

CANADA / JUDGMENT

MC0-00523

COURT

Refugee Appeal Division

DECIDED

19 February 2020

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RAD File / Dossier de la SAR : MC0-00523 MC0-00524 / MC0-00525 / MC0-00526 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 Montreal, QC Appel instruit / entendu à Date of decision February 19, 2020 Date de la décision Panel Ayanna Roberts Tribunal Counsel for the persons who are the subject of the appeal Me Aminder Kaur Mangat 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] I allow this appeal, in part. XXXX XXXX XXXX is the Principal Appellant and a citizen of Nigeria. His wife, XXXX XXXX XXXX is the co-Appellant. She and their eldest daughter, XXXX XXXX XXXX, are also citizens of Nigeria. Their youngest daughter, XXXX XXXX XXXX XXXX was born in the United States and is an American citizen. * The Appellants fear the family of the Principal Appellant who will subject their daughters to dangerous Yoruba female genital mutilation rituals. They also fear persecution as Christians in Nigeria due to the threat of Boko Haram and other groups. * Though the Refugee Protection Division (RPD) had some minor concerns with the Appellants' credibility, it concluded that those concerns were not determinative. The RPD decided that the Nigerian Appellants could find safety in the Internal Flight Alternatives (IFA) of Benin City and Port Harcourt and therefore were neither Convention refugees nor persons in need of protection. It also rejected the American Appellant's claim for protection against the United States. * The determinative issue on appeal is the availability of an Internal Flight Alternative (IFA) in Benin City or Port Harcourt. * My decision is that the Nigerian Appellants do not have a viable IFA in Nigeria because the absence of mental health services that the Principal Appellant requires makes it unreasonable for them to locate there, given the facts of their case. However, the Appellants have not established that the youngest daughter, the American Appellant, faces a risk in the United States. DECISION
- [2] The appeal is allowed for the Nigerian Appellants. I substitute my own decision that the Appellants are Convention refugees.
- [3] I dismiss the appeal for the American Appellant. The RPD was correct in finding that she is neither a Convention refugee nor a person in need of protection.

BACKGROUND

- [4] The Principal Appellant's family believes in Yoruba tradition of Oro, which the Appellants claim subjects them to persecution by way of barbaric rituals including Female Genital Mutilation (FGM).
- [5] They fear that his family will subject his eldest daughter XXXXto FGM and other accompanying rituals. They claim that the Principal Appellant and his sister were subject to these rituals as children and that his sister died from blood loss associated with FGM in 1994.
- [6] After the death of his sister, the Principal Appellant's family converted to Christianity. Both the conversion to Christianity and his sister's death caused tension and strife within his extended family who never stopped trying to subject them to family traditions. The family threatened that they would always be able to trace them with an oracle and by collaborating with other Nigerian chieftains across the country.
- [7] The Principal Appellant's father lived in the United Kingdom for two years, and died two days after his return to Nigeria in 2002. At his father's burial, the extended family expressed sorrow for the death but warned that it was the will of family gods and that they would kill the Principal Appellant in the name of the family gods if he did not follow the family tradition. He lost touch with his extended family for these reasons.
- [8] The co-Appellant also underwent traditional rituals as a child. When the Principal and co-Appellants decided to marry, family tradition required that both sides of the family meet and attend the wedding. This requirement incited the Principal Appellant to re-establish contact with his extended family. The marriage occurred without incident. In order to keep the peace, the Principal Appellant agreed to participate in some family rituals and did so for three years despite his Christianity and despite XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX When the family requested that his eldest daughter undergo the FGM ritual, he refused and reported his family to the police who hesitated to get involved in the dispute.
- [9] To protect their eldest daughter, the Appellants moved from Ibadan to Lagos, where they were found at his mother-in-law's home by the extended family. They tried to take the Appellants' eldest daughter by force but the Principal Appellant physically prevented them from doing so and suffered injuries from which he bears physical scars to this day. The family escaped to a Christian church camp and then fled to the United States in July 2016 where their youngest daughter was born. The extended family called them in the United States to threaten them. The stress caused a temporary break up between the adults and the co-Appellant moved with her daughters to Washington D.C. The couple reconciled and decided to seek asylum in Canada after experiencing racism in the United States and fearing that the American administration's immigration policies would result in their deportation to Nigeria. They requested asylum in Canada in February 2018. REQUEST FOR AN ORAL HEARING The request for a hearing is rejected

- [10] The Appellants have requested that I hold a hearing if I doubt any aspect of their credibility. According to the law¹, I can only hold a hearing if the Appellants present new evidence that raises a serious issue with respect to their credibility. The Appellants have not presented any new evidence on appeal.

ANALYSIS

Internal Flight Alternative (IFA)

- [11] My role is to look at all the evidence and decide if the RPD made the correct decision.² After looking at that evidence, I find that the Appellants do not have a viable IFA in Nigeria.
- [12] The RPD found that the Appellants did not credibly establish that the feared family members could locate them in Benin City or Port Harcourt. It also found that the Principal Appellant could access private healthcare in Nigeria, providing care comparable to the mental health services that he was receiving in Canada.
- [13] The Appellants argue that the RPD failed to meaningfully engage with relevant and credible evidence leading to errors in its IFA analysis. I agree with the Appellants that the RPD erred in this way. Specifically, I find that the RPD failed to consider evidence on the record indicating that the Principal Appellant suffers from XXXX XXXX XXXX that will significantly restrict his ability to find employment in either Benin City or Port Harcourt because sufficient mental health care is not available in Nigeria. This renders the family's relocation to these cities or any city in Nigeria unreasonable.
- [14] The Appellants have credibly established that they did face harm in Nigeria at the hands of the Principal Appellant's extended family, and that the extended family has been previously motivated to find them and harm them. The Appellants' testimony is enough for me to conclude that their extended family is still motivated to locate the Appellants to have them participate in traditional rites including FGM.
- [15] Though it is not determinative for me, I find that the RPD erred by finding the Principal Appellant's testimony evolved when he was questioned about whether his two uncles, who are the heads of his family and his primary persecutors, could locate him in Nigeria. The Principal Appellant testified that their businesses could require them to travel across Nigeria, including in Lagos, Abuja and Ibeju. The RPD interpreted his testimony to mean that he was trying to eliminate various cities as viable IFAs. After listening to the exchanges, I am not convinced that this was the Principal Appellant's intent. He repeatedly confirmed that he believed he could be located in Nigeria because his uncles were chiefs who were connected to other well-placed chieftains in their traditional religion. He mentioned the various locations where his uncles risked travelling due to their occupations only when prompted by the RPD to clarify his testimony about their businesses. Whatever the Principal Appellant's intent was, I find that the testimony does not allow me to conclude that his uncles cannot locate him in Benin City and Port Harcourt on a balance of probabilities.

- [16] In order to receive XXXX XXXX XXXX XXXX the Principal Appellant must be employed. He is the family's sole provider as the co-Appellant did not work in Nigeria and only performed menial work in the United States during her separation from her husband. In Nigeria's competitive employment environment where 70% of citizens live below the poverty line and unemployment stands at over 16%³, one of the adults needs to have the capacity to secure a good job in order for the family to survive and for the Principal Appellant to live in one of the IFAs while receiving XXXX XXXX. His very detailed XXXX XXXX⁴ indicates that he XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. In order to secure employment in Nigeria and to maintain that employment, the Principal Appellant must continue to receive XXXX XXXX XXXX XXXX. It is not clear that he will be able to XXXX XXXX XXXX.⁵ XXXX XXXX XXXX XXXX XXXX are underfunded in Nigeria, and studies indicate that Nigerians can mistake XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX⁶ On a balance of probabilities, he is unlikely to have access to that XXXX XXXX XXXX upon arrival in Nigeria leading to a XXXX XXXX XXXX XXXX XXXX XXXX XXXX finding a job, supporting his family.
- [17] Also, the Principal Appellant has already been targeted by traditionalists. Given that Nigerians can believe that XXXX XXXX requires solutions related to traditional practices, I find that his XXXX XXXX will attract the attention of these same traditionalists who have already demonstrated themselves to be fervent in their desire for the Appellants to engage in ritualistic practices. This opens the Principal Appellant to discovery by his extended family becoming aware of his situation and location through the chieftain community. This jeopardizes the reasonableness of any IFA in Nigeria. American Appellant
- [18] The Appellants have not established that the American Appellant, the youngest daughter, is at risk in the United States. I recognize that black people are subject to racism and discrimination in many American cities and I do not doubt that the Appellants were subject to that racism during their stay in the United States. However, they have not presented evidence that establishes a risk for the American Appellant under the Immigration and Refugee Protection Act. They have not presented any arguments on appeal indicating that the RPD made any errors in its analysis on this point and I have not unearthed any during the course of my analysis.

CONCLUSION

- [19] The appeal is allowed for the Nigerian Appellants. I substitute my own decision that the Appellants are Convention refugees.
- [20] For the American Appellant, I dismiss the appeal and confirm the decision of the RPD that she is neither a Convention refugee nor a person in need of protection. (signed) Ayanna Roberts Ayanna Roberts February 19, 2020 Date AR/dd 1 Subsection 110(6) of the IRPA. 2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 3 National Documentation Package (NDP), Nigeria, 29 November 2019, tab 1.6: Nigeria. The World Factbook. United States. Central

Intelligence Agency. 13 November 2019. NDP, Nigeria, 29 November 2019, tab 1.19: EASO Country of Origin Information Report. Nigeria: Key socio-economic indicators. European Union. European Asylum Support Office. November 2018. 4 RPD Record. Psychological report XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. 5 RPD Record. Psychological report XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX RPD Record. Nigeria has a mental health problem. AlJazeera. Pages 371-376. RPD Record. People, heal thyselfes: Nigeria's new mental illness approach. The Guardian. Pages 377-380. RPD Record. Nigeria: World Mental Health Day - Rehab Centres Grounded as 60m Nigerians Suffer Mental Disorder. Daily Trust. Pages 381-383. 6 RPD Record. A Review of Stigma and Mental Illness in Nigeria. Pages 385-

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