

CANADA / JUDGMENT

Kamau v. Canada (Citizenship and Immigration)

2025 FC 1740

COURT

Federal Court

DECIDED

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IMM-1859-25

Decision Content

Date: 20251029

Docket: IMM-1859-25

Citation: 2025 FC 1740

Ottawa, Ontario, October 29, 2025

PRESENT: Mr. Justice McHaffie

BETWEEN:

DANIEL NGUNGU KAMAU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] Daniel Ngungu Kamau asserts that he is gay and that the Mungiki gang in Kenya extorted money from him, threatening to expose his sexuality. He says the gang found him even after he moved from Nairobi to Mombasa and that his wife, who remains in Mombasa with their children, continues to pay extortion payments. Fearing gang members, as well as Kenyan authorities and society more broadly, he sought refugee protection in Canada.

[2] The Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] found Mr. Kamau's evidence not credible and refused his refugee claim. The RAD identified credibility concerns in Mr. Kamau's evidence regarding (i) his initial awareness of his homosexuality; (ii) an ongoing same-sex relationship with a Kenyan man identified as N.; (iii) his interactions with the Mungiki gang; and (iv) his family's location. It also found that supporting correspondence from Mr. Kamau's friend and from his wife did not assist in establishing his sexual identity due to weaknesses and contradictions in that evidence.

[3] Mr. Kamau seeks judicial review of the RAD's decision. He contends that the RAD failed to practically apply the IRB's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics [SOGIESC Guideline]; made microscopic, peripheral, and inadequately explained credibility findings; improperly discounted the corroborative correspondence; and failed to recognize and acknowledge language barriers during his testimony.

[4] For the following reasons, I conclude Mr. Kamau has not established that the RAD's decision was unreasonable. The RAD's reasons provide a transparent, intelligible, and justified explanation for its adverse credibility findings and for giving the corroborative documents little weight. Mr. Kamau's arguments do not persuade me that those findings were unfounded or unreasonable.

[5] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review [6] As the parties agree, the RAD's decision is subject to review on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. The sole issue on this application is therefore whether the RAD's decision was reasonable.

[7] Making factual findings through the weighing of evidence and the assessment of credibility is central to the function that Parliament has assigned to the RAD pursuant to sections 110, 111, and 171 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. Such findings will only be set aside in exceptional circumstances: *Vavilov* at paras 125–126. To succeed on this application, Mr. Kamau must show that the RAD's findings suffer from

sufficiently serious shortcomings that they cannot be said to exhibit the degree of justification, intelligibility, and transparency required of a reasonable administrative decision: Vavilov at paras 100, 126.

- [8] For completeness, I note that Mr. Kamau raised an issue of procedural fairness in his written memorandum but withdrew that argument at the hearing of this application.

III. Analysis [9] The RAD found that Mr. Kamau was not a credible witness and that the evidence he presented was insufficient to establish his core allegations that he is a gay man, that he had same-sex relationships in the past, and that he was targeted by criminal gangs in Kenya because of his sexual orientation. Mr. Kamau challenges three main areas of the RAD's conclusions: (1) the RAD's findings regarding the vagueness of certain aspects of his testimony; (2) the RAD's findings regarding inconsistencies in the evidence; and (3) the RAD's treatment of two corroborative documents. He also raises a broader argument regarding language barriers that I will address after his arguments in these three main categories.

- (1) The RAD's vagueness findings [10] The RAD found Mr. Kamau's evidence vague on two issues: his initial awareness of his homosexuality, and his relationship with N. It drew adverse conclusions regarding Mr. Kamau's credibility based on this vagueness. Mr. Kamau challenges each of these findings.
- [11] Mr. Kamau wrote in his basis of claim narrative that "[he] realized [he] was gay in 1993 while attending school." The RAD found Mr. Kamau's evidence about this statement to be "extremely vague," providing no explanation for his identification of 1993 as the year in which he realized he was gay. Rather, his evidence referred only to an event that did not trigger the realization.
- [12] Mr. Kamau characterizes the RAD's conclusions as presuming both a near-perfect recollection and an ability to pinpoint a specific date, event, or defining moment when he became aware he was gay. He argues this is unreasonable and contrary to the IRB's SOGIESC Guideline. He points to section 3.1 of the guideline, which underscores that an individual's awareness and acceptance of their sexual orientation may present as a gradual or non-linear process. He submits that his testimony, which spoke of a "long process" that occurred between 1993 and 2004, reflected such a gradual process.
- [13] I do not find that the RAD made any particular presumptions about how Mr. Kamau's awareness of his sexuality arose or ought to have arisen. To the contrary, the RAD specifically stated, with reference to section 3.1 of the SOGIESC Guideline, that it accepted that Mr. Kamau's recognition of his own sexuality could have been a gradual and non-linear process, and that it could not assume that a "coming-out" narrative common in North America applied in his context. It also expressly considered the possibility that cultural, language, or situational barriers might affect the nature of his evidence.

- [14] The RAD did not fail to practically apply these principles, as Mr. Kamau contends. The RAD's credibility conclusion was not based on general assumptions about the ability to pinpoint or recall a specific date or event. It was based on Mr. Kamau's own written statement that he "realized [he] was gay in 1993 while attending school." The RAD reasoned that something must have occurred in that year that would cause Mr. Kamau to specifically refer to it in his narrative as the year he realized he was gay. The RAD stated that it was "not expecting perfect recollection," but considered it reasonable to expect Mr. Kamau to be able to explain his statement. As Mr. Kamau's testimony about his early realizations provided no such explanation, despite multiple opportunities, and was "extremely vague," the RAD found that this counted against Mr. Kamau's credibility.
- [15] Recognizing the deference due to the RAD's credibility findings, I conclude it was reasonable for the RAD to have found this evidence to count against Mr. Kamau's credibility as part of its overall credibility finding. I agree with Mr. Kamau that it would have been unreasonable for the RAD to assume he must have been able to pinpoint a particular date of his awareness of his sexuality, or to expect perfect recollection. However, the RAD was clear that its reasoning was not making such assumptions. Rather, the RAD's adverse credibility finding was based on Mr. Kamau having himself made a precise written statement about the date of his realization, but then being unable to explain that statement. While this finding alone may not have been sufficient to entirely discount Mr. Kamau's credibility, it was reasonable for the RAD to consider the vagueness of his evidence on this point as one issue among others that affected his credibility.
- [16] The RAD's second finding based on vagueness in Mr. Kamau's evidence relates to his relationship with N. Mr. Kamau's narrative states that he met N. in 2015, that they began dating in 2019, and that they are still in a relationship. During his testimony, Mr. Kamau repeated that he and N. developed a friendship in 2015, then began a physical relationship in 2019. However, when asked to speak about N. as a person, Mr. Kamau was able to provide little detail beyond that he worked in a remote place, was difficult to contact, and that they met once in a while. He was unable to speak about N.'s character or background, claiming they "met only a few times." He was also unable to say much about the relationship other than the fact they met in Nairobi "for a few minutes if not hours" because N. could not travel to Mombasa, and spent "very little time" together.
- [17] The RAD found that Mr. Kamau had not reasonably explained why he was unable to describe N. as a person. Even if their relationship had been predominantly physical rather than romantic, the RAD found Mr. Kamau could be reasonably expected to describe N.'s character beyond it being difficult to contact him because of work, particularly since he had known N. for about four years before the relationship became physical, and they remained in contact by telephone. The RAD also expected Mr. Kamau to be able to describe the circumstances that led to their relationship, even considering cultural barriers that might limit the extent to which he could do so. The RAD further noted that Mr. Kamau was able to communicate in English, understood the RPD's questions, and that there was no evidence of any

psychological barriers to him testifying.

- [18] Mr. Kamau contends that the RAD did not consider the circumstances of his sporadic, physical and superficial relationship. He argues that in such a context, it was unreasonable for the RAD to expect him to know more about N. or be able to describe him as a person. I disagree. The RAD reasonably and clearly explained its finding that Mr. Kamau would and should have been able to describe N. if they had truly had the relationship he claims, since Mr. Kamau testified that he had known N. for four years as friends before their relationship started, and that they remained in a relationship. Mr. Kamau's arguments effectively ask this Court to reassess the evidence and draw different inferences from those drawn by the RAD regarding his credibility. This goes beyond the Court's role on judicial review: *Vavilov* at paras 125–126.
- [19] Mr. Kamau also argues that the RPD and the RAD unduly emphasized the vagueness in his evidence regarding N., rather than focusing on his evidence of another relationship with a man identified as M., which he claims was more meaningful and serious. Mr. Kamau's evidence was that M. was a childhood friend who he later dated between 2003 and M.'s death in an accident in 2011. He argues the RPD should have spent more time in questioning him about M., and that it was unreasonable for the RAD to focus on the vagueness in his evidence about the less meaningful relationship with N.
- [20] This argument cannot be accepted, for two reasons. First, Mr. Kamau did not raise any argument before the RAD about his relationship with M., the extent to which the RPD had questioned him on it, or how it affected the RPD's assessment that his evidence regarding N. was vague. Having failed to raise this issue before the RAD, Mr. Kamau cannot now raise the issue in this Court and cannot fault the RAD for failing to address that relationship: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22–26; *Vavilov* at paras 127–128.
- [21] Second, Mr. Kamau in fact gave little evidence, either in his narrative or his testimony, regarding his relationship with M. There is little in this evidence that would identify this relationship as being inherently more meaningful or serious, or more important from an evidentiary perspective in establishing Mr. Kamau's sexuality. It was reasonable in the circumstances for the RAD to consider the vagueness that arose in Mr. Kamau's testimony regarding N., rather than focusing on the evidence, or lack thereof, with respect to M. In this regard, the RAD cannot as a general rule focus on peripheral or minor inconsistencies to the exclusion of the evidence as a whole. However, this is not what the RAD did in this case. It noted that Mr. Kamau's evidence lacked expected detail on a matter directly relevant to the central elements of his claim. Making credibility findings based on these concerns and undertaking the requisite weighing of the evidence is the RAD's responsibility, and not that of the Court.

- (2) The RAD's inconsistency findings [22] The RAD found there were inconsistencies in Mr. Kamau's evidence on two matters: his account of the Mungiki gang targeting him in Mombasa, and his assertion that he and his family had moved to Mombasa to avoid the gang. The RAD considered that these inconsistencies adversely affected Mr. Kamau's credibility.
- [23] With respect to the former, Mr. Kamau alleged that men visited him in 2021 at the car dealership where he worked in Mombasa. On one occasion, a group of men who knew his name approached him and asked him if he had come to hide in Mombasa. Another group returned three weeks later, claiming they wanted to buy a car. After getting in a car with them, Mr. Kamau was kidnapped and assaulted. The RAD found an inconsistency between Mr. Kamau's basis of claim narrative and his oral testimony about when he realized the men were associated with the Mungiki gang that had extorted him in Nairobi. According to his written narrative, he realized the men were members of the gang when the first group approached him. However, in his testimony, he claimed he only came to realize it when the second group of men started driving him away from Mombasa toward Nairobi. The RAD found this to be a material inconsistency that undermined the credibility of Mr. Kamau's testimony.
- [24] Mr. Kamau contends that the RAD unreasonably fastened onto a discrepancy regarding the number of encounters with these men and suggests that the similarities in Mr. Kamau's detailed account of the incidents should have led the RAD to view his evidence more holistically and find it credible. I disagree. The RAD noted a material inconsistency not with the number of encounters, but with Mr. Kamau's account of when he first realized that the Mungiki gang—the very gang whose threats and extortion led him to flee to Mombasa—had located him there.
- [25] While Mr. Kamau tried to explain the inconsistency on the basis that he “did not take [the first encounter] seriously,” this did not explain why he wrote clearly in his narrative that he knew the first group were Mungiki gang members, and in his testimony that he did not. The RAD rejected Mr. Kamau's argument that this was not a relevant or material issue. It found the issue to be directly relevant to his claim that he feared the Mungiki gang as a consequence of his sexuality. The inconsistency in his accounts regarding his alleged experiences with the gang in Kenya, and in particular when he realized he had been located in Mombasa, therefore undermined his credibility. It was reasonable for the RAD to draw such a conclusion from the inconsistency identified on this point.
- [26] Nor do I accept Mr. Kamau's argument that the RAD erred in focusing on this inconsistency rather than the consistency and detail of other aspects of the account. As with his argument that the RAD unduly focused on one of his relationships rather than the other, Mr. Kamau did not raise this argument before the RAD. In any event, Mr. Kamau is essentially arguing that the RAD should have put greater weight on other aspects of his testimony, rather than a material inconsistency on a relevant issue that raised concerns about the credibility of the account as a whole. Again, this Court's role is not to reweigh the evidence. The RAD's

conclusion was clearly explained and founded on a justified review of the evidence before it. There is no basis for this Court to interfere.

- [27] The latter inconsistency arose from Mr. Kamau's 2022 application for a temporary resident visa [TRV], which he used to travel to Canada. In his TRV application, Mr. Kamau listed his "Present address," and that of his wife and children, as being Ruiru, a town about 22 kilometres from Nairobi. However, in his narrative and testimony, he asserted that he and his family moved to Mombasa in December 2012 and that his family remained there even after he returned to Nairobi in May 2022 and came to Canada in July 2023.
- [28] Faced with these differing statements, Mr. Kamau claimed he had listed his children's birthplace in the TRV application, rather than where they lived. He said that while they were living in Mombasa, they returned to Ruiru for their births to be near the family home. He explained that one could not take one's child to Nairobi because the hospitals were so expensive, so they preferred to return to Ruiru.
- [29] The RAD found that Mr. Kamau had not reasonably explained the discrepancy, since the form clearly asks for the individuals' present address and not where they were born. It found this inconsistency relevant and material to the claim, given Mr. Kamau's allegations that he continues to send money to his wife in Mombasa to pay the gang who continues to threaten her.
- [30] Mr. Kamau argues that his explanation of misunderstanding and mistake was plausible, and that his family's residence is of little relevance to his primary claim based on his sexual orientation. I am not persuaded on either front. In assessing the reasonableness of the RAD's decision, the question is not simply whether an applicant has put forward a plausible explanation, but whether the RAD's rejection of it was reasonable and justified. Here, the RAD reasonably explained the reasons it did not accept Mr. Kamau's mere assertion that he had written his and his family's birthplace in response to a question clearly asking for their place of residence. The RAD was not obliged to accept Mr. Kamau's explanation for the discrepancy, particularly in the absence of any other objective evidence supporting his statements regarding his family's current residence. Nor is Mr. Kamau's explanation particularly plausible or consistent on its face, given that the birth certificates on the record show that two of his children were in fact born in a hospital in Nairobi, and not in Ruiru.
- [31] The residence of Mr. Kamau's family is not a peripheral or microscopic matter. One of the central aspects of his narrative is that he is at risk at the hands of the gang, which he claims targeted and extorted him due to his homosexuality, forced him to move to Mombasa, located him in Mombasa, kidnapped him from Mombasa and assaulted him, and continues to extort payments from his wife who remains in Mombasa. Evidence that directly contradicts that narrative—in the form of Mr. Kamau's own statements in 2022 that he and his family lived in Ruiru and not Mombasa—is of material importance to the credibility of Mr. Kamau's account.

- [32] Mr. Kamau also argues that even if his evidence with respect to the gang or his family's whereabouts is found not to be credible, this does not mean that he is not credible with respect to his sexuality. I cannot agree. It is true that an adverse credibility finding with respect to one aspect of a claim may not invariably taint an applicant's entire testimony. It may even be unreasonable to conclude that a witness is generally not credible based on a fabrication of one part of a story to bolster a claim, where that fabrication has no bearing on the remainder of the story: *Guney v Canada (Citizenship and Immigration)*, 2008 FC 1134 at para 17; *Oria-Arebun v Canada (Citizenship and Immigration)*, 2019 FC 1457 at paras 57–58. Conversely, however, this Court has frequently held that an adverse credibility finding on a central matter may extend to and taint all aspects of a claim: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 24; *Li v Canada (Citizenship and Immigration)*, 2018 FC 877 at para 29; *Shabaz Bhatti v Canada (Citizenship and Immigration)*, 2024 FC 2010 at para 23.
- [33] As noted, Mr. Kamau's narrative regarding the Mungiki gang and his move to Mombasa was central to his claim. A finding that he had not been truthful about this narrative was a reasonable ground on which the RAD could question his truthfulness about his sexuality. This is particularly so given the importance of Mr. Kamau's own testimony in establishing his sexuality and the paucity of other evidence. In any event, the RAD did not simply rely on the contradictions in respect of the Mungiki gang allegations; it also identified separate credibility concerns in respect of Mr. Kamau's testimony directly on the issue of his sexuality. In the circumstances, I cannot conclude that it was unreasonable for the RAD to conclude, on the basis of the identified credibility concerns, that Mr. Kamau was not a credible witness, and that this conclusion extended to his assertion that he is gay.
- (3) The RAD's treatment of the corroborative documents [34] Mr. Kamau filed two documents that purport to corroborate his claims regarding his sexuality and his fear of the gang. The first is a letter from a friend, who writes to "formally certify that since 2014, [Mr. Kamau] has been a part of the LGBTQ+ community." The RAD noted an inconsistency between the author's statement that she had known Mr. Kamau for seven years (i.e., since 2016), and their purported certification of his membership in the LGBTQ+ community since 2014. The RAD added that, at most, the letter could only establish the author's belief that Mr. Kamau has been a member of the LGBTQ+ community since 2014, which amounted to hearsay evidence presented in an unsworn form without any information to confirm the author's identity. Given this context and the contents of the letter itself, I do not accept Mr. Kamau's arguments that the RAD failed to adequately or reasonably explain the contradictions it identified in the letter or the reasons it gave the letter little weight.
- [35] The second document was an email purporting to be from Mr. Kamau's wife, dated two days after he left Kenya. As the RAD noted, the email refers to a gang "behaving just like the Mungiki group, back in Nairobi." The RAD considered the email to be contradictory to other evidence. Although the email does not give the wife's address, it refers to "shifting from Nairobi to Mombasa." The RAD therefore found the email inconsistent with the

inadequately explained statement in the TRV application that his wife was living in Ruiru. For the reasons above, I do not accept Mr. Kamau's argument that his wife's location was irrelevant to his claim based on his sexuality or that it was unreasonable to give this document little weight based on the contradiction, combined with the fact that the email was unsworn and unaccompanied by identification.

[36] I therefore conclude that Mr. Kamau has not established that the RAD's treatment of the corroborative documents was unreasonable.

(4) Language and comprehension issues [37] In oral argument, Mr. Kamau also raised a broader challenge to the RAD's credibility findings, namely that the RAD unreasonably dismissed any language or communication barriers in his testimony. He points to numerous places in the transcript of the RPD hearing in which he asked for a question to be repeated and argues that it was unreasonable for the RAD to conclude that there was no language barrier. He contends that the language barrier provides context for the concerns about vagueness, the contradictions between his testimony and his narrative, and the contradictions regarding residence in the TRV application.

[38] This submission cannot be accepted, both because Mr. Kamau did not raise it before the RAD or in his written argument on this application, and because the RAD directly addressed the issue and reasonably explained its conclusions. The RAD expressly considered the fact that Mr. Kamau "frequently throughout the hearing asked the RPD member to repeat his question." Having listened to the entire audio recording, the RAD nonetheless found that Mr. Kamau's responses did not indicate that he was unable to understand or respond adequately to any questions, or that he was limited in his English vocabulary or by cultural factors in giving his evidence. These conclusions, based on the RAD's assessment of the evidence, are entitled to deference and there is no basis to disturb them.

IV. Conclusion [39] For the above reasons, I conclude that Mr. Kamau has not demonstrated that the RAD's decision was unreasonable. The application for judicial review must therefore be dismissed.

[40] Neither party asked the Court to certify a serious question of general importance pursuant to paragraph 74(d) of the IRPA. I agree that none arises in the matter.

JUDGMENT IN IMM-1859-25

THIS COURT'S JUDGMENT is that

The application for judicial review is dismissed.

"Nicholas McHaffie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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