Neutral Citation Number: [2008] EWCA Civ 119

Case No: C5/2007/1482

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
HX/21892/2003

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/02/2008

Before :

LORD JUSTICE SEDLEY
LORD JUSTICE RIX
and
LADY JUSTICE ARDEN

- -

Between :

FK (KENYA)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

Mr P Jorro (instructed by the Refugee Legal Centre) for the **Appellant**
Mr A Payne (instructed by **T**he Treasury Solicitors) for the **Respondent**

Hearing date: Thursday 6 December 2007

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Judgment

Lord Justice Sedley :

1. The appellant is a Kenyan woman. Now aged 42, she arrived in this country in October 2002 with her older daughter Consolata, now aged 19 and with a child of her own, and claimed asylum for them both on the ground that they had a well-founded fear, were they to be returned, of being compelled to undergo female genital mutilation (FGM). This fear has been held to be well-founded in the appellant's home area, but it has also been held that by relocating to another part of Kenya she and her daughter can be safe. It is against the latter finding that she now appeals by permission of Sir Henry Brooke, who considered this "an anxious case" and was also influenced by the fact that the decision under appeal has been given general guidance status.

2. The appellant's account, accepted as factual, is this. She is of Kikuyu ethnicity and a member of a family of practising Christians. Her home was in the Kiambu area, in the south of the country and to the north-east of Nairobi. She was married in 1987. Her husband was a local printer; she herself sewed and sold clothes. They had three children. Then in 2002 her husband's father was recruited and initiated by the Mungiki, a militant, violent and largely clandestine traditionalist sect which the Kenyan authorities have tried but failed to suppress, and which promotes the practice of FGM on both women and girls. The father-in-law in turn tried to recruit his son, the appellant's husband, together with his family. When he refused the Mungiki came to the house and beat him up badly. At the end of July 2002, following a further menacing approach by the father-in-law which the husband again rebuffed, he was attacked at home and killed by the Mungiki. The appellant, with the children, sought help from her father-in-law, but he already knew about his son's death and sent them home. The police, to whom the killing was reported, were unable (or possibly unwilling) to bring the offenders to justice. The Mungiki then returned to the appellant's home and, when she again refused to join them, wrecked her late husband's car and the house and killed her poultry. When finally she agreed to join them, they demanded that both she and her elder daughter undergo FGM. She agreed but managed to temporise. Then the local Mungiki told her father-in-law that their elder wanted to marry his granddaughter Consolata. The father-in-law accepted a dowry for her. When the appellant refused to let this happen, the Mungiki forcibly took Consolata away for circumcision and marriage. The child managed to escape and ran home. From there the appellant, with her three children and her sister-in-law, managed to flee while the Mungiki burned her house down. At her sister-in-law's urging she left the two younger children with her and fled with Consolata, the two of them in their nightclothes, to Nairobi. There they were given temporary shelter by a Catholic priest in his church, but the Mungiki came asking for a mother and daughter, probably because they had been noticed in their nightclothes. And so, after a temporary change of shelter, they fled again, first by bus to Zimbabwe and then by air to the United Kingdom.

3. The appellant's claim for asylum and human rights protection was turned down by the Home Office and again on appeal to an adjudicator who, however, accepted pretty well the entirety of her account of the events which had driven her here. In September 2003 permission to appeal to the IAT was granted. By the time the substantive appeal came on in October 2006 (the delay is unaccounted for), the IAT had become the AIT

and the appeal had become a reconsideration. It is not useful now to pick over the specified grounds, because by common consent the issues determined by the AIT and now before us are the decisive ones. On the first stage, in January 2006, the AIT found a material error of law in the adjudicator's determination. But on a full reconsideration the AIT (SIJ King, SIJ Southern and Mrs J. Holt) dismissed the appeal on the ground that there were other parts of Kenya to which it was reasonable and not unduly harsh to expect the appellant, with her daughter and – by necessary implication – her grandson, to relocate, and where they could be safe.

4. For the appellant Peter Jorro submits that the AIT has erred in two broad respects: first, in devaluing the expert evidence which suggested strongly that there was nowhere in Kenya where the appellant and her daughter would now be safe from the Mungiki, and secondly in failing to give proper attention to the particular position of the appellant as against Kikuyu women generally. These two arguments dovetail: the first aims to show that the Mungiki are, or may be, a more widespread menace than the AIT was ready to accept; the second that the appellant and her daughter are not just Kikuyu women who have left home but have reneged both on Mungiki membership and ritual and – even more seriously – on a marriage with a Mungiki elder for which the daughter's grandfather had accepted a dowry.

5. The decision of the AIT, before whom the appellant was represented by an advocate from the Refugee Legal Centre and the respondent by a presenting officer, is extremely thorough. Helpfully, it concludes with the following summary, intended to give guidance to other tribunals:

> (1) It is important to determine whether the claimant belongs to an ethnic group, amongst which group FGM is practiced. If so she may be a member of a particular social group for the purposes of the 1951 Geneva Convention.
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> (2) All uncircumcised women in Kenya, whether Kikuyu or not, are not as such at real risk of FGM. The statistical evidence shows that at least fifty per cent, if not more, of women in Kenya have not been the subject of FGM. The objective evidence shows an increasing pressure to abstain from such a practice both by many of the churches and communities, by the government and non-governmental agencies, by the promotion of an alternative "initiation rite".
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> (3) The decision to undergo FGM is one made by the individual if adult or by the parents if a child. Such a decision will no doubt be reflective of the cultural norms which exist within the particular community in which the woman or child resides. It is, however, possible for a woman not wishing to embrace the initiation of FGM for herself or her family to live in a community which does not subscribe to such practises. Those who practice FGM are not reasonably likely (particularly in urban areas) to seek to inflict it upon women from non-practising ethnic groups (or sub-groups).

(4) A woman will only be at real risk if she comes from an ethnic group (or sub- group) where FGM is practised and the evidence shows that she is reasonably likely to be required by her parents or by others, in a position of power and influence over her to undergo FGM.

(5) There is no evidence that the Mungiki seek to impose FGM upon women or communities other than those who have been initiated into their particular sect. The objective evidence speaks of the Mungiki as being involved in organised crime, transportation in urban areas and in public order offences. There is no evidence that they are engaged in any significant activity such as imposing FGM on groups or communities who do not support their political/cultural aims.

(6) The authorities are motivated to act against the Mungiki and in the past a significant number of arrests including the arrest of one of the leaders. The Mungiki seeks to reflect the traditional or cultural base of the Kikuyu. The sect generally is not found in areas occupied by those tribes whose ethnic groups (or sub-groups) which are not Kikuyu or which do not contain an element of the Kikuyu.

(7) Internal relocation will be available in Kenya to a woman who is at real risk of FGM in her home area if the evidence shows, (i) she is not reasonably likely to encounter anyone in the place of relocation who would be in a position of power and influence over her and who would use that power and influence to require her to undergo FGM; and (ii) she can reasonably be expected to live in that place, having regard to the general circumstance prevailing in it and the personal circumstances of the appellant (paragraph 3390 of HC 395 (as amended). In the case of a woman from a rural area in Kenya, internal relocation to some other region or urban centre will not be available unless her circumstances are such that she will be able to survive economically (see Januzi v Secretary of State for the Home Office and Others [2006] UKHL 5).

(8) In considering internal relocation it is important to bear in mind the religious and/or cultural context particularly whether there is any family or sub-clan support available to the woman in the area proposed. It may be considered that it would be easier for a member of the Kikuyu tribe to relocate to an area with a similar tribal culture and support, rather than relocating into a different area. That having been said, however, much will depend upon the individual circumstances of the woman and of the availability of a support structure within the proposed area of return.

(9) Credibility will usually have an important part to play in determining whether a woman is at risk. In considering the

> issue of relocation it is important that the family and extended family situation and context be examined particularly as to cultural context, education, economic lifestyle and work experience.

6. We have not been invited to decide whether the global appraisal of risk in sub-paragraphs (2) to (4) fully reflects the accepted evidence, because the appellant and her daughter manifestly come within the real-risk category described at (4). But it is submitted that one element of the background evidence, that provided by Dr Knighton, has been improperly undervalued to the appellant's detriment. As to (5), 'initiated' plainly includes not only women whose initiation - by FGM - has taken place but those whose male family members have been recruited by the sect and who are consequently expected to undergo FGM. No issue is taken with the account at (7) of the relocation test. The appeal turns upon the word "if" in the second line: it is Mr Jorro's case that the evidence fails disturbingly to show that this appellant and her daughter are reasonably likely to be safe from the Mungiki anywhere in Kenya.

7. We deal first, then, with Dr Knighton's evidence. It is first necessary, however, to say that the leading allegation in the grounds of appeal in relation to the expert evidence has rightly featured very little in oral argument. This related to the evidence of Dr Hanny Lightfoot-Klein, an American expert on FGM in Africa and among Africans. Although she has done some research in Kenya, the bulk of her work has been done in Sudan. She is able to give a disturbing account of the social pressures and the physiological and psychological trauma associated with the practice. She points out that women in traditional Kenyan society have the status of property and belong, once married, to their husband's family. She also gives evidence that, once a female has reached puberty, the pressure to undergo FGM does not abate with age. None of this is controverted in the AIT's findings or challenged before us. It is, we accept, unfortunate and undesirable that the AIT has not referred anywhere in its extensive determination to Dr Lightfoot-Klein's evidence; but Mr Jorro accepts that in those respects which are material to the present case it does no more than corroborate elements of Dr Knighton's evidence which have not been doubted.

8. Dr Knighton's credentials are impressive. He is a fellow of the Royal Anthropological Institute and gives this account of his qualifications:

> I have lived and worked in Uganda and Kenya for nine years altogether, starting in January 1984. My work there for the Anglican church involved hundreds of interviews to test the probity, financial and personal inter alia, of many categories of people. Most of my time in the UK since 1983 has been spent in the study and research of East Africa, including my doctoral thesis in the University of Durham (Knighton 1990). I lived south of Mount Kenya and worked among the Agĩkũyũ (Kikuyu) from 1991-8. I have returned there in connection with my academic work about annually on average, and did so in December-January 2005, when I interviewed Agĩkũyũ women about their initiation which involved Female Genital Cutting (FGC) in every case. I have taken an interest in Mũingiki (Mungiki in the English press) for more than four years. I am part of the African

> Studies circle in University of Oxford http://www.africanstudies.ox.ac.uk/academics/ and Ph.D Programme Leader in the Oxford Centre for Mission Studies. I have ongoing contact with many Kenyans and Agĩkũyũ, some among my research students. I am thus in a relatively advantageous position to understand the context from which FK, 'the Appellant', comes.

9. Dr Knighton gave oral evidence in support of his report. The tribunal record part of it as being that

> "church communities could provide some temporary assistance and did so, particularly for children running away from FGM. Normally, however, the churches were unable to provide a sustainable family life but rather would put the children into a boarding school. Without some community base and support the appellant would find it difficult to support herself and her family."

10. It was also Dr Knighton's evidence that within the Kikuyu, who constituted about a fifth of Kenya's population, "potential adherence to the [Mungiki] sect is very substantial". He could give no figures, but thought there might be half a million or more[1]. His conclusion, to which the tribunal make specific reference, was that:

> "he did not consider that the appellant could relocate anywhere in safety from the Mungiki. Even if she could be safe from them it is his contention that given her cultural links with the Kikuyu, she would find it difficult to exist elsewhere in Kenya outside her particular clan or sub-clan."

11. The tribunal accepted, on now well-established authority, that Kenyan women from ethnic groups where FGM is practised constitute a particular social group within the meaning of the refugee convention. They then analysed in detail the possibilities of relocation under three successive heads:

- A Kikuyu woman remaining within Kikuyu culture and territories
- The risk from Mungiki on relocation
- A Kikuyu woman moving into a non-Kikuyu area.

12. We have not been addressed on the tribunal's findings under these heads. Without doubt deliberately, these are not expressed as conclusions because the tribunal have yet to come, as they do next, to the appellant's own situation. The provisional findings are, in short, that within Kikuyu areas FGM can often be avoided; that Mungiki are not as serious a threat there as Dr Knighton suggests; and that in any event relocation to a non-Kikuyu area is feasible for a Kikuyu woman. We would comment only that

[1] No point has been taken on the tribunal's calculation (§34) that this would amount to no more than 1.47% of the Kikuyu population. That is the proportion of the entire population of 34 million. It would in fact be around 7.35% of the Kikuyu population. There was also evidence before the tribunal of a Canadian estimate that the Mungiki numbered some 2 million.

in relation to a country where, despite laws forbidding it, up to half the women have undergone FGM and about a third are still expected or required to undergo it, it is particularly important to keep distinct the existence of a risk to women and the possibility of their finding safe refuge from it.

13. At several points the tribunal take issue with Dr Knighton's views. They were perfectly entitled to do so, so long as they gave adequate reasons for it, as they did. For example they preferred (§78) to attribute the low level of arrests – or rather convictions - of Mungiki activists to a decline in their activity rather than to a supine attitude on the part of the police. They accepted Dr Knighton's evidence (§81) that such arrests as there were related mainly to routine crime. But they found his emphasis on the extended family as the only support apparatus for a single woman to be "unduly wide" (§88) because it left out the possibility that the woman will have skills with which, alone or with others, she can work to maintain herself. It is not for us to decide whether the second proposition is an answer to the first: the tribunal's considered view was that it is. They were also entitled to comment (§91) that Dr Knighton's evidence that the appellant's sub-clan still adhered to FGM did not account for the fact that neither the appellant nor her daughter had been subjected it.

14. In several places the tribunal acknowledge Dr Knighton's contribution to their fund of information. They also, however, comment dismissively on Dr Knighton's material and his approach to it. For example, at §71 they remark: "Dr Knighton does not attempt to give any figures as to the number of Mungiki who may be in existence". That is hardly surprising: to give a membership figure for such a clandestine organisation would have attracted justified criticism. When asked directly, as noted above, Dr Knighton hazarded a figure of half a million (from which the tribunal derived an erroneous proportion within the Kikuyu population). More damagingly, at §96 the tribunal say:

> The position adopted and adhered to by Dr Knighton was that without a family network and clan support an individual would be unable to live even on a basic level of economic subsistence other than by resorting to prostitution or exposing herself or her family to exploitation. For our part we find that conclusion to be heavily overstated. We found that the report of Dr Knighton tends to concentrate upon generalities rather than focusing upon the particular situation and circumstance of the appellant. It is helpful in furnishing background information about the general situation in Kenya relating to FGM and to the Mungiki, but less helpful when it comes to evaluating this information. For example Dr Knighton commented that "the church cannot provide sanctuary and neither the government nor NGOs can provide a livelihood or a place to live. There are few parts where she could settle without being destitute, because of the importance of the family network". We find such a comment to go well beyond the evidence he relies upon and as lacking particular reference. Dr Knighton goes on to talk about the fact that the appellant is not free to exercise legal rights in Kenya nor free to live a lawful life with all her children without any real fear of persecution, revenge or intimidation. We find little

> basis in substance for such wide and emotive expressions. In many ways we find the report to be particularly partisan in its approach and lacking in objectivity.

15. We agree with Mr Jorro that this is unfair criticism. It was on his entire knowledge and experience in Kenya that Dr Knighton was manifestly drawing in the comment which drew the criticism. His further remark that the appellant was not free to lead a life free of fear, like other aspects of his phraseology, may have been justifiably termed both wide and emotive. But the *coup de grace* in the final sentence, we are bound to say, is in our opinion unwarranted. It might be said to manifest exactly the same faults as the tribunal had in the previous sentence attributed to Dr Knighton. Possibly it reflects the impression made by Dr Knighton as a live witness; but that is not how it is put.

16. This said, we do not find it possible to uphold Mr Jorro's complaint that the tribunal's appraisal of the expert evidence was so flawed as to undermine their overall conclusion about the situation of women in Kenya. Their findings, however contentious, lay within their remit and were supported by evidence. What remains to be considered is whether, against that background, the tribunal made a proper and adequate appraisal of the appellant's own prospects of safe relocation with her daughter.

17. Here too Mr Jorro is entitled to point to the way the tribunal dealt with Dr Knighton's testimony. At §98 they say this:

> Dr Knighton in his comments before us indicated the majority of Kikuyu women were farmers living off the land. It would have been helpful had he clarified precisely the experience of the appellant. It may be that she was indeed used to farming and agriculture; equally it may be that she assisted her husband in his business. In fairness to the appellant we bear in mind the high incidence of unemployment and balance that with the perception that she is somebody who has initiative and drive as evidenced by her immigration history to date. We do not accept the proposition advanced by Dr Knighton that the factor of marriage and land ownership and occupation are the determining factors in an ability to maintain a reasonable and safe lifestyle in Kenya.

18. Leaving aside the want of any expressed reason for declining to accept a proposition of which Dr Knighton was well qualified to give evidence, this passage is one of several in which Dr Knighton is criticised by the tribunal for not dealing with the specifics of the appellant's situation. They may have overlooked the fact that Dr Knighton had stressed at the start of his report that he had not met and had no personal knowledge of the appellant: his remit, as he took it, was to describe the situation of such a woman in Kenya. There is also, we would add, a strong possibility that an expert who sets out to express a view on the appellant's particular situation

and prospects will be told – correctly - that he or she is trespassing on the tribunal's function. The relevance of this to the second main point in the appeal is that the tribunal go on, at §99, to repeat a complaint they have made earlier about the

> "paucity of information … about the family situation and circumstances of the appellant [and] as to her lifestyle and expectations whilst living in Kenya. There is an almost total absence of information about her parents and their occupations, whether or not she has an extended family and if so where and their occupations. The claim of the appellant has been presented on a very narrow basis based very much upon the appellant's personal experiences, without in any sense placing that within the wider context of life in Kenya."

19. There are several comments we wish to make about this passage. First, the entire purpose of the evidence of the two experts called on the appellant's behalf was to place her experience and consequent fears for the future in the context of life in Kenya. Secondly, against this background the appellant's own situation, based on her experiences, was what her claim was about. Thirdly, although the appellant's advocate had quite understandably elected not to call her but to rely on the extant findings in her favour, there was nothing – as Alan Payne for the Home Secretary and Mr Jorro agreed on the basis of their own experience – to stop either the Home Office Presenting Officer or the tribunal itself inviting the appellant to give evidence about the matters now troubling the tribunal. Once it had been indicated what her further evidence was to relate to, the tribunal would be entitled to draw an adverse inference if she declined without good reason to give it. As it happens the tribunal have overlooked the fact that she gave her occupation on her initial application form; that she was asked at interview what family she had in Kenya and replied "My two children"; and that her witness statement records that, in addition to a brother whose whereabouts she does not know, she has only a sister-in-law (presumably her husband's sister) and father-in-law who are both Mungiki; her two younger children are missing. But they were in our judgment not justified in holding against the appellant the supposed shape and content of her case or the supposed gaps in it.

20. This matters, in our judgment, because the nub of their determination comes in the succeeding paragraphs:

> 100. Mr Bandegani submits, essentially, that the appellant would be at risk from the Mungiki wherever she went in Kenya. Either she would be sought after by the Mungiki "intelligence units", because of the events in her home village or she would be perceived as being non-traditional because of her single status and that of her dependants. She would be isolated and therefore the object of their attention.
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> 101. We find little support for that generalised statement in the detail of the evidence which has been presented to us. There is no reason to suppose that the appellant was, or remains, of any particular interest to the sect on account of the activities which she has described in Kiambu in the summer of 2002. Violence and extortion of the vulnerable would seem to be part of the

> general mode of operation by the sect. There is nothing to indicate in the circumstances if the appellant or her father which would cause those members of the Mungiki involved to have any reason to remember them.
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> 103. As we have indicated before, we find that there are areas in Kenya occupied by the Kikuyu where FGM is not practiced or welcomed. The Mungiki sect would not be welcomed either. The significance of the account as given by the appellant of her experiences in Kaimbu was precisely because the sect gained a foothold with the conversion of her father-in-law. There is nothing to indicate that he had been reluctant to be converted. Those who had been reluctant had been herself and her husband. There is no evidence as to the response of the wider village community to the Mungiki or as to the current situation in that area or village.
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> 104. There is no reason to suppose that the appellant necessarily would stand out were she to live among such communities. The objective evidence would seem to indicate that the Mungiki as a sect expect those initiated into the sect to conform to traditional standards including FGM. There is nothing advanced before us to indicate that they seek systematically to impose FGM upon non-initiates or upon a community basis. In the circumstances we do not find there to be a real or significant risk to the appellant or her family arising from the activities of the Mungiki sect. We find that there are many areas in Kenya where the Mungiki have no interest or influence or not significantly.
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> 105. In all the circumstances we find that the appellant may return to live elsewhere in Kenya. To do so would not expose her or her dependants to a real risk of being the subject of FGM forced upon them either by the community generally or by the Mungiki in particular. We do not find that any such relocation would be unreasonable or unduly harsh in all the circumstances. We do not find there to be a well-founded fear of persecution for a Convention reason nor do we find a risk of serious harm so as to qualify for humanitarian protection. We do not find that her protected human rights are infringed.

21. Mr Jorro's critique of the tribunal's reasoning is that it fails entirely, or at least adequately, to engage with the specificity of the appellant's case: that she would probably need to relocate to a Kikuyu area in order to survive; that in any Kikuyu area, and equally in a non-Kikuyu area where her name would show her to be Kikuyu, there was a real risk that Mungiki would sooner or later locate her; and that, irrespective of whether the local community welcomed them, they were likely to exact revenge upon a mother and daughter who had violated tribal custom by fleeing from a Mungiki elder to whom her grandfather had given the daughter in marriage in

return for a dowry, and had done so in order to avoid both the marriage and the genital mutilation to which the mother, under coercion, had consented. He points out that Dr Knighton's report gives explicit and documented support to this possibility but is not referred to by the tribunal.

22. It was on these grounds that the appellant was found to have a fear which was both genuine and, were she to return to her home village, well-founded. The tribunal had therefore to be satisfied that, if she were to live elsewhere in Kenya, the fear would no longer be well-founded. They begin this part of their determination (§83) by noting that there are tribal areas where there is no societal pressure to undergo FGM, and that Musoma and Mombassa are multi-ethnic towns; but they base no finding on this, since the appellant's case turned not on societal pressure but on the risk of direct victimisation. This meant, if nothing else, considering with very great care whether the Mungiki, who had killed the appellant's husband for refusing to join them as his father had done, and who had evidently attempted to track down the appellant and her daughter when they fled to Nairobi, might by enquiry or by rumour learn where they were now living. If there was a real risk that they might do so, it would arguably be impossible to exclude a real risk of abduction and enforced genital mutilation.

23. In our judgment the tribunal has failed to engage properly with this critical issue. Earlier in their determination (at §81) they say: "No example has been adduced before us of communities being targeted by the Mungiki, particularly to undergo FGM." This is a surprising assertion: what had happened to the appellant and her family was a very clear example of exactly this process. It is set in context, no doubt, by what they go on to note: that there are evidently millions of Kenyan women who are not required to undergo FGM and who therefore, it can be inferred, escape the attention of Mungiki. But that, like the first sentence of §103, cited above, does not meet the particularity of the appellant's case.

24. Nor, with respect, does the second sentence of that paragraph do so. On the very clear evidence before the tribunal - both the appellant's specific evidence and Dr Knighton's generic evidence – the penetration of Mungiki into communities where they have as yet no influence has little or nothing to do with whether they are welcomed. That is not how they operate. On the evidence, they operate by recruiting individuals where they can and, for the rest, by imposing their customs and practices on the community by violence and intimidation.

25. The tribunal's earlier remark (at §81) that "If whole communities came under such pressure with such violence, it is perhaps surprising that nothing in the media has been published" is not only speculative but appears to overlook the fact that the material part of Dr Knighton's report gives sources in the Kenyan press, the second of them derived from a statement by the provincial chief of police for Nairobi, for the Mungiki's revanchist policy and practice towards renegades. If a distinction is intended by the tribunal between the penetration of communities and the oppression of them, it does not seem to us illuminating in the present context.

26. It is in §101 that the tribunal set out to deal with the case they have set out in the previous paragraph. They begin by describing that case as a generalised statement, which in our judgment it is not. They then assert that there is little support for it in the detail of the evidence. For reasons we have already given, this too is incorrect: both the appellant and Dr Knighton had given detailed evidence capable of making out the

case. Contrary to what the tribunal next assert, there was every reason, given such evidence, to suppose that the appellant both had been and would remain of particular interest to the sect because of what happened in Kiambu in 2002. The finding in the final sentence of the paragraph seems to us to verge on the perverse: by focusing solely (and dubiously) on the appellant and her father, it ignores the real agent of mischief, her father-in-law, and the strong likelihood that both the insult to him and the elder's lost dowry would be very well remembered.

27. A similar imbalance is apparent in §103-4. The suggestion that only the willing are drawn into the Mungiki orbit, contrasting the father-in-law on the one hand with the appellant and her husband on the other, fails to take account of what happened first to her husband, who was murdered, and then to the appellant's daughter, who narrowly escaped FGM. And the tribunal's further finding that "there is nothing advanced before us to indicate that [Mungiki] seek systematically to impose FGM upon non-initiates" overlooks the clear evidence that FGM *is* initiation, and that the appellant, in fear after the killing of her husband, had agreed to it: clear evidence, in other words, of systematic imposition.

28. Lastly, the finding that there was no reason to suppose that the appellant would necessarily stand out in a community where FGM is not practised fails to engage with Dr Knighton's evidence that her name would always identify her as Kikuyu and – to Mungiki – as a renegade. Whether her name stands out may therefore be beside the point: the question is whether it may sooner or later enable her to be identified and targeted.

29. For all these reasons we consider that the specificity of the appellant's case – which, we reiterate, relates not to the existence of a well-founded fear in her home village but to the reasonableness and safety of moving elsewhere in Kenya - has not been adequately addressed. We would add in this connection that the reasonableness of a particular relocation is not necessarily confined to what is objectively to be feared there, although that is ordinarily conclusive. There may be cases where the tribunal is satisfied that, objectively, the appellant can be safe on relocation, but the appellant is so traumatised by past events that she remains in genuine terror of being returned there. The Home Secretary, by her counsel, accepts that cogent evidence to such effect may be relevant to whether internal relocation is unduly harsh.

30. In spite of the time that has gone by – not, so far as we know, through the fault of the appellant or her advisers – it seems to us that this case requires remission to the AIT so that the critical issue of the reasonableness of internal relocation can be properly determined. We invite counsel's submissions, initially in writing, as to what form the remission ought to take.

Lord Justice Rix:

31. I agree.

Lady Justice Arden:

32. I also agree.