



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-001370  
First-tier Tribunal No:  
HU/00696/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 09 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**Mudasir Ahmed Mahamoud  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms L Brakaj, Iris Law

For the Respondent: Mr C Williams, Senior Home Officer Presenting  
Officer

**Heard at Birmingham Civil Justice Centre on 15 November 2022**

**DECISION AND REASONS**

1. The appellant is a national of Somalia, living in Kenya. On 7 January 2020 he applied for entry clearance as an Adult Dependant Relative on the basis of his family life with his sister who has refugee leave in the UK. The application was refused for reasons set out in a decision dated 16 December 2020.
2. The respondent had noted the appellant's claim that he is paralysed from the waist down after he was attacked in his home and suffered gunshot wounds. The respondent had conceded:
  - a. The application does not fall for refusal on grounds of suitability.

- b. The appellant is unable to perform everyday tasks.
- c. The eligibility financial requirement of paragraphs E-ECDR.3.1. to 3.2 are met.

The only issue identified by the respondent when the application for entry clearance was refused was that on the evidence relied upon, the respondent was satisfied that there is care available to the appellant in the country where he is currently residing (i.e. Kenya).

- 3. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Cope for reasons set out in his decision promulgated on 30<sup>th</sup> December 2020. The appellant claims that in reaching his decision, Judge Cope failed to proceed upon the premise that the only area of dispute is whether the appellant is unable, even with the practical and financial help of the sponsor, to obtain the required level of care required because (a) it is not available and there is no person in that country who can reasonably provide it; or (b) it is not affordable. In reaching his decision the appellant claims Judge Cope:
  - a. Failed to have regard to the fact that the appellant has no permanent right to reside in Kenya.
  - b. Failed to consider the extremely basic and unacceptable conditions the appellant currently resides in.
  - c. Erroneously stated the appellant would not be able to obtain free treatment under the National Health Service because of his immigration status. An individual with leave to remain in the UK would be entitled to NHS treatment and there was no requirement to address the ability to privately fund treatment in the UK. In any event, Judge Cope also failed to consider the ability of the sponsor to meet the costs of any NHS treatment the appellant may require in the future.
  - d. Failed to consider the guidance regarding 'family reunion' that requires a decision maker to consider whether there are exceptional or compassionate circumstances, including the best interests of other children in the family, which warrant a grant of leave to enter or remain outside the Immigration Rules on ECHR Article 8 grounds. These could be that the applicant would be left in a conflict zone or dangerous situation and become destitute on their own; have no other relatives that they could live with or turn to for support in their country; are not leading an independent life and the rest of the family intend to travel to the UK.
  - e. Failed to have regard to the effect of the refusal upon the sponsor's son, who had been separated from his mother when

the family fled Somalia and had been cared for by the appellant.

4. Permission to appeal was refused by First-tier Tribunal Judge Swaney on 2<sup>nd</sup> March 2022 but was granted by Upper Tribunal Judge Frances on 27 June 2022. She said:

“It is arguable the judge erred in his assessment of the appellant’s long term care needs in Kenya or alternatively in the UK and he arguably failed to adequately consider compelling or exceptional circumstances outside the immigration rules.”

## **Decision**

5. For the reasons that follow I reject the appellant’s claim that the decision of Judge Cope is vitiated by a material error of law. At paragraph [11] of his decision, Judge Cope records the issues in the appeal.
6. At paragraph [26] of his decision, Judge Cope summarised the appellant’s claim. At paragraph [29] he said that much of the factual basis of the appellant’s case is not contentious. He recorded at [30] that the respondent accepts that the appellant is a citizen of Somalia; that he has disabilities to the extent that he is paralysed from the waist down and that he has to use a wheelchair; that the disabilities are as a result of him being shot; that as a result he is unable to perform everyday tasks; that the sponsor has been recognised as a refugee under the 1951 Refugee Convention; and that she has been given limited leave to remain in the United Kingdom until August 2023. It is also not disputed that the sponsor’s son, who I refer to as [MO], is living with the sponsor in the United Kingdom having been granted entry clearance to join his mother in July 2020, and having arrived in the UK in October 2020.
7. Judge Cope found there to be family life between the appellant and sponsor notwithstanding the geographical distance between them. He accepted the decision to refuse entry clearance has consequences of such gravity as to engage the operation of Article 8. He also accepted that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The central issue in this appeal was whether the decision to refuse leave to enter is proportionate to the legitimate aim. That is addressed at paragraphs [58] to [118] of the decision. He found the decision of the respondent to refuse the appellant’s application for entry clearance is not unlawful under s.6 of the Human Rights Act 1998 and dismissed the appeal.
8. The obligation on a Judge in a specialist jurisdiction is to set out the reasons that have led to the decision. Such reasons need not be

elaborate, and do not need to address every argument or every factor which weighed in the decision. It is sufficient that the critical reasons to the decision are recorded. I address each of the criticisms made by the appellant below but reading the decision as a whole, I am satisfied Judge Cope considered the evidence before the Tribunal in the round, and reached conclusions that were open to him. It is now well established that an appellate court should resist the temptation to subvert the principle that they should not substitute their own analysis of the evidence for that of the Judge by a narrow textual analysis which enables it to claim that the Judge below misdirected themselves. It is not a counsel of perfection. An appeal to the Upper Tribunal is not an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits.

*The appellant's presence in Kenya*

9. Ms Brakaj submits Judge Cope failed to have regard to the precarious nature of the appellant's position in Kenya. He is a national of Somalia, and as Judge Cope referred to at [26], the appellant was able to escape to Kenya in 2018. He was originally granted a visa by the Kenyan authorities on the basis of being in the country for medical treatment. That was for an initial period of three months, and it is no longer available to him. He has been told that he may have to return to Somalia. The appellant's claim that he has no lawful basis to remain in Kenya was not challenged by the respondent. Ms Brakaj submits Judge Cope proceeds upon the basis that there is some durability in the care available to the appellant in Kenya, when in fact he has no lawful basis to remain in Kenya. Furthermore, neither the appellant nor the sponsor has any lawful basis to be in Kenya and Judge Cope failed to consider what would happen if the appellant could not remain in Kenya or how other arrangements could be made by the sponsor for the care of the appellant in Kenya, when she is not a national of that country. For example, Judge Cope did not consider what might happen if the appellant's neighbours were to move away.
10. Ms Brakaj submits the Judge was required to carry out a careful assessment of the required level of care, the stability of the care and whether the appellant is lawfully in the country in which he is living. There was no dispute as to the credibility of the sponsor's evidence that the appellant had a temporary visa and has no status in Kenya. He had permission to remain in Kenya until December 2019. Furthermore, the care and assistance previously provided by Mr Ali has come to an end, and the arrangements currently in place are of a temporary nature.
11. I reject the claim that Judge Cope failed to have regard to the fact that the appellant has no permanent to reside in Kenya. At [33], Judge Cope records that the principal area of disagreement between the parties is the

degree and extent to which the appellant is able to obtain care, on a short-term or long-term basis, in Kenya. At paragraph [34] Judge Cope said:

“Put simply the Appellant says that any care that he has been able to obtain in Kenya is only limited, and ad hoc and temporary in nature.”

12. At paragraphs [35] to [43], Judge Cope referred to the evidence before the Tribunal. At paragraphs [44] to [46], he said:

“44. I have taken all of this evidence into consideration. Whilst I do accept that there are day-to-day tasks that the Appellant is unable to do for himself, it is clear from what [the sponsor] said that he is able to do a lot of his personal caring himself.

45. Furthermore I consider that on the evidence available to me the Appellant is obtaining an appropriate level of care in Kenya from people such as his neighbours. This has been in existence for some time, for at least 18 months since Mr Ali left, and there is nothing in the evidence before me to suggest that it is likely come to an end or that (even if it did) alternative appropriate care could not be obtained.

46. It may not be the same level as potentially could be available to the Appellant in the United Kingdom whether from Ms Mahamoud or other sources, but that is not the test under section EC-DR of Appendix FM.”

13. I accept, as Mr Williams submits, the ‘Adult dependent route’ required the appellant to establish, under Section E-ECDR.2.5, that he is unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where he is living. The focus is not upon the appellant’s country of nationality, but where the appellant is living, here, Kenya. At paragraph [26] Judge Cope noted the appellant fled to Kenya in 2018 and was granted a visa for three months. Mr Williams drew my attention to the evidence that was before the First-tier Tribunal. In the application made by the appellant he was asked (page 16 of the respondent’s bundle), *“What permission do you have to be in Kenya?”*. He replied that he is not a permanent resident, but went on to say, *“I reside using temporary visas and my previous visa expired in December and I am waiting for the renewal to be stamped”*. The appellant therefore remains in Kenya lawfully and there is an extant application for his stay to be extended. On the evidence before the Tribunal, the appellant’s presence in Kenya is being facilitated by the authorities in Kenya and there is no suggestion that the removal of the appellant from Kenya is anticipated, let alone imminent. I accept, as Mr Williams submits, there was no requirement for the Judge to consider how long the appellant could remain in Kenya, but on the evidence, it was entirely reasonable to assume his presence there could continue for the foreseeable

future.

14. It is clear Judge Cope considered whether the appellant would be able to obtain the required level of care in Kenya. He made clear findings, at [33] to [46] upon the appellant's access to care, having regard to the medical evidence before the Tribunal. It was open to Judge Cope to conclude the appellant's care requirements are being met by the nursing home and with the assistance of neighbours and there was no evidence before the Tribunal that the care was in any sense about to come to an end.

*The cost of treatment in the UK*

15. Ms Brakaj submits the respondent had accepted the eligibility financial requirements set out in Section E-ECDR.3.1 and 3.2. of Appendix FM are met. She refers to paragraph [83] of the decision in which Judge Cope said the major factor that has not been addressed by the appellant and sponsor is the question of his likely future medical treatment, and especially, its cost in the United Kingdom. She submits it was not open to, or unfair, for Judge Cope to hold against the appellant the fact that any future treatment or social care necessary would have to be paid for privately by the sponsor and those costs have simply not been addressed by the appellant and sponsor in the evidence before the Tribunal.
16. On behalf of the respondent, Mr Williams accepts section E-ECDR.3.2 of Appendix FM required the sponsor to provide an undertaking confirming the appellant will have no recourse to public funds, and that the sponsor will be responsible for his maintenance, accommodation and care, for a period of 5 years from the date the appellant enters the UK. An undertaking had been provided that the care required by the appellant would be provided by the sponsor, that was not challenged by the respondent. Mr Williams accepts Judge Cope was wrong to say that the appellant would not be entitled to NHS treatment. However any error in that respect is, Mr Williams submits, immaterial. Mr Williams submits that in his assessment as to whether the refusal of leave to enter is proportionate, Judge Cope did not weigh the appellant's potential reliance upon NHS treatment as a factor that weights against him.
17. Addressing the relevant requirements to be met for entry clearance as an adult dependent relative, Judge Cope said:

“79. I have found above that the Appellant is someone who is more likely than not to require long-term personal care to perform everyday tasks particularly because of his disabilities arising from him having been shot.

80. What however I have not accepted it is that the Appellant would not be able to obtain the required level of care in Kenya, because I am not satisfied that it has been shown that it is not

available there and that there is no person who can reasonably provide it or that it is not affordable.

81. I am also unable to accept that [the sponsor] has provided the necessary information specifically required by paragraph 12A(g) of Appendix FM-SE to the Immigration Rules. This requires details to be provided of the care arrangements in the United Kingdom, the cost of those arrangements, and how that cost will be met by the United Kingdom sponsor.”

18. At paragraphs [82] and [83] Judge Cope accepted that there was some evidence regarding the proposed care arrangements, but he noted that what is missing are the details of the wider costs involved, in particular, the likely future medical treatment and its cost in the United Kingdom. At paragraphs [83] to [86], Judge Cope said:

“83. In particular the major factor that has not been addressed by [the sponsor] and the Appellant is the question of his likely future medical treatment, and especially its cost in the United Kingdom.

84. It seems to me to be inherently implicit in the medical letters and in the evidence of [the sponsor] that there is an ongoing dimension to the Appellant’s disabilities; and I consider it highly likely that there will be a need for treatment or social care because of the nature of those disabilities.

85. Such treatment or social care necessary would have to be paid for privately by [the sponsor] as the financial sponsor as the Appellant would not be able to obtain free treatment under the National Health Service because of his immigration status.

86. Those costs have simply not been addressed by the Appellant and [the sponsor] in the evidence before me; and bearing in mind the nature of the Appellant's physical disabilities, I do not consider that it can be assumed that the costs involved would be minor or of no consequence.”

19. I accept that paragraph 12A(g) of Appendix FM-SE requires that where an adult dependent relative is applying for entry clearance, he/she must in addition provide details of the care arrangements in the UK planned for them by their sponsor, of the cost of these arrangements and of how that cost will be met by the sponsor. Here, as Mr Williams accepts, the respondent had accepted the sponsor had provided an undertaking confirming, *inter alia*, that the sponsor will be responsible for the appellant’s care for a period of 5 years from the date the appellant enters the UK. The costs of the appellant’s care was not therefore in issue and Judge Cope accepted there was some evidence regarding the proposed care arrangements. In paragraphs [83] to [86]

Judge Cope was not concerned about the costs or caring for the appellant, but the wider costs involved, in particular, the likely future medical treatment and its cost in the United Kingdom. Mr Williams accepts Judge Cope was wrong to say that the appellant would not be entitled to NHS treatment. I have considered whether that error is material to the outcome of the appeal.

20. In my judgment the error is not material to the outcome of the appeal. At paragraph [80], Judge Cope explains he does not accept that the appellant would not be able to obtain the required level of care in Kenya. He was not satisfied that the appellant has established that the care he requires is not available in Kenya and that there is no person who can reasonably provide it, or that it is not affordable. Although the focus of paragraphs [83] to [86] of his decision is upon the likely cost of treatment in the UK, the reasons for finding that paragraph E-ECDR.2.5. of Appendix FM is not met is found at paragraphs [87] to [90] of the decision. Judge Cope noted that an assessment of the level of long-term personal care requires an individualised assessment. He referred to the report of Dr Gikenye that was at page 67 of the appellant's bundle. The report is very brief. It confirms the appellant is confined to a wheelchair, his lower limbs are paralysed and that he wears a urethral catheter. The report simply concludes the appellant is a paraplegic and recovery is unlikely. On the evidence before the Tribunal, it was open to Judge Cope to reject the appellant's claim that he would not be able to obtain the required level of care in Kenya. I have considered the evidence before the First-tier Tribunal and it is clear there was an absence of evidence to support the claim that the appellant is unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where he is living, because (a) it is not available and there is no person in Kenya who can reasonably provide it; or (b) it is not affordable. The Judge's consideration of the costs of any treatment in the UK was not therefore material in considering whether the requirements in paragraph E-ECDR.2.5. of Appendix FM is met. On any view, on the evidence that was before the Tribunal it was open to Judge Cope to conclude the requirements of the rules were not met.
21. In any event, if there were any doubt, having concluded the requirements of the Immigration Rules are not met, Judge Cope went on to say at paragraphs [112] and [113]:

"112. On looking at the evidence as a whole I consider that it is more likely than not that the Appellant will be able to continue to obtain personal care in Kenya, just as he has been able to until now, albeit that it is not the type of personal care that he and [the sponsor] would want for him. It has not been shown that for instance the neighbours are no longer willing to assist him.



113. Given the disparity in standards of living between the countries, I am furthermore satisfied that [the sponsor] from the United Kingdom will be able to continue providing financial support to the Appellant in Kenya to enable him to pay to obtain the necessary personal care including on a long-term basis.”

*The circumstances the appellant currently finds himself in*

22. I also reject the claim that Judge Cope failed to consider what are described in the grounds of appeal as the extremely basic and unacceptable conditions the appellant currently resides in. Ms Brakaj submits the overall assessment of the suitability of the arrangements for the care of the appellant is not adequately addressed. She submits there is only a superficial consideration of whether he has access to food and whether his basic needs are met, but no wider consideration of factors such as his inability to meet and interact with others, and how he might be expected to exist in the long term without support.
23. Having found the appellant does meet all the requirements of section EC-DR of Appendix FM and of FM-SE to the Immigration Rules, Judge Cope noted at [102] that the inability to meet the substantive requirements of the Immigration Rules is not necessarily the end of the case for the purposes of Article 8. He noted it is still necessary to give consideration as to whether the decision to refuse the application for entry clearance represents a fair balance between the interests of the appellant and sponsor on the one hand, and the wider public interest on the other hand. He went on to consider whether there are exceptional circumstances which would mean that refusal of entry clearance would breach Article 8 because it would result in unjustifiably harsh consequences for either the appellant or the sponsor.
24. A judge is not required to address every claim made by an individual provided it is clear from the decision that the judge has had regard to all relevant matters. Reading the decision as a whole, it is clear that Judge Cope had in mind throughout the circumstances the appellant finds himself in by reference to the evidence before the Tribunal regarding his disability, his needs, and the arrangements for his care.

*The guidance regarding ‘family reunion’*

25. I reject the claim made by the appellant that Judge Cope failed to consider the guidance regarding ‘family reunion’ that requires a decision maker to consider whether there are exceptional or compassionate circumstances, including the best interests of children in the family, which warrant a grant of leave to enter or remain outside the Immigration Rules on ECHR Article 8 grounds. Ms Brakaj submits Judge Cope failed to have proper regard to the background to the claim and, in particular, the fact that an application could not succeed under the family reunion

provisions despite the circumstances behind the family fleeing Somalia together, their separation, the care provided by the appellant to [MO] and the strength of that relationship.

26. At paragraphs [71] and [72] Judge Cope referred to the relevant public interest considerations set out in s117B of the Immigration, Nationality and Asylum Act 2002 (“the 2002 Act”). He noted, at [74] and [75], that the application has, understandably, been framed by the appellant’s solicitors as an application to join a relative who has been recognised as a refugee in this country under the 1951 Refugee Convention. He noted however that the refugee family reunion provisions of the Immigration Rules do not extend to a relationship such as between adult siblings.
27. At paragraphs [87] to [90] Judge Cope addressed the reliance placed by the appellant on the Home Office policy document; Family Policy: Adult dependent relatives (31st December 2020), that sets out the approach that the respondent will adopt in considering applications for entry clearance as adult dependent relatives. He noted that there must be an individualised assessment, and the letter from Dr Gikenye, does not address the question of what long-term personal care is and will be required by the appellant.
28. Judge Cope considered whether there is anything that amounts to compelling circumstances for entry clearance to be granted notwithstanding the failure to meet the requirements of the Rules. Judge Cope concluded that whilst he had every sympathy for the appellant and the concern of the sponsor, there is nothing in the circumstances of this case or of the situation of the appellant, that amount to compelling circumstances for entry clearance to be granted notwithstanding the failure to meet all of the requirements of the Rules. That was a conclusion that Judge Cope was entitled to reach based upon the findings he made and the evidence before the Tribunal.

*The best interests of the sponsor’s son.*

29. Finally, I reject the claim that Judge Cope failed to have regard to the effect of the refusal upon the sponsor’s son, who had been separated from his mother when the family fled Somalia and had been cared for by the appellant. Ms Brakaj submits Judge Cope failed to carefully consider the best interests of [MO] and more was needed to reach the conclusions reached by the judge.
30. Mr Williams submits that in reaching his decision, Judge Cope had regard to the best interests of [MO] and had proper regard to all relevant matters.
31. Judge Cope referred to the close relationship established between the appellant and [MO] that included a period in Kenya when the appellant

was the principal adult in the child's life. Judge Cope noted however that the child is now living in the UK with his mother, the sponsor, and that the evidence does not show that the appellant's exclusion will have any long-term impact upon the child's social and personal development. Judge Cope concluded the best interests of [MO] are for him to stay here in the United Kingdom with his mother. It is clear in my judgement that in reaching his decision, Judge Cope considered the claim made by the appellant and had regard to the best interests of [MO] as a primary consideration.

### Conclusion

32. The assessment of such a claim is always a highly fact sensitive task. Reading the decision as a whole, I am satisfied Judge Cope carried out a fact-sensitive analysis of the Article 8 claim made by the appellant. The core issue in the appeal was whether the decision to refuse the appellant leave to enter is a disproportionate interference with the right to respect for family life. Judge Cope was required to consider the evidence as a whole and he plainly did so, giving adequate reasons for his decision.
33. Although the Judge erroneously referred to the potential cost of the treatment that might be required by the appellant in the UK and how that might be funded, that was not material to the outcome of the appeal. It is inherent in the evaluative exercise involved in such a fact sensitive decision that there is a range of reasonable conclusions which a Tribunal might reach. The decision of Judge Cope was within the range of reasonable conclusions open to him on the evidence and findings made.
34. The conclusions reached by the judge on the Article 8 claim outside the immigration rules are neither irrational nor unreasonable. The decision was one that was open to Judge Cope on the evidence before him and the findings made.
35. It follows that I dismiss the appeal.

### **Notice of Decision**

36. The appeal is dismissed.

**V. Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**28<sup>th</sup> March 2023**