



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

Appeal Number: PA/02418/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21<sup>st</sup> June 2019**

**Decision & Reasons Promulgated  
On 12<sup>th</sup> July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCGINTY**

**Between**

**M E  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Bhatti, Solicitor, Solomon Solicitors

For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge N M K Lawrence promulgated on 25<sup>th</sup> April 2019 following a hearing at Hatton Cross on 11<sup>th</sup> April 2019. At the appeal hearing before me today the Appellant has been represented by Ms Bhatti, a solicitor, from Solomon Solicitors, and the Secretary of State has been represented by Mr Bramble, a Senior Home Office Presenting Officer.
2. The Appellant seeks to appeal against the decision of First-tier Tribunal Judge Lawrence in which he dismissed the Appellant's asylum, humanitarian protection and human rights claims.

3. Permission to appeal in this case had been granted by First-tier Tribunal Judge Grant-Hutchison on 30<sup>th</sup> May 2019. In the Grounds of Appeal there are nine Grounds of Appeal and Judge Grant-Hutchison did not specifically limit the Grounds of Appeal in her grant of permission so it is necessary for me now to go through each and every ground. I am grateful to the submissions made by the advocates in clarification and expansion upon the Grounds of Appeal and to understand fully the response from the Secretary of State in the Rule 24 reply.
4. The Appellant is entitled to anonymity. It is an asylum claim and in the specific circumstances of this case it is appropriate for there to be an anonymity direction made such that I do make an anonymity direction. No record or transcript of these proceedings may identify the Appellant or any member of her family either directly or indirectly and failure to comply with this direction may lead to contempt of court proceedings. This direction applies to both the Appellant and the Respondent.
5. It is the Appellant's case that she is a national of Sudan who took part, she says, in various political activities in Sudan and was persecuted by the Sudanese authorities because of her political activities. She says that her political activities continued outside of Sudan, both in Egypt and also in the UK. Her case is that if returned to Sudan she fears being persecuted by the Sudanese authorities because of her political activities in Sudan, Egypt and the UK. It is said that at the First-tier Tribunal hearing for the first time, the Appellant disclosed to her legal representatives that whilst she had been detained by the Sudanese authorities, she had been raped.
6. In Ground 1 of the Grounds of Appeal it is argued that at paragraph 15 of the determination of the First-tier Tribunal Judge although it was said the judge stated that he had not attached too much weight on the failure of the Appellant to know the address of the JEM headquarters in Sudan, he had failed to consider that there was no official headquarters given that it was a banned organisation. Looking at paragraph 15 of the decision what the judge stated was that in interview the Appellant had been asked for the address of the JEM headquarters. The Appellant, he records as stating that she did not know the address because she was only involved in Hasahesa (her neighbourhood). In her first witness statement the Appellant said that she completed a registration form. She was not issued with a membership card as it had to be a secret and in light of the fact she actually claimed to complete a registration form the judge found that her lack of knowledge of the address of JEM's headquarters incongruous. The judge stated particularly "*I am prepared not to attach too much weight to her failure to demonstrate knowledge on this point*". Ms Bhatti argues that he has attached some weight to it, but there is no official headquarters because it is a banned organisation. However, the judge had noted the Appellant had been asked in interview the address of the JEM headquarters and rather than saying that because it was a banned organisation, there was no official headquarters, what she said was that she did not know the address because she is involved in Hasahesa, her neighbourhood. The judge I find on that basis was entitled to find that her answers were incongruous. The Appellant herself was not saying there

was no headquarters (even unofficial) and Ms Bhatti has not been able to produce any evidence before me today that because it is a banned organisation they just undertake disparate activities with no central base, it may not be an official headquarters with a sign outside saying this is the headquarters but obviously even secret organisations may have a headquarters and that is why she was asked the question in the interview. But the judge said he was prepared not to attach too much weight to her failure to demonstrate knowledge on that point. I do not consider that there is any error of law in that regard.

7. Moving to the second Ground of Appeal. It is there argued that in relation to paragraphs 16 to 20 of the determination the Immigration Judge stated that the Appellant was well informed and educated and could not fail to know that JEM was an armed movement. It is argued that the Appellant stated in her answer to question 134 that "she did not know anything about their arms" and that she did not at any point say that she did not know that they had an armed wing and she stated that she did not know anything about this armed wing. It is argued that the Immigration Judge has misinterpreted her words and that the Appellant clarified the point in her witness statement at paragraph 6 when she stated that "I know that it is an armed group but I stated I wasn't involved with that". It is said that this has not been properly understood by the Immigration Judge.
8. Well when considering what the judge actually found when dealing with the issue between paragraphs 16 and 20 of the decision, he noted at paragraph 16 of the SEF interview at question 134 that it was put to the Appellant that JEM was an armed group. The actual question that was asked was "external information states that JEM is an armed group, do you have any comments regarding being a member of an armed group?" The answer she gave was "*when I actually became a member of JEM I was mainly concerned with their main objectives which is to end the oppression of the Darfur people and because I was supporting the rights of women I don't know anything about their arms I am not part of that*". The judge in paragraph 16 referred to a number of background pieces of information indicating that the roots of JEM were well-established in the armed struggle i.e. violence and that the Appellant registered as a member in 2008 when JEM was engaged in what the judge described as "*its most famous operation against the Sudanese government when it attacked the Sudanese capital of Khartoum --- temporarily controlling Omdurman --- the government's use of army helicopters to repel the JEM advance*". The judge found that in various accounts the Appellant had alluded to familiarity with both Khartoum and Omdurman. She said in her first witness statement her family had moved to Omdurman and that she studied in Khartoum and graduated in 2006. The judge found in light of that, that it was incredible that she did not know that it was an armed movement. He said in paragraph 17 that was especially after the violent attack in Khartoum in 2008. He noted in paragraph 6 of her statement that the Appellant had said that she knew that JEM was an armed group, but she was not involved with that part of JEM's activities and that she said that JEM had only carried out an armed struggle in Darfur and since she

was not from Darfur she was not involved in the armed struggle. The judge did not find that to be credible. The judge found the background information clearly demonstrated that JEM's violence was not limited to Darfur but other cities like Khartoum.

9. The judge in paragraph 18 noted that he found was that in answer to question 134 she said she did not know that JEM was an armed group and the answer he quoted was "I don't know anything about their arms I'm not part of it". He found that the operative part of the answer was "I don't know about their arms" and on his reading of those words he was led to find that she had said that she did not know that JEM was an armed group and that "I am not part of it" is an attempt to justify her lack of knowledge that JEM was an armed group.
10. At paragraph 20 he said that when all the evidence was considered in the round he said it was clear to him that the Appellant may have gained information about JEM from external sources and not by being a member or campaigner and if she had been either she would have known from personal experience and knowledge that JEM is rooted in violent struggle. She could not have attended JEM's meetings where there was not a word mentioned about the violent struggle carried out by JEM in major cities such as Khartoum and Omdurman. He said that he found the fact that the Appellant did not know this, is because she is not politically involved when she was in Sudan.
11. What was argued by Ms Bhatti is that the judge has actually put words into the Appellant's mouth and what she was stating within the interview was not that she did not know that JEM was an armed organisation, but simply that she was not part of any armed wing of the organisation and that was what she then clarified in her statement. In that regard, with the greatest respect to Ms Bhatti, it seemed to me she is attempting simply to reargue the point. The judge had considered both what was said by the Appellant in her interview on that issue and in her statement and given the Appellant's answer, when being asked specifically to comment upon being a member of an armed group when she said that she did not know anything about their arms "I am not part of that", was entitled to find that basically the Appellant was seeking to say at that stage that she did not know that it was an armed organisation. It may be that another judge may have come to a different conclusion, but what has to be considered is whether or not that was an irrational finding based upon the evidence before the judge and in my judgment that was a finding open to the judge based upon that answer given in interview. The judge has given clear, adequate and sufficient reasons for the findings and made findings which were open to him on the evidence. There is no error of law in that regard.
12. In respect of the third Ground of Appeal although initially it was said within the Grounds of Appeal that the ground related to paragraph 23 of the determination, Ms Bhatti has this morning clarified that in fact she is talking about paragraph 22 of the decision. At paragraph 22, the First-tier Tribunal Judge stated was that:

*"In her first witness statement the Appellant claims 'that night' Sudanese security forces (the Appellant refers to this as 'NISS') came to her house and forcibly took her to a building a 40 minute ride away (see: Appendix 1 paragraph 40-41). However, in her AIR (q68) she particularises the time of the NISS's arrival at her home. It was '11 o'clock at night approximately'. The Appellant did not mention the time of arrival in her first witness statement. It was prepared at leisure. Again, on its own, nothing much turns on this."*

13. The argument raised in ground 3 is simply that the Appellant did not contradict anything she said in her initial statement and answered at question 68, the question that she was asked. It was said the point of the substantive interview is for the Respondent to ask further questions and obtain clarification. Had the Appellant contradicted what she previously said this would undermine her credibility, but she confirmed that she provided more information as required by the interviewing officer. It was said her credibility should not have been affected by this.
14. What point the judge is simply making is that in the first statement she had said that it was that night but in the interview she had said it was about 11 o'clock at night. She had not mentioned the time of arrival in the first statement but he said again nothing much turned on that. The judge therefore, although noting that what was said was slightly different, has actually not considered that to be a discrepancy or that it was one to which little weight should be attached. He himself says nothing much turned on that answer. There was no error in respect of that paragraph.
15. In respect of Ground 4 said to relate to paragraph 24 of the decision in which the Appellant discussed where it is said she was taken when she was detained in February 2017. In the Grounds of Appeal it was said that the Appellant was asked at question 74 "Where are you taken?" In order to answer that question the Appellant says she speculated and confirmed in her answer to question 75 that she had speculated and said the reason for the speculation was that she was specifically asked where she was taken and she wanted to answer the questions that were put to her. It is argued her credibility should not have been affected.
16. The point being made by the judge in paragraph 24 was that in the first witness statement the Appellant claimed she was hooded from home to the final destination and could not see where she was being taken but when she was asked questions on exactly the same point in the SEF interview at questions 74 to 76 she said that her face was covered but said *"I didn't know exactly where we had been taken but there was a bus stop called Shinti and I know that they have a lot of buildings in this area"* (q74). The judge noted that it was difficult to see how she could have had her face covered and still noticed a bus stop called Shinti. This was put to her in the SEF interview. The judge went on to say that the Appellant was not sure but surmised the journey took 40 minutes and that she knew there were NISS buildings 40 minutes away so she concluded it must have been Shinti. She argued this was speculation. The judge said *"In my view*

*even if this could be deemed to be an educated guess the Appellant is a graduate, there is no reasonable explanation why this could not have been mentioned in the first statement".* He went on in paragraph 25 to say this is not just speculation but speculation with the aim of embellishment intended to bolster her claim and add strength to her claim that she was arrested and detained by NISS.

17. The First-tier Tribunal Judge noted that in her initial witness statement she said she had been hooded from home to the final destination, that the answer she actually gave then in the interview when she mentioned that there was a *"bus stop called Shinti and I know that they have a lot of buildings in this area"* and then only when asked in question 75 of the interview *"how do you know that there is a bus stop called Shinti if your face was covered"* and the reply *"I'm not sure I'm saying this was approximately near this bus stop because it took about 40 minutes and I know there had been some buildings there so this is speculation not knowledge for sure"* and the judge compared that to the explanation then given by the Appellant subsequently in paragraph 10 of her appeal statement.
18. The findings made by the judge in that regard in terms of that being an embellishment rather than simply speculation, when she says that she was aware that there was a bus stop called Shinti, was a finding open to the judge on the evidence before him. Effectively what is sought to be done by Ms Bhatti is effectively seeking to simply reargue that point. The judge was entitled to find that he had concerns regarding how she knew there was a bus stop called Shinti if her face was covered and obviously Ms Bhatti simply saying that that is speculation is obviously an attempt to reargue the point given the answers contained within paragraphs 34 and 35 of the statements. There is no error in the way the judge dealt with that issue and the judge made findings again which were open to him on the evidence. That finding is not in any way irrational.
19. In respect of Grounds 5 and 6 those grounds are linked in that they both relate to the fact that it was said that on the very day of the hearing that the Appellant disclosed for the first time that she had been raped and that she had not mentioned that previously. It is argued in Ground 5 that in respect of paragraphs 33 to 49 of the decision that it does seem that the Appellant's evidence is contradictory in places, but it had to be taken into account that just before starting the hearing she informed her representative that she had been raped for the first time. It was said that the Immigration Judge had indicated that if an adjournment was sought he was not minded to grant that because she had mentioned sexual abuse previously. He had set the case back to the afternoon for a witness statement to be taken. It was said that the judge failed to consider the impact on a vulnerable woman who had for the first time told anyone about the rape and the most traumatic event in her life. It was said that taking that into account the Appellant's answers may have been considered as contradictory and vague and that should have been understood. The grounds go on to say that the judge did not accept the Appellant had been raped because it was at the hearing the first time she

had mentioned it, but the fact she did not mention the rape earlier should not be taken against her. It was argued that the judge has wrongly stated she should have been able to mention the rape given she was not in the UK and not in a Muslim country where she would be punished and that the stigma of rape goes far beyond the punishment that a rape victim may receive in a Muslim country. The stigma is social and cultural and not something the Appellant wanted anyone to know about. It was argued that rape is very different from sexual assault and to band the two together showed a lack of empathy and cultural awareness. It was argued that although the judge said that the Appellant could have informed a female doctor the Appellant did not wish anyone to know about the rape and when the judge has then gone on to say that she could have been able to confide in the members of Waging Peace or her friend Mrs E., that the judge failed to understand the stigma that the Appellant felt.

20. It was confirmed by Ms Bhatti this morning that the grounds are not seeking to say that the judge erred in law in failing to grant an adjournment to the case. She did not actually ask for an adjournment. It was said that the judge had previously indicated he was prepared to stand the case down until 2 o'clock so that a witness statement on the issue could be taken.
21. When looking at the question of the rape the judge noted himself and reminded himself that the issue had to be dealt with in accordance with the Presidential Guidance at paragraph 50 and noted there are many possibilities in paragraph 51 why a victim may not mention she was raped at the earliest opportunity. In the instant appeal the Appellant asserted that there is stigma in society and that in the Muslim society it is the victim who is punished, not the perpetrator. The judge went on to find that she was now in the UK and she travelled between the UK and Sudan on numerous occasions and that the Appellant's reason therefore for not mentioning the rape before the final hearing did not make sense. He said that in the screening interview she mentioned she was threatened with rape and she was sexually molested and her private parts had been touched and he said she had been interviewed by a UK Immigration Officer it was not too much of a leap to actually say that she was raped. The judge went on to consider whether or not she could have actually then told her GP or someone from the Waging Peace organisation or a friend about it.
22. In paragraph 54 the judge went on to find:

*"In my view the alleged rape cannot be seen in isolation. It has to be considered in the round. The Appellant claims the alleged rape took place in detention between February and March 2017. I have scrutinised the evidence presented regarding the alleged detention in some detail. I find, to the lower standard, the Appellant has not demonstrated that she was detained between February and March 2017. Therefore I find her claim that she was raped during the period of detention is equally a false claim. The claim is made at a late stage in order to bolster her claim."*

23. In that regard, when looking at the alleged detention between February and March 2017, the judge gave very clear reasons for rejecting her claim that she was detained, both in terms of it not being credible that she remembered that her photograph was taken but she could not remember whether she was fingerprinted and also the findings the judge made in respect of the Shinti bus stop issue discussed above.
24. The arguments in Ground 5 in saying that the judge had not taken account of the impact on a vulnerable woman, the judge did not accept in this case the Appellant had actually been detained during February and March 2017 and therefore was entitled to find that she had not been raped during such detention. Those were findings open to the judge on the evidence before him. Further it was open to the judge to find in my judgment that she had mentioned previously about the threat of being raped and being sexually assaulted and that the judge was entitled to take into account the fact she had not mentioned the actual rape allegation until the morning of the hearing itself. It has been suggested by Ms Bhatti that obviously this Appellant said in the statement that she did not know previously that she could ask for a female interpreter. It seems that even on the day of the hearing there was actually a male interpreter rather than a female interpreter, from what I have been told from Ms Bhatti who actually attended the First-tier hearing. Grounds 5 and 6 do not reveal any material error of law in the decision and are in my judgment simply again an attempt to relitigate the point before the First-tier Tribunal.
25. In respect of Grounds 7 and 8 it is argued that in relation to the Appellant's sur place activities that the judge failed to take account of the evidence of the Waging Peace representative in respect of the Appellant's risk as a result of her sur place activities.
26. Well having discussed that with Ms Bhatti she concedes that in fact those grounds are not made out and that the judge when dealing with sur place activities had properly dealt with that in the correct way.
27. Ground 9 relates to the judge not making an anonymity direction. A decision by the First-tier Tribunal is not actually published and therefore whether or not the judge actually made an anonymity direction is not going to amount to a material error of law. As I have indicated obviously given the nature of the allegations raised in this case I am making an anonymity direction so that although this judgment is published it will not be with the name of the Appellant or any member of her family contained within it. Therefore that ground also does not disclose a material error of law.
28. On that basis having dealt extensively with each of the grounds, the decision of the First-tier Tribunal Judge does not disclose any material error of law and the decision stands. The Appellant's appeal is dismissed.

### **Notice of Decision**



29. The decision of First-tier Tribunal Judge N M K Lawrence does not reveal any material error of law and is maintained. The Appellant's appeal is dismissed.
30. I do make an anonymity direction in this case given the nature of the issues raised within the asylum appeal. The Appellant is thereby entitled to anonymity. No record or transcript or note of these proceedings is to identify the Appellant or any member of her family either directly or indirectly. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 7<sup>th</sup> July 2019

DJ McGinty

District Judge McGinty sitting as  
Deputy Upper Tribunal Judge