



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001832

First-tier Tribunal No: PA/01519/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th October 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MWM
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Pipi, Counsel , Direct Access

For the Respondent: Mr N Wayne, Senior Home Office Presenting Officer

Heard at Field House on 18 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. By my decision promulgated on 4 July 2023, I set aside the decision of the First-tier Tribunal (JFTT Froom). I now re-make that decision.
2. The appeal concerns a citizen of Kenya, born in 1968, who came to the UK in 2010 on a visitor visa and overstayed her leave. She claims to face a risk of

persecution in Kenya. The First-tier Tribunal did not accept that she would face a risk on return and the findings on this are preserved. The appellant also claims that her removal from the UK would breach Article 8 ECHR. The First-tier Tribunal made numerous findings of fact relevant to this question, all of which were preserved.

3. The only question before me was whether the appellant's removal would breach Article 8 ECHR. It was not argued that it would breach Article 3 ECHR.

The Preserved Findings of Fact

4. The preserved findings of fact relevant to Article 8 are as follows:
- (a) The appellant has resided in the UK for over eleven years.
 - (b) The appellant speaks English.
 - (c) The appellant entered the UK as a visitor and overstayed intentionally for a long time.
 - (d) The appellant relies on friends in the UK for financial support.
 - (e) The appellant has depression, but not a serious mental health condition, and treatment is available in Kenya for her condition.
 - (f) The appellant is familiar with life in Kenya where she has adult children and aunts, and where she had lived until the age of 41. She also practises a mainstream religion and speaks the language of Kenya. She would have support from family and could stay with her daughter initially on return.
 - (g) She could move to live in Nairobi.
 - (h) She would face hardship on return.
 - (i) She does not have a partner or children in the UK.
 - (j) Removal would interfere with friendships and the life to which she has been accustomed in the UK.
 - (k) She would be unable to return to her matrimonial home.
 - (l) Her age and health may make it difficult to find employment.

New Evidence

5. The appellant (with permission) submitted evidence that was not before the First-tier Tribunal concerning her mental health. The most significant evidence was:
- (a) two reports by Ms Gehrels, a counsellor at Notre Dame Refugee Centre, dated 25 April 2023 and 13 September 2023;
 - (b) a report by Dr Bernstein dated 17 May 2022;

- (c) a statement by Ms Osman, a mental health nurse who knows the appellant through church, and
- (d) objective evidence concerning how mental health patients are treated in Kenya.

The Hearing

- 6. The appellant did not attend the hearing. I asked Mr Pipi if he was seeking an adjournment because of this. His response was that as the appellant's mental health means that she would be unable to give evidence, her attendance was not necessary. He stated he was ready to proceed. Mr Wayne stated that, in any event, he had no questions for the appellant. In the light of the position of both Mr Pipi and Mr Wayne, I decided to not adjourn the hearing.
- 7. Mr Wayne argued that the preserved findings of fact establish that the appellant is enough of an insider in Kenyan society to integrate, notwithstanding her mental health difficulties. He also submitted that the evidence does not establish that the appellant would be unable to obtain, in Kenya, any medication that she currently takes. He observed that the evidence of Ms Gehrels was that the appellant works part-time and he submitted that the combination of family support and working part-time would mean that the appellant would be in a position to afford private medical treatment in Kenya should that be necessary.
- 8. Mr Pipi argued that the appellant has a serious mental health condition and that the objective evidence establishes that in Kenya there is very poor infrastructure for the care of mental health, a lack of mental health professionals, and substandard treatment of mental health patients. He submitted that whether or not the medication the appellant relies on is available in Kenya is not the point, as what matters is that there would not be professionals able to support her, for example, by prescribing changes in the medication or supporting her to access the support that she needs. He highlighted the objective evidence showing the shortage of professionals and the dire state of mental health facilities in the country where there is a high rate of suicide amongst mental health patients. He also stated that the fact that the appellant is able to work in the UK as a carer does not undermine her case to have a serious mental health problem, because the reason she is able to work is that she has the support of mental health and medical services.

The appellant's mental health

- 9. The new evidence submitted by the appellant concerns her mental health and the provision of mental health care in Kenya.
- 10. The report by Dr Bernstein dated May 2022 records that the appellant has a diagnosis of "severe depressive episode with psychotic features". Dr Bernstein reviewed the appellant in an Early Intervention Service in Psychosis following a referral from her GP. It was noted that she is currently taking Sertraline as well as Naproxen and Omeprazole. It is stated in the report that she would benefit from increasing antidepressant medication, starting an antipsychotic and psychological therapy. A care plan was advised which includes the increase of Sertraline, starting Aripiprazole and Promethazine.
- 11. The reports from Ms Gehrels state that the appellant suffers from depression, anxiety and complex PTSD; and also that she shows symptoms of mild psychosis.

Ms Gehrels has undertaken counselling sessions with the appellant and states that her PTSD symptoms are acute and chronic, entailing insomnia, intrusive thoughts, panic attacks, memory loss, difficulties concentrating, thoughts of self-harming and suicide. She says she hears voices telling her she is worthless and should kill herself. It is also noted in her reports that the appellant is working as a part-time carer, although in the second report it is stated:

“There are days when she is too unwell to go to work and she hears voices telling her to harm herself. She remains at very high risk of suicide due to symptoms of psychosis and is unable to function when having these episodes. She has had to cancel appointments with me on several occasions when experiencing symptoms of psychosis and stays in bed for fear of getting lost and confused when going out”.

12. In the light of this new medical evidence, I consider that the appellant’s mental health condition is more serious than that which was understood to be the case by Judge Froom (who did not have the benefit of the evidence that has now been adduced). I find as a fact that the appellant has significant mental health difficulties.

Treatment of people with mental health conditions in Kenya

13. I have had regard to the background material that has been adduced regarding the treatment of people with mental health problems in Kenya. Mr Pipi relied on a range of materials including a document from Human Rights Watch which, amongst other things, discussed people with “psychosocial disabilities” being chained and shackled. Reliance was also placed on a news article discussing various countries, including Kenya, where people with mental health problems are stigmatised; and the respondent’s Country Background Note on Kenya dated May 2020 where in section 7.6, under the subheading Mental Healthcare, it is reported that a review noted that there were only 92 psychiatrists in the country and limited provision of mental health services, which are significantly underfunded. It is stated that the mental health services that exist are:

“relatively inaccessible to the majority who need mental health services due to geographical distance as majority are based in the urban areas with high consultation fees. This forces most of those suffering to seek private treatment which is very costly and those who cannot afford are forced to deal with their conditions themselves without professional assistance ... Mathari Hospital, is the only affordable public facility and the only public hospital in the country offering specialised psychiatric services and training”.

14. In the light of this evidence I accept – and find as a fact – that in Kenyan people with mental health problems face a stigma and that there is a shortage of mental health facilities in the country.

Analysis

15. It is not in dispute that Article 8 is engaged in this case. There are two issues in contention. The first is whether, in the light of the evidence about the appellant’s mental health, there would be very significant obstacles to her integration in Kenya. The second issue is whether removal would be disproportionate, having regard to all of the material circumstances.

Very Significant Obstacles to Integration

16. As explained in *Secretary of State for the Home Department v. Kamara* [2016] EWCA Civ 813:

‘The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life’_

17. In *Parveen v SSHD* [2018] EWCA Civ 932 the Court of Appeal confirmed that for the Rule to be satisfied there is an elevated threshold. It is not enough for there to be mere inconvenience or upheaval, there must be obstacles to reintegration which are very significant.
18. In my view, the appellant’s serious mental health condition means that she is likely to face hardship on return to Kenya. She will need to find mental health support in a country where this is not readily available and mental health problems are stigmatised; and where she is likely to have to pay for medication and treatment privately. However, I am not satisfied that the elevated threshold of very significant obstacles to integration is met. This is because, as is clear from the preserved findings of fact, the appellant has lived in Kenya for nearly all of her life, she practises the mainstream religion, speaks the language and is familiar with the culture. She has adult children (including a daughter with whom she could live temporarily) and wider family who would give her some support.
19. I am satisfied that, with her family’s support, it is likely that she will be able to access the medication that she currently takes and which enables her to function sufficiently to maintain part-time employment, albeit with difficulties. She will be returning to her own country and to an environment with which she is extremely familiar. With her family’s support (and access to her medication) it seems unlikely that she will develop mental health issues that require hospitalisation where the degrading treatment described in the objective evidence tends to occur. I therefore do not accept that she faces very significant obstacles to integration.

Article 8 outside the Rules

20. I have adopted a balance sheet approach, setting out factors weighing in favour of immigration control (the cons) and factors weighing in favour of the appellant’s family and private life (the pros).
21. There is only one “con” in this case, which is that the public interest in ensuring immigration controls are maintained (as identified in section 117B(1) of the 2002 Act), weighs strongly against the appellant. This is because she entered the UK as a visitor and then overstayed her visa and remained in the UK unlawfully for many years.
22. The “pros” are the following:
- (a) The appellant will face hardship in Kenya, primarily because of her mental health difficulties. Although she will not face very significant obstacles *integrating*, she will face significant challenges and hardship, in particular

due to the limited amount of mental healthcare provision and support and the stigma associated with mental health problems.

(b) The appellant has developed a private life in the UK with family and friends which would be disrupted. However, I attach only little weight to her private life given that it was established when she was in the UK unlawfully. This is in accordance with section 117B(4)(a) of the 2002 Act.

23. I am proceeding on the basis that the appellant is financially independent and speaks English such that the considerations in section 117B(2) and (3) do not weigh against her.

24. This is a closely balanced case. On the one hand, there is a strong public interest in the appellant's removal (given her lengthy overstaying). However, on the other hand, the hardships she is likely to face in Kenya also weigh heavily in the article 8 balance. Having regard to all of the circumstances, I find that the overall balance is in favour of the respondent. The appellant has not established that there would be very significant obstacles to integration which would be necessary for her to meet the conditions of the applicable Immigration Rules and the factors weighing in her favour in the article 8 proportionality assessment (including in particular the hardship she is likely to face in Kenyan) are insufficient to outweigh the strong public interest in the maintenance of effective immigration controls.

Notice of Decision

25. The appeal is dismissed.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9.10.2023