

CANADA / JUDGMENT

Kibiku v. Canada (Citizenship and Immigration)

2025 FC 548

COURT

Federal Court

DECIDED

25 March 2025

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

Kibiku v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2025-03-25 Neutral citation 2025 FC 548 File numbers IMM-2452-24 Notes A correction was made on March 26th, 2025. Decision Content Date: 20250325 Docket: IMM-2452-24 Citation: 2025 FC 548 Toronto, Ontario, March 25, 2025 PRESENT: The Honourable Madam Justice Furlanetto BETWEEN: DANIEL MUNGAI KIBIKU Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS

- [1] This is an application for judicial review of a January 23, 2024 decision [Decision] of the Refugee Appeal Division [RAD] that confirmed a decision of the Refugee Protection Division [RPD], rejecting the Applicant's claim for refugee protection that was made under sections 96 and 97(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA].
- [2] This is the second judicial review proceeding involving the Applicant. The matter was previously remitted back to the RAD for redetermination on the basis that the RAD had breached procedural fairness by failing to provide the Applicant with notice of new concerns involving the authenticity of the Applicant's documentary evidence.
- [3] On redetermination, the RAD found the RPD was correct to conclude that the Applicant was not credible because of inconsistencies that could not be explained between the Applicant's Basis of Claim [BOC] narrative, testimony, and documents, relating to key elements of the Applicant's claim. It also found that the objective documentation was inconsistent and therefore insufficient to overcome credibility concerns associated with aspects of the Applicant's claim.
- [4] For the following reasons, the application is dismissed as the Applicant has not established a reviewable error. I. Background [5] The Applicant, Daniel Mungai Kibiku, is a citizen of Kenya who belongs to the Kikuyu tribe. He alleges a fear of returning to Kenya due to risks from his uncles and members of the criminal Mungiki group relating to a land dispute within his family.

- [6] The Applicant asserts that following the death of his grandfather, his half-uncles (sons of his grandfather and his first wife) inherited land, while the Applicant's father and another uncle (sons of his grandfather and his second wife) did not. The Applicant contends that attempts were made to confront the half-uncles which led to threats and violence against the Applicant, his father, and uncle.
- [7] In his BOC narrative, the Applicant alleged that he and his father were threatened in June 2019 and that he subsequently moved to Nairobi out of fear and felt some relief until his father was attacked and hospitalized with injuries. Upon questioning at the RPD hearing, the Applicant stated that due to stress he misremembered the timing of the attack on his father, and that it had occurred before he moved to Nairobi, but that he was travelling back and forth between Nairobi and another town, Kiambu, at the time.
- [8] The Applicant provided testimony regarding the attack on his father, and provided a police report, hospital report, medical treatment report, and affidavits from his parents relating to the attack and his father's injuries.
- [9] He further asserted that on July 25, 2019, the Applicant's uncle was found dead in his home, decapitated, with his hands tied behind his back. He asserted that the condition in which his uncle was found was characteristic of a murder by the Mungiki. The Applicant provided a medical examiner's report, death certificate, and relied on affidavits from his parents for details relating to the death of his uncle.
- [10] On August 9, 2019, while walking home in Mombasa, the Applicant claims that he was attacked by unknown assailants who warned him to stop inquiring about the Kikuyu land. He fled Kenya and arrived in Canada on September 9, 2019, submitting a claim for refugee protection soon thereafter, which was refused by the RPD.
- [11] On January 23, 2024, in its redetermination decision, the RAD dismissed the Applicant's appeal of the RPD Decision. The determinative issue was credibility. The RAD made four key findings.
- [12] First, the RAD noted inconsistencies between the Applicant's BOC narrative, his testimony, and his documentary evidence relating to the date when his father was allegedly attacked and when the Applicant moved to Nairobi. While the RAD accepted that the Applicant had initially made an error in his BOC relating to the date of the alleged attack, the RAD concluded that the inconsistencies relating to when the attack occurred relative to when and why the Applicant moved to Nairobi were not reasonably explained and were critical to his claim.
- [13] Second, the RAD found the RPD erred by not considering the objective evidence, although it found this error to be not determinative. Upon conducting its own independent analysis, the RAD found inconsistencies in the documents relating to which injuries the Applicant's father suffered and which weapons were used in the alleged attack. The RAD concluded that because of these inconsistencies and those relating to the date and timeline of the attack on

the Applicant's father, there was insufficient credible evidence to establish, on a balance of probabilities, that the Applicant's father was attacked as alleged.

- [14] Third, the RAD considered the documentary evidence relating to the death of the Applicant's uncle and found the medical documents did not support the Applicant's assertion that his uncle was beheaded from an attack by the Mungiki.
- [15] Last, the RAD found the RPD had not erred by failing to accept the Applicant's explanation for the discrepancies in the evidence relating to the date he was attacked in Mombasa and his attendance at hospital, concluding that the evidence did not support a finding that the Applicant was attacked in Mombasa. II. Analysis [16] The overriding issue on this application is whether the RAD's credibility determination was reasonable.
- [17] A reasonable decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 85. A decision will be reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 99-100.
- [18] The Applicant argues that the RAD erred in three of its four findings, namely that it erred in finding that the Applicant's evidence was not credible regarding: when his father was attacked and when he moved to Nairobi; the injuries suffered by his father and the weapons used in his father's attack; and the manner in which his uncle was killed. The Applicant asserts that any one of these errors is sufficient to render the RAD's overall credibility finding unreasonable. I do not agree.
- [19] First, I find no reviewable error in the RAD's analysis relating to when the Applicant's father was attacked and when the Applicant moved to Nairobi. While the Applicant asserts that the RAD did not reasonably consider his explanation for the amendments to his evidence on these points and gave insufficient justification, I cannot agree. As noted earlier, the RAD accepted the Applicant's correction to the date stated in his BOC as to when his father was attacked and his explanation for this error. Although the RAD rejected the Applicant's explanation for his revised testimony relating to whether he had moved to Nairobi before the attack occurred to escape threats (as stated in the BOC narrative), or only after his father was attacked (as later revised), this does not mean the RAD did not fully consider the Applicant's explanation on this point. As reasonably noted by the RAD, it could not accept the Applicant's explanation for the change in his evidence as the evidence was critical to the Applicant's narrative about when and how his fear crystallized, and the change was also inconsistent with other evidence on this core issue. While it is clear that the Applicant does not agree with this finding, this does not render the RAD's analysis on this point unreasonable.

- [20] Second, I find no reviewable error in the RAD's analysis relating to the documents regarding the injuries suffered by the Applicant's father and the weapons used in his father's alleged attack. As noted by the Respondent, this analysis was conducted because the RAD found the RPD had erred by not conducting an analysis of the objective evidence (i.e., the police report, hospital report, medical treatment report, and affidavits from the Applicant's parents). While the RAD identified various inconsistencies between the documents, it did not do so as a veiled authenticity attack as alleged by the Applicant, but rather as an assessment of whether the documents were sufficient on their own, as a collective, to overcome the RAD's credibility concerns with the Applicant's evidence on the attack. I agree with the Respondent that the jurisprudence cited by the Applicant, including *Oranye v Canada* (Citizenship and Immigration), 2018 FC 390 is not relevant.
- [21] The Applicant also cites to *Belek v Canada* (Citizenship and Immigration), 2016 FC 205 [Belek] at paragraph 21 for the principle that documents that corroborate some aspects of a claim cannot be discounted merely because they do not corroborate other aspects of the claim. However, here the RAD's finding was that the documents were inconsistent with each other, as a collective, not that any one was silent on a point and therefore could not individually be relied upon. I likewise do not find *Belek* to be relevant.
- [22] Third, I also find no reviewable error relating to the RAD's consideration of the evidence on the uncle's death. It was reasonable for the RAD to question whether the Applicant's uncle had been decapitated and beheaded as the medical documents referred to the uncle arriving in an unconscious state, with assessments being made of his pupil dilation, heart sounds, pulse and respirations, and that his cause of death was "[b]leeding out after puncture on major arteries". While the RAD used the words "reasonable expectation" and "common sense" in different sentences of its reasons (shown in the paragraph below), it did not do so to make an implausibility finding relating to the medical report or a veiled authenticity attack. Rather, this was part of the RAD's discussion as to why the Applicant's allegation that his uncle was beheaded by the Mungiki was not credible and why the Applicant's argument that the medical report and his evidence were consistent could not be accepted:
- [25] I also reject the Appellant's argument that the stated cause of death, "Bleeding out after puncture on major arteries," is consistent with decapitation as there are obvious "major arterial connections, [in the neck] and bleeding out would be the direct cause of death resulting from a decapitation." I note that a puncture is different than a cut. I find it to be a reasonable expectation that a medical examiner's report would indicate that the individual's head was completely severed from his body, if this was in fact true. In addition, if the head was severed from the body, common sense indicates that the assessment of consciousness, pupil dilation, heart sounds, pulse or respirations would not be required. [Emphasis added, footnotes removed]

- [23] As further noted by the RAD, the description of his uncle's condition also changed when the Applicant was questioned about the inconsistency between his evidence and the documents, with the Applicant later stating that his uncle had a cut on his neck, instead of being beheaded. The RAD accordingly could not find, on a balance of probabilities, that the Applicant's uncle was beheaded as would be characteristic of an attack by the Mungiki.
- [24] Even if I were to find that the RAD had erred on any one of these sub-issues (which I do not), contrary to the Applicant's assertions, it is my view that this would be insufficient to render the RAD's overall credibility finding unreasonable in view of the remaining findings made, which are critical to the credibility of the Applicant. Notably, the Applicant has also not challenged the RAD's finding that there was insufficient credible evidence to establish, on a balance of probabilities, that he was attacked in Mombasa, which was a core element of his claim.
- [25] For all these reasons, the application is dismissed. There was no question for certification proposed by the parties, and I agree none arises in this case. JUDGMENT IN IMM-2452-24 THIS COURT'S JUDGMENT is that: The application for judicial review is dismissed. No question of general importance is certified. "Angela Furlanetto" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-2452-24 STYLE OF CAUSE: DANIEL MUNGAI KIBIKU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: HEARD BY VIDEOCONFERENCE DATE OF HEARING: March 11, 2025 JUDGMENT AND REASONS: FURLANETTO J. DATED: March 25, 2025 APPEARANCES: Kes Posgate For The Applicant Asha Gafar For The Respondent SOLICITORS OF RECORD: Kes Posgate Law Barristers and Solicitors Toronto, Ontario For The Applicant Attorney General of Canada Toronto, Ontario For The Respondent

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/fc-cf/decisions/en/item/527792/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/kibiku-v-canada-citizenship-and-immigration-2025>

Prepared on 29 October 2026 · Esheria