



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/04234/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 04 September 2017**

**Decision & Reasons  
Promulgated  
On 11 September 2017**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**M M**

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the appellant: Ms Z. Ahmed, Senior Home Office Presenting Officer  
For the respondent: Mr J. Collins, Counsel instructed by Sentinel  
Solicitors

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the original appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the original appellant and to the Secretary of State.

## **DECISION AND REASONS**

1. For the sake of continuity, I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal to the Upper Tribunal.
2. The appellant appealed against the respondent's decision dated 19 April 2017 to refuse a protection and human rights claim. The respondent rejected the credibility of the appellant's account of abduction by Al Shabaab because of a number of inconsistencies in the dates and his description of the events. She concluded that it would be reasonable for the appellant to relocate to Mogadishu.
3. First-tier Tribunal Judge T. Jones ("the judge") allowed the appeal in a decision promulgated on 27 June 2017. His findings were as follows:

"33. On the totality of the evidence before me, and applying the appropriate standard, I find that the Appellant is credible in connection with the events from 2009 and 2010, though the Respondent, I find, is right to reflect upon the differing estimates of date or time that the Appellant has given variously as to when the first event occurred and then for how long he was detained before the Appellant was able to escape.

34. I am prepared to accept the account that an escape was engineered, though it may well have been facilitated by way of payment of a bribe, the circumstances of which the Appellant is, seemingly, in ignorance of. To the appropriate standard though, I am prepared to accept the Appellant's lack of education and how he struggles even to this day with basic maths, to be a truthful account in all of the circumstances, allowing for the appropriate standard and the length of the interview time (9am to 4pm), I am prepared to find for him.

35. Equally, there is a criticism that he has failed to mention the second event of 2010 in his screening interview, but I do note the contents of paragraph 4.1 thereof which is an exhortation to an Appellant to keep matters brief. The Appellant has understood that he would be able to explain things further and in more detail in an interview which he had anticipated might take place over a period of some two hours.

36. At the time and events in question, background material would suggest that they support the Appellant's claim in terms of abduction and an attack on his property as claimed, and applying the appropriate standard, though I consider the two paragraphs the respondent has placed in the Refusal Letter as to the Appellant's claimed mistreatment at the hands of rogue officials in Kenya, applying the appropriate standard, I am prepared to find for the Appellant in all of the circumstances of his claim.

37. That said, much has changed since then and Al Shabaab is no longer the force or presence that it was considered to be. Mr Collins has wisely reflected upon this with his instructing solicitors, and has certainly said, they do not seek to distinguish MOJ even though there is further information instance at the hands of Al Shabaab in Mogadishu as recently as the end of May 2017 in the public domain.

38. What is in essence here, I find, is the question of whether or not the appellant could relocate to Mogadishu, as has been claimed. I have contrasted paragraph 50 onwards in the Refusal Letter with the appellant's response, a detailed response at that, in his witness statement at paragraphs 21 to 34. Therein the paragraphs, certainly from

the headnote as drawn to my attention by Mr Collins in his closing submissions, are expanded upon with some care and clarity.

39. For my part in carrying out a detailed assessment of the Appellant's individual circumstances, I find he does not have a support network in Mogadishu; his family has long since fled from Somalia. I accept that which he has claimed as regards his aunt being unable to assist him financially, such that he faces the prospect of return to Mogadishu, not in fear of clan violence but in fear of destitution and in all likelihood, to the appropriate standard, placement in an IDP camp. I accept the Appellant has no ties to Mogadishu or transferable skills and in light of this, and for the reasons outlined in his detailed witness statement and the succinct submission made by Mr Collins, I find that return for the Appellant in these circumstances would render the United Kingdom to be liable to breach its obligations under the 1950 Convention Article 3, or that return at this time for the Appellant, as is proposed, is unreasonable or unduly harsh."

4. The Secretary of State argues that the judge made bare statements and that he accepted the appellant's account without providing evidence based reasons for his findings. The judge failed to explain why the appellant's evidence in his witness statement was accepted and the reasons given in the decision letter for refusing the application were rejected. The Secretary of State relied on the decision in *MK (duty to give reasons) Pakistan* [2013] UKUT 00641. The headnote states:

- (1) It is axiomatic that a determination discloses clearly the reasons for a tribunal's decision.
- (2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons.

5. The Secretary of State also relies on the decision in *Budhathoki (reasons for decisions)* [2014] UKUT 00341. The headnote states:

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

6. On behalf of the appellant it is argued that the findings were adequate. The judge outlined the Secretary of State's reasons for refusal in the decision letter and took it into account. The central issue was return to Mogadishu in the context of paragraph (xii) of the headnote in *MOJ & Others (Return to Mogadishu) Somalia* CG [2014] UKUT 442. Even if the judge had not given sufficient reasons in relation to the appellant's core account of abduction by Al Shabaab, his reasons for finding that the appellant would be at risk of Article 3 ill-treatment in Mogadishu were sustainable. He contrasted the appellant's witness statement with the reasons for refusal letter. It was open to the judge to find that he had no support network in Mogadishu and that his other relatives abroad were not able to provide him with financial support. The judge was not required to make findings on each and every aspect of the evidence.

## **Decision and reasons**

7. Having considered the grounds of appeal and the submissions made by both parties I find that there is some force in the Secretary of State's argument that the judge failed to give sufficient reasons to explain why he accepted the appellant's account of the core events relating to persecution by Al Shabaab, which was an issue that was disputed in the decision letter.
8. Paragraphs 33-36 of the decision contain the judge's findings relating to the key aspects of the appellant's account. The reasons why the judge accepted the account appeared to be: (i) he accepted that the appellant's lack of education might mean that he struggles to provide accurate dates; (ii) he accepted that failure to mention the second incident in 2010 in the screening interview did not undermine the credibility of his account because of the limited nature of the interview; and (iii) the appellant's account was broadly consistent with the background evidence.
9. Although the judge acknowledged that the Secretary of State was "right to reflect upon the differing estimates of date or time" there is no analysis of the other credibility issues raised by the respondent, which included an allegation that the appellant had given differing descriptions of the place he was held and the way in which he escaped. I note that the appellant prepared a detailed witness statement responding to the reasons for refusal. The judge made clear that he had considered that statement. However, what is missing from the relevant paragraphs of the First-tier Tribunal decision is any analysis of the reasons for refusal and any reasons to explain why the judge was willing to accept the appellant's account of events. Some credibility issues raised in the reasons for refusal letter might reasonably be explained by the appellant's lack of education, but not all of the credibility issues were explained by his lack of education. These were matters that needed to be considered and resolved with adequate reasoning. I conclude that this aspect of the decision lacked the level of reasoning required given the credibility issues raised in the decision letter.
10. It is argued on behalf of the appellant that, even if the judge's reasoning in respect of the account of past persecution was lacking, his reasons for concluding that the appellant would face Article 3 ill-treatment as a minority clan member without a support network in Mogadishu are sustainable. In relation to this aspect of the case the judge made clear that he had considered the reasons for refusal and the appellant's detailed response [38].
11. In interview, the appellant was asked a large number of questions about the location of various family members. It appears that the respondent accepted the appellant's evidence regarding the location of family members in the decision letter [49]. The evidence before the respondent at the date when the decision was made was outdated. The interview took place in 2015 and the letter from the appellant's legal representatives

referred to in [49] of the decision letter was dated 06 March 2015. The credibility of the appellant's evidence regarding the location of various family members did not appear to be a matter in dispute.

12. The appellant updated the position in the detailed witness statement prepared for the hearing. In 2015, the only family member he had in Mogadishu was a sister, who he said was divorced and was struggling to survive [qu.406-408 interview]. He said that she could not even support herself [qu.414]. In his statement the appellant said that she had passed away [18]. His evidence at the hearing was that he did not have any relatives or connections in Mogadishu [20]. The appellant's evidence on this issue did not appear to be disputed by the respondent at the hearing. Instead, it was suggested that he had relatives elsewhere who might be in a position to provide financial assistance [25].
13. It seems clear that the judge was referred to evidence to show that the appellant's aunt in the USA was reliant on social security payments and was not in a position to provide financial support if he was removed to Mogadishu [20 & 29]. Similar evidence was produced relating to his siblings in the UK. Although the judge could have given more detailed reasons to explain his conclusions at paragraph 39 of the decision, I find that this is not fatal to his findings given that the credibility of the appellant's account of the whereabouts of his family members did not appear to be in dispute. The fact that his remaining family members outside Somalia could not afford to provide him with financial support was sufficiently supported by evidence.
14. In circumstances where the respondent accepted that the appellant is from a minority clan, and that his home area is Brava, I find that it was open to the judge to accept the appellant's evidence that he had no support network in Mogadishu. Regardless of the judge's failure to provide sufficient reasons to explain his findings relating to the appellant's account of persecution by Al Shabaab, the Home Office County Information and Guidance on Minority Groups (March 2015) indicated that minority groups in south and central Somali are likely to face discriminatory treatment and human rights abuses including harassment and violence as well as looting of land and property [1.3.9]. In light of the background evidence, any errors relating to the appellant's core account of events in Brava were unlikely to be material because, as correctly identified, the key issue was whether it would be unduly harsh or amount to a breach of human rights to remove the appellant to Mogadishu.
15. In respect of those findings, I conclude that the judge's reasoning was adequate in the circumstances outlined above. I conclude that, despite the error of law relating to lack of sufficient reasoning in paragraphs 33-37 of the decision, the error was not material to the overall outcome of the appeal. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of a material error of law.

## **DECISION**

The First-tier Tribunal did not involve the making of a material error on a point of law

Signed

A handwritten signature in cursive script, appearing to read 'M. Canavan', written in black ink.

Upper Tribunal Judge Canavan  
September 2017

Date 11