

CANADA / JUDGMENT

MB9-05067

COURT

Refugee Appeal Division

DECIDED

24 January 2020

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RAD File / Dossier de la SAR : MB9-05067

MB9-05068 / MB9-05069

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Toronto, ON

Appel instruit / entendu à

Date of decision

January 24, 2020

Date de la décision

Panel

R.Seyan

Tribunal

Counsel for the persons who are the subject of the appeal

Temitope Ayodele

Conseil des personnes en cause

Designated representative

XXXX XXXX

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

Reasons for decision

- [1] XXXX XXXX, her husband XXXX XXXX XXXX and their daughter XXXX XXXX XXXX are citizens of Nigeria. They are appealing the decision of the Refugee Protection Division (the RPD), which denies their claim for refugee protection.
- [2] XXXX XXXX is the principal appellant. Her husband is the associate appellant. Their daughter is the minor appellant.
- [3] The principal appellant is the designated representative of the minor appellant.
- [4] The adult appellants also have a second daughter, who was born in Canada in XXXX 2018. She is a Canadian citizen and not part of this appeal.

Determination

- [5] I confirm the decision of the RPD that the appellants are not Convention refugees. Nor are they persons in need of protection.
- [6] The determinative issue is credibility.
- [7] While I invited submissions on internal flight alternative and received a response to my directions¹, I will not be writing on this issue as credibility is determinative.

Allegations

- [8] The appellants allege that they are threatened by the associate appellant's father's brother (paternal uncle), XXXX XXXX XXXX. XXXX is laying claim to land that was passed down to the associate appellant and his sister by their father. XXXX has no right to this land as it was purchased by the associate appellant's father.
- [9] The associate appellant alleges that XXXX poisoned and killed both his parents in 2006. In 2012, the principal appellant was unknowingly circumcised by her husband's family and miscarried. In 2015, the principal appellant traveled to the XXXX XXXX and gave birth to the minor appellant, after which she returned to Nigeria.
- [10] XXXX attempted three times to kidnap the minor appellant: XXXX 2016, XXXX 2016 and XXXX 2017. He wanted to circumcise the child as well as perform other traditional rituals.
- [11] The appellants left Nigeria and arrived in the United States in XXXX 2017. A few days later, they traveled to Canada and asked for asylum.

The appellants' arguments for appeal

[12] The appellants raise three issues:

(i) Did the RPD err in omitting to apply and/ or refer to Guideline 4? The appellants argue that the RPD neither mentioned nor applied the Gender Guidelines. Therefore, procedural fairness is breached.²

(ii) Did the RPD ignore evidence? The RPD did not make a clear finding on state protection. It made two negative inferences, one that the principal appellant did not report the FGM forced upon her to the authorities, and two, that the appellants did not have a copy of a complaint that they had made to the authorities. Furthermore, the RPD did not consider the documentary evidence adduced by the appellants in its assessment of state protection.³

(iii) Did the RPD err in omitting to make a final determination for the minor appellant's claim?

[13] Furthermore, the appellants have asked to be allowed to provide five documents that became available after the appeal was perfected in March 2019 pursuant to Rule 29. They are requesting an oral hearing.⁴

MY ANALYSIS

[14] I do not find the appellants to be credible witnesses. I do not believe their allegations on a balance of probabilities.

The role of the RAD

[15] The RPD rejected the appellants' claims on credibility.

[16] The standard of review is correctness.⁵ I am required to conduct my own independent assessment and not defer to the RPD except in limited circumstance, which do not arise in this case.

The new evidence is admissible

[17] The appellants have tendered five pieces of evidence post-perfection of the appeal: a XXXX XXXX XXXX; a letter from XXXX XXXX XXXX XXXX; an affidavit from XXXX XXXX; a Nigeria Police Force crime diary entry; and an affidavit from XXXX XXXX.

[18] The evidence pertains to two events that have occurred post-perfection:

(i) XXXX XXXX 2019: the associate appellant's sister is assaulted by XXXX and others. The evidence is a XXXX XXXX XXXX XXXX XXXX, a letter from a hospital with respect to the sister's injuries (XXXX XXXX XXXX XXXX), and an affidavit by her husband (XXXX XXXX).

(ii) XXXX XXXX 2019: cult members sent by XXXX went to the principal appellant's friend's house, who made a report to the police (affidavit from XXXX XXXX; Nigeria Police Force crime diary entry).

[19] In order to be admissible, this evidence has to meet Rule 29 and 110(4) of the IRPA.

[20] Rule 29 requires me to consider the following factors: the relevance and probative value of the document; any new evidence the document brings to appeal; and whether the evidence could have been provided as part of the appeal record. If the evidence meets Rule 29, I go on to consider if the evidence meets 110(4) and the Singh/ Raza factors (credibility, relevance, newness and materiality).

[21] I have laid out my analysis in the following table in two parts: one with respect to the XXXX 2019 and the other XXXX 2019 events.

XXXX 2019

XXXX XXXX XXXX XXXX XXXX

Letter from XXXX XXXX XXXX XXXX

Affidavit of XXXX XXXX

Rule 29

All 3 pieces of evidence pertain to the same incident. They are relevant and probative. The documents show that the agent of persecution is still searching for the appellants. The evidence could not have been provided as part of the appeal record. These events had not occurred at the time that the appeal was perfected.

110(4)

As this incident occurred post-perfection, it could not reasonably have been presented at the time of the rejection by the RPD.

Singh/ Raza factors

These factors are met. The evidence is new and relevant. It is credible with respect to its source and circumstances.

Conclusion

Accepted.

XXXX 2019

Affidavit from XXXX XXXX

Nigeria Police Force crime diary entry

Rule 29

These documents also show that the agent of persecution is looking for the appellants. The incident and consequent police report took place after the perfection of the appeal and therefore could not have been provided any other way.

110(4)

Again, this evidence could not have been provided prior to the rejection of the claim by the RPD.

Singh/ Raza factors

The evidence is new and relevant. Its source and circumstances are credible for the purpose of determining admissibility.

Conclusion

Accepted.

No oral hearing

[22] Next, I turn my attention to whether an oral hearing is warranted. In other words, are the all three factors in 110(6) met?

[23] The appellants are requesting an oral hearing and have stated that they would make themselves available should the RAD require. They argue that the new evidence submitted is central.⁶

[24] The new evidence does not pass the test for an oral hearing, which is a conjunctive test. The new evidence is not central to the decision. It does not justify allowing or rejecting the claim as it does not outweigh the credibility findings that I make after a careful and independent review of the record.

[25] Therefore, the appellants' request for an oral hearing is denied.

Credibility

[26] The appellants have raised three issues with respect to the RPD's assessment of credibility: improper or insufficient reference to the Gender Guidelines; ignoring evidence; and failure to make a final decision with respect to the claim of the minor child.

[27] Furthermore, I will assess the new evidence that I have determined meets the threshold for admission.

The Gender Guidelines were applied in a meaningful way

[28] The appellants allege that because the principal appellant and the minor appellant are female, they have experienced/ fear a harm that is gender-specific (FGM). Therefore, the Gender Guidelines have to be applied in a meaningful way. ⁷

- [29] The appellants are correct in that the RPD decision does not make reference to the Gender Guidelines. Nor did the RPD mention the guidelines in the hearing. However, that alone does not render a decision incorrect. It's the application of the guidelines, or lack thereof, that has the potential to render a decision incorrect.
- [30] I find that the RPD applied the Gender Guidelines in a meaningful and sensitive way.
- [31] It is clear from a review of the audio of the hearing that the RPD applied the guidelines in a meaningful way.
- [32] I have listened to the recording of the hearing. At the beginning of the hearing, counsel informs the RPD that the principal appellant is breastfeeding and that the baby (the Canadian citizen daughter born in 2018) is outside. I listened to the hearing and note that the RPD member demonstrated sensitivity to the fact that the principal appellant had a young child and made accommodations as needed.
- [33] The RPD understood that the principal appellant was a new mother and therefore had needs that were linked to the baby. At the 40 minute mark, counsel asked if there was a knock at the door. The RPD member shifted his attention immediately to the possibility of a knock at the door. (There was no knock at the door, but that is not the point).
- [34] After about 90 minutes into the hearing, the RPD calls a recess and asks if the appellants need 15 minutes or if they need more time. Counsel replies minimum 15 minutes.
- [35] In the last third of the hearing, while the principal appellant is testifying about her relationship with the associate appellant and breaks down. The RPD member asks if she can continue or if she would like a break to compose herself.⁸
- [36] When the RPD member finishes his questions, he reads the time into the record. 11:35 a.m. The member asks counsel how she wants to proceed: does she want to ask questions and give her observations today? Or do they want to resume another time? The RPD member says that he is at the disposal of the appellants and their counsel and that he is aware that they have a child. ⁹
- [37] The Gender Guidelines inform us that women may fear persecution because of their gender in addition to a Convention ground. Gender constitutes membership in a particular social group, as gender is an immutable and unchanging characteristic.
- [38] The RPD member is aware that the principal appellant and minor appellants are female and therefore face risks that are particular to them. This is clear from the RPD's questions that arise out of item 5.12 of the Nigeria National Documentation Package (NDP) dated December 21, 2018.¹⁰
- [39] The Gender Guidelines are an aid in the assessment of evidence provided by women to the Board. They are not a cure for the deficiencies in the evidence of the appellants.

[40] The RPD did apply the Gender Guidelines in a correct and meaningful way. There has not been a breach of procedural fairness by the RPD as argued by the appellants. The decision does not fail for this reason.¹¹

[41] I also apply the Gender Guidelines throughout my analysis. I am aware that the claims to the principal appellant and the minor appellant are tied to their gender.

The RPD did not ignore evidence as alleged by the appellants

The appellants' arguments

[42] The appellants argue that the RPD ignored evidence in its decision.¹² Their arguments can be outlined as follows:

- (i) The RPD does not make a clear determination on whether state protection is accessible;
- (ii) The RPD made a negative credibility inference, as the appellants did not make a report to the authorities after the forcible FGM of the principal appellant;
- (iii) The RPD made a negative inference because the appellants did not have a copy of the report that was made to the authorities;
- (iv) The RPD did not consider the appellants' evidence that when they did go to the police, they were told that it was a family affair and that the police would not intervene; and
- (v) The RPD did not refer to Exhibit C17 (media article entitled Corruption: Nigerian Police under scrutiny; dated August 19, 2017 by Vanguard News Nigeria).

[43] The appellants do not challenge any other findings of the RPD.

The RPD decision

1. The disputed land

[44] The RPD finds that the appellants failed to establish the existence/ ownership of the land that is the foundation of the dispute. The deed is in the bank, and the associate appellant did not think it was necessary to provide documentation with respect to the land.

[45] The associate appellant alleged that XXXX poisoned his parents because of the dispute. The RPD did not believe this allegation because (i) the appellants made no efforts to settle the land ownership and (ii) the documents for the death of the parents describe the cause of death as food poison 2° acute gastroenteritis.

[46] The appellants allege that they reported the deaths to their authorities, but no police report was submitted as part of the evidence.

- [47] Furthermore, the associate appellant remained in Nigeria for 11 years after the alleged poisoning of his parents though he stated that he would be his uncle's next target. The appellants did not leave though they had visas for XXXX. The RPD did not think that this was reasonable behaviour of someone who is fearing for his life.
2. The 2012 forced circumcision and the subsequent miscarriage
- [48] The RPD accepted that the principal appellant had been circumcised, but did not believe that she had been circumcised under the circumstances alleged: that in order to please her husband's family, she was forced to undergo a ritual and made to drink a concoction, which made her lose consciousness. When she awoke, she had been circumcised. She had a miscarriage thereafter. The RPD found that the medical reports submitted did not confirm the appellants' allegations. The appellants did not report this to the authorities.
- [49] The appellants do not challenge this finding.
3. The three kidnap attempts of the minor appellant
- [50] The appellants allege that XXXX attempted to kidnap the minor appellant three times (2015, 2016 and 2017). The appellants stated they reported the first incident to the police, but did not provide a police report to support their allegations.
- [51] The RPD member relied on 5.12 of the NDP13 to find that parents are the ones who decide if daughters are circumcised.
4. Delay in leaving/ failure to claim elsewhere
- [52] The RPD did not accept the principal appellant's explanation for failing to make a refugee claim in the XXXX XXXX.
- [53] Furthermore, the RPD noted the appellants did not leave for XXXX in 2016 though they had visas. Nor did they claim asylum in the United States. The RPD found that the appellants intended to come to Canada all along, hence the delay in leaving and the failure to claim elsewhere.

My analysis

- [54] The RAD is an appellant driven process, so my focus will be on the issues raised by the appellants.
1. State protection
- [55] The RPD does not make a clear finding on whether there is state protection for the appellants. Instead, the RPD rejects their claim on the basis of credibility.
- [56] In other words, the RPD did not believe that the appellants were pursued by XXXX, because it did not believe that there was any land.

- [57] Because the claim fails on credibility, it is not necessary for the RPD to make a clear determination on state protection.
- [58] The RPD decision is not incorrect, because it did not make a finding on state protection.
2. Failure to report the forced FGM of the principal appellant to the authorities
- [59] The appellants amended basis of claim form makes no reference to the appellants reporting the matter to the authorities. The RPD does make a negative inference with respect to the failure to report this incident to the authorities. This is an error on part of the RPD as it did not solicit an explanation for the failure to seek protection during the hearing.
- [60] Nevertheless, this is not an error that is fatal to the RPD decision.
- [61] In my independent assessment of the evidence, I find that the principal appellant was circumcised at some point in the past. This is corroborated by a letter from a medical doctor in Toronto, Ontario. The letter is issued in XXXX 2018 and states that the principal appellant has undergone FGM in the past.¹⁴
- [62] I share the same concerns as the RPD with respect to the medical report that was allegedly issued shortly after the forced circumcision that took place on XXXX XXXX XXXX 2012.
- [63] The principal appellant stated in her evidence that she chose to undergo a tribal ritual, because she wanted to marry the associate appellant. She was drugged and when she gained consciousness, she had been circumcised without her knowledge or her consent. She was bleeding and in a lot of pain.
- [64] She did not seek medical attention until later when she attended the XXXX XXXX XXXX in Lagos State. The letter dated XXXX XXXX XXXX 2012 says she was admitted on XXXX XXXX XXXX 2019 for difficulty in movement, low abdominal pains, spot bleeding and dizziness. She had a miscarriage. The doctor diagnosed a severe complication of cervical incompetence with miscarriage. It says that this was likely a result of the protracted illness. There is no reference to a recent circumcision, which the appellants say is the cause of the miscarriage.
- [65] In my independent review of the evidence, I accept that the principal appellant miscarried in 2012, and I accept that she was circumcised. However, I do not accept that the latter led to the former. The appellants have failed to establish this causal link on a balance of probabilities.
- [66] As the appellants were not asked to give an explanation as to why they did not report this matter to the authorities, I do not make any inferences with respect to this action.
3. Failure to provide a copy of the report to the police with respect to the 2015 attempted kidnapping

- [67] The appellants allege that in 2015, when XXXX attempted to kidnap the minor appellant, they reported this matter to the police. The police attended the house after XXXX and the two other assailants had left.¹⁵
- [68] During the hearing, the appellants testified that they made a report to the authorities.¹⁶ The RPD member asked the associate appellant why they did not submit a copy of the complaint. The associate appellant testified that the statement was written down but he was not given a copy. He stated that in Nigeria you are never given a copy, only that a statement is taken from you.¹⁷
- [69] The RPD member asked a second time where the statement or report was. The associate appellant stated that he gave a statement at the police station.¹⁸ The RPD member once more asked for a copy of the report, emphasizing its importance. The associate appellant replied that he was not given one. ¹⁹ The member asked if he tried to get a copy and the appellant testified again that he was not given one.²⁰ He explained that the Nigerian police were not reliable and that he was not given a copy.
- [70] The associate claimant did not provide an explanation as to why he had made no efforts to obtain a copy of the report. Instead, he repeated that the police did not give him a copy.
- [71] The RPD made a negative credibility finding. I find that this is the correct finding.
- [72] The onus is on the appellants to furnish the necessary evidence. They were asked why they made no efforts to obtain a document that would assist in establishing their claim, and their only explanation was that they were not given a copy of the statement. This is an inadequate explanation.
- [73] I conclude that the RPD was correct in its credibility assessment. After a review of the evidence, I conclude that the appellants' credibility is eroded by their failure to make efforts to obtain documentary evidence that was easily within their abilities.
- [74] The appellants did not flee Nigeria in a hurry. Rather, they remained for approximately XXXX months after they decided to leave. They could have easily made efforts to obtain the necessary information.
4. The RPD ignored the appellants' evidence that the police in Nigeria told them that this was a family affair and they would not interfere
- [75] The appellants' memorandum in footnote 9 references pages 9 - 10 of the appellants' record, which is the RPD decision paragraphs 27 - 33.
- [76] I have reviewed the record and am unable to find where the appellants make this statement. It is not in their initial narrative²¹, nor is it in their amended narrative.²² I have listened to the hearing of the recording and did not find this statement made by the appellants.

- [77] The appellants went to the police twice: (1) to report the deaths of the associate appellant's parents, allegedly poisoned by XXXX, and (2) to report the 2015 attempted kidnapping of their daughter by XXXX.
- [78] The RPD did not ignore the appellants' evidence that the Nigerian authorities were ineffective. Rather, it did not believe that the appellants were persecuted as alleged.
5. The RPD ignored Exhibit C17, a media article
- [79] The appellants are correct. The RPD did not reference this article and did not consider the evidence. Again, the RPD did not believe the appellants' allegations and therefore did not do a state protection analysis.
- [80] This is correct on part of the RPD. I have reviewed the evidence (see my analysis below) independently and conclude that I do not believe the appellants' allegations either.

The appellants are not credible

- [81] In my own independent assessment of the evidence, I conclude that the appellants are not credible. While my reasoning is my own, some of my findings are identical or similar to those of the RPD.
- [82] I find that the appellants are not credible with respect to the following: (1) failure to establish the existence of the land that is the basis for this dispute; (2) failure to establish that the associate appellants' were poisoned by XXXX; (3) failure to make efforts to obtain corroborating documents (a police report), and (4) delay in leaving. Finally, I will address the new evidence (5), which I also do not accept as credible.
1. Failure to establish the existence of the disputed land
- [83] At the heart of this claim is land that is coveted by XXXX, but belongs to the associate appellant and his older sister. The appellants testified that the deed to the land was in the bank, the associate appellant placed it in the bank, when the troubles started.²³
- [84] The appellants made no efforts to obtain these documents. They could have left Nigeria with the document as they did not leave Nigeria in a hurry. Rather, their evidence is that they decided to leave Nigeria in XXXX 2016.²⁴
- [85] They say they went into hiding, applied for visas to the XXXX XXXX, which were denied. They left Nigeria in XXXX of 2017, more than XXXX months later. They had plenty of opportunity to obtain the document in question.
- [86] Furthermore, once they arrived in Canada, they made no efforts to obtain the document with the assistance of the associate appellant's senior sister, who is also owner of the alleged land.

- [87] I do not accept the appellants' explanation with respect to their failure to obtain documents that were easily available or at the very least make efforts to do so.
- [88] I find that the disputed land does not exist on a balance of probabilities.
2. Failure to establish the parents were poisoned because of the land dispute
- [89] The associate appellant argued that XXXX had poisoned his parents because of the land dispute. His parents died in 2006 XXXX XXXX XXXX XXXX XXXX XXXX XXXX.
- [90] I accept that his parents died of gastroenteritis in 2006, but I do not accept that they were poisoned as alleged.
- [91] The associate appellant testified that the doctor wrote that they had been poisoned on their death certificates. 25 The RPD member said that he could not see where the doctor said they had been poisoned on the death certificates.
- [92] An examination of both death certificates reveals that the associate appellant's father died on XXXX XXXX XXXX 2006 and his death was registered on XXXX XXXX XXXX 2007 in Lagos. There is other information, such as the father's age and his address, but there is no mention of the cause of his death. 26
- [93] There is also a letter from the XXXX XXXX XXXX XXXX XXXX stating that on XXXX XXXX, 2006, the father was brought into the hospital dead. An autopsy was performed. The primary cause of death is identified as food poison 2° to acute gastroenteritis.27
- [94] Similarly, the death certificate for the mother states that she died on XXXX XXXX XXXX 2006 and her death was registered on XXXX XXXX, 2007. It does not state the reason for her death. 28
- [95] A letter from the XXXX XXXX XXXX XXXX XXXX, which does identify a primary cause of death: food poisoning 2° to acute gastroenteritis.29
- [96] I accept that the death of the parents within days of each other was tragic. It is also a little peculiar that XXXX XXXX XXXX XXXX XXXX XXXX XXXX. I do not accept that the parents were poisoned by XXXX as alleged.
- [97] The appellants have proffered no evidence to support their allegations. Food poisoning is an infection that results from eating spoiled food. There is no evidence to suggest that it resulted from the ingestion of a noxious substance that is lethal (a poison). Nor is there any evidence to suggest that gastroenteritis is a symptom of lethal poisoning
3. Failure to make efforts to obtain a police report regarding the XXXX 2015 kidnapping
- [98] The appellants allege that they reported the XXXX 2015 kidnapping attempt by XXXX to the authorities. The police took a statement.

[99] The RPD was correct to make a negative inference with respect to a lack of effort to obtain this police report. It asked the appellants for an explanation, and the associate appellant repeated that he was not given a copy.³⁰

[100] I also find that this explanation is inadequate. The appellants had plenty of time to make efforts to obtain this document as they did not leave Nigeria until XXXX 2017, XXXX months after they decided they wanted to leave Nigeria.

4. Delay in leaving

[101] The RPD makes negative inferences with respect to the appellants' delay in leaving and failure to claim elsewhere.

[102] The principal appellant was in the XXXX and in XXXX and could have sought asylum in either country, but did not do so. I do not make a negative inference with respect to her failure to claim elsewhere. I note when she was in the XXXX, she had given birth of a premature baby and was probably confused and preoccupied. With respect to her failure to claim in XXXX, I note that she was there in 2013. This is before XXXX had threatened to circumcise her daughter and before he attempted to kidnap her.

[103] However, I do make a negative inference with respect to the delay in leaving. I note that despite the three kidnapping attempts, the appellants remained in Nigeria. They decided that they wanted to leave in XXXX 2016. Their efforts consisted of making applications for XXXX visas, which were denied, and then US visas, which were granted. The appellants' efforts to leave Nigeria were not consistent with their alleged fear, particularly as they did have visas to XXXX and chose not to use them. Their explanation was that it would be difficult. That may be true, but it would also be safe from the alleged agents of persecution.

5. The new evidence

[104] I have accepted two sets of documents as follows:

- (i) XXXX XXXX 2019: the associate appellant's sister is assaulted by XXXX and others. The evidence is a media article XXXX XXXX XXXX, a letter from a hospital with respect to the sister's injuries (XXXX XXXX XXXX XXXX), and an affidavit by her husband (XXXX XXXX).
- (ii) XXXX XXXX 2019: cult members sent by XXXX went to the principal appellant's friend's house, who made a report to the police (affidavit from XXXX XXXX; Nigeria Police Force crime diary entry).

[105] I do not accept that the XXXX 2019 events occurred as alleged. I do not accept the XXXX XXXX media article as I have identified errors on the face of the document.

[106] First, I note that the header at the top of the page leads me to conclude that this is an online article, because it says "admin login" and "webmail" at the very top. However, there is no URL page or address anywhere on the document. In other words, I cannot independently verify the article's origin or address.

- [107] Next, I note that there is part of a page at the top of the article. I can only make out the following words: "the", "Sunday" and "XXXX XXXX". In the top right corner is an ad for "XXXX XXXX XXXX XXXX". There appears to be a hole made possibly by a hole punch in the top left corner.
- [108] There is a banner at the top of the article. It says "XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX" The banner is outdated, referring to profits made in the XXXX XXXX XXXX XXXX.
- [109] The article then goes on to say that the associate appellant's sister was attacked by XXXX, who is looking for the associate appellant.
- [110] The article then uses the incorrect pronoun to describe the associate appellant:
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX 31
- [111] Based on the concerns that I have outlined above, I find that this media article is not genuine. Therefore, I do not believe that the associate appellant's sister was assaulted by XXXX goons, who were looking for the appellants.
- [112] There is no reason for me to doubt that she went to the hospital to seek treatment for her injuries, but I do not find that it was for the reasons alleged.
- [113] The affidavit of XXXX XXXX, the husband of the sister of the associate appellant, contains a similar mistake of that of the alleged media article:
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. 32
- [114] In of itself, this mistake is not remarkable as the affidavit contains other grammatical errors.
- [115] However, when viewed in conjunction with the media article which contains the same error, it acquires a greater significance.
- [116] With respect to the XXXX 2019 incident, I note that the language used by the principal appellant's friend in the affidavit dated XXXX XXXX, 2019 is almost identical to the language used in the police report issued on the same date.

Affidavit 33

Police report34

Analysis/ comments

That some time ago, I accommodated XXXX XXXX and her daughter - XXXX XXXX XXXX because of her husband's family problems.

That some time ago, she accommodated XXXX XXXX and her daughter - XXXX XXXX XXXX because of her husband's family problems.

Identical except for pronouns. Note also the placement of the dash before the daughter's name.

That MR. XXXX XXXX XXXX is a strong member of the Ogboni Confraternity (Cultist).

That MR. XXXX XXXX XXXX is a strong member of the Ogboni Confraternity (Cultist).

Identical.

That I am worried over the incident that happened at my home on the XXXX XXXX, 2019 with cult members (Ogboni) who claimed that MR. XXXX XXXX XXXX sent them.

That she is worried over the incident that happened at my home on the XXXX/XXXX/ 2019 with cult members (Ogboni) who claimed that MR. XXXX XXXX XXXX sent them.

Identical except for pronouns and format of the date.

That the cult members (Ogboni) threatened me with dangerous weapons to tell them the where about of XXXX and her family.

That the cult members (Ogboni) threatened her with dangerous weapons to them the whereabouts of XXXX XXXX and her family.

Difference in pronoun, omission of the word 'tell' in the police report, whereabouts in the police report versus where about in the affidavit, use of principal appellant's full name in the police report.

That I called XXXX and told her what happened in my house and the coming of the cultist, telling me they will track down XXXX and her family one day or else they will kill me when next they come.

That she called XXXX XXXX and told her what happened in her house and the coming of the cultist, telling her they will track her down XXXX XXXX and her family one day or else they will kill her when next they come.

Identical but for pronouns and use of principal appellant's full name in the police report

That the incident was reported at the XXXX XXXX XXXX XXXX XXXX and is still under investigation.

That the incident was reported at the XXXX XXXX XXXX XXXX XXXX and is still under investigation.

Identical.

- [117] The affidavit and police report appear to be authored by the same persons. Perhaps, one is a copy of the other.
- [118] I give this evidence no weight with respect to establishing the appellants' allegations. The similarity in these two documents that appear to have different sources is too striking for me to simply put down to coincidence.
- [119] I find that the agents of persecution did not seek the appellants at her friend's house as alleged.

Summary

- [120] After a careful review of the evidence, I do not believe the allegations of the appellants, on a balance of probabilities. I do not believe that there is land that has led to a family dispute. I do not believe that the associate appellant's parents were poisoned because of this dispute. I do not believe that the principal appellant was circumcised as alleged. I do not believe that the agents of persecution are looking for the appellants. I do not believe that Mr. XXXX attempted to kidnap the minor appellant.
- [121] I do not believe that the minor appellant is at risk of FGM as alleged by her mother, her designated representative. This is because I have found the principal appellant not to be a credible witness.

CONCLUSION

- [122] I have conducted an independent review of the record, hearing and RPD decision. There is no error. I agree with the RPD that the appellants are not credible.
- [123] I dismiss the appeal and confirm 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)

"R. Seyan"

R. Seyan

January 24, 2020

Date

1 Exhibit RAD-1, Members Direction dated November 20, 2019.

2 Exhibit P-2, Appellants' Record, Appellants' Memorandum, pp. 23 - 24.

3 Exhibit P-2, Appellants' Record, Appellants' Memorandum, pp. 25 - 26.

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- 4 Exhibit P-3, Appellants' post hearing disclosure, Response to Member's Direction/Rule 29 dated December 4, 2019, principal appellant's affidavit, p. 5, para. 7.
- 5 Canada (Citizenship and Immigration) v. Huruglica, [2016] 4 FCR 157, 2016 FCA 93.
- 6 Exhibit P-3, Appellants' post hearing disclosure, Response to Member's Direction/Rule 29 dated December 4, 2019, pp. 31 - 32, para 43 .
- 7 Exhibit P-2, Appellants' Record, Appellants' Memorandum, p. 23 - 24.
- 8 Audio of the RPD hearing at 2 hours 17 minutes.
- 9 Audio of the RPD hearing at 2 hours 34 minutes.
- 10 Audio of the RPD hearing at 1 hour 58 minutes; Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package (NDP) for Nigeria (21 December 2018), Item 5.12.
- 11 Exhibit P-2, Appellants' Record, Appellants' Memorandum, p. 26, para. 20.
- 12 Exhibit P-2, Appellants' Record, Appellants' Memorandum, p. 27 - 28, paras. 21 - 26.
- 13 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (21 December 2019), Item 5.12.
- 14 RPD-1, RPD Record, Appellants' Documents, C.21, p. 251.
- 15 Exhibit RPD-1, RPD Record, Amended Narrative, pp. 133.
- 16 Audio of the RPD hearing at 1 hour 47 minutes.
- 17 Audio of the RPD hearing at 1 hour 48 minutes.
- 18 Audio of the RPD hearing at 1 hour 50 minutes.
- 19 Audio of the RPD hearing at 1 hour 51 minutes.
- 20 Audio of the RPD hearing at 1 hour 52 minutes.
- 21 Exhibit RPD-1, RPD Record, pp. 29 - 33.
- 22 Exhibit RPD-1, RPD Record, Amended Narrative, pp. 131 - 135.
- 23 Audio of the RPD hearing at 1 hour 7 minutes.
- 24 Exhibit RPD-1, RPD Record, Amended Narrative, pp. 135, line 71.
- 25 Audio of the RPD hearing at 1 hour 26 minutes.
- 26 Exhibit RPD-1, RPD Record, Appellants' Documents, C6, p. 140.
- 27 Exhibit RPD-1, RPD Record, Appellants' Documents, C12, p. 158.
- 28 Exhibit RPD-1, RPD Record, Appellants' Documents, C6, p. 141.
- 29 Exhibit RPD-1, RPD Record, Appellants' Documents, C5, p. 139.

30 Audio of the RPD hearing at 1 hour 49 - 53 minutes.

31 Exhibit P-3, Appellants' post hearing disclosure, Response to Member's Direction/Rule 29 dated December 4, 2019, p. 15, para. 6.

32 Exhibit P-3, Appellants' post hearing disclosure, Response to Member's Direction/Rule 29 dated December 4, 2019, p. 11.

33 Exhibit P-3, Appellants' post hearing disclosure, Response to Member's Direction/Rule 29 dated December 4, 2019, p. 14.

34 Exhibit P-3, Appellants' post hearing disclosure, Response to Member's Direction/Rule 29 dated December 4, 2019.

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Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration

et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD.25.02 (April 04, 2019)

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Prepared on 26 October 2026 · Esheria