



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

**Case No: UI-2022-001891**  
**First-tier Tribunal No:**  
**PA/00739/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 10 October 2023**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**MK**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms X Vengochea, Counsel, instructed by SJK Solicitors  
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**Heard at Field House on 20 September 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is 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. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Komorowski (“the Judge”), promulgated on 16 March 2022. By that decision, the Judge dismissed the Appellant’s appeal against the Respondent’s refusal of his protection and human rights claims. The protection claim was essentially based on the assertion that the Appellant, a citizen of Namibia, had been forced into marrying his late uncle’s widow. Country information indicated that this was a traditional practice in Namibia.

## **The Judge’s decision**

2. The Judge dealt with the evidence under the subheadings of: photographs; complaint to the traditional authority; the aunt’s sexual abuse; time in hospital; the widow’s age; a police letter; and an injury report. The Judge found there to be problems in the Appellant’s own evidence, together with certain difficulties within the documentary evidence adduced in support. The account was rejected. The rejection of the account led the Judge to cease his assessment of the protection claim at that stage. He did not go on to consider the issues of state protection and/or internal relocation. Article 8 was dealt with in brief terms and that claim was also rejected.

## **The grounds of appeal and grant of permission**

3. The grounds of appeal took issue with almost every aspect of the Judge’s assessment of credibility. In essence, they asserted that too much weight had been placed on certain aspects of the Appellant’s evidence and that the Judge’s assessment of the documentary evidence was flawed. In particular, it was said that the documentary evidence was not in fact viewed in the round, but was mainly rejected as a result of other aspects of the Appellant’s own evidence having been rejected.

4. In a detailed grant of permission, Upper Tribunal Judge Jackson concluded that it was arguable that the Judge had placed too much weight on relatively minor credibility points and had appeared to disregard certain documentary evidence as false or dishonest and then used that basis to disregard other documentary evidence. In addition, Judge Jackson concluded that it was arguable the Judge had failed to have regard to background evidence going to the question of plausibility.
5. Subsequent to the grant of permission a brief rule 24 response was provided by the Respondent opposing the Appellant's appeal.

### **The hearing**

6. At the hearing I heard helpful and concise submissions from Ms Vengochea and Mr Diwnycz. I am very grateful to them for these. They are a matter of record and I do not intend to set them out here, suffice it to say that Ms Vengochea relied on the grounds of appeal and expanded thereon. Mr Diwnycz did not make any concessions, but acknowledged that there were perhaps one or two points tending in the Appellant's favour as regards the documentary evidence and consideration thereof.
7. At the end of the hearing I reserved my decision.

### **Conclusions**

8. I remind myself of the need to show appropriate restraint before interfering with a decision of the First-tier Tribunal. In this case the Judge had considered a good deal of evidence from a variety of sources. I acknowledge his statement that he was considering the evidence in the round. In my judgment, certain aspects of the Appellant's challenge, whilst not without any merit, do not identify errors of law on the Judge's part. Questions of the weight attributable to evidence is a matter for the fact-finding tribunal, subject to, for example, questions of irrationality (which do not arise in this case). The Judge was, at least in principle, entitled to find that there were certain inconsistencies in the Appellant's

own evidence, particularly relating to the complaint made to the traditional authority and the question of how long the Appellant had apparently spent in hospital.

9. However, after careful consideration I conclude that there are material errors of law in the Judge's decision. In essence, these relate to his consideration of the documentary evidence, in particular the police letter, the injury report, and the photographs. It is the case that the reliability of documentary evidence, if provided (there is no requirement for corroborative evidence), is for an appellant to prove and that this involves considering the evidence in the round. Whilst it can be a difficult exercise to undertake that holistic assessment without appearing to view matters in isolation, there is sometimes a danger of rejecting documentary evidence primarily on the basis that other aspects of an appellant's own evidence has been rejected already. I conclude that this is what has occurred in the present case.

10. The police letter was on the face of it supportive of the Appellant's account, albeit there were certain difficulties with what the Appellant himself had said. At paragraph 47 of his decision, the Judge concluded as follows:

"As I have explained earlier, serious concerns arise from the contents of the appellant's affidavit, such that no reliance ought to be placed upon it. The affidavit being closely connected to the letter in terms of date, format, and substance, and also having been produced by the appellant, no reliance can be placed upon that letter either".

11. Even applying the appropriate restraint referred to earlier, this reasoning falls foul of the risk of potentially supportive documentary evidence being rejected on the basis of a previous rejection of the Appellant's own evidence. Similarly, in respect of the injury report (which on the face of it was again supportive of the Appellant's overall account), the Judge noted certain intrinsic concerns, but accepted that these were

not of particular significance. In respect of extrinsic concerns, at paragraph 52 the Judge found that:

“(ii) The concerns over whether one document has been honestly put forward by the appellant (the affidavit) because concerns over any other documents produced by him, including this report.

It is not so closely connected to the affidavit as the police letter....If the affidavit is a fabrication, it could well be that the report has also been forged or procured as part of the same effort to support a false account with documents.”

12. Again, in my judgment this amounts to something of a ‘cart before the horse’ approach to potentially relevant evidence. It discloses, in my judgment, a linear approach in practice, rather than a holistic the evidence.
13. I appreciate that at paragraph 53, the Judge stated that even if the report was both authentic and reliable as to its contents, it did not prove motive. That may have been the case, but the evidence could not possibly have gone that far. The point is that the report was supportive as part of the interaction of various sources of evidence and that that entire picture included the Appellant’s evidence on motive. Problems with the Appellant’s evidence could have been materially affected by the documentary evidence.
14. Finally, in respect of the photographs (and indeed the same applies to the injury report), the issue of motive could of course not have been addressed by that documentary evidence. That evidence was supportive of the claimed attack and injury; it could never have said anything about motive.
15. When taken together, I am satisfied that the Judge’s erroneous approach to the documentary evidence I have identified might have had a material impact on his overall credibility assessment. Whilst it is the case that other aspects of that assessment cannot in themselves be

impugned, the errors are material and that assessment cannot stand. I conclude that the Judge's decision must be set aside.

### **Disposal**

16. By way of disposal, this is a case where credibility is of crucial importance and there needs to be a wholesale reassessment of the evidence. Remittal to the First-tier Tribunal is the appropriate course of action.

### **Notice of Decision**

17. The decision of the First-tier Tribunal involved the making of an error of law and that decision is set aside.
18. This appeal is remitted to the First-tier Tribunal (Edinburgh hearing centre) for a complete rehearing with no preserved findings and before a judge other than First-tier Tribunal Judge Komorowski.

**H Norton-Taylor**  
**Judge of the Upper Tribunal**  
**Immigration and Asylum Chamber**  
**Dated: 2 October 2023**