

CANADA / JUDGMENT

MB9-05888

COURT

Refugee Appeal Division

DECIDED

8 January 2020

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RAD File / Dossier de la SAR : MB9-05888 MB9-05889 / MB9-05890 / MB9-05891 MB9-05892 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 XXXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Ottawa, ON Appel instruit / entendu à Date of decision January 8, 2020 Date de la décision Panel Jillan Sadek Tribunal Counsel for the persons who are the subject of the appeal Lydie-Magalie Stiverne Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] The Principal Appellant (XXXX XXXX XXXX), his wife, the Associate Appellant (XXXX XXXX XXXX) and their children, the minor Appellants (XXXX XXXX XXXX, XXXX XXXX XXXX, XXXX XXXX XXXX) are citizens of Nigeria. The Principal Appellant is the designated representative of the minor Appellants. All claims are based on the Principal Appellant's allegations.
- [2] The Principal Appellant alleges that he and his family may not return to Nigeria because in XXXX 2015, his homosexuality was discovered by his partner's wife. The Principal Appellant fears attacks from the family members of his partner, he fears cleansing rituals will be forced upon him and his family by his own family members and he fears being arrested by the police as homosexuality is illegal and punishable by up to 14 years in prison.
- [3] The Refugee Protection Division (RPD) determined that the Principal Appellant's allegations lacked credibility and rejected the claim.
- [4] The Appellants assert that the RPD failed to assess the risk the Principal Appellant would face in returning to Nigeria as a homosexual and failed to take into account corroborative evidence.
- [5] I have determined that the RPD was correct to reject the claim on the basis of a lack of credibility. The appeal is dismissed. ROLE OF THE RAD

- [6] The Refugee Appeal Division (RAD) reviews decisions of the RPD on a standard of correctness after conducting an independent assessment of the evidence before it.¹ The exception to this rule is where the RPD enjoys a meaningful advantage in the assessment and weighing of oral testimony heard, which, in particular cases, may attract deference. Unless specifically stated below, I have applied a correctness standard.

ANALYSIS

- [7] The RPD found contradictions in the Appellants' evidence and found the Principal Appellant's actions incompatible with those of someone who had a subjective fear of returning to Nigeria. The RPD concluded that the Principal Appellant was not involved in a long-term relationship with XXXX (his alleged same-sex partner), nor was he sought by police for homosexual conduct.
- [8] The Appellants submit that the RPD did not evaluate the risk the Principal Appellant would face if he returned to Nigeria as a homosexual and that the RPD failed to take into account the corroborative testimony of his wife, the Associate Appellant.
- [9] I have attentively listened to the recording of the RPD hearing, and have carefully reviewed the entire record. I have also taken into account the Chairperson's Guideline 9: Proceedings before the IRB Involving Sexual Orientation and Gender Identity and Expression. I agree with the RPD that the Principal Appellant's allegations are not credible and that the claim should be rejected. The RPD did not err in noting the inconsistencies in the Principal Appellant's evidence
- [10] The RPD noted several inconsistencies between the information provided by the Principal Appellant in the initial forms he completed after coming to Canada and the information he provided in his amended Basis of Claim form (BOC) and in his oral testimony.
- [11] The Principal Appellant entered Canada on XXXX XXXX XXXX 2017. The first set of immigration forms he completed was signed on September 3, 2017, and witnessed by a Canadian government official on September 6, 2017. His first BOC form was completed and signed on September 20, 2017, with the assistance of his representative but this initial BOC provided no details of his claim, indicating only that the substance "will be provided later".² The detailed BOC was finally signed and submitted in December 2017. Among the initial forms completed was the Schedule 12, question 9 of which reads: "Arrests and criminal offences: Have you ever been sought, arrested, or detained by the police or military or any other authorities in any country, including Canada?" The Principal Appellant indicated, "Yes. By Immigration in Canada 2017-XXXX-XXXX to 2017-XXXX-XXXX for illegal entry."³ The Principal Appellant signed this form on XXXX XXXX, 2017. The Principal Appellant did not mention having been sought by police in Nigeria, yet this was a key aspect of the claim he was to submit in December 2017 and to which he testified at his hearing on February 4, 2019.

- [12] Similarly, in the "Schedule A, Background Declaration" the Principal Appellant indicated that he resided at the same address in Nigeria from XXXX 2007 to XXXX 2016, specifically: XXXX XXXX XXXX XXXX XXXX, Nigeria.⁴ The Principal Appellant completed and signed this form on Sept 6, 2017. However, this information is contradictory to the information provided in the Principal Appellant's BOC submitted in December 2017 and contradicts his testimony at this hearing in February 2019. The Principal Appellant testified that after his homosexuality was discovered on XXXX XXXX XXXX 2015, he did not return to his family home to reside. He testified that he travelled to the U.S. in XXXX XXXX, 2016, with one of his children, but that he then returned to Nigeria on XXXX XXXX, 2016, and at this point still did not return to his home address. He stated that he then departed Nigeria a second time for the U.S. in XXXX 2016.
- [13] The Appellants assert that these discrepancies on the earlier forms completed by the Principal Appellant were unintentional as he was told by the volunteers at the shelter that he would be able to give details later on in his BOC form. The Appellants argue that: The panel failed to consider that the Appellant filed these documents while at the shelter according to schedule 12 form question 4 that Appellants were under the care of Praidia (Programme regional d'accueil et d'intégration des demandeurs d'asile-YMCA) which were providing accommodation for the hundreds of massive arrivals of refugees including the Appellants. A volunteer interpreted or explained the form in English or French to the Appellant, but no Yoruba-English interpreter was provided; The Appellant submits that the police was looking for him, but he was never charged or convicted of any crime, hence answering the negative in Schedule A Form to the question as he understood it at the time; The Panel never asked if the form was ever interpreted in Yoruba to the appellant.⁵
- [14] In terms of the residential address listed for the period 2007-XXXX 2016, the Appellants argue that after he left the family home in XXXX 2015, he was "just going from place to place and did not have an address" which is why he simply noted his old address as his wife continued to live there.⁶
- [15] I agree with the RPD that these discrepancies are noteworthy. Despite the difficulty of being one of many refugee claimants assisted at a shelter in September 2017, the basic information in the forms completed just after the Appellants' arrival appears to be consistent with information provided later on, which suggests that whatever assistance the Principal Appellant received at the shelter was sufficient to give him a clear understanding of the questions and he was able to provide lucid replies. The fact therefore that he did not mention being wanted by the Nigerian police is very telling, as is the fact that he used his family home address for the period XXXX XXXX, 2015, to XXXX 2016, a period during which he states he never returned home other than to collect some belongings. The fact that this information was submitted prior to the BOC being completed is of significance in that it leaves the later allegations unsupported.

- [16] The Appellants contend that the Associate Appellant, the Principal Appellant's wife, supported his statement that he did not return to the matrimonial home to live after XXXX XXXX 2015, and that the RPD should have given this testimony more weight. I note that the testimony of the Associate Appellant was quite limited though the RPD directed questions to her throughout the hearing. In fact, at the start of the hearing the Associate Appellant indicated she wished to wait outside while her husband testified but was convinced by the RPD that it would be in her best interests to stay for the hearing as it was also her hearing, her claim being based on her husband's allegations. I find the RPD gave an appropriate weight to the statements of the Associate Appellant and that none of her statements would explain the discrepancies in information provided in the Principal Appellant's forms.
- [17] In sum, these inconsistencies speak to the heart of the claim, i.e. whether he the Principal Appellant was sought by police in Nigeria and whether he continued to live at his address with his family after his homosexuality was allegedly reported to police. The RPD was correct to take them into account. The RPD did not err in noting that the Principal Appellant used the word "frantically" when describing the manner in which the police were searching for him
- [18] The Appellants assert: "The panel infer in paragraph 15 of the reason for decision that the police was "frantically" looking for the principal Appellant so therefore he lied answering when answering Schedule 12 question 9. However, nor in his BOC form or in his written statement attached to the BOC, the principal Appellant has said that the police efforts to find him after Kaka's wife public scandal was "frenetic", It is the Panel's own addition to the Appellants' facts."7 Though this argument is somewhat difficult to follow, I believe the Appellants are asserting that the Principal Appellant used the word "frenetic" and not "frantic". I find this argument to be irrelevant.
- [19] At 1hr53 of the recording of the hearing, the following questions and answers may be discerned: RPD: Did you ever report to the police station? Principal Appellant: The police were looking for me frantically (pronounced by the interpreter as if having 4 syllables) so I could not go to the police station. RPD: And what makes you say they were looking for you frantically? Principal Appellant: While I was going from place to place, some of my family members were calling me and informing me that sometimes policemen came to my house, at other times they would just hang around in the neighbourhood to see if they would see me walking towards the house.8
- [20] Even if both the RPD and I have misheard the interpreter's words and he in fact said "frenetically" instead of "frantically", the meaning of frenetic is quite similar and might even be considered a synonym of frantic. The point that the RPD was correctly making is that the allegation that the police were assiduously searching for him after his homosexuality was brought to their attention, if true, ought to have been noted by the Principal Appellant in the immigration forms he completed in September 2017. I agree.

- [21] Furthermore, as noted by the RPD, if the Principal Appellant truly feared that police would arrest him for homosexual conduct, his behaviour in returning to Nigeria in XXXX 2016, after just XXXX weeks in the US, is incompatible with such a subjective fear. He indicated he returned to Nigeria in XXXX 2016 because he no longer felt welcome at his friend's house in the U.S., however, this does not explain why he would put himself at risk of being arrested and imprisoned for 14 years by returning to Nigeria. He could have simply found somewhere else to stay in the US. This period of reavailment, from XXXX 2016 to XXXX 2016, definitively undermines the credibility of the Principal Appellant's allegations in my opinion. The RPD did not err on this point. The RPD did not disregard pertinent evidence
- [22] The Appellants assert that the RPD erred in commenting on the fact that there was insufficient credible evidence that the Principal Appellant had a long-term relationship with XXXX, as the important aspect of this relationship was not its length but simply that they were caught in the act. The Appellants also assert that the RPD erred in suggesting that the Principal Appellant's failure to mention his previous homosexual relationships in his BOC was an omission, as these previous relationships did not result in any adverse consequences.
- [23] I disagree with the Appellants. The RPD was correct to ask the Principal Appellant about how he identifies himself in terms of his sexual orientation and about previous partners, given the nature of the claim. These questions elicited information which one would have expected would have been included in the BOC, such as the fact that he had some seven homosexual relationships and that he was in fact introduced to XXXX by an ex-partner, XXXX, who he does mention in his BOC, but mentions only as a "friend". The BOC narrative is detailed and discusses his initial homosexual experiences, thus it would be expected that these additional facts would have been mentioned - being relevant to his sexual orientation which is the crux of his claim. The RPD did not err in noting their absence from his BOC and in making an adverse inference from their omission.
- [24] The Appellants also assert that the RPD failed to take into account all of the country condition evidence relating to the treatment of homosexuals in Nigeria - exhibits C-9 to C-11. Among these sources it is mentioned that marriage is a non-negotiable rite of passage in Nigeria and it would be entirely normal for a homosexual male to enter into a heterosexual marriage as in the Principal Appellant's case.
- [25] I disagree with the Appellants that the RPD ignored the country condition evidence. Firstly, the RPD never commented on the fact that the Principal Appellant is married to a woman and has four children (the most recent a Canadian citizen, born in Canada in XXXX 2017). Thus, the RPD was evidently aware that this is not a factor which would negate the Principal Appellant's assertion regarding his sexual orientation.

- [26] Secondly, the country condition information regarding the taboo nature of homosexuality in Nigeria and the discrimination and mistreatment of homosexuals in Nigeria was not called into question by the RPD. As the RPD was not satisfied that the allegations were credible, the RPD need not have examined any risks the Principal Appellant may face as a Muslim homosexual male returning to Nigeria. The RPD was correct not to discuss this country condition evidence in its decision which is not the same thing as disregarding the evidence.

CONCLUSION

- [27] After my independent review of the evidence in the Appellants' case, I find the RPD did not err in its finding that the Principal Appellant's allegations are not credible. I am satisfied, based on the evidence, that the Appellants would not be personally subjected to a risk of torture, a risk to their life or a risk of cruel and unusual treatment or punishment should they return to Nigeria. I am also not satisfied the Appellants have demonstrated that there is a serious possibility that they would be persecuted on a Convention ground if they returned to Nigeria at this time.
- [28] The RAD dismisses the appeal and confirms 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). (signed) "Jillan Sadek" Jillan Sadek January 8, 2020 Date 1 M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93, at para 103. 2 RPD-1,,Original BOC of the Principal Appellant, RPD recrod, p. 96 3 RPD-1, Schedule 12 of the Principal Appellant, RPD record, p. 128 4 RPD-1, Schedule A of the Principal Appellant, RPD record, p. 121 5 P-2, The Appellants' memorandum, paragraph 27-32, Appellants' record, p.16-17 6 P-2, The Appellants' memorandum, paragraph 35, Appellants' record, p. 17 7 P-2, The Appellants' memorandum, paragraph 26-33, Appellants' record, p. 16-17 8 At minutes 1h53 to 1h55 of the recording of the RPD hearing, February 4, 2019

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Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section
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