



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/10903/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
On 26 October 2015**

**Decision & Reasons Promulgated
On 30 October 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

DECENT MAPHOSA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Byrne, Advocate, instructed by Latta & Co., Solicitors

For the Respondent: Miss S Aitken, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Zimbabwe born on 21 September 1984. The respondent rejected his asylum claim for reasons explained in a letter dated 22 November 2014.
2. The appellant says that he operated a truck delivery service in Zimbabwe. He had a contract to deliver foodstuffs on behalf of a European charity organisation (unidentified). His main contact for this work was a significant figure in the MDC, and distribution was to identifiable MDC supporters. This resulted in attacks upon him by people on the side of

Zanu-PF. He reported one incident to the police, but they told him not to expect any result. In a further attack men purported to hire his truck but then kidnapped and blindfolded him, stabbed him and beat him unconscious, then abandoned him in the cab of the truck which had been set on fire. He arranged to leave the country.

3. The respondent refused the claim for reasons set out in a decision dated 22 November 2014. The respondent did not find the appellant's account of key incidents to be credible (paragraphs 9-15). Medical evidence added little. The police had shown themselves willing to investigate, and despite problems with the police force in Zimbabwe there was legal sufficiency of protection. The case was alternatively considered "at highest" and was found to be defeated, under reference to country guidance, by availability of internal relocation (paragraphs 27-36).
4. Judge Dennis dismissed the appeal by determination promulgated on 31 March 2015. Unlike the respondent, the judge found the appellant's account of 3 incidents from 2010 to 2012 to be credible, supported by the medical report, and that he had suffered 2 beatings by unknown assailants. However, the judge did not accept that the attacks were linked to his deliveries for a charity organisation, or to the MDC, or that they had any political element. He considered the events arose from business competition and from criminality. There was no political element, direct or imputed, to bring the case within the Refugee Convention. There was no threat entitling the appellant to a grant of humanitarian protection, and he made no claim under Article 8 of ECHR. Finally, the judge said:

"Reliance is also placed upon the Country Guidance case of *CM* [2013] UKUT 00059 ... confirming that there is "significantly less politically motivated violence in Zimbabwe" and that the return of a failed asylum seeker with "no significant MDC profile" would not create a real risk of persecution ... and that one returning to Bulawayo [the appellant's home area] "will not in general suffer the adverse attention of Zanu-PF even if he had a significant MDC profile."
5. The appellant submits in his grounds of appeal to the Upper Tribunal that inconsistencies should be put to an appellant if not apparent from the respondent's decision or from cross-examination and submissions: the judge reached his conclusion partly because of the appellant's inability to state details of the types of food distributed, amounts, packaging and locations but he had never been asked to provide these. That was procedurally unfair. The judge failed to take into account the appellant's evidence that during the attacks he was interrogated about involvement with the MDC, his truck was vandalised with the words "sell out" painted thereon, and that unknown men came to his house asking his family about his relationship with the MDC. The judge thought that the appellant had belatedly sought to politicise his claim, but allegations regarding war veterans and Zanu-PF supporters had been contained at his initial interview and initial statement.

6. For the error in law hearing the appellant offered an additional statement explaining that he could specify the main foodstuffs he was asked to deliver, locations, regularity, and the identity of the recipients as MDC supporters.
7. Miss Aitken sought to raise as a preliminary matter that if any error of law was shown it could not be material given the country guidance governing the appeal, particularly *CM*, and given paragraph 41 of the determination.
8. Mr Brown submitted that the respondent having failed to file any Rule 24 response should not be permitted to raise the point stated by Miss Aitken. He further submitted that paragraph 41 was in any event tied to the finding that the attacks on the appellant were criminal only, and not linked to political persecution. As the appellant had experienced his difficulties while in Bulawayo, the principle of internal relocation would not apply to his specific case. If he had been found credible, Rule 399K of the Immigration Rules would have applied: past persecution is a serious indication of a well founded fear, unless there are good reasons to consider that such persecution or serious harm would not be repeated. The judge had gone wrong on the facts by finding that the appellant had no significant link to the MDC and that his difficulties were related only to business competition and criminality. The appellant was criticised in the determination paragraph 33 for inability to give certain details, but he had not been asked about them. Issues of fair notice were fact sensitive. This was not a fair criticism, as the matter was not one crying out for the appellant to explain in advance of being asked. The judge went astray from that point on. His second substantial error began at paragraph 35, in finding the political element to be an embellishment. There were passages in the appellant's interview record and his initial statements which clearly described his problems with Zanu-PF and war veterans. The criticism that he was adding on a political element simply got the evidence wrong. Those were errors of such significance as to require a rehearing of the case.
9. Ms Aitken in response pointed out that the principle in paragraph 339K of the Rules applies unless there are good reasons to consider that persecution will not be repeated. Here, there were such reasons, firmly grounded in country guidance. *CM* was not avoided by the appellant coming from Bulawayo, as a principal finding was that even a person with significant MDC profile could safely return there. Even if the judge had attached a political element to the case, the outcome would have been the same. Every individual point did not require to be put an appellant, and the absence of information might properly be founded upon.
10. Mr Byrne in reply provided further references to the information put forward by the appellant in his claim. He also pointed to the argument on internal flight at paragraph 27 of the skeleton argument in the First-tier Tribunal.
11. I reserved my determination.

12. The point raised by Miss Aitken at the outset is decisive of this appeal. It is not one which required prior notice to the appellant. It goes to the issue which is always before the Upper Tribunal: whether any error is material, so as to require the determination to be set aside.
13. The argument on internal flight in the skeleton argument from the First-tier Tribunal is that since it was in Bulawayo that the appellant was persecuted in the past, "it cannot be suggested that he would be safe there now." That is simplistic. It does not follow from *CM*, or from the facts of this case.
14. The judge may have gone wrong in thinking that the appellant failed to include obvious details in his evidence, and in thinking that he did not make the political element clear from the outset. However, he found the appellant generally truthful regarding the assaults upon him, and the distinction drawn between political and criminal elements makes no difference to the eventual outcome.
15. Criminality and political violence are inextricably linked in Zimbabwe, and the attempt to distinguish between them does not seem to me to have been a particularly useful one; but I do not think that it matters.
16. The critical aspect of the case is that the appellant was not in the MDC, but associated with it only for particular business reasons. The judge was correct to apply country guidance so as to find no bar to return to Bulawayo. Further, if he had to, the appellant could go anywhere else in Zimbabwe. His claim failed even taken at highest.
17. The judge made no error which would require or entitle the Upper Tribunal to set aside the determination, so it shall stand.
18. No anonymity direction has been requested or made.



Upper Tribunal Judge Macleman
29 October 2015