



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

Case Nos: UI-2022-002028  
(PA/53001/2021)

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 14 June 2023**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**TR (Namibia)**  
**(anonymity order made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Adejumobi, Immigration Advisory Service  
For the Respondent: Mr A. McVeety, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 7 June 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**

1. The Appellant is a national of Namibia born in 1988. She appeals with permission against the decision of the First-tier Tribunal (Judge N Malik) to dismiss her appeal on protection and human rights grounds.
2. The basis of the Appellant's claim for protection is that she faces a real risk of being forced into marriage should she return to Namibia. Alternatively, if she refuses such marriage, she will be at risk of "honour" based violence at the hands of her family, in particular her paternal grand- father. It is the Appellant's case that the idea of such marriage was first mentioned to her in early 2015 at her father's funeral. She managed to avoid being forced into marrying her older cousin for a while. Initially, she was at boarding school and her mother and grandmother managed to "buy her time". As she grew older and completed her education the risk increased. As soon as she was able, she left Namibia for the United Kingdom and claimed asylum.
3. The issues in the protection appeal before the First-tier Tribunal were risk, sufficiency of protection, and internal flight.
4. Judge Malik rejected the Appellant's claim as not credible. She did not believe that the Appellant was facing forced marriage in Namibia, and gave several reasons for that conclusion.
5. The Appellant now appeals on several interconnected grounds. I deal with each in turn.

### **Unclear Findings**

6. At paragraph 22 (a) of her decision Judge Malik says this:
  - (a) I do not find the appellant's account reasonably likely that her GF had been seeking to force her into a marriage with her older cousin from 2015 onwards - because if that was his intention, despite the interventions of the appellant's mother and grandmother and the appellant being hospitalised, her GF did not force the marriage on her.
7. It is submitted that this reasoning is unclear. The Appellant had explained that her mother and grandmother managed to buy her time, for instance by pointing out that she needed to finish her education; the proposed marriage was also put on hold because the Appellant was hospitalised after being bitten by a spider. In this paragraph the Judge appears to have rejected that account without giving reasons for doing so.
8. As Mr McVeety pointed out in his submissions, the import of this paragraph is perfectly clear. It was the Appellant's case that she was, between 2015 and 2022 in Namibia, at a real risk of gender based violence at the hands of her grandfather. This was against the background of expert evidence provided by Mr Birchall that Namibia is a deeply patriarchal society where women's rights are routinely violated by male family members. The Judge was, in those circumstances, reasonably entitled to ask how it was that this real risk of harm was subverted simply at the request of the Appellant's mother and grandmother.

The point being made at 22(a) was that the narrative did not sit well with the background evidence, or the claimed risk.

### ***Mibanga***

9. In his submissions, although it should be said not in the grounds, Mr Adejumobi developed his critique of the First-tier Tribunal's approach to the general background evidence about the position of women in Namibia. There was in this case a lengthy expert report which, as I have said, set out the challenges faced by women in Namibia. Mr Adejumobi submitted that the Judge appears to have failed to have regard to that evidence until the end of her analysis, where she in essence concludes that having already found the Appellant not to be credible there is not much that Mr Birchall could add to the case. This, he says, is a classic *Mibanga* error of putting the cart before the horse.
10. I do not accept that this is what the Tribunal has done. Nowhere does Judge Malik take any issue with Mr Birchall's evidence about the facts on the ground. On the contrary, she proceeds on the basis that his portrayal of Namibian society is an accurate one, and in fact, as the preceding paragraphs set out, that is in part why this account is found not to be credible.

### **Failure to Consider Material Evidence**

11. This ground concerns the Judge's finding, at paragraph 22(b) of her decision, that there was some contradiction in the Appellant's claim that Namibia is a small country where she would be easily found by her family, and her claim that she had, from 2017 onwards, managed to conduct an illicit relationship with a boyfriend in another village.
12. In his submissions Mr Adejumobi pointed to the Appellant's witness statement where she explains that she only actually saw her boyfriend in person once a month, and that other than that it was a relationship conducted via social media and telephone.
13. I accept that the evidence given in the witness statement is not expressly considered in the decision. I am however not satisfied that this is in any way material. The point made by Judge Malik holds good regardless of that evidence. If the Appellant was, as claimed, betrothed to be married to her elder cousin, in a situation of coercive control by her grandfather, it is unlikely that she would have managed, over a long period of time, to have conducted a pre-marital relationship with another man. If such a relationship was successfully conducted, this rather undermines her claim to be at risk of discovery and harm by her family wherever she should choose to live in Namibia.
14. A separate ground under this heading concerns the Judge's rejection of the Appellant's claim to have approached the traditional tribal authority for help. Judge Malik finds this to lack credibility given the evidence that her grandfather was a respected elder with influence and reach within that very community. The Appellant protests that Judge Malik here failed to have regard to her evidence that she made this approach at the suggestion of the police. Again, I accept that this evidence has not been expressly reflected in the reasoning, but again that this is an omission that I am unable to find is material. The expert evidence was that women face systematic discrimination in Namibia and that tribal or

traditional practice entails them having little say in domestic arrangements that affect them. It was also that the police are unlikely to be willing to intervene to offer women assistance in such circumstances. The Appellant claims that notwithstanding that background, her reaction upon being told of the proposed marriage was that she went first to the police (whom she knew would not help) and then to the very authority that exists to uphold and enforce the harm that she sought to avoid. Judge Malik was rationally entitled to take a sceptical view of that evidence.

15. The same can be said of the Appellant's testimony that her grandfather did nothing in response to her approach to the traditional authority, another matter from which Judge Malik drew adverse inference. In her grounds the Appellant rhetorically asks: "if he knew that I would get nowhere with my complaints, why should he bother taking reprisal action against me?" The answer, says the Respondent, is that his apparent nonchalance about it is indicative that the Appellant is not, in fact, at risk. I agree. This part of the account was fundamentally inconsistent with her claim that her grandfather was determined to force her into marriage, or to do harm to her if she refused.

### **Fairness**

16. As I allude to above, the Appellant claims that she approached the traditional authority to ask them to help her. A letter was produced in evidence purportedly from that authority. At her paragraph 22(e) Judge Malik says this:

(e) The letter the appellant seeks to rely on from the Mureti Royal House traditional authority of 20/03/15 makes no mention of her GF and speaks of "her family" forcing her to marry. I also find the letter self-serving as it is written for a third person; it is unclear why the appellant would have requested such a letter from them, given at that point, there is no suggestion she would need it for a later protection claim. Again, this causes me to find the appellant has fabricated her account of her GF forcing her to marry her cousin.

17. The Appellant makes the fair point that there is on the facts little distinction between the Appellant's 'family' and the head of that family, her grandfather. Moreover she submits that the Judge has here taken a point against her case which was not made by the Respondent in the refusal letter. Although the letter from the traditional authority was before the decision maker at the time that the claim was considered, its veracity is not challenged by the Home Office. Nor is it the case that she requested such a letter: her witness statement explains that after she approached them they simply issued this as a record of their interaction with her.
18. Mr Adejumobi is quite right to say that it will in general be unfair for a judge to take against a point against a party in a reserved judgment without first giving the party the opportunity to respond to that forensic challenge. That is not however what has happened here. The Respondent rejected the entire account as not credible. The Appellant was therefore well aware going into her appeal that all of her evidence - that letter included - was challenged. The analysis conducted by Judge Malik is no more than the rounded *Tanveer Ahmed* assessment that she was bound to undertake. Even if it could be said that she

should have expressly asked the Appellant about how she came to be in possession of that letter, I am unable to see that the explanation now offered could have made a difference to the outcome of the appeal.

### **Legal Grounds for Refusal**

19. As I note above, the Respondent disbelieved this account, but also gave two other, connected, reasons for refusing protection: that there was a sufficiency of protection provided by the Namibian state, and that if the Appellant wished to avoid her family it remained open to her to relocate away from them within Namibia. Judge Malik broadly agreed.
20. The grounds take issue with the Judge's conclusions on these matters. I am not satisfied that any of those grounds have merit, not least because they are not relevant. The central finding in the decision of the First-tier Tribunal was that the account advanced does not establish that the Appellant is at a real risk of harm at the hands of her family. That being the case, the Tribunal's failure to conduct a detailed assessment of whether the police would help, or whether it would be 'unduly harsh' to expect the Appellant to move elsewhere in Namibia is irrelevant.

### **Notice of Decision**

21. The decision of the First-tier Tribunal is upheld. The appeal is dismissed.
22. There is an order for anonymity.

Upper Tribunal Judge Bruce  
7<sup>th</sup> June 2023