

CANADA / JUDGMENT

MB9-25582

COURT

Refugee Appeal Division

DECIDED

22 June 2020

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RAD File / Dossier de la SAR : MB9-25582 MB9-25583 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 June 22, 2020 Date de la décision Panel David Morris Tribunal Counsel for the persons who are the subject of the appeal Daniel Epstein 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] These are my reasons for allowing the appeals of XXXX XXXX XXXX (Principal Appellant) and his wife, XXXX XXXX XXXX (Associate Appellant), from a decision of the Refugee Protection Division (RPD), dated October 21, 2019, which rejected their claims for refugee protection.
- [2] The Appellants are citizens of Nigeria and of Yoruba ethnicity.
- [3] The Principal Appellant fears harm at the hands of three of his paternal uncles and their accomplices. The uncles want to dispose of or otherwise have full control over family land in which the Principal Appellant and his father have an interest. The uncles hired 'land grabbers' who attacked the Principal Appellant and appear to have murdered two of his cousins who also had an interest in the land.
- [4] The Associate Appellant also fears the Principal Appellant's family. First, the Principal Appellant's maternal aunts threatened her and spread rumours she was a witch because she was unable to conceive a child. The Associate Appellant also fears the Principal Appellant's uncles will harm her due to the land dispute.
- [5] The Principal Appellant left Nigeria in XXXX 2017, arriving first in the United States (US) and eventually coming to Canada in XXXX 2017. The Associate Appellant joined her husband in the US for a brief period before returning to Nigeria on XXXX XXXX 2017. On XXXX XXXX2018, she came to Canada and joined her husband.
- [6] The RPD rejected the claims on the basis that the Principal Appellant had a viable Internal Flight Alternative (IFA) and that the Associate Appellant failed to establish a prospective risk of persecution or serious harm or death. GROUNDS OF APPEAL

- [7] Although their submissions lack focus and clarity, the Appellants' arguments may be summarized as follows:
1. The RPD based the decision on erroneous findings of fact;
 2. The RPD failed to consider relevant evidence;
 3. The RPD erred in its application of the then Jurisprudential Guide for Nigeria;
 4. The RPD erred in law by not considering Chairperson's Guideline 4 in a meaningful and sensitive manner;
 5. The RPD erred in its analysis of whether the discrimination faced by the Associate Appellant amounted, cumulatively, to persecution;
 6. The analysis of the RPD with respect to the Associate Appellant was overzealous and microscopic.

ANALYSIS

- [8] My role is to look at all the evidence and decide if the RPD made the correct decision.¹ I have reviewed the entire Record, including the transcript of the RPD proceedings and the documents and submissions of the Appellants. I find the RPD enjoyed no meaningful advantage with respect to the assessment of this evidence. I therefore find I owe no deference to the RPD.
- [9] Although the Principal Appellant has indicated he is submitting new evidence, no new evidence has been included in the Appellants' Record. Principal Appellant
- [10] The RPD's reasons provide no clear findings with regard to the basis of the Principal Appellant's claim or his overall credibility. Instead, the RPD dealt only with the issue of IFA. As I have found the RPD's IFA analysis to be erroneous, it is necessary to determine whether the Principal Appellant is a Convention refugee or person in need of protection.
- [11] I have considered the entirety of the Principal Appellant's testimony. I have also reviewed his documentation. This includes court documents that show an ongoing dispute with his uncles over the family lands. The Principal Appellant also submitted a police report with respect to the 12 April 2017 attack against him in Lagos, the death certificates of his two cousins and an affidavit from the cousins' brother. I accept the Principal Appellant has established the core elements of his claim as follows:
1. He has an interest in commonly held ancestral family lands;
 2. The property is the subject of an ongoing dispute between the Principal Appellant's father and the father's brothers;
 3. The dispute has been adjudicated in the court in Nigeria and is the subject of an ongoing appeal;

4. The Principal Appellant's cousins, who also had an interest in the lands, were murdered;
 5. The Principal Appellant was threatened and attacked in Lagos by his uncles or their hired "land grabbers" in an effort to force him to relinquish any claim to the family's ancestral property.
- [12] With regard to state protection, I note the Principal Appellant was attacked and hospitalized and that he reported this to the police. The only action taken by the police was to advise him "...to be on the look out and report any suspicious movement...."2 I find this indicative of inadequate protection under the circumstances.
- [13] Considering these facts, I find that the Principal Appellant has established, on a balance of probabilities, that he faces a risk to his life from his uncles. I find this is a personalized risk not faced generally by other individuals in Nigeria who have no interest in the disputed lands., I find, that the Principal Appellant is a person in need of protection pursuant to section 97 of the Immigration and Refugee Protection Act (IRPA). Internal Flight Alternative
- [14] The RPD found the Principal Appellant had a viable IFA in Cano (i.e., Kano) or Benin City. I find the RPD erred in its assessment of the reasonableness of the proposed IFAs.
- [15] The test for assessing an IFA consists of two parts:3
1. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists and/or the claimant would not be personally subject to a risk to life or risk of cruel and unusual treatment or punishment or danger, believed on substantial grounds to exist, of torture in the IFA.
 2. Moreover, the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claim, for the Appellants to seek refuge there.4
- [16] Both prongs must be satisfied to find that the Appellants have a viable IFA.
- [17] The RPD found that the Principal Appellant did not face a serious possibility of persecution or, on a balance of probabilities, a risk to his life or a risk of cruel and unusual treatment or punishment or a danger of torture in Benin City or Kano. It further found that the proposed IFAs were objectively reasonable in the circumstances.
- [18] The Appellants make no submissions with regard to the reasonableness of the IFA. It is for the Appellants to make full and detailed submissions in this regard. The Refugee Appeal Division (RAD) is not required to make arguments on behalf of the Appellants.5
- [19] Nonetheless, I am also obliged to consider the most recent documentation available. In particular, I find the RPD did not deal with the issue of indigeneity, which I find is fundamental to an assessment of the reasonableness of the proposed IFAs in this case.

- [20] Nigerians distinguish between indigenes (or natives) and non-indigenes (or settlers) of regions or states. One's indigeneity is determined by the place of origin of one's parent and is therefore closely tied to ethnicity. The evidence adduced in this case shows that the Principal Appellant is ethnically a Yoruba and that he is an indigene of Lagos or the southwestern part of Nigeria where the Yoruba form the largest ethnic group. Of the two proposed IFAs, Kano is primarily ethnically Hausa and Benin City is primarily Edo. The Principal Appellant would therefore be regarded as a non-indigene in either of these IFAs.
- [21] The recent evidence on indigeneity indicates that access to employment, housing and other government services such as education may all be subject to de facto restrictions for non-indigenes. ... "[t]hroughout Nigeria, public institutions require individuals to identify their state of origin, or their indigeneity, before they can access public services" ... certificates of origin are often required for "registration in schools, award of scholarships, employment and even visa processing" ... "non-indigenes may have difficulty in accessing any number of ... government services, including police protection in case of ethnic violence."⁶ [citations omitted]
- [22] With regard to employment, the RPD correctly noted that the Principal Appellant is educated, speaks English and that his work history with the Lagos State Internal Revenue Service generally weighed in his favour in terms of finding work.
- [23] However, the evidence shows that non-indigenes generally do not have access to federal or local government jobs. I find the Principal Appellant's work history as a government employee in Lagos would therefore not be as beneficial to his employment prospects in Kano or Benin City as the RPD suggests. I find it likely he would face serious restrictions on his ability to find employment and to earn a living in the proposed IFAs due to his being a non-indigene. This is crucial to an assessment of the reasonableness of the IFA as, being a non-indigene, he would likely have to pay for private services such as health care and education.
- [24] I further note that the security situation in Kano is extremely poor. The Government of Canada indicates that all travel to the region should be avoided due to security concerns. These include kidnapping, which I note the Principal Appellant specifically identified as a reason he could not safely relocate to Kano.
- [25] The government also recommends avoiding all non-essential travel to Benin City - also because of the security situation. While these security issues do not relate to the Principal Appellant's dispute with his uncles, I find that as a non-indigene, he and his family would be more vulnerable to security issues and that the police may not be willing to provide protection.

- [26] Although the information on transport to and within Nigeria is subject to change, given that airports remain closed due to the Covid-19 crisis and that inter-state travel is currently restricted, there is a question as to whether the Appellants would have any reasonable access to the proposed IFAs for the foreseeable future.
- [27] Accordingly, I find that the proposed IFAs are not reasonable in the circumstances.
Associate Appellant
- [28] I find the Associate Appellant is also a person in need of protection.
- [29] The RPD accepted the core elements of the Associate Appellant's claim: that her aunts-in-law threatened to expose her as a witch if she did not separate from her husband, that they spread rumours about the Associate Appellant being a witch, and that they harassed her mother. Considering the Record, I see no error in the RPD's factual findings in this regard.
- [30] Nonetheless, the RPD rejected the Associate Appellant's claim finding she had failed to establish a "prospective risk" of persecution or serious harm. Specifically, the RPD held that:
1. The Associate Appellant's return to Nigeria was "incompatible behaviour";
 2. The treatment she received at the hands of her aunts amounted to discrimination, not persecution;
 3. There was no longer any fear of being branded as a witch since this fear was based on her inability to have children and the Associate Appellant was now pregnant.
- [31] I do not find the Associate Appellant's return to Nigeria in 2017 to be determinative. The Associate Appellant testified she and her husband fell out shortly after she first joined him in the US because he was having an affair. I do not find her return to her mother's home, even after her mother had been harassed, to be so unreasonable under these circumstances that it negates the possibility of any subjective fear.
- [32] In any case, the RPD accepted the Associate Appellant had been threatened by the aunts. Having found these threats credible, it is unclear from the RPD's reasons how the Associate Appellant's return to her mother's house was relevant.
- [33] I also find the RPD erred in its assessment of discrimination versus persecution.
- [34] While the threats from being branded a witch, which had been made in the past, might not themselves have amounted to persecution, the RPD still needed to assess whether those threats gave rise to a serious possibility that the Associate Appellant could be persecuted or physically harmed or killed if she returned to Nigeria. While it was open to the RPD to find the fear of being killed for being a witch was not well-founded, such treatment clearly does amount to persecution. I find the issue of discrimination versus persecution is simply not raised by the facts of this case.

- [35] At her hearing and in both of her amended Basis of Claims (BOCs), the Associate Appellant stated that she was branded as a witch because she could not conceive children. Subsequent to the hearing, the Associate Appellant disclosed she was pregnant. The main thrust of the RPD's decision was that the Associate Appellant's stated fear therefore no longer existed.
- [36] However, since the Associate Appellant's child was as yet unborn, the RPD's determination was, at the very least, premature. Even at this stage of the proceedings, I have no evidence before me as to whether the Associate Appellant has actually given birth. In any case, I do not find the motivation behind the witch branding to be so clear cut. I find it just as likely the branding was motivated by the property dispute as any genuine belief that the Associate Appellant is a witch.
- [37] I find that even if the Associate Appellant were to give birth to a child, she would still be at risk from her husband's family.
- [38] This is because I find that the essence of both of the Appellants' claims is the dispute over family property. The Associate Appellant's evidence was not only that she feared her aunts, but that she also feared the Principal Appellant's uncles because of this ongoing dispute. The RPD did not assess this aspect of her claim except to say that it was highly speculative that the Appellants' future children would want to stake a claim in the land.
- [39] While this may be so, I note that the future children are not claimants in this matter. The issue is whether the uncles would harm the Associate Appellant, whether she had given birth or not.
- [40] Having found that the Principal Appellant was at risk because of the dispute, that his relatives had also been killed also as a result of the fight over the property and that the basic allegations of the Associate Appellant were accepted by the RPD, I determine that the Associate Appellant has established, on a balance of probabilities that she would also be at risk of harm or death - whether at the hands of her uncles, or because the aunts have branded her as a witch.
- [41] I also find, for the same reasons outlined above with regard to the Principal Appellant, that the Associate Appellant does not have access to adequate state protection or a viable IFA.

CONCLUSION

- [42] Pursuant to paragraph 111(1)(b) of IRPA, I reverse the decision of the RPD and determine the Appellants are persons in need of protection pursuant to section 97 of IRPA.
- [43] This appeal is allowed. (signed) David Morris David Morris 22 June 2020 Date 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 2 Exhibit RPD-1, RPD Record, Exhibit 4, at p. 446. 3 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.). 4 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 589 (C.A.); (1993), 22 Imm. L.R. (2d) 241 (F.C.A.). 5 Lui, Hong Zin v. M.C.I., 2017 FC 736, at

paras. 25-26. 6 National Documentation Package (NDP) for Nigeria (9 April 2020), Item 13.1, Response to Information Request (RIR) NGA106361.E, Immigration and Refugee Board of Canada, 30 October 2019, at p. 9, section 4.3.

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