consequences of deprivation and was immaterial to the appellant's loss of entitlement to public funds and rented accommodation.

19. In granting permission on this ground, Judge Blundell considered it arguable that the judge may have strayed into a proleptic assessment in considering that possibility and the protections which it would provide.

20. In essence, the judge found that the appellant would likely make a protection claim and even if that claim were to be refused by the respondent, she could not be removed to Kenya whilst any appeal was in process. It is this that Ms Easty argued was impermissible, submitting in terms that it was one thing to say that the appellant was entitled to make a claim but quite another to say she would not be required to leave because she would make such a claim which would prevent her from being removed until any appeal was resolved. For the reasons summarised below, I reject these submissions and do not accept that the judge strayed into impermissible speculation.

21. First, the judge was told in clear terms by the appellant's legal representative at the hearing that the appellant would probably make a protection appeal if deprived of citizenship. The judge referred to having been given as a "strong indication" of this prospect at the hearing. Second, the appellant's skeleton argument put before the First-tier Tribunal at the appeal hearing stated at paragraph 6:

> *"There is no real prospect of the appellant being removed from the UK to Kenya as an FTT has previously accepted that she is in an open same sex relationship with her partner..."*

22. The skeleton argument went on to provided three detailed reasons for that assertion, including in reliance on Aziz v Secretary of State [2019] 1WLR 266 CA, that:

> *"whilst an FTT hearing a deprivation of citizenship appeal is not required to carry out a proleptic assessment of an appellant's asylum and human rights claim before a decision from the respondent concerning the same has been*

made, if the appellant plainly has a knock out point in respect of the same: 'it would in principle be open to the individual concerned to try to show that there was no real prospect of him being deported at the end of the day, as part of his case to challenge the making of the deprivation order.'"

23. Effectively, the appellant's own representatives were submitting that the judge should assume that the appellant would make a protection claim and that in consequence there was no real prospect of her being removed to Kenya. When I put this to Ms Easty, she said only that she had not seen the skeleton argument in question. I am satisfied that the appellant cannot now complain that the judge made the assumption which had been advocated for by her own legal representatives. In any event, given the indications given at the hearing, I am satisfied that the judge was entitled to make the assumption she did, which did not go quite as far as that urged upon the Tribunal, and was limited to stating only that the appellant "will be able to remain in the UK for so long as the appeal process continues." That was permissible and no material error of law is disclosed by this ground.

24. In all the circumstances, and for the reasons summarised above, I am satisfied that the grounds disclose no properly arguable error of law in the making of the decision of the First-tier Tribunal.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands.

I make no order for costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 August 2023