

CANADA / JUDGMENT

VB9-07244

COURT

Refugee Appeal Division

DECIDED

29 January 2020

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RAD File / Dossier de la SAR : VB9-07244 VB9-07245 / VB9-07246 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered /
heard at Vancouver, BC Appel instruit / entendu à Date of decision January 29, 2020 Date de la
décision Panel Ron Liberman Tribunal Counsel for the persons who are the subject of the appeal
Misha Sanghi Barrister and Solicitor Conseil des personnes en cause Designated representative
XXXX XXXX XXXXforXXXXXXXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the
Minister N/A Conseil du ministre REASONS FOR DECISION

INTRODUCTION

- [1] XXXX XXXX XXXX (Principal Appellant), his spouse XXXX XXXX XXXX (Co-Appellant), and their minor son, XXXX XXXX XXXX (Minor Appellant), (collectively "the Appellants"), citizens of Nigeria, appeal the decision of the Refugee Protection Division (RPD) denying the claims for refugee protection under section 96 and finding them not to be persons in need of protection under section 97(1) of the Immigration and Refugee Protection Act (IRPA).¹
- [2] The Appellants did not include new evidence with this appeal. The Principal Appellant was the Designated Representative for the Minor Appellant at the RPD hearing.

DETERMINATION

- [3] On behalf of the Refugee Appeal Division (RAD), I have conducted an independent analysis of the evidence concerned, including listening to an audio recording of the RPD hearing, as well as considering the Appellants' Appeal Record, the RPD's Decision, the Appellants' Basis of Claim (BOC) Forms, and the entire balance of the RPD Record.
- [4] I find that the RPD erred in finding there is adequate State Protection available to the Appellants in Nigeria. The RAD is unable to make a final determination in this case, without hearing evidence that was presented to the RPD, and therefore refers the matter to the RPD for re-determination by a differently constituted Panel. OVERVIEW AND FACTUAL BACKGROUND

- [5] The Principal Appellant alleges he was gathering produce at his business partner's farm in XXXX 2017, when he witnessed a gruesome attack by the Fulani Herdsmen against the village, targeting Christian farmers. The Principal Appellant escaped, but one of the attackers, who was not wearing a mask, saw him and screamed that he must be killed. The Principal Appellant fled to Lagos to make a police report only to learn the police were already aware. According to a news report, XXXX persons were killed in the attack. Shortly after, the Hausa buyers of the produce held the Principal Appellant hostage. They demanded the return of the money they had advanced to the deceased business partner for the produce. The produce and the truck which had been transporting it had been destroyed in the attack by the Fulani herdsmen. The Principal Appellant received death threats against himself and his family if they failed to repay the money or if they reported the matter to the police. The Co-Appellant was able to gather some of the money, following which the Principal Appellant was given some time to come up with the remainder of the money. The Principal Appellant, after spending some time recovering in a hospital, fled Nigeria with his family. They entered the United States and subsequently crossed the border into Canada. After a few weeks in Canada, their landlord in Nigeria advised that unknown persons had attempted to break into their home in search of the Principal Appellant. The Appellants allege they will be harmed by the Fulani as well as by the Hausa buyers if they return to Nigeria RPD decision
- [6] The RPD found that the Appellants had not rebutted the presumption of State Protection in Nigeria. Appellant's arguments
- [7] Counsel for the Appellant argued: * The RPD erred in the State Protection analysis, and placed a burden to exhaust all avenues though there was no evidence of protection; * The RPD acknowledged that Nigeria is the third most corrupt country in the world, but still presumed that State Protection in Nigeria is adequate; * The RPD determined that Nigeria fails in State Protection but that State Protection does exist for the Appellants; * The RPD failed to consider the level of democracy in assessing the burden placed on the Appellants to prove an absence of State Protection; * Nigeria is a democracy but with low levels of rule of law, it is an error to demand the same standards as for a high-level democracy; and, * The presumption of State Protection does not exist in this case, it is improbable the State will have the resources to protect the Appellants. ROLE OF THE RAD
- [8] I have reviewed this decision of the RPD on a standard of correctness after conducting an independent assessment of the evidence before me.²

ANALYSIS

New Evidence

- [9] The Written Statement submitted by Counsel states there is new evidence and that an oral hearing is requested. However, on the "Table of Contents" page in Counsel's Memorandum in respect of "Item 3. New Evidence" Counsel has entered "N/A". I found no new evidence

included with the Appeal, neither is there a statement in Counsel's Memorandum as to how any proposed new evidence meets the requirements of section 110(4) of IRPA, as is required by the caselaw.³ In these circumstances, I am unable to admit any new evidence; for this reason, I am also unable to hold an oral hearing under section 110(6) of IRPA. State Protection

- [10] Turning then to the issue of State Protection, a contextual approach requires consideration of factors such as the Appellants' personal situation, the specific risk alleged, the identity of the persecutor, and the prevailing situation in the country where the threats were made. I find the RPD has examined these factors, however I disagree with its findings.
- [11] I have determined the RPD erred in finding that there was adequate State Protection for the Appellants in relation to the risk they faced from the Hausa buyers. I have made this determination on the assumption that the Hausa are not working in concert with the Fulani. I do note that the RPD found there was insufficient evidence to demonstrate that the Fulani herdsmen had a continuing interest in the Appellants. The RPD also found there was insufficient evidence that the Fulani were working in concert with the Hausa buyers in order to target the Appellants. Notwithstanding these findings, the RPD went on to focus much of its State Protection analysis on whether State Protection was adequate in relation to threats from Fulani herdsmen and the State's military response to Fulani attacks against villages. The Appellant's Memorandum does not directly state that the RPD erred in finding that the Appellants do not face risk from the Fulani. However, on appeal the Appellants do assert the RPD's State Protection analysis in relation to the Fulani is in error. Where I have determined the RPD erred in its State Protection analysis in relation to the threat from the Hausa buyers, I find that I do not need to make a determination of whether the RPD's finding that the Appellants do not face risk from the Fulani was correct. I also do not need to make a finding of whether the RPD's State Protection analysis in relation to the Fulani was correct.
- [12] The RPD found that there was evidence to demonstrate that the Hausa buyers were targeting the Appellants. I agree. I therefore examined whether the RPD was correct in concluding that the Nigerian Police Force (NPF) are able to provide him with adequate protection in relation to the threats of harm he faces from the Hausa buyers. In my review of the National Documentation Package (NDP) documents I note the statement in the recent European Asylum Support Office (EASO) report⁴ that "the NPF is generally considered to be unable to perform its duties in a proper and efficient manner. Numerous sources mention its lack of sufficient funding, suitable manpower, proper equipment, appropriate and adequate training ... criminal groups do not fear prosecution or arrest".
- [13] The RPD acknowledges endemic corruption in the NPF, but, as against this, points to it being comprised of 350,000 police. I find, firstly, this fails to consider the sizeable population of the country and is misleading. The EASO report quoted above, in addition to pointing to a lack of sufficient manpower, states "Nigeria is not only lacking enough police officers but 'almost half of them are responsible for protecting VIPs such as politicians, businessmen and other wealthy individuals.'" Secondly, what needs to be considered in the context of a

State Protection analysis is not how many security personnel are available, but rather whether they provide the Principal Appellant with adequate protection. Moreover, the assessment of the adequacy of State Protection involves more than a consideration of State efforts and I must consider the operational adequacy of State Protection.

- [14] The RPD did acknowledge the existence of corruption in the NPF and efforts of the State to address corruption. However, I find the RPD's conclusion that there is some measure of adequacy of State Protection because 2/3 of the police do not take bribes, cannot stand where the RPD does not address an abundance of NDP evidence that directly contradicts this conclusion. The RPD erred in reaching its conclusion without demonstrating it considered the NDP evidence that indicates the NPF are inefficient, underfunded, ill-equipped, inadequately trained, and that criminal gangs do not fear them.
- [15] I find the RPD erred in its analysis of State Protection, by failing to address cogent and important evidence in the NDP that contradicted its findings that State Protection was adequate at the operational level in relation to the threat the Appellants faced from the Hausa buyers.

DETERMINATION

- [16] Pursuant to section 111(1)(c) of the Immigration and Refugee Protection Act, the RAD allows the appeal and refers the matter to the RPD for re-determination by a differently constituted Panel. DIRECTIONS
- [17] The RAD directs the differently constituted RPD Panel to consider, along with any issues they find relevant, the viability of IFA locations, including but not limited to Kano, Ibadan, Abuja and Port Harcourt. (signed) "Ron Liberman" Ron Liberman January 29, 2020 Date 1 Immigration and Refugee Protection Act, SC 2001, c.27. 2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 3 Tiodunmo v. Canada (Citizenship and Immigration), 2019 FC 1489 4 National Documentation Package for Nigeria, November 29, 2019 , Item 1.11.

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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

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