

CH
Heard at Field House
On 1 August 2002

APPEAL NO HX45636-2001
WN (Risk –Kikuyu – Rift Valley-
Documentary Evidence) Kenya
CG [2002] UKIAT 04138

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....03/09/2002.....

Before:

**MR P R MOULDEN (CHAIRMAN)
MRS E MORTON
MRS S HUSSAIN JP**

Between

WINFRED WANJA NGANGA

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The Appellant is a citizen of Kenya who has been given leave to appeal the determination of an Adjudicator (Mr P M Kilty), dismissing her appeal against the Respondent's decision to give directions for her removal from the United Kingdom and to refuse asylum.
2. Miss M Riley-Poku, of Counsel, instructed by Arona Sarwar & Co., Solicitors, appears for the Appellant. Ms C Cooper, a Home Office Presenting Officer, represents the Respondent.
3. The Appellant entered the United Kingdom on 12 March 2000. She applied for asylum three days later. The notice containing the decision against which she appeals is dated 20 December 2000. The Adjudicator heard the appeal on 20 December 2001 and leave to appeal was granted on 11 June 2002.
4. We have the Appellant's bundle containing 82 pages and the Home Office Kenya Country Assessment for April 2002.

5. Part way through her submissions, Miss Riley-Poku referred to a recent witness statement by the Appellant. We queried this and it became apparent that copies had not been submitted to the Tribunal or to the Respondent. We looked at the witness statement, signed by the Appellant, and dated 27 July 2001. There was no evidence to indicate that it contained information which would have prevented it from being prepared and submitted much earlier, and certainly within the fourteen day deadline before the hearing required by standard practice directions. Ms Cooper objected to the submission of the witness statement and we declined to accept it. It was out of time and Ms Riley-Poku was not able to give any reason for its late submission.
6. The Appellant claimed to fear persecution from the authorities in Kenya for two reasons. Firstly, her husband, a former policeman, was accused of stealing guns and other weapons to be used in tribal clashes. He had disappeared and the police were interested in her as a means of finding him. Secondly, she and her husband were at risk because they were Kikuyu. It is now argued that these matters are interrelated and that the risk arising from the husband's activities is exacerbated because he and his wife are Kikuyu. However, to start with, the Appellant did not make clear that her claim was in any way based on her being a Kikuyu.
7. The Adjudicator did not make a blanket adverse credibility finding. He accepted, in paragraph 16 of the determination, that, "the Appellant may have been the subject of attention from the police and that as a result she may have been ill-treated". However, in the light of the country reports and the particular facts, he found that she would not be at risk if she were to return. She had not established a well-founded fear of persecution for a Convention reason or that her human rights would be infringed, in particular under Article 3.
8. Leave to appeal was granted in respect of all the grounds of appeal. It is submitted that the Adjudicator had not understood the Appellant's claim. She was at risk from the police because of her husband's activities and her ethnicity. The Appellant has also submitted three documents which are referred to as warrants but which we prefer to call by the title shown on them, that is "Bond to Attend Court", which we will abbreviate to "bond". These were not before the Adjudicator. The three are on the same form, entitled "Republic of Kenya, the Kenya Police, Bond to Attend Court". In the form, the named individual binds herself to attend a Court at a particular time in the matter of a particular charge on pain of forfeiting a specified sum. Each is dated, signed by a police officer, and witnessed by another police officer. They have not been signed by the Appellant. They are dated 1 January 2001, 28 June 2001 and 14 January 2002. The Appellant arrived in the United Kingdom on 12 March 2000.

9. Miss Riley-Poku submitted that the determination was flawed because the Adjudicator said, "I find it difficult to understand the Appellant's story". Obviously, there was a failure of understanding. She submitted that the basis of the claim was clear. In reply to our question, Miss Riley-Poku confirmed that the Appellant only claimed to have been detained by the police on one occasion, as set out in the answers to questions 27 and 30 of her interview. This refers to one period of detention for three weeks in February 2001.
10. Miss Riley-Poku emphasised that the Adjudicator had not made an adverse credibility finding. Paragraphs 5.5 to 5.57 of the country assessment showed that Kikuyu were persecuted by the government, dominated by the ruling Kalenjin tribe. This contradicted the Adjudicator's conclusion that there was no objective evidence of persecution. We were also referred to the State Department report at page 79.
11. Miss Riley-Poku submits that the Appellant's statement that she last saw her husband when he was arrested was not inconsistent with her statement that she last saw him when he disappeared. Too precise an interpretation should not be placed on the exact wording. She was not able to explain why, as the bonds are designed for signature by the individual concerned, they were used as they could not be signed by the Appellant at a time when she was out of the country. She also conceded that there was no indication of who the bonds were given to after they had been issued. We were asked to allow the appeal.
12. Ms Cooper referred us to the country assessment and submitted that the clashes between Kalenjin and Kikuyu in the Rift Valley took place in 1992 to 1993 and 1997. There was no proof that the government were involved against the Kikuyu. We were referred to a number of passages in the country assessment and, in particular, those at paragraphs 5.14, 5.46, 5.49, 5.52, 5.53 and 5.54. There was no evidence of the current persecution of Kikuyu because of their ethnicity. She submitted that the Adjudicator was correct to find that the Kikuyu were not persecuted by the Kalenjin, the government, or anyone else. The fact that the Appellant was a policeman supported the conclusion that Kikuyu were not persecuted. The authorities were not likely to allow a Kikuyu to become a policeman if they were persecuting Kikuyu.
13. In relation to the bonds, Miss Cooper submitted that they should have been signed by the Appellant, but all were dated at a time when she was in the United Kingdom. She had never said that the police suspected her of being involved with "clashes" or "clashes/tribal" which were the reasons given on the bonds. The bonds had been completed with incorrect spelling and the dates were in the wrong places. Applying Tanveer Ahmed principles, we should give little or no weight to these documents. It was submitted that the Adjudicator was correct in his conclusion that the Appellant had not been persecuted because

- of her ethnicity. There was no evidence that the authorities would still be interested in her or her husband.
14. We find that the Appellant is not now at risk of persecution for a Convention reason or infringement of her human rights. It is accepted that she was arrested, detained and ill-treated for one period only, in February 2001, for three weeks. She does not claim that the police were interested in her because of her own activities. It is clear that the police were interested in her, detained, questioned and ill-treated her to try and obtain information which would enable them to find her husband. It is not likely that she was of any greater interest to the authorities because she is Kikuyu. The country information does not support the contention that the police are likely to persecute Kikuyu purely because they are Kikuyu, absent any other reason.
 15. The police have never accused the Appellant of stealing guns or involvement with her husband's criminal activities. Their only interest in her was to try and find him.
 16. The country information does not support the Appellant's belated claims that she was harassed because she was Kikuyu.
 17. Applying Tanveer Ahmed principles and assessing the bonds in the light of the evidence as a whole, we place no weight on them as evidence. The Appellant has not provided any country information to show what forms are likely to be used and on what occasion. In the absence of this information, the documents do not appear to suit the purpose. They appear to be designed for an individual to sign when he or she is bailed to appear at court. The vaguely specified charges of "clashes" or "clashes/tribal" do not relate to the circumstances in which the Appellant claimed and the Adjudicator found that she had been detained. The bonds refer to an existing charge, yet the Appellant never claimed to have been charged with anything.
 18. The country information shows that in the past there have been serious clashes between the Kalenjin and Kikuyu in the Rift Valley. The evidence does not show that these continue to any serious extent or that individual Kikuyu are likely to suffer ill-treatment because of their tribal origin.
 19. We agree with the Adjudicator's conclusion and dismiss the appeal.

P R Moulden
Vice President