IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-001336
UI-2023-001338
First-tier Tribunal Nos:
PA/52987/2021
PA/53650/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 July 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between
AOO
TOO
(ANONYMITY DIRECTION MADE)

Appellants

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellants: Ms Norman, Counsel instructed by Polpitiya & Co
For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 23 June 2023

Order Regarding Anonymity

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

DECISION AND REASONS

1. The appellants are citizens of Nigeria who entered the UK on a visit visas in December 2019. The second appellant was born in 2016 and is the daughter of the first appellant.

2. On 3 August 2020 the appellants applied for asylum. The first appellant claimed that the second appellant's father (who I will refer to as "F") intended to have FGM carried out on the second appellant. The respondent refused the application. Although she accepted that there was a reasonable risk that F would want FGM

performed on the second appellant, she did not accept that there was an objectively well-founded risk of FGM taking place because there is sufficient state protection and, in any event, it would be reasonable for the appellants to internally relocate and thereby avoid the risk.

3. The appellants appealed to the First-tier Tribunal where their appeal came before a panel comprising of Judge of the First-tier Tribunal Welsh and Judge of the First-tier Tribunal Beach ("the panel"). In a decision dated 30 March 2023 the panel dismissed the appeal. The appellants are now appealing against this decision.

The High Court Judgments

4. In July 2020 F commenced proceedings in the High Court seeking the return of the second appellant to Nigeria. He alleged that the first appellant took the second appellant to the UK without his knowledge in order to remove him from her life. There have been two judgements by Knowles J in the High Court.

5. In the first judgment, handed down on 4 July 2022 (which I will refer to as "the first judgment"), Knowles J considered, inter alia, a range of allegations about F made by the first appellant. Some of these were accepted, but others were not. In paragraphs 153-154 Knowles J stated:

> 153. I have set out the findings I have made on the mother's allegations in a schedule to this judgment. Those findings fall short of the wide ranging case advanced by the mother, but where I have indicated controlling behaviour by the father, I am satisfied that this was abusive within the meaning given in PD12J. In my view, the father's behaviour went beyond the directive, stubborn and selfish behaviour identified in Re L (Relocation) (Second Appeal) (see above). Further, I do not excuse the father's behaviour because, as Miss Munroe QC submitted and I accept, it transcended traditional Yoruba gender roles and had the effect on the mother and, indirectly, P which I have described.
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> 154. In her closing submissions, Miss Munroe QC questioned why the mother would have left a comfortable life in Nigeria to become an asylum seeker here, living precariously on a meagre income and unable to work. My analysis of the marital relationship may indicate why she took that step. In my view, the mother was a deeply unhappy woman whose marriage fell far short of her expectations. The father was a selfish adulterer, used to getting his own way and requiring obedience from her as was expected in his family and Yoruban culture. Feeling isolated and unsupported, I infer that the mother sought an escape route, especially when money became tight and, in her eyes, the father failed as a good provider. Highly regrettably, the mother acted dishonestly in achieving her goal of a new life in the UK where she could be closer to her immediate family. That analysis does not account for some evidence such as the effusive, loving text the mother sent the father in the summer of 2019 but, in the absence of a truthful account by the mother about why she took the course she did, it is an analysis which plausibly answers Miss Munroe QC's rhetorical question.

6. The Schedule of Findings in the first judgment includes the following: (a) the first appellant removed the second appellant from Nigeria without informing F; (b) it was not established on the balance of probabilities that F threatened to have FGM performed on the second appellant; and (c) F engaged in controlling behaviour towards the first appellant and on one occasion hit her.

7. The instances of controlling behaviour described in the Schedule include F requiring the first appellant to seek his permission to go out and to visit her family; on one occasion F messing up the kitchen to teach the first appellant a

lesson; and on one occasion requiring the first appellant to kneel and apologise to him in front of his family.

8. The second judgment by Knowles J (which I will refer to as "the second judgment") was handed down on February 2023. Knowles J undertook a welfare assessment of the second appellant and concluded that she should be returned to Nigeria on the basis of stringent conditions, which are set out in an order. Amongst other things, Knowles J found that the benefit to P of returning to Nigeria includes the opportunity to have regular contact with F and her paternal family. It is stated in paragraph 81 that:

> 81. Given my findings of domestic abuse, I have given anxious consideration to paragraphs 35-37 of PD12J. I observe that the findings I made would not preclude this father having contact in this jurisdiction, subject to him engaging with a programme orientated on providing him with insights into his behaviour and promoting behavioural change. This is because I could be satisfied that P's emotional and physical safety as well as that of her mother would be secured before, during and after contact and that the mother would not be subjected to further domestic abuse. In that regard, this is also the reality of the mother's position before me in that she accepted that, subject to a third-party handover and despite the father not yet having engaged with any behavioural change programme, P could see her father unsupervised in this jurisdiction without this being a threat either to P's welfare or to her own.

9. Knowles J considered whether F might use financial maintenance as a way of controlling the first appellant. In paragraph 76 she stated:

> Finally, I note the mother's fear that the father might use money as a means to control her in the future. Though I made no finding that the father financially controlled the mother in the past, his behaviour was characterised by a need to exert control over the mother in a number of respects. In circumstances where neither are living together and where he does not accept the court's findings, I cannot exclude the possibility that the father would use ongoing maintenance as a means of controlling the mother.

10. Knowles J also recognised in paragraph 68 that F's position that the appellants should live in Lagos could be motivated by a desire to exert control over the first appellant. She stated:

> The father too loves P and his contact with her has shown him to be an enthusiastic and emotionally attuned parent. I accept the view of the children's Guardian that his position in this litigation is driven by a genuine concern for P's welfare. However, the father has caused harm to P and to her mother as set out in my findings yet does not presently accept responsibility for that behaviour. His attitude is clear and uncompromising, characterising some of my findings as total fabrications. Though the father accepts he needs to undertake some work to address his behaviour, it is plain that he regards this as being limited in scope and of very limited duration. I was troubled by his attitude to the financial support of the mother were she to live elsewhere than Lagos. Though Mr Hames KC sought to persuade me otherwise, the father's instinctive response struck me as an attempt to control the mother as he had done in the past. In closing submissions, Mr Hames KC rowed back from the father's position that P and her mother should live in Lagos and offered a variety of significant concessions to soften the impact on the mother and P of a return to Nigeria. Nevertheless, I am very clear that the father's attitude to the findings of domestic abuse underlined the need for the most careful scrutiny of any return to Nigeria.

Decision of the First-tier Tribunal

11. In the First-tier Tribunal proceedings, the appellants claimed to face two distinct risks of serious harm in Nigeria. The first was that the second appellant would be forced to undergo FGM by F and her paternal family. The second was that F would continue his coercive and controlling behaviour over the first appellant.

12. The panel rejected the FGM claim. This aspect of the decision has not been challenged and therefore is not considered further.

13. With respect to F's coercive and controlling behaviour, the panel found that the appellant suffered the abuse described in the Schedule of Findings in the first judgment but did not accept that the abuse and/or controlling behaviour went beyond this.

14. Amongst other things, the panel did not accept that F's insistence that the appellants live in Lagos (rather than eight or nine hours travel away) - and that he would only pay half the rent of a future property - constituted controlling behaviour. These findings are set out in paragraphs 88(2) and (3), where the panel stated:

> (2)We note the concern expressed by Knowles J in the second judgment [68] but we consider it far more likely that F's desire for the child to live in Lagos was because it would make it easier for him to see the child…rather than an attempt to exert control over the first appellant.
>
> (3)F's initial insistence that he would only pay half the rent for her future property and any unpleasant matters he raised in the High Court proceedings are, in our view, matters that are likely to occur when separated couples are in dispute about financial and custodial matters. This is particularly so in this case given the evidence of the first appellant is that F has limited financial means. We emphasise that we do not condone his behaviour; rather, we do not consider it to be controlling.

15. The panel found that although controlling behaviour can amount to persecution or serious harm it did not do so in this case. The panel summarised their reasons for reaching this conclusion in paragraph 98, where they found that the threshold of persecution/serious harm was not reached because:

> (1) the assault was minor in nature and was a single incident;
> (2) the control exerted was limited in its extent and degree and was not accompanied by threats

16. The panel then found that, even if F's past behaviour did amount to persecution or serious harm, the appellants would not face a risk of such harm on return because:

    a. The first appellant and F will be divorced and no longer living together.

    b. F has accepted that the second appellant should live with the first appellant.

    c. The return order will be converted into terms of settlement which will ensure that the first appellant does not have direct contact with F and there is not a real risk of non-compliance by F with the order.

    d. Even if F seeks to use ongoing maintenance as a means of controlling the first appellant (which is acknowledged as a possibility in the second

judgment) the first appellant will not be financially dependent on F. The panel explained this finding in paragraph 118, where they stated:

> Lastly, we note the concerns of Knowles J at [76] that "in circumstances where neither are living together and where he does not accept the court's findings, I cannot exclude the possibility that the father would use ongoing maintenance as a means of controlling the mother". It was this concern, as we understand it, that led to the stringent terms of the return order in respect of financial payments and ongoing maintenance. We find that, even if F sought to use maintenance payments in such a way, it is not capable, in the circumstances of this case, of amounting to an act of persecution because the first appellant will not be financially dependent on F. She is an intelligent and highly educated woman. In Nigeria, she worked. Indeed, she was the sole breadwinner for much of the marriage. Further, she has an independent source of income, namely from the rental properties owned by her and her siblings

e. Effective protection is available in Nigeria through the family courts.

17. The panel then considered article 8 ECHR. It concluded that the public interest in effective immigration controls outweighs the weight attached to the private life of the appellants in the UK.

Grounds of appeal

18. The grounds are set out under five headings.

19. The first heading is "findings of the family court". The arguments made under this heading can be distilled into two distinct submissions.

    a. First, the panel minimised the High Court's findings of fact and it was irrational for the panel to characterise the High Court's findings as being that F's controlling behaviour was "limited in its extent and degree" given that the High Court found that F's controlling behaviour was continuous and persisted over a significant period of time.

    b. Second, the panel's finding in paragraph 88(2) that it is likely that F's desire for the second appellant to live in Lagos was because it would make it easier for him to see her rather than an attempt to exert control over the first appellant was irrational and inconsistent with the High Court. It is submitted in the grounds that a rational basis was not provided for departing from the findings of the High Court.

20. The second heading in the grounds is "whether the controlling behaviour amounted to persecution/serious harm". Under this heading two distinct submissions are made.

    a. First, it is submitted that the panel failed to appreciate the extent of F's controlling behaviour and therefore the finding that the controlling behaviour was not sufficient to constitute persecution is not sustainable.

    b. Second, it is submitted that the panel failed to consider whether the controlling behaviour amounted to persecution/serious harm in respect of the second appellant.

21. The third heading in the grounds is “assessment of risk”. Under this heading, it is submitted that:

    a. The panel failed to appreciate that the High Court order was made on the basis that the appellants would not return to Lagos and it is recognised in the High Court that they should not be required to return to Lagos.

    b. The panel erred by failing to take into account the High Court’s finding about F failing to recognise his controlling behaviour.

    c. The panel’s finding that the first appellant could maintain herself without F’s financial support is inconsistent with the High Court which found that she needs to be provided maintenance, and the fact that she receives means tested public funding which demonstrates her low income.

22. The fourth heading is “sufficiency of protection”. Under this heading, it is submitted that in finding that there would be sufficiency of protection without the return order, the panel erred by failing to have regard to evidence as to the length of time it will take for court protection to be obtained in Nigeria; and by not factoring into the assessment that controlling behaviour is not recognised as domestic abuse in Nigeria.

23. The fifth heading in the grounds is “article 8”. Under this heading, it is submitted that the conclusion in respect of article 8 is tainted by the errors of minimising the findings by the High Court and departing from those findings.

Analysis

24. I will address each of the five “headings” set out in the grounds in turn. I have not set out the submissions of Ms Norman and Ms Ahmed separately but I have considered them carefully and they are incorporated into my analysis below.

Findings of the family court

25. Ms Norman emphasised that controlling behaviour can be – and often is – a very serious form of abuse, even where there is no violence or threats. She referred to *H-N And Others* (Children) (Domestic Abuse: Finding of Fact Hearings) (Rev 2) [2021] EWCA Civ 448, where this is made clear. The seriousness of controlling behaviour was not disputed by Ms Ahmed, and Ms Norman was plainly correct to highlight that it is well-established that coercive control often is just as (if not more) serious than violent abuse. However, I did not understand Ms Norman to be arguing – and if she was making this argument I do not accept it - that the panel failed to appreciate how serious controlling behaviour is. This is because the panel stated in paragraph 95 that controlling behaviour can amount to persecution, which clearly is a high threshold: see, for example, paragraph 12 of *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31. As the panel recognised, whether, in a particular case, controlling behaviour amounts to persecution or serious harm for the purposes of a protection claim will be fact specific, and will depend on the nature and extent of the abuse suffered.

26. In the first judgment Knowles J considered the wide ranging allegations made by the first appellant. Whilst she accepted that some of the coercive control described by the first appellant occurred, she did not accept other parts of the claim. For example, she did not accept that the first appellant was forbidden from seeing her family when pregnant or from using her phone when breastfeeding (paragraph 145), that she was forced to dress the second

appellant in male clothing (paragraph 146), or that F told the first appellant that she was a bad mother in front of the second appellant (paragraph 152). In the first judgment, after a very detailed consideration of the evidence, the Schedule of Facts includes only a limited number of carefully worded factual findings about the coercive control. These are summarised in paragraphs 7 of the second judgment, as follows:

> 7. A major feature of the fact-finding hearing was whether the parents' relationship was characterised by domestic abuse as defined by PD12J of the Family Procedure Rules 2010. My findings established a degree of controlling behaviour on the part of the father though these fell short of the wide-ranging case advanced by the mother. For the avoidance of doubt, I was satisfied that the father's controlling behaviour was abusive as defined in PD12J. My findings in that respect were as follows:
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> > a) Prior to P's birth and when she was pregnant, the father required the mother to either ask his permission to go out or to tell him where she was going;
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> > b) Following P's birth, the mother had to seek the father's permission to visit her family;
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> > c) On one occasion, following an urgent visit to her grandmother when she had not obtained the father's prior permission, the mother returned home to find the kitchen extremely messy. The father told her he had done this to teach her to do her duty as a wife;
> >
> > d) In January 2017, the mother and father rowed in their car on the way home from the paternal grandparents' home. Reaching between the seats whilst driving, the father punched the mother's left thigh. In so doing, he was careless of P who was being breastfed. She was jolted but was otherwise unhurt. The mother was hurt and upset by the father's behaviour. This was the only occasion on which the father hit the mother; and
> >
> > e) Following the above incident, the couple returned to the paternal grandparents' home where the paternal grandparents made plain to the mother that she should be obedient to her husband. The following morning, the mother was required to kneel and apologise to the father in front of the paternal family. This episode demonstrated controlling behaviour by the father which the paternal grandparents supported or acquiesced in.

27. Considering both the Schedule of Findings and the two High Court judgment as a whole, I am satisfied that it was not inaccurate for the panel to describe the High Court’s findings as being that the control exerted over the first appellant by F was limited in its extent and degree. I therefore do not accept the appellants’ argument that the panel mischaracterised – or downplayed – the High Court’s findings about the extent of the coercive control.

28. In paragraph 82(2) the panel departed from a finding of Knowles J. In paragraph 68 of the second judgment Knowles J stated that F’s instinctive response to providing support to the appellants if they were to live elsewhere than Lagos “struck me as an attempt to control the mother as he had done in the past”. In paragraph 88(2) the panel took a different view, stating that, notwithstanding what Knowles J had said, their view was that it is more likely that the reason F

wanted the second appellant in Lagos is that it would be easier for him to see her rather than this being an attempt to exert control.

29. Ms Norman argued that the panel erred by not giving reasons for reaching a different conclusion to the High Court in paragraph 88(2). I agree. The panel observed that the High Court's findings were made following 13 days of evidence and argument and that the High Court undertook an exceptionally detailed analysis of the evidence and made findings supported by cogent reasoning. The panel also stated that it placed significant weight on the High Court's findings. Moreover, with the exception of the finding in paragraph 82(2), the panel effectively adopted the High Court's findings wholesale. In these circumstances, it was not enough for the panel to simply state, as they did in paragraph 88(2), that they reached a different conclusion to the High Court about F's motivation for wanting the appellants to live in Lagos. They needed to give reasons to explain why a different conclusion was reached. The lack of reasons means that the finding in paragraph 88(2) about F's motivation for wanting the appellants to live in Lagos is unsustainable. However, for the reasons explained below in paragraphs 30 – 33, the error is immaterial.

Whether the controlling behaviour amounted to persecution/serious harm

30. Given my findings that the First-tier Tribunal did not mischaracterise or minimise the findings of the High Court about the extent and nature of F's coercive control over the first appellant in Nigeria, the appellants cannot succeed in their argument that the panel's finding on persecution/serious harm is undermined by having minimised and mischaracterised the High Court's findings. The error in paragraph 82(2) (as found above in paragraph 29) does not assist the appellants in this argument because that finding is immaterial to an assessment of the harm suffered by the appellants in Nigeria. This is because it concerns a finding in respect of F's behaviour during the High Court proceedings (ie after the appellants left Nigeria). It is therefore not a finding of fact concerning the nature and extent of persecution/serious harm suffered by the appellants in Nigeria.

31. In any event, the panel found that, even if they were wrong about past behaviour constituting persecution/serious harm, the appellants would not be at risk on return. This conclusion was supported by cogent reason and was plainly open to the panel given that (1) there is no real risk of F taking the second appellant away from the first appellant; (2) the second appellant will be living separately to and independently of F; (3) the first appellant will be able to avoid contact with F; (4) there is not a real risk of F physically harming the first appellant; (5) any coercive control through financial arrangements can, if necessary, be avoided by the first appellant ceasing to rely on funds from F; (6) Nigeria has a functional family court system that (subject to delays) could assist in making arrangements protective of the first appellant; and (7) if F were to threaten to harm the appellants they could turn to the authorities for protection. Therefore, the panel was plainly entitled to find that even if persecution/serious harm occurred in the past, there was not a real risk of it occurring in the future.

32. The submission in the grounds that the panel erred by failing to consider whether F's controlling behaviour towards the first appellant amounted to persecution/serious harm in respect of the second appellant is no more than a bare assertion as neither the grounds nor Ms Norman identified any findings in the High Court judgments that could support such a conclusion. In any event, the contention that, on return to Nigeria, the second appellant would face a risk

of serious harm because of F's controlling behaviour towards the first appellant is meritless because, for the reasons set out in paragraph 31, it was plainly open to the panel to find that there was not a real risk of the first appellant experiencing controlling behaviour reaching a threshold of serious harm/persecution on return.

Assessment of risk

33. It is understandable that the first appellant does not want to live in Lagos, given her desire to distance herself from, and avoid contact with, F. However, it does not follow from this - or from the High Court recognising that the appellants will not be returning to Lagos - that there is a real risk of the appellants being harmed in Lagos. For the reasons set out above in paragraph 31, it was plainly open to the panel to find that the appellants do not face a risk of serious harm/persecution from F wherever they live in Nigeria. Moreover, the panel were entitled to observe that the first appellant could make the decision to be financially independent of F by ceasing to rely on his financial support. Taking such a step would no doubt put her in a difficult financial position but that does not mean that the appellants would be at risk of serious harm/persecution.

Sufficiency of protection

34. The appellants' arguments in respect of sufficiency of protection concern alleged deficiencies in the Nigerian family court system. However, for the reasons explained above (in particular in paragraph 31), whilst the quality of the appellants' lives (including in particular their financial circumstances) are likely to be adversely impacted if the Nigerian family court system has the deficiencies described in the grounds, it does not follow from this that the appellants face a risk of persecution.

Article 8

35. The grounds concerning article 8 state that the panel's article 8 assessment was tainted by minimising, and departing from, the High Court's findings of fact. In the light of my findings on these issues in paragraphs 25-32, the appellants cannot succeed under this ground.

Conclusion

36. In a comprehensive and thorough decision, the panel found that (a) the coercive control suffered by the first appellant did not reach the threshold of persecution/serious harm; and (b) even if it did, the appellants do not face a risk of persecution/serious harm on return. These findings were supported by cogent reasons and were plainly open to the panel. Although I found that there is an error in the panel's decision (as set out at paragraph 29 above), the error is immaterial because it does not undermine either the panel's conclusion about whether the harm suffered in Nigeria reached the threshold of persecution/serious harm or their conclusion in respect of whether the appellants face a risk of persecution/serious harm on return.

Notice of decision

The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30.6.2023