



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

Country of Decision/Jurisdiction	United Kingdom
Case Name/Title	FK (Kenya) v Secretary of State for the Home Department
Court Name <i>(Both in English and in the original language)</i>	Court of Appeal
Neutral Citation Number	[2008] EWCA Civ 119
Other Citation Number	
Date Decision Delivered	26 February 2008
Country of Applicant/Claimant	Kenya
Keywords	Internal relocation
Head Note (Summary of Summary)	Internal relocation may be unduly harsh where there is cogent evidence to the effect that the appellant is so traumatised by past events that she remains in genuine terror of being returned to the place of relocation.
Case Summary (150-500)	<p>The appellant, a Kenyan woman, aged 42 at the time of this judgement, arrived in this country in October 2002 with her older daughter, now aged 19 and with a child of her own. She claimed asylum for them both on the ground that they had a well-founded fear of being compelled to undergo female genital mutilation (FGM).</p> <p>The appellant's account was accepted as the truth. 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. 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.</p> <p>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.</p> <p>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</p>



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	<p>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.</p>
<p><i>Facts</i></p>	<p>The appellant's account was accepted by an adjudicator and her fear of FGM was held to be well-founded in the appellant's home area, but it was also held that by relocating to another part of Kenya she and her daughter could be safe.</p> <p>The Tribunal upheld the decision of the adjudicator. Their decision in this case was reported as a Country Guidance case. Permission to appeal against that decision was granted by the Court of Appeal to consider the Tribunal's treatment of the expert evidence, particularly in relation to internal relocation, both in regards to safety and reasonableness.</p>
<p><i>Decision & Reasoning</i></p>	<p>The Court of Appeal found that the Tribunal's treatment of the expert evidence was unlawful. The Court of Appeal did not accept the conclusion of the Tribunal that the expert's approach to the evidence was partisan. The Court found too that the Tribunal had given inadequate reasons for rejecting the evidence that the appellant would have to live in a Kikuyu area to survive, that in any case she would be recognised as Kikuyu by her name, and that the Mungiki, her persecutors, would sooner or later locate her.</p> <p>The Court of Appeal went on to reject the reasons given by the Tribunal for finding that she could safely relocate to an area where FGM was not prevalent. In this regard, the Court of Appeal criticised the Tribunal for making generalisations about the position of Kikuyu women, without properly engaging with the particular facts of the appellant's case.</p> <p>In its conclusion, the Court of Appeal stated,</p> <p><i>26. 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</i></p>



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	<i>unduly harsh.</i>
<i>Outcome</i>	The Court of Appeal remitted the appeal to be reconsidered by the Asylum and Immigration Tribunal in regard to the reasonableness of relocation. The reported Country Guidance case was removed from the list of Country Guidance cases and replaced some time later by the judgement in <i>VM (FGM-risks-Mungiki-Kikuyu/Gikuyu) Kenya CG [2008] UKAIT 00049</i> . In that case, it was found that the Secretary of State had failed to identify any areas within Kenya where the appellant could find safety, or where it would be reasonable to expect her to relocate.