

CANADA / JUDGMENT

VB9-03024

COURT

Refugee Appeal Division

DECIDED

14 December 2020

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RAD File / Dossier de la SAR : VB9-03024 VB9-03025 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision December 14, 2020 Date de la décision Panel K. Qureshi Tribunal Counsel for the persons who are the subject of the appeal Alastair Clarke 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] XXXX XXXX XXXX (Principal Appellant or PA) and XXXX XXXX XXXX (Associate Appellant or AA), citizens of Nigeria, appealed a decision of the Refugee Protection Division (RPD) rejecting their claims for refugee protection. The Appellants allegations are as follows.
- [2] The Appellants fear persecution in Nigeria due to the PA's decision to run for political office and his refusal to participate in rituals demanded by a cabal that rules the candidates. On XXXX XXXX XXXX 2017, the PA announced his intention to seek the People's Democratic Party (PDP) nomination for XXXX of XXXX XXXX in the local government. In XXXX 2017, the PA began receiving anonymous threatening letters and calls advising him to drop his candidacy. He was advised by his sponsor, AS, to report the threats to police, but police did not provide him with any support. In XXXX 2017, the PA received a phone call from WE inviting him to a meeting to obtain sponsorship and protection. On XXXX XXXX XXXX 2017, the PA took a bus to a village in Ogun State for the meeting. When he arrived, the attendees learned they were to be initiated into a cabal and were to swear allegiance to it, and that this would be accomplished by performing rituals using human cadavers. The PA was able to escape with the assistance of a security guard and fled to his friend's house in Ibadan with his wife. Two weeks later, AS was strangled to death. On XXXX XXXX XXXX 2017, armed men broke into the PA's friend's house in Ibadan looking for the PA and his wife. The Appellants escaped and fled to Lagos. In XXXX 2018, the Appellants left Nigeria for the United States of America (USA) and subsequently crossed irregularly into Canada on XXXX XXXX XXXX 2018.
- [3] The Appellants claim was heard on February 22, 2019 and rejected on March 27, 2019 on the basis of credibility and Internal Flight Alternative (IFA) in Port Harcourt. The Appellants appeal to the Refugee Appeal Division (RAD) and present new evidence. DECISION

- [4] The appeal is allowed. I substitute my own decision that the Appellants are Convention refugees. NEW EVIDENCE The evidence presented by the Appellants is partially accepted
- [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
 - i. that the appellant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.
- [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] The Appellants submit the following new evidence:
- a. Various pages and advertisement published in the XXXX XXXX XXXX News seeking information on the whereabouts of the PA dated XXXX XXXX XXXX 20193
 - b. Letter from XXXX XXXX, undated⁴
 - c. Letter from XXXX XXXX dated XXXX XXXX XXXX 20195
 - d. XXXX - Armed Men Storm Family House of Former XXXX XXXX XXXX XXXX dated XXXX XXXX XXXX 20196
 - e. Photograph of a search XXXX XXXX XXXX XXXX of the PA⁷
 - f. Text messages between the Appellant and the acquaintance who sent photos of XXXX XXXX XXXX⁸
 - g. Al Jazeera - "Nigeria to hold local elections amid fears of violence dated 8 March 2019
 - h. Bloomberg - "Nigeria Halts River Election Process Amid Violence, Disruption" dated 10 March 2019
 - i. Vanguard - "Governorship polls: N-Delta militants issue warning to FG over military interference in Rivers dated 10 March 2019
 - j. European Union Election Observation Mission Nigeria- General Elections 2019 "Second Preliminary Statement" dated 11 March 2019
 - k. NAIJ - "If not for us, River would have been burnt to ashes-Nigerian Army" dated 7 May 2019
 - l. Leadership Newspaper - "X-raying Rivers' Joint Committee On Election Violence" dated 13 May 2019
 - m. This Day Live - "PDP Sweeps Rivers Supplementary Polls" dated 14 April 2019 Items a, d, e, f, k, l and m are accepted as new evidence. Remaining evidence is rejected.

- [8] Item "a" is a "missing" advertisement in XXXX XXXX XXXX news regarding the PA. As the article was published on XXXX XXXX XXXX 2019, I accept that it arose after the rejection of the claim and therefore meets the requirements of s.110(4) of the Immigration and Refugee Protection Act (IRPA). Regarding the factors under Singh/Raza, I accept that the information is new as it suggests that there continues to be interest in the PA's whereabouts since the rejection of the claim. The information is also relevant as it indicates that there continues to be searches for the PA since the claim was rejected. Finally, for the purposes of the admissibility stage, I accept that the advertisement is credible as it appears to be duly published in the newspaper. A full consideration of credibility will be considered subsequently. I therefore accept item "a" is admissible as new evidence.
- [9] Items "b" and "c" are letters that pertain to an incident on XXXX XXXX XXXX 2019 where men stormed the home of the PA's relatives seeking to know his whereabouts, and then set the house on fire. Item "b" is an undated letter from the PA's cousin who resided in the home. Item "c" is a letter from a witness who resides in the building.
- [10] The fire of XXXX XXXX XXXX 2019 occurred prior to the rejection of the claim on XXXX XXXX XXXX 2019. However, the Appellants have not explained why the letters, items "b" and "c," were not reasonably available prior to the rejection of the claim. The burden is on the Appellants to provide full and detailed submissions yet they only submit that the evidence was "written after the Appellants' claim was heard" [emphasis added].⁹ Notably, the relevant time frame for the admissibility of new evidence is after the rejection of the claim, not the hearing of the claim. The Appellants have not provided any explanation for when they learned about the fire or when they attempted to obtain the new evidence. I further note that item "b" is undated on its face. Overall, I do not find that the Appellants have established that items "b" and "c" meet the requirements of s.110(4) and therefore they are rejected as new evidence.
- [11] Item "d" is an article published on XXXX XXXX XXXX 2019 in XXXX News regarding the fire. Although the fire occurred prior to the rejection of the claim, the article was not reasonably available until XXXX XXXX XXXX 2019. Therefore, I accept that it meets the requirements of s.110(4). Regarding the factors under Singh/Raza, I accept that the article is new with respect to its source. I also accept that it is relevant as it provides updated information indicating that the Appellants are still being sought in Nigeria. I will also accept that the article is credible given that it is published in the XXXXNews, a credible news source. I therefore accept item "d" as new evidence.
- [12] Items "e" and "f" are a XXXX XXXX of the PA and text messages between the PA and the acquaintance who sent him the photos of the XXXX XXXX. The text messages contain a date on the top left corner of XXXX XXXX XXXX XXXX2019. Although the Appellants do not confirm whether this date is XXXX XXXXorXXXX XXXX XXXX, on the basis of their claim that the new evidence was written after the claim was heard, I interpret XXXX XXXX XXXX XXXX2019 to mean XXXX XXXX XXXX 2019. Therefore, I accept this information was not reasonably available prior to the rejection of the claim and meets the requirements of

s.110(4). Regarding the Singh/Raza factors, I accept that this information is new as this is the first suggestion in the claim that the police are also interested in the PA's whereabouts. I also accept that the information is relevant as it denotes that the Appellants are continuing to be sought or are under threat in Nigeria. I will also accept that the information is credible as the XXXX appears to be tacked onto the wall of an actual police station bulletin board, which implies that the contents of the text messages are legitimate as well. I therefore accept items "e" and "f" as new evidence.

- [13] Items "g" through "m" are various news articles pertaining to election violence in 2019. The Appellant submits that these articles are relevant because they pertain to the IFA of Port Harcourt and provide insight into the deteriorating political and security situation in Rivers State following the 2019 elections. 10
- [14] I note that items "g" through "j" were all published before the claim was rejected on March 27, 2019. Therefore, these articles were reasonably available earlier. Furthermore, the IFA of Port Harcourt was an issue that was raised by the RPD at the actual hearing on February 22. Therefore, the Appellants could reasonably have been expected to have produced these articles prior to the rejection of the claim. Articles in items "g," "h," "i" and "j" are rejected as new evidence.
- [15] Items "k," "l" and "m" are articles that were published after the claim was rejected. Although these articles also pertain to election violence in Rivers state, they provide more recent and updated information that arose after the rejection of the claim. I therefore accept that they meet the requirements of s.110(4). Regarding the factors in Singh/Raza, I accept that the information in the articles is new as it is updated information regarding election violence which was a developing situation after the claim was rejected. I will also accept that the articles are relevant as they pertain to the viability of Port Harcourt as an IFA. Finally, as the articles appear to be duly published in credible news sources, I accept that they are credible. Overall, I accept items "k," "l" and "m" as new evidence. Rule 29 documents are accepted as new evidence
- [16] The Appellants submitted new documents on December 16, 2019 which were not included in the Appeal Record. For evidence submitted after the perfection of the Appeal Record, the Appellants must meet the requirements of Rule 29 of the Refugee Appeal Division Rules, 11 in addition to the requirements of subsection 110(4) of the IRPA¹² and Singh/Raza. In determining the application, the RAD must consider any relevant factors, including: the relevance and probative value of the document, any new evidence the document brings to the appeal, and whether the appellant could have, with reasonable effort, provided the document with the Appeal Record. The Appellants submit the following documents:
- a. Vanguard News - Gunmen kill man, 28, in Port Harcourt dated October 8, 2019
 - b. Letter from XXXX XXXX, XXXX XXXX XXXX 2019

- [17] The Rule 29 evidence discusses an incident where gunmen stormed the PA's brother's home in Port Harcourt and gunned down a friend. As the documents convey that the gunmen were looking for the PA, this information is relevant and probative. The documents also convey that assailants are still seeking the Appellants which is updated and new information for the purposes of the appeal. Finally, as the incident itself occurred after the filing of the Appeal Record, the documents could not have been provided earlier.
- [18] Under s.110(4), as the incident took place on September 26, 2019, it arose after the rejection of the claim. Under Singh/Raza, the information is relevant and new, as discussed above. I will also accept that the news article is credible given that the publisher is the XXXX News which is a credible news source. Regarding the letter from the PA's brother, there is nothing to suggest that the letter was written by anyone but him and therefore I accept that it is credible for the purposes of the admissibility stage. Overall, I accept the Rule 29 evidence in this claim. Oral Hearing
- [19] Subsection 110(6) of the IRPA gives the RAD the discretion to hold an oral hearing if new evidence has been accepted that raises a serious issue with respect to the credibility of the appellant, that is central to the decision with respect to the appellant's claim and that, if accepted, would justify allowing or rejecting the appellant's claim.
- [20] The request for an oral hearing is rejected on the basis that the partially accepted new evidence is not capable, by itself, to justify allowing or rejecting the Appellants' claims.

ANALYSIS

- [21] I have reviewed the RPD decision on a standard of correctness and conducted an independent assessment of all of the evidence.¹³ I acknowledge that when a claimant swears that certain facts are true, this creates a presumption that they are true unless there is a valid reason to doubt their veracity.
- [22] The Appellants submits that the RPD erred as follows:¹⁴
- a. In its credibility assessment.
 - b. By speculating about the modus operandi and reasonableness of the Cabal's behaviour regarding ritual murder and treatment without any supporting evidence.
 - c. By ignoring plausible justifications regarding the PA's lack of campaign and associated political material.
 - d. In its IFA analysis by suggesting the PA could refrain from exercising his political rights as a price to pay to live in security. RPD erred in its credibility assessment
 - i. Ritual murders

- [23] As one of its credibility findings, the RPD decision noted that although the existence of human sacrifice in Nigeria is known, as indicated in NDP item 7.13, that "the documentation did not indicate that ritual murder is permitted in Nigeria, or countenanced, generally."¹⁵ The Appellants submit that, per their review of item 7.13, a Response to Information Request (RIR), although ritual murder is not "permitted" in the sense that it is not sanctioned by the State, this does not mean it does not happen.¹⁶ Furthermore, that item 7.13 supports the Appellants' position that such practises do occur.
- [24] I have independently considered the RIR which says, despite any laws to the contrary, that ritual murder practices appear to persist. The RIR states: According to various sources, ritual killings in Nigeria are performed to obtain human body parts for use in rituals.... "many experts" attribute the prevalence of ritual murder to the "continuing belief among many Nigerians, ... even educated ones, in the supernatural belief in the power of ritual murder "is very strong among the local population [of southern Nigeria] including people of different faiths and educational backgrounds" and not only among "traditional fetish illiterates" ritual killings were particularly prevalent in the states of Lagos, Ogun, Kaduna, Abia, Kwara, Abuja, Rivers, and Kogi
- [25] Furthermore, an article provided by the Appellants suggests that fetish oath taking can be a prerequisite for taking public office. The article states: Some of our political office aspirants with scant honour and integrity have no option, but to accept whatever their godfathers want them to do in order for them to achieve their political desires, and this includes fetish oath taking¹⁷ Fetish/secret oath is taken in order to keep secret official information between the political office holders, their godfathers and/or oathgivers¹⁸
- [26] Therefore, based on my independent assessment, I find that the objective evidence indicates that ritual killings occur in Nigeria. Also, as fetish/secret oaths can occur for political positions, it is possible that this may include ritual murders. Therefore, I find the RPD erred by drawing a negative credibility inference against the Appellants based on its belief that the ritual murder is not permitted in Nigeria. ii. PA not being prepared in advance for cabal
- [27] The RPD drew a negative credibility inference against the Appellants on the basis of its belief that, It is unreasonable that the cabal would introduce the principle claimant to these activities without any preparation or warning to test his toleration or willingness to accept such rituals, nor is there any indication that the principal claimant was in any position to ever help the cabal in any of it's activities as he has never been confirmed as a candidate for his party or any party, in any election at any level.¹⁹
- [28] The Appellants submit this is a plausibility determination based on the RPD Member's perspective.²⁰ Also, that the RPD did not take into account the power hierarchy, political corruption, and cultural context, mentioned in NDP items 4.1 and 7.13, which provides a plausible explanation for why the PA was not first tested or prepared before being invited to the ceremony.

- [29] Based on my independent assessment, I note that scholarly articles provided by the Appellants indicate the following regarding cabals: They consist of a shadowy group of people bound together by some sinister political interests,... cabals and mafias operate in the dark and hardly make any statements that could betray their identity... most of the individual or groups that securitize this class of Nigerians are often unable to say who they are²¹
- [30] That is, the evidence conveys that cabals are very secretive entities. Implausibility findings are only to be made in the clearest of cases. I find it is plausible that the PA would not have been tested or prepared prior to being taken to a cabal meeting due to the highly secretive nature of the group. I therefore find that the RPD made an unsupported implausibility finding and erred in this regard. iii. Appellant's lack of corroborative documents
- [31] RPD drew a negative credibility inference from the PA's lack of corroborative documents regarding his political activities. The RPD noted that the PA had no material directly confirming his campaign, apart from a 2015 election poster, which the RPD did not appear to attribute much weight to. The RPD concluded that, given the PA's alleged popularity, it was difficult to see how no corroborative evidence was available in this regard.²² The Appellants submit that they provided a reasonable level of material and detail that could be expected from an individual who was seeking a low level political office for the first time, and then left the country as quickly as possible.²³
- [32] Based on my independent assessment, I find the RPD erred by drawing a negative credibility inference from the lack of corroborative documents regarding the PA's political activities. First, as the RPD noted itself, the PA was not actually selected by the PDP to be their candidate in either 2015 or 2017. Therefore, I find that there is little reason for the PA to have acquired extensive campaign material. For example, in 2015, when the PA announced his interest in running as a candidate for the PDP in his XXXX, the PDP asked him to step down as they had a different candidate in mind. Then, in 2017, the PA announced his intention to seek candidacy as the PDP representative for XXXX XXXX only on XXXX XXXX XXXX 2017, however the events causing him to go into hiding occurred only a few months later in XXXX 2017. Therefore, given that the PA never actually got to the stage of running for the party candidacy, or even in an actual election, I find that the lack of campaign documents can be reasonably explained.
- [33] Regarding the PA's lack of online presence, again, I note that the PA was seeking a low level position in his local community and, as he testified, he opted to communicate with his community directly given that most people did not have access to the internet.²⁴ The RPD did not engage with the PA's explanations which I find to be a reasonable justification for the lack of corroborative documents regarding the PA's political aspirations or activities.

- [34] Finally, I note that the PA did provide his PDP membership card,²⁵ a letter from a fellow PDP member confirming the PA's political activities and his own membership card,²⁶ an Application for Election Form²⁷ and an affidavit and letter from the sponsor's son.²⁸ These documents were not discussed in the RPD decision. However, based on my independent assessment, I do not find any errors or inconsistencies within these documents themselves, or when compared to the other evidence and the Appellants testimony.
- [35] Overall, I find that the RPD erred by finding that the Appellants lack credibility. I have independently reviewed a transcript of the hearing and I find that the Appellants' testimony was responsive, clear and forthright. I also note that the Appellants provided several corroborative documents which were detailed and consistent. I therefore find that the Appellants are credible with respect to their allegations and claim. RPD erred by finding the Appellants would be safe in an IFA
- [36] The RPD concluded that the Appellants could relocate to the IFA or Port Harcourt provided the PA did not run for political office. The RPD decision states, he has the right to make his views count in Nigeria through participating in elections, going to protests, advising his party, writing letters and other vehicles other than publicly running for office. I am unaware of any court case or authority over the Board which states that it is a fundamental human right to run for political office as a candidate [emphasis added].²⁹
- [37] The Appellant submits that, despite the RPD member's unawareness, section 3 of the Charter explicitly defines running as a candidate as a protected right and caselaw confirms that "to be qualified for membership" should be interpreted broadly to mean that every citizen is eligible to be a candidate.³⁰ Finally, that section 3(3)(d) of the IRPA confirms that decisions taken under this act should be consistent with the Charter.
- [38] I accept the Appellants' submission in this regard and that the RPD erred in concluding that the Appellants have an IFA provided the PA does not run for public office. Based on my independent assessment, I accept the PA's submission that running for public office is of paramount importance to him and that, wherever he relocates, he would become involved in politics in this way. I accept the PA's submission that running for office would invariably create publicity which would alert the cabal to his location. Also, the Appellants' objective documentation states that cabal members are elite and powerful such that they can rule governments.³¹ Therefore, I find that the cabal has the means to seek out the Appellants throughout the country. Finally, I find that the cabal has the motivation to pursue the Appellants given that there is evidence that the Appellants were being sought in Port Harcourt as recently as September 2019, as indicated by the Rule 29 evidence.
- [39] Overall, based on the foregoing analysis, I find that the Appellants would face a serious possibility of persecution if they were to locate to the IFA, on a balance of probabilities. No State Protection available to the Appellants

- [40] The PA tried to seek police assistance after he received threats from unknown people in the summer of 2017, to no avail.³² Also, the new evidence submitted by the Appellants demonstrates that the police themselves are seeking him.³³ I find therefore that adequate state protection is not available to the Appellants. Summary of claim
- [41] Overall, based on my independent assessment, I accept the Appellants' allegations are credible and that they face a serious possibility of persecution in Nigeria, on a balance of probabilities. I also find that they would face a serious possibility of persecution if they were to locate to the IFA, and that there is no state protection available to them in Nigeria, on a balance of probabilities.

CONCLUSION

- [42] The appeal is allowed. Pursuant to section 111(1)(b) of the Immigration and Refugee Protection Act (IRPA), the RAD sets aside the determination of the RPD and substitutes its own determination that the Appellants are Convention refugees. (signed) K. Qureshi K. Qureshi December 14, 2020 Date 1 Subsection 110(4) of the IRPA. 2 Canada (Citizenship and Immigration v. Singh, 2016 FCA 96, [2016] 4 FCR 230; Canada (Citizenship and Immigration) v. Raza, 2007 FC 385. 3 Exhibit P-3, Legible Copies dated December 16, 2019, at pp. 13-17. 4 Exhibit P-3, Legible Copies dated December 16, 2019, at p. 6. 5 Exhibit P-2, Appellant's Record, at p. 26. 6 Exhibit P-3, Legible Copies dated December 16, 2019, at p. 3. 7 Exhibit P-3, Legible Copies dated December 16, 2019, at pp. 10-12. 8 Exhibit P-2, Appellant's Record, at p. 33. 9 Exhibit P-2, Appellant's Record, Appellant's Memorandum at para. 37. 10 Exhibit P-2, Appellant's Record, Appellant's Memorandum at para. 38-46. 11 Refugee Appeal Division Rules, SOR/2012-257. 12 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 13 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93, [2016] 4 FCR 157; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145, [2019] 2 FCR 597. 14 Exhibit P-2, Appellant's Record, Appellant's Memorandum at para. 3. 15 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 2, line 39-40, p.3, lines 1-3. 16 Exhibit P-2, Appellant's Record, Appellant's Memorandum at para. 5-11. 17 Exhibit RPD-1, RPD Record, Exhibit 5, at p. 171. 18 Exhibit RPD-1, RPD Record, Exhibit 5, at p.175. 19 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 3, lines 5-11. 20 Exhibit P-2, Appellant's Record, Appellant's Memorandum at paras. 12-19. 21 Exhibit RPD-1, RPD Record, Exhibit 5 at p. 145. 22 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 3, lines 13-17. 23 Exhibit P-2, Appellant's Record, Appellant's Memorandum at paras. 20-25. 24 Transcript of hearing, February 22, 2019, at p. 19, line 23. 25 Exhibit RPD-1, RPD Record, Exhibit 4, at p. 106. 26 Exhibit RPD-1, RPD Record, Exhibit 4, at pp. 136-138. 27 Exhibit RPD-1, RPD Record, Exhibit 4, at p. 119. 28 Exhibit RPD-1, RPD Record, Exhibit 4, at pp. 108-109. 29 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 4. 30 Exhibit P-2, Appellant's Record, Appellant's Memorandum at paras. 26-36. 31 Exhibit RPD-1, RPD Record, Exhibit 5 at pp. 144-170. 32 Exhibit RPD-1, RPD Record, Exhibit 2, BOC narrative, at p. 45. 33 Exhibit P-3, Legible Copies dated December 16, 2019, at p. 10-12.

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