



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

Appeal Number: PA/12468/2016

**THE IMMIGRATION ACTS**

**Heard at: Liverpool**

**Decision and Reasons  
Promulgated**

**On: 16<sup>th</sup> August 2017**

**On: 21<sup>st</sup> August 2017**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**AMN  
(anonymity direction made)**

Appellant

**And**

**The Secretary of State for the Home Department**

Respondent

**For the Appellant: Ms Warren, Counsel instructed by Broudie  
Jackson and Canter**

**For the Respondent: Mr Diwnycz, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Somalia born in 1985. He has permission to appeal against the decision of the First-tier Tribunal (Judge OR Williams) to dismiss his appeal against the Respondent's

decision to refuse him protection.

### **Anonymity Order**

2. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Background and Matters in Issue**

3. The Appellant claimed asylum at port on the 30<sup>th</sup> April 2016. He claimed to have a well-founded fear of persecution in Somalia for reasons of his ethnicity (membership of a non-majority clan) and imputed political opinion (refusal to join Al-Shabaab).
4. In her letter dated 25<sup>th</sup> October 2016 the Respondent refused to grant protection. The Respondent accepted that the Appellant was from Wanlaweyn in the Lower Shabelle and that he was a member of the Shanta Alemood clan, otherwise known as the Shanta Caleemood. This is part of the Digil confederation, distinguished from nomadic Somali clans by the fact that they are connected not just by common ancestry but by alliances and adoption. The Appellant’s clan has been prominent in the Lower Shabelle, and “fairly secure” there, since 2006. It is one of the major clans in the area. The Respondent evaluated the Appellant’s account against the background information on his home area and found the two to be mutually inconsistent. It was not accepted that he was reasonably likely to have suffered oppression at the hands of a more significant clan, or that Al-Shabaab would have repeatedly threatened him after he refused to join them. It was his account that they had visited his farm between 20 and 30 times. The Respondent considered that it was implausible that this group would have exhausted so much time and energy trying to recruit a single reluctant farmer.
5. The Appellant appealed and it a decision dated 10<sup>th</sup> February 2017 the First-tier Tribunal rejected his historical account and finding there to be no current risk of harm, dismissed the appeal. The key findings

were:

- (i) That the Appellant was a member of a majority clan which had demonstrated strong financial and community stability;
- (ii) The description of forced recruitment by Al-Shabaab was implausible and contradictory and therefore not worthy of belief;
- (iii) The Appellant would be able to return to Mogadishu where he would have family and clan support, and where he would be able to support himself using his skills as a farmer.

6. The grounds of appeal were lodged in time, and permission was granted by First-tier Tribunal Judge Mailer on the 5<sup>th</sup> June 2017. The grounds of challenge are:

- (i) That the determination is based on errors of fact, in particular:
  - (a) The Appellant is not part of a 'majority' clan in the sense that it is understood in anthropological terms in respect of Somalia (and reflected in the background information and caselaw);
  - (b) The Appellant's clan do not have a significant presence in Mogadishu;
  - (c) The Tribunal has misunderstood what relatives the Appellant has and where.
- (ii) The Tribunal has failed to take material matters into account, in particular:
  - (a) The evidence that when the Appellant previously went to Mogadishu, he was forced to live in an IDP camp outside the city.

## **Discussion and Findings**

7. I need not address all of the grounds, since Mr Diwnycz conceded that the errors of fact alleged were made out, and that they must be material to the overall decision. For instance, central to the

conclusion that the Appellant would be able to live in Mogadishu was the finding at [30] that he has family in the city to whom he could turn. Ms Warren submitted, and Mr Diwnycz accepted, that the Tribunal had here misunderstood the position. Contrary to the suggestion in the determination the Appellant has two ex-wives. One lives with her uncle in the Shabelle. The other has remarried and is believed to live in Mogadishu but the Appellant does not know where. The basis of the finding at 31 that his ex-wife/uncle would be able to assist him is therefore unclear. Mr Diwnycz further accepted that the Tribunal had omitted to direct itself to the evidence that the Appellant had spent time as an IDP in a camp on the outskirts of Mogadishu, and that this was plainly relevant to the question of whether internal flight was a reasonable option: MOJ and Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC).

8. In view of the Respondent's concession I find that the determination of the First-tier Tribunal must be set aside for error of law. I would just like to deal briefly with the position of the Appellant's clan. The Shanta Alemood /Caleemood are a sub-clan of the Rahanweyn, part of the Digil confederation of clans. They are an agriculturalist clan grouping based in, amongst other places, the Shabelle. The First-tier Tribunal correctly noted that this group are in the 'majority' in that area, in that they live there in significant numbers, greater than those of other clans around them. This was the finding made at paragraphs 20-22 of the determination, where the Tribunal concludes that in that area this group is able to provide its members with "strong financial and community stability". No issue is taken with that finding. Where the Appellant criticises the determination is in its transposition of the term 'majority', from its use in ordinary English, to its conclusions at 23 and 33 that the clan was a 'majority' clan in the sense that this term is used in anthropological studies of Somalia, and in asylum law. The term 'majority clan' has historically in these contexts been used interchangeably with the term 'noble' to denote one of the four large clan groupings which have dominated the country since at least the fall of Siad Barre. The term 'noble' derives from their claimed descent from the Prophet Mohammad. See for instance at [4.1.1] of the Country Policy and Information Note Somalia: *Majority clans and minority groups in south and central Somalia* (Version 2.0, published June 2017):

'The 'noble' clan families trace their origin back to a mythical common ancestor called Samaal, who is said to be descended from the Prophet Mohammed. These groups are nomadic pastoralists. The clan family is the highest level of clanship. Its members can count up to 30 generations back to a common ancestor. The four "noble" (Samaale) clan families are the following:

- The Darod are usually divided into three major groups: Ogaden,

Marehan and Harti. The Harti are a federation of three clans: the Majerteen are the main clan in Puntland; the Dulbahante and Warsangeli live in the disputed border areas between Puntland and Somaliland. The Ogaden are the most important Somali clan in Ethiopia, but also quite influential in both Jubba regions, while the Marehan are present in South and Central Somalia.

- The Hawiye mainly live in South/Central Somalia. Their most influential subdivisions are the Abgal and Habr Gedir, which are both dominant in Mogadishu.
- The Dir settle mainly in western Somaliland and in some pockets of South/Central Somalia. The main clans are the Issa, Gadabursi (both in Somaliland and bordering regions of Ethiopia and Djibouti) and the Biyomaal (in southern Somalia).
- The Isaaq are the main clan family in Somaliland. According to some scientists and Somalis, they are considered part of Dir clan family.

9. The designation ‘noble’ or ‘majority’ assumed significance in asylum law because these clans operated their own powerful militias, considered to be capable of offering a sufficiency of protection to their members. This was in contrast to the members of ‘minority’ groups who did not claim ‘noble’ lineage and who did not have either the numbers or arms to effectively protect themselves during the civil war and its aftermath. As can be seen from the extract above, the Appellant’s clan does not feature in the list of noble clans.

10. For the sake of completeness I should note Ms Warren’s concession that the Rahanweyn are not - conversely - a minority clan, that is one considered to be particularly vulnerable. The CIG cited above describes them as a “separate caste” of agriculturalists living in the Shabelle. Ms Warren submitted that due to their particular origins and occupation they are an ‘intermediate’ group outside of the traditional Somali clan hierarchy familiar to this Tribunal. I accept that this would be an accurate description. In SH (Rahanweyn not a minority clan) Somalia CG [2004] UKIAT 00272 Upper Tribunal Judge Storey held them to hold an “intermediate position between the main Somali clans and minority clans proper....”.

11. I find it was an error of fact to describe the Rahanweyn as a ‘majority’ clan. In this determination that error was material to the outcome of the appeal, since it is clear from the reasoning that it underpinned the Tribunal’s conclusion that the Appellant would have their protection and support upon return, including in Mogadishu. There would appear to be no evidential basis for the conclusion that these farmers in the Shabelle would have either the capacity or numbers in the city to provide the

Appellant with support. Similarly the finding that the Appellant would be able to work as a farmer on return to Mogadishu is not supported by evidence to that effect.

### *Conclusions*

12. The Respondent agrees that the determination contains errors of fact that have infected the reasoning overall and that as such the decision must be set aside. The parties before me agreed that the appropriate remedy was for the matter to be remitted to the First-tier Tribunal for the matter to be heard afresh.

### **Decisions**

13. The determination of the First-tier Tribunal contains a material error of law and it is set aside.
14. The matter is remitted to the First-tier Tribunal for hearing *de novo*.
15. There is an order for anonymity.



Upper Tribunal Judge Bruce  
15<sup>th</sup> August

2017