

CANADA / JUDGMENT

MB9-08826

COURT

Refugee Appeal Division

DECIDED

27 January 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File / Dossier de la SAR : MB9-08826 MB9-08827 / MB9-08828 / MB9-08829 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Ottawa, ON Appel instruit / entendu à Date of decision January 27, 2020 Date de la décision Panel Charles A. McDermott Tribunal Counsel for the persons who are the subject of the appeal Dov Maierovitz Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX (Principal Appellant) and XXXX XXXX XXXX, XXXX XXXX XXXX, XXXX XXXX XXXX (Associate Appellants), citizens of Nigeria, appealed a decision of the Refugee Protection Division (RPD), dated March 11, 2019, rejecting their claims for refugee protection.
- [2] The Appellants allege persecution because she is perceived by her family and the community to have supported her husband, who is bisexual, and because she refused to submit her daughter to female genital mutilation (FGM). The Principal Appellant allege that she discovered her husband was having a same-sex relationship and told her family. As a result, the family and community have excluded, harassed, threatened and attacked the Appellants. The Appellants left Nigeria for the United States of America (USA) on XXXX XXXX XXXX 2017, and entered Canada on XXXX XXXX XXXX 2017, to claim asylum. The RPD found that the Principal Appellant was not a credible witness.
- [3] The Appellants have not submitted any new evidence and have not requested an oral hearing.

DETERMINATION

- [4] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA).

ANALYSIS

Determinative issue

- [5] The RPD determined that the Principal Appellant was not a credible witness. I have independently assessed the evidence and testimony and considered the Appellants' arguments and I find that credibility continues to be the determinative issue in the appeal. I also find that the RPD did not have any real advantage that would lead to me deferring to its finding regarding credibility. The RPD did not err in its analysis of the omission of the beatings at the mother-in-law's house
- [6] The RPD found that the omission from their narratives of the beatings that the Appellants received at the mother-in-law's house was not satisfactorily explained. The Appellants argue that the omission was insignificant and the result of a microscopic examination.
- [7] The RPD did not err and the Appellants' argument must fail. At the RPD hearing, the Principal Appellant testified that a group of around seven persons attacked and beat the Appellants while they were at the mother-in-law's house. When the RPD asked why this was not included in her written narrative, at 00:57:50 of the hearing, the Principal Appellant stated: "Yeah, I wasn't thinking straight or proper at that time". The RPD did not accept this explanation for the reasons outlined in paragraph 20 of its decision. I do not accept the explanation for those same reasons and I adopt them as my own. I draw a negative inference from the omission of the beatings from the Appellants' narratives. The RPD did not err in its analysis of the omission of the phone threats received by the Appellants while staying in Lagos
- [8] The RPD found that the omission from their narratives of the phone threats received by the Appellants while they were in hiding in Lagos was not satisfactorily explained. The Appellants argue that the omission was insignificant and the result of a microscopic examination.
- [9] The RPD did not err and the Appellants' argument must fail. At the RPD hearing, the Principal Appellant testified that she received threatening messages while in hiding in Lagos. When the RPD asked why this was not included in her written narrative, the Principal Appellant, at 1:25:52 of the hearing, responded: "That is why I ran away from Lagos. That's why I could not stay in Lagos". The RPD asked again why it was not included in her narrative, the Principal Appellant stated: "I didn't put it in my narrative they were threatening me, that's why I left. It wasn't safe for me because they were ...(inaudible)... they would find me". The RPD gave the Principal Appellant two opportunities to explain why the threats were not included in her written narrative, but no explanation was provided. As correctly noted by the RPD, these ongoing threats go to the heart of the Appellants' claim. They are not, as the Appellants argue, insignificant or peripheral. The Appellants had the benefit of counsel when completing their narratives. I find that the Appellants have not satisfactorily explained why this information was omitted from their narratives. I draw a negative inference from this omission. The RPD did not err in its analysis of the omission of the loss of employment

of the Principal Appellant

- [10] The RPD found that the omission from their narratives of the lay-off of the Principal Appellant as a result of the sexual orientation of her husband was not satisfactorily explained. The Appellants argue that the omission was insignificant and the result of a microscopic examination.
- [11] The RPD did not err and the Appellants' argument must fail. The RPD asked the Principal Appellant a number of times throughout the hearing about how she has been persecuted or threatened. At no point did the Principal Appellant volunteer that she had been laid-off from her employment. At 1:30:47 of the hearing, the RPD confronted the Principal Appellant with her mother-in-law's letter, which mentioned the lay-off, and asked why she did not include the lay-off in her written narrative. After an uncharacteristic pause of seven seconds, the Principal Appellant replied: "I wasn't thinking. There was a lot of things I had in my head. Wasn't thinking straight". The RPD then questioned why the Principal Appellant's Schedule A form indicates that she worked for the same employer until May 2017. The Principal Appellant stated that she had simply made a mistake.
- [12] It is not unusual for claimants to make minor mistakes when filling out their forms and I accept the Principal Appellant's explanation of making a mistake on her Schedule A form. I do not accept the Principal Appellant's explanation for why she did not include it in her narrative. Being laid-off is a significant event, especially when the reason for the lay-off is the same reason for which a person is claiming persecution. The Appellants had the benefit of counsel when completing their narratives. I find that the Appellants have not explained why the lay-off was not included in their narratives and I draw a negative inference from this omission. The RPD erred in its analysis of the threat of FGM of the Principal Appellant
- [13] The RPD found that the omission from their narratives of the threat of FGM of the Principal Appellant was not satisfactorily explained. The Appellants argue that the omission was insignificant and the result of a microscopic examination.
- [14] The Appellants' argument has merit. The Principal Appellant explained she was ashamed that, as an adult, her father wanted to subject her to FGM. I find this to be a reasonable explanation. The Principal Appellant did state that her father wanted her to "undergoing a ritual cleansing". I find that the RPD was microscopic in its analysis of this omission from the Appellants' narratives. However, I also find that this RPD error is not sufficient to overcome the significant credibility issues of the Principal Appellant. The RPD did not err in its analysis of the search for the Principal Appellant's husband
- [15] The Appellants argue the RPD finding that failure to mention the search by the police and family for the Principal Appellant's husband in her narrative is another example of an erroneous finding of omission.

- [16] The Appellants' argument is without merit. From 1:04:25 to 1:11:45 of the RPD hearing, the RPD ask the Principal Appellant about the police and family searching for her husband and noted that this information was missing from the Principal Appellant's narrative. However, the RPD did not mention the issue in its Reasons and did not make any finding with respect to the search for the Principal Appellant's husband. I find that the RPD did not err in not including this in its analysis. The RPD did not err in its analysis of the destruction of the mother-in-law's house
- [17] The RPD found that the Principal Appellant and her husband gave conflicting dates as to when the mother-in-law's house was destroyed and this negatively affected the Principal Appellant's credibility. The Appellants argue that the Principal Appellant and her husband were likely referring to different houses and thus there is no inconsistency.
- [18] The RPD did not err and the Appellant's argument must fail. The Appellants state that the Principal Appellant was referring to her mother-in-law's house, whereas the husband was referring their own family house. The Principal Appellant did not make any mention of the destruction of their own house (or any other house) in XXXX or XXXX 2016. The Principal Appellant testified that, as a result of her troubles, she was evicted from her home and left it in XXXX 2017. In addition, the letter from the mother-in-law only mentions one house, which was left to her by her late husband. I find that the inconsistency still exists and I draw a negative inference from this inconsistency. The RPD did not err in its analysis of the address of the Principal Appellant
- [19] The RPD rejected the Principal Appellant's explanation of why she used a Nigerian address in a letter of support for her husband even though she was living in the USA at the time. The Appellants argue that the Principal Appellant gave a cogent explanation for this inconsistency.
- [20] The RPD did not err and the Appellants' argument must fail. There is no dispute that the letter was written in XXXX 2017, when the Appellants were living in the USA. The Principal Appellant also testified that she was evicted from her home in Nigeria and left that address in XXXX 2017. At 1:41:04 of the RPD hearing, when asked to explain the inconsistency, the Principal Appellant responded: "He told me to write a support letter for him. He never told me which address because he was so upset then". The Principal Appellant continued: "When I found somebody that was going home at the place we were staying then I also wrote my former address because we still the letters they go there and I did not change the address before we left". When the RPD stated that it seemed like the letter was being sent from Nigeria, the Principal Appellant responded: "I gave the letter to somebody to give to the mother because he had told me the mother is the one compiling everything together so I sent it to the mother". When the RPD noted that the Appellants had been evicted from that address at that point, to which the Principal Appellant replied "Yes I was evicted but I haven't changed address."

- [21] The Appellants submit that there is no inconsistency between the fact that the letter was addressed from the Principal Appellant's home address in Nigeria, when she was in the USA at the relevant time. With respect, there is an inconsistency. The Appellants were evicted, and left that address more than three months before the letter was written. After leaving that address, the Appellants lived in at least two other locations before the Principal Appellant wrote the letter. The Appellants argue that they were evicted for the same reason they are being persecuted and had to leave Nigeria. At no time did the Principal Appellant explain why she believed her home address was still in Benin City. The RPD stated that the use of an address in Nigeria was peripheral to the facts that go to the heart of the claims. I disagree. The Appellants claim persecution due to the sexual orientation of the Principal Appellant's husband and claim they were evicted from the XXXX XXXX XXXX house for the same reason. I find that the inconsistency has not been satisfactorily explained and I draw a negative inference.
- [22] The RPD also stated that it believed the Principal Appellant manufactured misleading evidence to support her husband's claim and made a general negative credibility finding with respect to the Principal Appellant. I disagree. It is not clear to me that the Appellants still living in Nigeria would bolster the husband's claim. If the Principal Appellant had recounted all of the allegations from her own claim, this may have strengthened the husband's claim much more so than the letter she did write. However, I find that this error is not determinative since it does not overcome the numerous omissions and inconsistencies that undermine the Principal Appellant's credibility. The RPD did not err in its credibility analysis of the Principal Appellant
- [23] The RPD found that the Principal Appellant was generally not credible in that she omitted important information from her BOC and her testimony was constantly evolving to attempt to address several contradictions and inconsistencies raised by the RPD.
- [24] While I find that the RPD did make some errors in its assessment of the Principal Appellant's credibility, I find that those errors were not determinative. The Principal Appellant omitted numerous important items from her BOC and did not provide satisfactory explanations for those omissions. These omissions include beatings at the mother-in-law's house, phone threats, and the Principal Appellant's loss of employment. In addition, there is inconsistent testimony and evidence regarding the destruction of the mother-in-law's house and the Appellants' addresses, neither of which have been satisfactorily explained. Due to these omissions and inconsistencies, I agree with the RPD's overall conclusion that the Principal Appellant is not a credible witness. Accordingly, the presumption of truth of her sworn evidence¹ has been rebutted. Since the Associate Appellants' claims are based on the evidence and testimony of the Principal Appellant, this finding is also applicable to them. The RPD did not err in its analysis of evidence filed by the Appellants
- [25] Having found the Principal Appellant not to be a credible witness, the RPD then explored whether there was any other evidence that would support the Appellants' claims.

- [26] The RPD found that the letter² from the Appellants' physician did not support the allegation that the Principal Appellant's father is actively seeking to perform female genital mutilation (FGM) on the female Associate Appellant. The Appellants argue that the RPD ignored crucial evidence.
- [27] The RPD did not err and the Appellants' argument must fail. The Appellants state that RPD did not mention the letter. This is not correct. Paragraphs 54 and 55 of the RPD Decision³ discuss the letter. The letter confirms that the female Associate Appellant has not been circumcised, but does mention "a scar on the XXXX XXXX XXXX inner part where there is a scar which the Mom states that it was during the trial of FGM". The physician appears to accept that explanation. However, as I have already found that the Principal Appellant is not a credible witness, I give that statement no weight. With respect to the "shaming and blaming due to their refusal of the FGM", the physician simply repeated what the parents stated. The letter does not corroborate the Appellants' claims of ongoing threats from the Principal Appellant's family and I give it no weight in establishing the Appellants' claim.
- [28] The RPD gave no weight to a supporting letter from the Principal Appellant's mother-in-law due to credibility issues with the letter. I agree and note several inconsistencies between the letter and the Principal Appellant's testimony. The letter states "When they learnt they were with me, they bundled us out of the family's house since I harboured them without the cleansing." My understanding of what this sentence is saying is "When the family learnt the Appellants were with the author, the family bundled the author and the Appellants out of the author's house since the author harboured the Appellants without the cleansing. However, this contradicts the Principal Appellant's testimony where, starting at 00:39:10 of the RPD hearing, she said that the Appellants left for Lagos the same day that they arrived at the mother-in-law's house and that the mother-in-law was not home when the Appellants left for Lagos. The letter also states that "they called a family meeting were (sic) they were publicly disgraced and humiliated." The Principal Appellant did not mention a family meeting in her narrative and did not mention a family meeting at the RPD hearing. The letter also states "She left a message that she was going to Lagos or anywhere a far as he (sic) legs could take her to". However, this is inconsistent with the Principal Appellant's testimony. At 00:50:35 of the RPD hearing, the RPD asked the Principal Appellant: "Did you tell her that you were leaving for Lagos or how did she learn about this?" The Principal Appellant responded: "When I got to Lagos I had told her before that ...(word inaudible)... is not safe for me and that whenever she doesn't see me at home, she know I have a friend in Lagos whenever she doesn't see me she will know I'm going over there." The RPD followed up with: "You told her?" The Principal Appellant replied: "Yes, prior to the incident." Because of the inconsistencies between the letter and the Principal Appellant's testimony, I find that the letter is not credible and I give it no weight in establishing the Appellants' claims.
- [29] The RPD found that the letter from the Principal Appellant's friend was insufficient to overcome the credibility issues of the Principal Appellant. While the letter does confirm that the Principal Appellant received threat messages from both her family and her in-laws, the

letter is lacking in details. Except for the threats, any details come from the Principal Appellant and are therefore not independently corroborate the Appellants' story. I find that the letter is insufficient to overcome the significant credibility concerns of the Principal Appellant. The RPD did not err in its consideration of internal flight alternatives (IFA) for the Appellants

- [30] The Appellants argue that the RPD erred in finding that the Appellants would not be persecuted in the proposed IFAs of Abuja, Port Harcourt and Ibadan.
- [31] The RPD did not err and the Appellants' argument must fail. Although the RPD raised the issue of IFA at the hearing and asked the Principal Appellant a number of questions on whether they would be safe in Abuja, Port Harcourt and Ibadan, the RPD ultimately found that credibility was the determinative issue in the Appellants' claim. The RPD did not make any findings on the viability of any of the identified cities as an IFA for the Appellants. I find that the RPD's treatment of IFAs for the Appellants was correct.

CONCLUSION

- [32] I find that the Appellants failed to provide sufficient credible or trustworthy evidence to establish their claims, on a balance of probabilities. This finding applies equally to both section 96 and section 97 of the IRPA.
- [33] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act. (signed) "Charles A. McDermott" Charles A. McDermott January 27, 2020 Date 1 Maldonado v. Canada (MEI), [1980] 2 FC 302. 2 Exhibit RPD-1, RPD Record, page 235. 3 Exhibit RPD-1, RPD Record, pages 12-13.

RAD File / Dossier de la SAR : MB9-08826 MB9-08827 / MB9-08828 / MB9-08829 RAD.25.02 (April 04, 2019) Disponible en français 2 Immigration and Refugee Board of Canada Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés RAD.25.02 (April 04, 2019) Disponible en français

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/Credibility-refugee-appeal-division-2020--6a40c3c14cf2c72690fb64d7>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 24 October 2026 · Esheria