

**Date: 20090319**

**Docket: IMM-3614-08**

**Citation: 2009 FC 291**

**Ottawa, Ontario, March 19, 2009**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**TERESIA NJERI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] The Refugee Protection Division (RPD) rejected the Applicant's refugee claim on the grounds of credibility. This is the judicial review of that decision and an instance where the Court finds, having regard to the deference owed, that the decision is not within a range of acceptable outcomes and must be quashed.

## II. BACKGROUND

[2] The Applicant, a citizen of Kenya, is a widow with two children. Her deceased husband's brother (Kiriimi) joined the Mungiki group in 2004, a religious group that advocates a return to traditional religious and cultural practices.

[3] Presumably, in keeping with those traditions, Kiriimi, the brother-in-law, insisted that the Applicant become his wife and that her sons were to join Mungiki. She refused.

[4] Kiriimi is then alleged to have returned to the Applicant's home in Nairobi to threaten, rape, and beat her. The incidents were reported to medical professions and to the local Chief of the village where the Applicant had lived with her husband and where Kiriimi resided. The Chief reprimanded Kiriimi.

[5] In February 2005, the Applicant's younger son was attacked at a bus stop and lost an eye. The Applicant believes that the attack was made by the Mungiki as punishment for her refusal. The son stated that he heard a voice like Kiriimi's during the attack.

[6] The Applicant then moved twice within Nairobi but Kiriimi found her each time. In May 2006, Kiriimi and three other men accosted her and threatened to blind her if she did not accede to his demands.

[7] Shortly thereafter, the Applicant came to Canada for a conference. Seven days later, she claimed refugee status.

[8] The RPD, while acknowledging the Gender Guidelines, did not follow them. The RPD identified credibility as the determinative factor, namely that the Applicant had not established her husband's death or the assaults on her or her son. It then went on to cite the following errors and/or discrepancies which led to the negative credibility finding:

- a. the PIF said her husband died in the village, whereas the Certificate of Death said Nairobi and lacked a space after a comma;
- b. the inconsistencies between the dates she was assaulted by Kirimi and the date of and reasons for her moves, and the failure to provide medical evidence of those assaults;
- c. the presence of a "Sister Ann" on documentary evidence sent from Kenya, one via Dubai and one from Kenya direct. The Board noted that the Applicant could not explain the FedEx routing via Dubai nor had she listed a sister on her PIF;
- d. the medical report of her son's beating contained a spelling mistake ("lose of the vision" vs. "loss of the vision");
- e. the son's report of Kirimi's presence at the beating came up in oral testimony but was not disclosed in the PIF;
- f. the village Chief's letter regarding the reprimand to Kirimi contained a spelling mistake ("out lowed" vs. "outlawed") and that the letter and another from a priest came via Dubai;

- g. two letters from Canadian social workers regarding counselling were discounted because the RPD concluded that the Applicant had not been abused.

[9] Finally, the RPD found that a one-week delay in seeking refugee status signified an absence of subjective fear.

### III. ANALYSIS

[10] While neither party addressed the standard of review, the Court will. Although the Applicant has raised the issue of failure to consider evidence, which is a legal error (see *Uluk v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 122), the crux of this case is credibility.

[11] On credibility findings, I have noted the reluctance that this Court has, and should have, to overturn such findings except in the clearest case of error (*Revolorio v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1404). The deference owed acknowledges both the contextual circumstances and legislative intent, as well as the unique position that a trier of fact has to assess testimonial evidence. That deference is influenced by the basis upon which credibility is found. The standard is reasonableness subject to a significant measure of deference to the Immigration and Refugee Board.

[12] However, deference is not a blank cheque. There must be reasoned reasons leading to a justifiable finding. With considerable reluctance, I have concluded that this decision does not meet this standard of review.

[13] Courts have been warned about microscopic review; boards have been warned about microscopic examination of an applicant's story. In this case, the RPD engaged in that type of microscopic review without setting matters in context.

[14] In its conclusions based on spelling errors, it is not unreasonable to find that such errors give rise to concerns. Often false documents are shown to be false because of such errors. However, in this case, the errors are so small, do not recast the story, and occur in circumstances where spelling errors are a likely occurrence. No regard was had to these factors which could explain the errors.

[15] The errors concerning the place of death are pause for consideration. However, the explanation of bureaucratic incompetence in Kenya was never addressed. There was no other evidence to suggest that the story of the death of the Applicant's husband was untrue.

[16] The inconsistencies of dates and the Applicant's general inability to recall small details are addressed in the Gender Guidelines. The Guidelines were, at best, given lip service. The proceeding was not conducted in accordance with the Guidelines nor was there any evidence that the RPD conducted itself as being aware of the principles and cautions in dealing with evidence of sexual assault.

[17] The RPD ignored evidence that the son heard Kirimi's voice during this beating. The RPD did not address the Applicant's explanation of her reason for not including that part of the story in her PIF.

[18] The RPD rejected the documents which came from Dubai without addressing counsel's explanation that Dubai is a trans-shipment point for African traffic moving over FedEx. It found the Applicant's inability to explain the reasons for packages from Dubai as negatively affecting credibility, yet did not address the explanation advanced.

[19] One of the reasons for rejecting this evidence is that it came from Sister Ann. Since the Applicant had not listed a female sibling in her PIF, the RPD concluded that there was some untruthfulness present. The RPD ignored the Applicant's explanation that "Sister Ann" referred to a nun, not a sibling.

[20] The RPD also found that there was no medical evidence confirming the Applicant's injuries from an assault. The record included a letter from a Canadian doctor confirming injuries to her mouth and legs consistent with the events the Applicant described. The Respondent asks the Court to read in that there was no medical evidence "from Kenya". Given the context of the RPD's comment and against a background of multiple errors, it is not for the Court to rescue the RPD from its errors.

[21] Lastly, the RPD found the one-week delay in claiming refugee status indicative of a lack of subjective fear. The RPD did not address the explanation that the Applicant was in a shelter and that the social worker who was to accompany her to make the claim was unavailable for a week.

[22] There are other aspects of the decision which also raise concern but the above is more than sufficient to compel this Court to intervene and set aside the decision.

#### IV. CONCLUSION

[23] This judicial review will be granted, the RPD's decision quashed, and the matter remitted to a differently constituted panel for a new determination.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is granted, the Refugee Protection Division's decision is quashed, and the matter is to be remitted to a differently constituted panel for a new determination.

“Michael L. Phelan”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3614-08

**STYLE OF CAUSE:** TERESIA NJERI

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 4, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Phelan J.

**DATED:** March 19, 2009

**APPEARANCES:**

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