Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/12250/2015**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 21 September 2017	**On 25 September 2017**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MUSA NDLOVU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Masih, instructed by Braitch RB Solicitors
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Musa Ndlovu, was born on 26 October 1981 and is a male citizen of Zimbabwe. He entered the United Kingdom in March 2015 and claimed asylum. His wife and son had entered the United Kingdom in 2013. Another child (a daughter) had been born in the United Kingdom. The appellant's wife has since died. The appellant's son and daughter claim as his dependants in this appeal. By a decision dated 4 September 2015, the appellant's application for asylum was refused and a decision was made to make directions for his removal from the United Kingdom. An appeal to the First-tier Tribunal (Judge Grimmett) was dismissed by a

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decision promulgated on 6 June 2017. The appellant now appeals, with permission, to the Upper Tribunal.

2. The judge found that the appellant's claim to have switched from support for ZANU-PF to MDC (Movement for Democratic Change) was true. The appellant had claimed that he had been arrested in October 2013 by two officers who had detained him for three days and asked him why he had changed from ZANU-PF to MDC. He was released without charge. He was arrested again in January 2014 and asked the same questions as before. Again, he was released without charge. . In January 2015, the same two police officers arrested the appellant and questioned him for five days. They threatened him and took him "to an area where he was told that MDC supporters were shot and thrown into a lake". He insisted that the appellant pay a bribe (US dollars 4,000) before releasing him. The appellant paid the bribe. At [22] the judge found that the appellant's account of his detention, ill-treatment and being forced to pay a ransom was true and accurate. However, the judge was not satisfied the appellant would be at risk on return. She noted that the appellant had not been charged at any time during any of the arrests/detentions and that he had, in any event, been released on each occasion, albeit on the third occasion by the payment of a bribe. The judge found that it was "far more likely that the reasons for detaining him were to obtain a bribe rather than to prosecute him because he was never charged despite the detention". The judge found that there was no evidence to show that any family member had been approached by the police after the appellant left Zimbabwe in 2015. No paperwork appeared to have been generated by any of his arrests and so it was unlikely that there would be any written record at the airport which might alert the authorities to his history of detentions. The appellant could return safely to live in his home area of Bulawayo.

3. In essence, there are two challenges to the judge's analysis. First, it is asserted that the judge applied the wrong standard of proof (the balance of probabilities) at [22] when she should have applied the lower standard of reasonable likelihood.

4. At [11], the judge correctly sets out the standard of proof to be applied in an asylum/Article 2 and 3 ECHR appeal. She noted that it was "for the appellant to establish substantial grounds for believing that returning him would result in a real risk of being persecuted … or suffering serious harm". The question then, is whether the judge's use of the words "it seems to be far more likely" at [22] shows that she has applied the incorrect standard of proof. Having read the entire decision very carefully, I conclude that, whilst possibly guilty of an unfortunate use of words, the judge did not err in law such that her decision falls to be set aside. I say that for the following reasons. The judge had before her two possible explanations for the third detention of the appellant by the police officers. These officers may have wished to detain the appellant on account of his political opinions and, secondly, they may have wished to detain him in order to extract a bribe. It was the appellant's contention that he had been detained on account of his political opinion. The judge did not accept that explanation but, having found as a fact that he had been detained,

explained his release on the basis that the police officers had wished to obtain a bribe. There is no suggestion at [22], notwithstanding the use of the expression "far more likely", that the judge is here weighing up two possible explanations for a past event and preferring one to the other on a balance of probabilities. It would have been enough for the judge simply to have found that the appellant was released for reasons wholly unconnected with his political opinions. Indeed, that is in effect what she has said. Having found that the appellant had been detained and released, as he claimed, it was open to the judge to say why she thought he had been released. I find nothing inconsistent in the analysis at [22] with the judge's accurate statement of the relevant standard of proof at [11].

5. The second challenge is, in effect, one of perversity. The appellant asserts that, having found that the police officers had arrested the appellant on two occasions, questioned him about his political opinions but then released him (without the payment of a bribe) that it was perverse to find that, on the third occasion, the police officers had not been concerned at all with the appellant's political opinions but sought only to obtain a bribe from him. I disagree with that argument. The judge has made clear findings of fact; she has found that, on the third occasion, the police officers took the opportunity to extract a bribe from the appellant. There is nothing illogical or perverse about that finding any more that it is arguably illogical to insist that, because they had shown interest in the appellant's political views on two previous occasions, the officers must have had a similar interest at the time of the third arrest. By the same token, it would be illogical for the officers to release the appellant without payment of a bribe on two occasions yet to demand one on the third. The appellant's challenge is nothing more than a disagreement with findings which was available to the judge on the evidence.

6. None of the arrests led to the appellant being charged and on each occasion he was released. As the judge noted, there is no evidence of paper trail resulting from the arrests. In the light of those findings, it was open to the judge to find that, on arrival at the airport in Zimbabwe, there would be nothing to alert the authorities which might lead them to detain and ill-treat the appellant. Thereafter, the appellant would be free to return to his home area of Bulawayo and to live there in safety. I agree with Mr Mills' submission that, if he was able to get beyond the airport, there was nothing to suggest that the appellant would be at risk in Bulawayo where it is possible openly to support the MDC and where the influence of ZANU-PF is much weaker than elsewhere in Zimbabwe.

7. For the reasons I have given, the appeal is dismissed.

Notice of Decision

8. This appeal is dismissed.

9. No anonymity direction is made.

Signed Date 22 September 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 22 September 2017

Upper Tribunal Judge Clive Lane