

Federal Court



Cour fédérale

ate: 20120411

Docket: IMM-1941-11

Citation: 2012 FC 409

Toronto, Ontario, April 11, 2012

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

TETTY MUGUGU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns the Applicant's claim for protection advanced on the basis of prospective subjective and objective fear of gender and political persecution and risk in Zimbabwe. In determining the claim there is no question the evidence produced by the Applicant, including her testimony, was accepted as thoroughly credible. A brief description of the basis for the Applicant's claim is found in paragraph 3 of the Decision under review:

In July 2008, her husband, the headman of their village, became seriously ill. During his illness, his relatives, fearing that the claimant would inherit his position because she and her husband had had no male children, became hostile towards the claimant. The hostility increased, with the relatives singing violent songs outside the claimant's home in the middle of the night alluding to the demise of the claimant. Fearing for her life, the claimant reported the matter to

the police who directed her to the chief of their village. When she reported the matter to the Chief, he refused to help her because of their political differences — the Chief being a member or supporter of Zimbabwe African National Union - Patriotic Front (ZANU-PF) and the claimant, a member of Movement for Democratic Change (MDC).

[2] A key piece of independent evidence placed before the RPD in support of the Applicant's claim is found in a letter written by the Applicant's lawyer in Zimbabwe, the contents of which are as follows:

In Zimbabwe traditional customary law order of succession has been fundamentally modified by the effects of the Legal Age of Majority Act of 1980 which conferred majority status on African women who has [sic] had hither to been perpetual minors under customary law. In *Hihowa v Mangwende* SC84/87, the Supreme Court of Zimbabwe ruled that "Customary law excluded women from its order of succession because they were and would always be minors in law. Now that women became [sic] majors at the age of 18 years, they have the same rights of succession as men. Consequently women are now in Zimbabwe entitled to succeed to their husbands as regards headmanship.

After Mrs. Tetty Magugu's husband passed away in 2008, she was entitled to succeed her husband as headman as they had no son. However, her late husband's relatives vehemently refused to accept her as head woman. They unleashed a rain of terror on her as they forcibly took all her property and banished her from the village threatening to make her life difficult, accusing her of being an opposing party member.

She reported the matter to the relevant authorities including the chief and to the police but to no avail. Instead they accused her of being an opposition party activist. Magugu was caught between a rock and a hard place, hence she was forced to flee the country because of fear, her life was in grievous danger. The danger still subsists and is real.

[Emphasis added]

(Applicant's Application Record, Tab 9)

[3] In the course of the hearing before the RPD, Counsel for the Applicant made detailed submissions on the gender and political persecution and risk issues raised in the letter (Tribunal Record, p. 106 – 108). Nevertheless, in the decision rendered by the RPD rejecting the Applicant's claim, no mention is made of the letter, or Counsel for the Applicant's argument, and, indeed, there is no recognition of the gender-based nature of the Applicant's claim. In my opinion, these three facts constitute reviewable error.

ORDER

THIS COURT ORDERS that:

For the reasons provided, the Decision under review is set aside and the matter is referred back to a differently constituted panel for redetermination on the following direction:

The redetermination be conducted on the evidence as it exists in the present Tribunal Record; on the basis that no credibility issue arises from the evidence; and on argument limited to whether the Applicant's claim is accepted as one based on gender and political persecution and risk.

“Douglas R. Campbell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1941-11

STYLE OF CAUSE: TETTY MUGUGU
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: APRIL 10, 2012

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: APRIL 11, 2012

APPEARANCES:

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Daniel Engle FOR THE RESPONDENT

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