

CANADA / JUDGMENT

MB9-10830

COURT

Refugee Appeal Division

DECIDED

11 September 2020

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RAD File / Dossier de la SAR : MB9-10830

MB9-10831

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX

Personnes en cause

Appeal considered / heard at

Montreal, QC

Appel instruit / entendu à

Date of decision

September 11, 2020

Date de la décision

Panel

Me Patricia O'Connor

Tribunal

Counsel for the persons who are the subject of the appeal

Me Aboubacar Touré

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

OVERVIEW

- [1] XXXX XXXX (Principal Appellant/PA) is a citizen of Nigeria. Her minor son XXXX XXXX XXXX is a citizen of South Africa. They appeal a decision of the Refugee Protection Division (RPD) rendered on April 10, 2019, denying their claim for refugee protection. The Appellants claim to fear the PA's stepmother in Nigeria because of a land dispute. They submit that the RPD erred in dismissing their claim based on overriding concerns about the credibility of their evidence.

DECISION

- [2] I dismiss the appeal. After conducting my own analysis, I find that the RPD was correct in finding that the Appellants' evidence lacked credibility. I conclude that the Appellants are neither Convention refugees nor persons in need of protection.

BACKGROUND

- [3] The PA's parents separated in 1984 and her father remarried XXXX XXXX who became her stepmother. Following the marriage, her father died of food poisoning. The PA believes that her stepmother killed her father.
- [4] The father owned property in Nigeria. His will stipulated that in order for the stepmother to inherit this property, she must raise the PA and her twin brother. In the years that followed, the PA was raised by her stepmother who mistreated her and failed to protect her from abuse.
- [5] The PA states that she refuses to sign a required document ceding the land to her stepmother which has angered her stepmother. As such, she fears being harmed or killed by her stepmother who has influential and powerful connections.
- [6] Unbeknownst to her stepmother, the PA managed to leave Nigeria in XXXX 2012 and went to South Africa. She met and married her husband XXXX XXXX XXXX and their son was born on XXXX XXXX XXXX XXXX.
- [7] The PA describes that they were targeted with threats and crime in South Africa because they are foreigners. For example, she was a victim of theft at the XXXX where she worked. In XXXX 2012, the PA and her husband were attacked by criminals who robbed them of their personal belongings and made disparaging remarks about their Nigerian nationality. In

XXXX 2012, she was insulted and assaulted by a taxi driver once he realized that she and her husband are Nigerian. Throughout her pregnancy, the Appellant considers that she received subpar treatment from medical personnel given her nationality.

- [8] On XXXX XXXX XXXX 2017, the PA travelled to the USA with her husband and son hoping to escape their difficulties in South Africa. However, they returned to South Africa on XXXX XXXX XXXX 2017, believing that they did not have the required documents to claim asylum in the USA. Following her return to South Africa, the PA heard about the possibility of claiming asylum in Canada by transiting through the USA. When her husband suddenly disappeared, the PA made plans to leave South Africa and travel to Canada with her son.
- [9] On XXXX XXXX XXXX 2017, the PA and her son travelled to the USA and made their way to Canada on XXXX XXXX, 2017, where they claimed refugee protection.
- [10] Back in Nigeria, the PA's mother reports that the stepmother continues to make threats against the Appellants and continues her quest to find them.
- [11] While mindful of the Gender Guidelines,¹ the RPD rejected the Appellants' refugee claim, finding overriding concerns with the credibility of the evidence as a result of significant omissions and inconsistencies. Moreover, the RPD found that the Appellants' return visit to Nigeria, their re-availment to South Africa from the USA, and the lack of corroborative evidence further undermined the credibility of the claim. The RPD also found the PA's refusal to relinquish her share of the land to her stepmother is unreasonable as this would put an end to the dispute and allow the Appellants to live peacefully in Nigeria. Finally, the RPD determined that the minor Appellant who was born in South Africa, is born from Nigerian parents which means that he is entitled to nationality in that country and could live there with his mother.

DETERMINATIVE ISSUE

- [12] The determinative issue on appeal is whether the RPD erred in the assessment of credibility and erred in expecting the PA to relinquish the land.

SCOPE OF THE RAD APPEAL

- [13] The Refugee Appeal Division (RAD) reviews decisions on a standard of correctness after conducting an independent assessment of the evidence before it.² Deference may be required when the RPD enjoys a meaningful advantage in the assessment of the credibility of oral evidence.³ I have applied the correctness standard in the present case.

ANALYSIS

Credibility

- [14] The RPD identified several credibility concerns leading to the conclusion that the Appellants' evidence is not credible. Counsel disputes these findings on appeal. I will address each issue in turn, mindful of the Gender Guidelines.

The stepmother has physical possession of the land and not ownership of the land

- [15] According to the PA, her stepmother currently operates the XXXX and has control of the property which is the subject of the land dispute in the city of Lagos.
- [16] The RPD concluded that it is "inconsistent that the stepmother would go after the claimant when she has already obtained what she wanted. Consequently, the panel draws a negative inference as to the claimant's credibility and does not believe that she would be at risk from her stepmother if she were to return to Nigeria".⁴
- [17] Here, I agree with Counsel that the RPD has erred. While it is true that the stepmother currently has physical possession of the land and operates the XXXX, the Appellant's evidence is that she is the person who holds the legal title to the land even if she does not exert physical control over the land at present. The PA's risk from her stepmother is not abated simply because the stepmother has physical possession of the land. The PA who is said to retain legal ownership of the land, is still able to exercise her right to recover the land currently in the physical possession of her stepmother.
- [18] In sum, while the RPD found that the Appellant did not credibly establish that she faces a risk from her stepmother in Nigeria since her stepmother is already in possession of the land and operates the XXXX situated on the premises, the RPD erred by failing to recognize that the stepmother is not the owner of the land and the Appellant's refusal to sign the document ceding the land to her stepmother is a source of ongoing conflict.

The Appellants' return visit to Nigeria in 2016

- [19] The PA states that her problems first began in Nigeria in 1984 after the death of her father. She was raised by her stepmother who mistreated her and failed to protect her from abuse. More recently, she says that she fears for her life and safety as a result of an ongoing land dispute with her stepmother over land that she inherited from her father. Given the untenable situation with her stepmother, the PA secretly planned her escape from Nigeria and fled to South Africa in XXXX 2012.
- [20] The PA testified at the RPD hearing that she never returned to Nigeria after fleeing her stepmother in 2012. In contrast, a stamp in her passport indicates that she entered Nigeria on XXXX XXXX XXXX 2016. When confronted by the RPD with this inconsistency, the Appellant initially remained silent. Then, she stated that her husband had returned to

Nigeria with their son in 2016, and he brought her passport in order to show the authorities that he had permission to travel alone with their son. The Appellant did not know why the authorities placed a stamp in her passport indicating that she entered Nigeria if she was not even present. Moreover, the PA could not explain why she had not simply signed an affidavit authorizing her husband to travel with their son. The RPD noted that her husband had signed an affidavit authorizing that the PA and their son travel to the USA and Canada.

- [21] The RPD found that that the PA did not reasonably explain a significant inconsistency in her evidence. The presence of a stamp in her passport reveals that she travelled to Nigeria with her son from XXXX XXXXto XXXX XXXX XXXX 2016, returning to the very place where her stepmother allegedly threatened her life. The RPD determined that the PA's return to Nigeria with her son negatively impacts her credibility.
- [22] Counsel submits that the RPD erred by failing to evaluate the PA's credibility in light of what is generally known about conditions and the laws in the country of origin. Moreover, Counsel submits that considerable caution is required when assessing the norms and patterns of different cultures and the practices and procedures of different police, political and social systems.
- [23] While I agree that these are all important principles to consider when assessing the credibility of a refugee claim, I disagree that the RPD has erred in the present case. The stamp that appears in the PA's passport indicating her entry to Nigeria, is a solid evidentiary basis to support the RPD conclusion that the PA returned to Nigeria with her son for a visit in 2016. While Counsel cautions that the decisionmaker must be mindful of the conditions and laws of the country of origin, he has not pointed me to any evidence to suggest that an entry stamp is placed in someone's passport in their absence. All things considered, the RPD did not err in finding that the PA's return trip to the very place where she is threatened with harm undermines the credibility of her allegation.

The Appellants' failure to claim asylum in the USA and their decision to return to South Africa

- [24] The RPD found that the Appellants' credibility was further impugned on the basis that they travelled to the USA from XXXX XXXX XXXX 2017, to XXXX XXXX XXXX 2017, but did not claim asylum. While the PA claims that they left South Africa where they were mistreated as foreigners, she was unable to explain her assertion that they failed to claim asylum in the USA as they were missing documents. The Appellants' failure to claim asylum at the first opportunity and their return to South Africa was found to further impugn the credibility of their fear.
- [25] My own review of the evidence is compatible with the RPD: the Appellants claim that their lives are at risk in Nigeria over the land dispute and that they fled South Africa where they were threatened and targeted with crime as a result of their status as foreigners. It is reasonable to expect that the Appellants would claim asylum at the first opportunity in the

USA. The PA was unable to provide a reasonable explanation for her failure to claim asylum in the USA and their decision to return to South Africa where they feared harm based on their status as foreigners. This further impugns their credibility. There is no reason to disturb the adverse credibility finding reached by the RPD which is unchallenged on appeal. All things considered, the Appellants' inadequate explanation for their failure to make a refugee claim in the USA in 2017 was certainly one factor to consider in the overall assessment of their credibility.

Lack of documentary evidence

- [26] The crux of this claim centres on a land dispute between the PA and her stepmother following the death of her father. The PA testified that the XXXX in question is a popular venue in Lagos which is open 24 hours per day. When asked if she had any documentary evidence to establish the existence of the XXXX XXXX the PA stated that she did not. She testified that she asked her brother in Nigeria to obtain information, but he did not want to go and see their stepmother to obtain such evidence. When her brother sent a friend to photograph the XXXX XXXX people guarding the XXXX forced the friend to delete the photos.
- [27] When asked if she or her brother had tried to corroborate the existence of the XXXX by checking for information online or in the local papers, she stated that this was not done as her mind was not there. Likewise, she concedes that she made no effort to obtain a letter of support from her mother or her family to corroborate her testimony regarding the existence of the XXXX.
- [28] The RPD noted that the first page of the BOC Form indicates that refugee protection claimants are responsible for obtaining and providing the Panel any documents that may support their claim. RPD Rule 11 further provides that the claimant must provide acceptable documents establishing their identity and other elements of the claim.
- [29] The RPD concluded that the PA's lack of effort to submit documentary evidence aimed at establishing the existence of the property at the heart of the land dispute, further undermines her credibility. As such, the RPD did not believe that the PA inherited the property, as alleged.
- [30] On appeal, Counsel submits that when a refugee claimant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there is a reason to doubt their truthfulness. As such, it is argued that the RPD erred in rejecting the claim as a result of a lack of documentary or material evidence to support the existence of the land dispute.
- [31] I disagree.

[32] Counsel is correct that a refugee claimant's testimony is presumed to be true unless there is a reason to doubt it. It is also true that it would be an error to discredit a refugee claimant solely on the absence of corroborative evidence.⁵ Corroboration is required if the RPD has valid reason to doubt the claimant's credibility and such evidence could reasonably be expected to be available.⁶ In this case, the Panel member had already identified concerns with the credibility of the evidence. In this context, the RPD did not err in drawing an adverse credibility finding based on the PA's failure to submit corroborative evidence to substantiate the existence of the land and XXXX. The very existence and legal entitlement of the land and XXXX is at the heart of this claim. The PA provided no evidence to corroborate this aspect of the claim and provided no reasonable explanation for failing to do so.

The PA's refusal to relinquish the land

- [33] The PA testified that the sole source of her fear in Nigeria is her stepmother because of the land dispute. When asked if she could simply relinquish the land to avoid further problems with her stepmother and save her life, the PA responded that she is unable to do so. She is now the owner of the land and her own mother who helped build the XXXX that sits on the land, does not want her to sign the document allowing the transfer of the property to her stepmother.
- [34] The RPD determined that there is nothing stopping the PA from giving up the land to save her life. According to Canadian jurisprudence, the right to private property is not a fundamental right. As such, the RPD concluded that it is not unreasonable to expect the Appellant to give up such a right in order to protect herself.⁷
- [35] On appeal, Counsel submits that the right to own land is a fundamental right in Nigeria. The PA has legal ownership of the land by inheritance and the stepmother is controlling the land without any due process of law.⁸
- [36] While Counsel has accurately captured the factual situation, as alleged by the Appellant, this submission does not squarely address the main issue: Did the RPD err in expecting the Appellant to cede the land as a way to resolve the land dispute and protect herself and her family from further harm?
- [37] In *Sanchez*, the Federal Court of Appeal held that "claimants who are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options."⁹ The Federal Court has held that it is not an error for the RPD to expect a refugee claimant to relinquish their right to property to avoid harm, so long as this decision does not compromise either who she is or a fundamental belief.¹⁰

[38] In the present case, the PA states that she is at risk of harm from her stepmother because she refuses to sign the document ceding the property to her. In other words, the PA is being targeted by the stepmother for what she is doing and not for what she was in an immutable or fundamental way.¹¹ In such a context, the RPD did not err in finding that the PA could be expected to relinquish her right to the property in order to avoid risk of harm in Nigeria.

Concluding comments about credibility

[39] Up to this point in the analysis, I have determined that the RPD erred in finding that the Appellants' risk from the stepmother is abated on the basis that the stepmother already has physical possession of the land. Having set aside this adverse finding, I still conclude that the RPD did not err in finding overriding concerns with the credibility of the Appellants' evidence. While the PA maintains that she is at risk from the stepmother given her refusal to cede the land, the PA was unable to demonstrate that the land/building in question exists and that she inherited the said property. Likewise, she made no reasonable effort to establish this fact which is at the very heart of this entire claim. Her return to Nigeria for a visit in 2016 which would have put her in harm's way, along with her failure to claim asylum in the USA during a visit in 2017, also undermines the believability that she is at risk, as alleged. Guided by the jurisprudence, it is clear that the RPD did not err in expecting the PA to cede the land thus protecting herself and family from further harm in Nigeria.

The RPD did not err in finding that the minor Appellant is not a Convention refugee or person in need of protection

[40] The minor Appellant was born in South Africa to Nigerian parents. While he is a citizen of South Africa, it appears from Nigeria's citizenship law that he also has Nigerian nationality. In particular, section 25(1) of Nigeria's citizenship law states that "the following persons are citizens of Nigeria by birth - [...] (c) every person born outside Nigeria either of whose parents is a citizen of Nigeria."¹²

[41] Considering that the minor child's claim is based on the allegations of his mother; and considering that the PA failed to establish that she is Convention refugee or person in need of protection in Nigeria, the RPD determined that the minor claimant has no fear or risk in Nigeria and could return to that country where he is a citizen.

[42] I agree with the analysis of the RPD. There is no need to disturb this finding which is unchallenged on appeal.

CONCLUSION

[43] 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)

Patricia O'Connor

Patricia O'Connor

September 11, 2020

Date

PO/lp

1 Chairperson's Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution [Gender Guidelines]

2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93, paras 78, 103.

3 Ibid, paras 58, 59 and 70.

4 Exhibit RPD-1, RPD Record, RPD Decision, para 22.

5 Galamb v Canada (Citizenship and Immigration), 2018 FC 135, para 10. Magyar v Canada (Citizenship and Immigration) 2015 FC 750, paras 33-37.

6 Magyar, ibid.

7 Exhibit RPD-1, RPD Record, RPD Decision, para 24.

8 Exhibit P-2, Appellant's Record, Memorandum of Appeal, para 29.

9 Sanchez v Canada (Citizenship and Immigration), 2007 FCA 99 (Canlii), para 16. [Sanchez]

10 Sanchez, ibid, para 19; Malik v Canada (Citizenship and Immigration) 2019 FC 955, para 30.

11 Ibid.

12 Document 3: National Documentation Package (NDP) for Nigeria (21 December 2018), Tab 3.1: Nigeria, 1999, Chapter III: Citizenship, Constitution of the Federal Republic of Nigeria.

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RAD.25.02 (January 2020)

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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 (January 2020)

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