

CANADA / JUDGMENT

MB8-20485

COURT

Refugee Appeal Division

DECIDED

12 March 2020

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RAD File / Dossier de la SAR : MB8-20485 MB8-20486 / MB8-20487 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard
at Toronto, ON Appel instruit / entendu à Date of decision March 12, 2020 Date de la décision
Panel Karen McGovern Tribunal Counsel for the persons who are the subject of the appeal
Jacqueline M Lewis Conseil de la|des personne|s 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 (Principal Appellant), XXXX XXXX XXXX (Associate Appellant), and XXXX XXXX
XXXX (Minor Appellant), citizens of Nigeria, appeal a decision made by the Refugee
Protection Division (RPD), dated September 5, 2018.

- a. The Appellants fear a former neighbor who sexually abused the Principal Appellant (PA)
beginning when he was XXXX years old. The former neighbor and agent of persecution
(AOP) began to threaten and attack the PA and his wife after the PA refused to associate with
the AOP.
- b. The RPD found that the PA was a victim of abuse by the AOP and that the AOP's attempts to
harm the Appellants were localized to Benin City. The RPD concluded that Lagos was a
viable internal flight alternative (IFA). The Appellants argue the RPD erred in finding the
AOP did not have the capacity to locate the Appellants outside of Benin City. They further
argue the IFA analysis did not take into consideration the individual circumstances of the
Appellants.
- c. The determinative issue is IFA.
- d. I find the Appellants do have a viable internal flight alternative in Lagos. There is insufficient
evidence to show that the agent of persecution (AOP) has the capacity to locate the
Appellants. It is objectively reasonable for the Appellants to relocate to Lagos. DECISION

[2] I dismiss the appeal. The RPD was correct in finding that the Appellants are neither
Convention refugees nor persons in need of protection. NEW EVIDENCE

[3] The Appellants submitted the following on appeal:

- a) Affidavit of the PA sworn XXXX XXXX XXXX 2018
 - b) Undated letter from PA's sister
 - c) Affidavit of the PA's mother sworn XXXX XXXX XXXX 2018
 - d) Article dated August 8, 2017
 - e) Article dated August 15, 2018
 - f) Article dated August 15, 2018
- [4] After the appeal was perfected, the Appellants submitted the following:
- g) Supplemental memo from new lawyer dated XXXX XXXX XXXX 2019
 - h) Affidavit of PA sworn XXXX XXXX XXXX 2019
 - i) Letter from Notary Public dated XXXX XXXX XXXX 2019
 - j) Affidavit from PA's sister sworn XXXX XXXX XXXX 2019 with crime diary extract
- [5] According to the law,¹ I can only accept evidence that:
- i. arose after the RPD decision; or ii. was not reasonably available at the time of the decision; or iii. that could not reasonably have been expected in the circumstances to bring to the RPD before the decision.
- [6] If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible and relevant before I can accept it.²
- [7] If the evidence is submitted after the appeal has been perfected, I must also consider any relevant factors, including:
- i. the document's relevance and probative value; ii. any new evidence the document brings to the appeal; and iii. whether the person who is the subject of the appeal, with reasonable effort, could have provided the document or written submissions with the appellant's record, respondent's record or reply record.³ Item (a) - Affidavit of PA sworn XXXX XXXX XXXX 2018 is not admitted
- [8] The PA's affidavit reiterates his testimony at the RPD hearing, saying he is not safe in Lagos. He attaches an undated letter from his sister and an affidavit from his mother describing an attack on their home by the AOP sometime on XXXX XXXX XXXX 2018, as well as three articles. The remainder of the affidavit restates the PA's belief that he will be located by the AOP in Lagos.

- [9] The affidavit describes the PA's receipt of new information from his mother and sister, but does not provide any details as to when and how the documents were received. Given that the information provided in the sister's letter and the mother's affidavit describe events that occurred after the RPD decision, I find the PA received the information after the RPD decision and the affidavit therefore meets the requirements of subsection 110(4).
- [10] In respect of the Singh factors, the affidavit does not contain new evidence. It provides that the PA received information from his sister and mother, which I have considered in determining whether to admit those documents as new evidence. The remainder of the affidavit contains evidence already before the RPD. There is otherwise nothing relevant in the documents with respect to this appeal. For these reasons, I do not admit the affidavit as new evidence. Item (b) - Undated letter from PA's sister is admitted
- [11] The letter from the PA's sister is included as an exhibit to the PA's affidavit sworn XXXX XXXX XXXX 2018. The letter is undated and refers to an attack by gunmen at the home of the PA's sister and mother on XXXX XXXX XXXX 2018. It is signed by the PA's sister. The attack arose after the RPD decision on August 10, 2018 and therefore meets the requirements of subsection 110(4).
- [12] In respect of the Singh factors, I find the letter contains new information related to the Appellants' claim as it describes events that occurred after the RPD decision. The letter is relevant as it describes an attack on the PA's sister and mother by gunmen who were looking to find the Appellants. In terms of credibility, the Appellants have not provided any information about how the letter was received. I note, however, that in the letter the PA's sister states that she decided to send it, "so that you might see it anytime you are online in your inbox." This suggests the letter was received via email by the PA and it would have been helpful to have a copy of the email or the PA's online inbox showing the letter. However, I note the PA's sister's signature seems to be the same as her signature in her previous affidavit that is part of the RPD record. Based on this, I find the source to be credible on its face. The PA's sister's letter is admitted. Item (c) - Affidavit of PA's mother sworn XXXX XXXX XXXX 2018 is not admitted
- [13] The affidavit of the PA's mother is included as an exhibit to the PA's affidavit of XXXX XXXX XXXX 2018. It describes an attack by gunmen at the home of the PA's sister and mother on XXXX XXXX XXXX 2018. The attack arose after the RPD decision on August 10, 2018 and therefore meets the requirements of subsection 110(4).
- [14] In respect of the Singh factors, I find the letter contains new information related to the Appellants' claim as it describes events after the RPD decision. The affidavit is relevant as it describes an attack on the PA's sister and mother by gunmen who were looking to find the Appellants. In terms of credibility, I note the affidavit is sworn on XXXX XXXX XXXX 2018 in Benin City, which is the day after the PA's affidavit is sworn in Montreal on XXXX XXXX XXXX 2018. It is impossible for the PA to have received his mother's affidavit the day before it was actually sworn. I find the affidavit is not credible and do not admit it. Item (d) - Article

dated August 8, 2017 is not admitted

- [15] The article is an editorial entitled "As political thugs go on the rampage" dated August 8, 2017. It describes attacks on a journalist organization in Kaduna State and the Kogi State House of Assembly by political thugs. The Appellants have failed to provide a statement as required by RAD Rule 3(3)(g)(iii) about how any new evidence submitted meets the requirements of subsection 110(4) and how the evidence relates to the appellant.
- [16] The article predates the RPD decision on August 10, 2018. As there is no explanation about why the article was not reasonably available to the Appellants or they could not have been reasonably expected to bring the article before the RPD, I find the article does not meet the requirements of s. 110(4) and it is therefore not admitted. Item (e) - Article dated June 4, 2018 is not admitted
- [17] The article is entitled "Political gangs under scrutiny in Nigeria after armed robbery" dated June 4, 2018. It describes members of a youth gang, recently arrested for numerous bank robberies, alleging that they were recruited as political enforcers by a former state governor and the current head of the Senate. The Appellants have failed to provide a statement as required by RAD Rule 3(3)(g)(iii) about how any new evidence submitted meets the requirements of subsection 110(4) and how the evidence relates to the appellant.
- [18] The article predates the RPD decision on August 10, 2018. As there is no explanation about why the article was not reasonably available to the Appellants or they could not have been reasonably expected to bring the article before the RPD, I find the article does not meet the requirements of s. 110(4) and it is therefore not admitted. Item (f) - Article dated August 15, 2018 is admitted
- [19] The article is entitled "Lagos State Ranks Third Worst City To Live In The World" and describes that Lagos state has been ranked the third worst city for humans to live in the world by the Global Liveability Index. It notes the ranking was based on social stability, healthcare, education, culture, environment and infrastructure, but contains no other details. The article post-dates the RPD oral decision on August 10, 2018. Having arisen after the RPD decision, it meets the requirements of subsection 110(4).
- [20] In respect of the Singh factors, the article presents new information about how Lagos was ranked in an international study. As Lagos is the proposed IFA, the article is generally relevant to the Appellants' claims. The source is an online article citing an international study and I therefore consider it a credible source. The article is admitted. Item (g) - Affidavit of PA sworn XXXX XXXX XXXX 2019 is not admitted
- [21] The affidavit of the PA is sworn XXXX XXXX XXXX 2019 and states that following a move to Toronto, the Appellants retained a new lawyer on XXXX XXXX XXXX 2019. It further states that he received an affidavit from his sister on XXXX XXXX XXXX 2019, which includes an extract from a crime diary and relates to recent events in XXXX 2019.

- [22] In considering the Rule 29 factors, I note that the affidavit and the events described in it post-date the submission of the Appellants' record on XXXX XXXX XXXX 2018. The affidavit does not provide new evidence. It provides information about when the Appellants retained a new lawyer and when the PA received new information from his sister, which I have considered in determining whether to admit the new evidence. There is otherwise nothing relevant or probative in the documents with respect to this appeal. For these reasons, I do not admit the affidavit as new evidence. Item (h) - Supplemental memo dated XXXX XXXX XXXX 2019 is admitted
- [23] The memo is authored by the Appellants' new lawyer. The lawyer states that after being retained, he reviewed the previous submissions by the Appellants' former lawyer and wished to provide additional submissions. The lawyer states that no decision of the RAD has been made and therefore there is no prejudice to any party in considering the additional submissions.
- [24] In considering Rule 29 factors, I note the supplemental memo does not contain new evidence, rather it provides additional submissions on behalf of the Appellants. I note the memo is dated XXXX XXXX, 2019, which post-dates the perfection of the Appellants' record by the previous lawyer on XXXX XXXX XXXX 2018. The supplemental memo could not have been made by the new lawyer as he was not retained by the Appellants at that time. For this reason, I admit the supplemental memo. As the memo contains no evidence, I am not required to consider the subsection 110(4) requirements. Item (i) - Letter from Notary Public dated XXXX XXXX XXXX 2019 is not admitted
- [25] The letter is entitled "Letter of Confirmation of Facts" and notes that the author, a notary public, deposed the PA's sister's affidavit on XXXX XXXX XXXX 2019. It further states: The said [PA's sister] presented to me also a copy of a Police Report she obtained from the Police concerning an incident she once reported to the Police some time back. After listening to her [sic] ordeal and that of her brother aforementioned, and in my opinion I verily believe her, before taking her deposition on oaths.
- [26] In considering the Rule 29 factors, I find the document is not relevant or probative as it merely describes the event of swearing the affidavit of the PA's sister. While it could not have been provided with reasonable effort with the appellant's record as the event post-dates perfection of the appellants' record, it brings no new evidence to the appeal. For these reasons, the letter is not admitted. Item (j) Affidavit of PA's sister with crime diary extract is not admitted
- [27] The affidavit with an attached crime diary extract describe an attack on the PA's sister and family members at their home on XXXX XXXX XXXX 2019. The attack was allegedly carried out by the agent of persecution in an effort to find the PA. The PA's sister reported the attack to police. The affidavit further states that the agent of persecution is still searching for the Appellants everywhere and they have attacked relatives' homes in Benin City, Lagos, Abuja and Port Harcourt.

- [28] In terms of considering the Rule 29 factors, the affidavit and attached crime diary extract are relevant and probative and provide new evidence to the appeal in relation to the agent of persecution's continuing efforts to locate the Appellants in Nigeria. The documents could not have been provided with reasonable effort; with the appellant's record, as the events described post-date perfection of the appellants' record.
- [29] In terms of the requirements of subsection 110(4), the documents describe events that occurred in XXXX 2019. As these events post-date the RPD decision date, the documents meet the requirements of subsection 110(4).
- [30] In respect of the Singh factors, I note the documents display new information as it describes events that post-date the RPD decision. The documents are relevant as they describe attacks allegedly committed by the agent of persecution in attempts to locate the Appellants.
- [31] In examining the extract, I note that it is entitled "Extract from Crime Diary Igbe Police Station, Nigeria". The extract has no logo. The country documentation provides that all documents released by the police, including crime diary extracts, contain the Nigerian Police logo and Coat of Arms.⁴ Given there is no logo or coat of arms, I find the crime diary extract is not authentic. Additionally, I note that the extract contains an entry dated XXXX XXXX XXXX 2019 stating that the PA's sister attended the police station on XXXX XXXX XXXX 2019 to report an attack by the AOP that occurred the same day. The entry describes the attack as well as the police response to the XXXX XXXX XXXX 2019 attack: All attempts to arrest the suspect proved abortive. The suspects are still at large and the victim has reported back to the station severally that the suspect is still threatening and making attempts at eliminating her brother with his gang through phone call to cover up his crime. That the Assailants were very violent, hence he and his gang are still at large and threatening to harm [the PA] and his wife. Action: Entry recorded and referred to crime recorder for action.⁵
- [32] According to country documentation, crime diary extracts are maintained as a log of complaints registered on the day the complaints are made.⁶ It is inconsistent with the country documentation that the entry describes an event reported to the police 10 days previously and summarizes the police activity in response. I also note that it is illogical for the recording office to conclude the entry with a referral for action when police response has already been documented. For these reasons, I find the crime diary extract is fraudulent and the PA's sister's affidavit is untrustworthy as it attached the fraudulent extract. Neither document is admitted. ORAL HEARING
- [33] I may only hold an oral hearing where new evidence has been admitted and I am of the opinion that the evidence:
- a. raises a serious issue with respect to the credibility of the person who is the subject of the appeal;
 - b. is central to the decision with respect to the refugee protection claim; and

c. if accepted, would justify allowing or rejecting the refugee protection claim.⁷

[34] I have considered the new evidence that has been admitted. I have concluded the evidence does not require a hearing as it does not justify allowing or rejecting the claim.

ANALYSIS

[35] My role is to look at all the evidence and decide if the RPD made the correct decision.⁸
Insufficient evidence that persecutor has the capacity to locate the Appellants in the IFA

[36] The Appellants argue that the RPD erred by concluding that the agent of persecution's attempts to locate the Appellants is localized to Benin City. They argue the RPD found the PA's testimony to be generally consistent and therefore his testimony that he believed the agent of persecution would be able to locate them in Lagos is sufficient to establish that the first prong of the IFA test is not met.

[37] I disagree. I have carefully reviewed the RPD record as well as the new evidence admitted in this appeal. I find the RPD did not err in concluding that the attempts to locate and harm the Appellants were localized to Benin City. Based on my independent assessment of the new evidence admitted, I find there is insufficient credible evidence to demonstrate that the agent of persecution has the capacity to track the Appellants outside of Benin City. My reasons follow.

[38] The RPD noted that the PA's testimony and narrative described the AOP making attacks or threats in the Benin City area. In his narrative, the PA describes being approach by two boys in XXXX 2013 who warned him that he should not leave the AOP's group because they would track him down. He further describes leaving a church program when armed boys began to approach him with guns but he managed to escape. Following this event, he left Nigeria because he felt he wasn't safe. A final attack occurred when his wife was threatened by armed men when they told her they were watching and monitoring her since the PA had ran away and they would make her pay for it. The RPD also noted that the PA's testimony, that he believed there were influential businessmen that were a part of the AOP's network, lacked the evidence to sufficiently establish their capacity outside of Benin City in terms of their business or other connections. In my view, the RPD correctly assessed the evidence before it and concluded that the capacity of the AOP to find the Appellants was localized to the Benin City area.

[39] The new evidence admitted in this appeal with relevance to the AOP's continued intent and capacity to locate the Appellants is the PA's sister's undated letter, describes an attack on herself and her mother on XXXX XXXX XXXX 2018 in Benin City. The evidence relates to a localized attack in Benin City and does not change my assessment of the AOP's capacity to locate the Appellants in Lagos as a result.

- [40] The Appellants also argue that the fact that Lagos is a large urban city is not relevant to the capacity of the AOP to locate them. In addition, they argue that Lagos is only 300 km from Benin City and the close distance gives the AOP the capacity to locate them there. I do not agree. The AOP's capacity to locate the Appellants is not assisted by the geographical distance between the AOP and the Appellants. Whether the distance is 300 km or 1000 km, the AOP would still need a way to identify and track the Appellants in a city of 13 million people.
- [41] In summary, I concur with the RPD that the AOP's attacks were localized. There is insufficient evidence to demonstrate that the AOP has the capability to locate them in Lagos. I find, on a balance of probabilities, that there is not a serious possibility of persecution or risk of life to the Appellants in the proposed IFA. The IFA is objectively reasonable
- [42] The Appellants argue that the RPD failed to consider the individual circumstances of the Appellants in its assessment of whether relocation to Lagos was objectively reasonable and lacked specificity in its reasons.
- [43] I disagree. Based on my review of the RPD record and audio recording, I do not find that the RPD erred.
- [44] The RPD noted that the Appellants would have freedom of movement in Lagos. The fact that the Appellants speak English and Bini would allow them to work and access services. As the country documentation indicates that the population is approximately 50% Christian and 50% Muslim, the Appellants would be free to practice their religion.
- [45] The RPD highlighted that both the PA and the Associate Appellant are highly educated and have experience in working in their respective professions. I agree that the Appellants' education and professional experience give them a much higher chance of obtaining work as compared to Nigerians who have on average 7 to 8 years of formal education.⁹ The Associate Appellant is a XXXX with 20 years of education and 6 years of professional experience in XXXX XXXX¹⁰ The PA is an XXXX XXXX with 15 years of education and 10 years professional experience in XXXX.¹¹ Given their professional status and income, they would be in a good position to find housing and education for their child. The Appellants have not raised any specific individual needs in relation to health care, education or other areas.
- [46] I have reviewed the article entitled "Lagos State Ranks Third Worst City To Live In The World" that describes Lagos as ranking third in a study about the worst cities to live in the world by the Global Liveability Index. It notes the ranking was based on social stability, healthcare, education, culture, environment and infrastructure, but contains no other details. Without some specificity in the basis for the ranking, I find the article is not probative in terms of assessing whether Lagos is objectively reasonable as an IFA for the Appellants. I assign it little weight.

[47] In summary, I concur with the RPD's conclusion. I find, on a balance of probabilities, that it is objectively reasonable for the Appellants to relocate to Lagos.

CONCLUSION

[48] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection. (signed) "Karen McGovern" Karen McGovern March 12, 2020 Date 1 Section 110(4), Immigration and Refugee Protection Act, (S.C. 2001. C. 27). 2 Canada (Citizenship and Immigration v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385. 3 Rule 29, Immigration and Refugee Board, Refugee Appeal Division Rules, SOR/2012-257. 4 National Documentation Package (NDP) for Nigeria (10 July 2018), Response to Information Request (RIR) NGA105999, Item 10.3. 5 Crime diary extract attached to PA's sister's affidavit sworn XXXX 2019. 6 National Documentation Package (NDP) for Nigeria (10 July 2018), Response to Information Request (RIR) NGA105999, Item 10.3. 7 Section 110(6), Immigration and Refugee Protection Act, (S.C. 2001. C. 27). 8Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 9 National Documentation Package, Nigeria, 29 November 2019, Item 1.6: ?Nigeria. The World Factbook. United States. Central Intelligence Agency. 13 November 2019. 10 Exhibit RPD-1, RPD Record, at p. 106. 11 Exhibit RPD-1, RPD Record, at p. 102.

RAD File / Dossier de la SAR : MB8-20485 MB8-20486 / MB8-20487 RAD.25.02 (January, 2020)
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Prepared on 29 October 2026 · Esheria