Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA118342015

THE IMMIGRATION ACTS

Heard at Bradford	**Decision and Reasons**
On 22nd June 2017	**Promulgated**
	On 27 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

MR MBUNGU KINDUDI
(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Tettey, Counsel instructed by Parker Rhodes Hickmotts Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of Judge Hillis, promulgated on the 14th December 2016, to dismiss the appeal on international protection grounds against the appellant's removal as an illegal entrant to the United Kingdom.

2. The appellant is a citizen of the Democratic Republic of Congo (DRC) who was born on the 12th December 1973. His case was (and no doubt still is) that, on the 30th December 2013, he attended with others at a group

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welcome of Paul Joseph Mukungubilia - a self-proclaimed prophet who goes by the name of 'Gideon' - at Kinshasa airport. However, this supposedly peaceful event ended in a violent attempted coup against government in which the appellant did not participate but was nevertheless subsequently arrested by the authorities. Fortunately for the appellant, a friend of his brother took pity upon him and arranged for his release.

3. Judge Hillis did not believe the appellant's account. His reasons for not doing so included the fact that the appellant's credibility was damaged by his use of a false passport in order to gain entry to the United Kingdom [paragraph 16], the fact that he admitted that part of his reason for coming to the UK was in order to receive treatment for his diabetes [paragraph 21], and that no credible explanation had been provided for how the appellant had been able to secure a copy of what he claimed to be a warrant for his own arrest [paragraph 22]. Although he did not abandon his criticism of these reasons, Mr Petty conceded that it was not perhaps the strongest part of his overarching argument that the judge had not given sufficiently clear reasons for his decision. I am in any event satisfied that those particular reasons were both sustainable and reasonably open to the judge on the evidence that was before him. I therefore pass on to consider the other reasons that he gave, which are arguably more problematic.

4. At paragraph 18, the judge said this –

> "It is clear from the objective background before me in both the Refusal Letter and the AB [appellant's bundle] that the Appellant's account of the event he claims to have been involved in, namely, an intended peaceful welcome of Gideon on his arrival at Kinshasa airport is inconsistent with the known objective material in the media reports."

It is right to observe that the judge was not assisted by the fact that two of the three "media reports" in the appellant's bundle (those at pages 16 and 17) were apparently concerned with events of an entirely separate incident – one that had occurred nearly three years' later, on the 19th September 2016 – to those in which the appellant was claiming to have been involved on the 13th December 2013. However, the confusion arising from inclusion of irrelevant material in the appellant's bundle of documents rendered it all the more important that the judge should identify, (a) the media reports to which he was referring, and (b) the precise respect(s) in which the appellant's account was inconsistent with them.

5. Paragraph 19 of the decision is equally vague concerning the existence of supposed discrepancies between the appellant's account and the "known media reports". Indeed, it is arguably even more problematic than paragraph 18, given that it (a) is difficult to follow (it is for this reason that I have added words in square brackets in the hope that it renders it more readily intelligible), and (b) appears to be predicated upon claims that the appellant did not in fact make. It reads as follows -

> "The Appellant's claim that he was [not?] arrested at the airport [because?] it would have been difficult for the security forces to arrest them as there were

> so many members of the Church (approximately 20) at the airport to welcome Gideon is inconsistent with the known media reports that many demonstrators/terrorists were killed. It is clearly not credible that the Appellant, in that situation, would be ignored by the security forces as he sought to leave the airport whilst gunshots were being heard."

6. Mr Tettey's main point was that the Appellant had never said that there were only 20 people at the event; merely that he had attended with around 20 others in a minibus. However, I am by no means clear that this was the point that Judge Hillis was seeking to make. It may well be that the first sentence of this paragraph was intended to make the point that the media reports suggested that the security forces were shooting suspects on sight rather than arresting them. However, I cannot with confidence say what it was that the judge intended to convey because his reasoning is simply unclear. Moreover, neither myself nor the representatives were able to identify the point at which the appellant had suggested that (a) the security forces would (for whatever reason) have had difficulty in arresting him at the airport, or (b) that he was "ignored" as he left. Such opaqueness of reasoning may again have been avoided if the judge had identified (i) the media report(s) to which he was referring, and (b) the particular respect(s) in which the appellant's account of events differed from them.

7. Finally, at paragraph 20, Judge Hillis said this –

> "I conclude that the Appellant's claim that he was released by the security forces because he was recognised as the brother of Mbunghui Ndombasi is inconsistent with the objective media reports of the treatment of the demonstrators/terrorists."

   This reasoning is again unclear. At a stretch, it might be interpreted to mean that the media reports did not admit to the possibility of suspects being released at the request of friends or relatives. If so, it would have been better state this expressly. Once again, the lack of clarity in this reasoning could have been avoided if the judge had identified (a) the media report(s) to which he was referring, and (b) the particular respect(s) in which the appellant's account of events differed from them.

8. I have therefore concluded that the overall reasoning of the judge was insufficiently clear for the appellant to understand why he had lost his appeal and that his decision should therefore be set aside. In considering how best to proceed in re-making the decision in this appeal, I bear in mind that I have found that some parts of Judge Hillis' decisions are both intelligible and sustainable on the evidence (paragraph 3, above). I have nevertheless concluded, on balance, that none of his findings should stand. It will therefore be a matter for the judge who remakes the decision to decide whether to adopt those parts of Judge Hillis' reasoning that were clear and sustainable and, if so, what weight to attach to them when considering the evidence as a whole. The representatives therefore agreed that the appropriate course was to remit this appeal to the First-tier Tribunal for a complete rehearing.

Notice of Decision

9. The appeal is allowed and the decision of the First-tier Tribunal to dismiss the appeal is set aside.

10. The appeal is remitted to the First-tier Tribunal, sitting at Bradford, for complete re-hearing before any judge other than Judge Hillis.

11. Any further directions concerning the re-hearing of this appeal are reserved to the Acting Resident Judge at Bradford.

Anonymity is not directed

Signed Date: 23rd June 2017

Judge Kelly

Deputy Judge of the Upper Tribunal