H-ATS-V2

Appeal Number: **HX51774-2001**
DI (IFA - FGM) Ivory Coast CG [2002] UKIAT 04437

IMMIGRATION APPEAL TRIBUNAL

Heard at Field House
on 2 July 2002
Dictated 9 July 2002

Determination Promulgated
27th September 2002
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Before:

Miss K Eshun – Vice President
Mr A Smith

between

Miss Dele Angie Pelagie IKOSSIE

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Ms J Lule of Counsel instructed by Powell & Co Solicitors
For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a citizen of Ivory Coast, appeals with leave of the Tribunal against the determination of an Adjudicator (Mrs C M Kennedy) dismissing her appeal against the decision of the Respondent on 29 November 2000 to give directions for her removal from the United Kingdom as an illegal entrant following refusal to grant her asylum.

2. In this case the Appellant arrived in the United Kingdom illegally and claims to have arrived on 10 October 2000. She claimed asylum on 1 November 2000. She completed an SEF and statement on 13 November 2000. She was interviewed on 1 August 2001. The reasons for the refusal of her asylum application are set out in a Home Office letter dated 2 August 2001.

3. The Appellant's claim to asylum is that she comes from the village of Yopougon in Abidjan. She has a young son who still lives with her partner in Abidjan. He is not the father of the child. The father works in Paris and maintains the child.

4. She says that it is the custom in her village for young girls between the ages of 18 and 30 to undergo female circumcision. Her mother is the head of the group of village women who perform the procedure. Parents would force their daughters to be excised on reaching 18. It was the custom for excisions to be performed between August and December each year. She said that she and her elder sister Solange were due to be excised in August 2000. They had both successfully avoided it for several years by going to live elsewhere in the Ivory Coast four, five to six months at a time. In August 2000 her sister returned to the village to attend the village feast and was caught for excision. She died as a result. The Appellant produced a death certificate. She escaped and claimed that if she returns to Ivory Coast her mother will force her to be excised.

5. At the hearing before the Adjudicator Counsel requested an adjournment because she said that although the Appellant was in court, she was not fit to give evidence. The appeal had previously been adjourned on 29 January 2000 with standard directions and for a medical/psychiatric report to be produced. Counsel told the Adjudicator that she had not been able to obtain a report but all other directions had been followed including a witness statement dated 23 January 2000. There were letters in the Appellant's bundle indicating that she had been receiving treatment from a psychiatrist for severe mental health problems prior to July 2001 which had been exacerbated by being removed to Bristol under the dispersal programme. Her psychiatrist had arranged for her to be re-housed back in London close to her cousin. The Adjudicator noted that there was no further medical evidence and the appeal could continue on the basis of the statement. She refused an adjournment and when the appeal was put back in the list and recalled at 2 p.m., the Appellant was present and gave oral evidence.

6. However the Adjudicator found the Appellant manipulative. She twice walked out of the hearing resulting in her cross-examination and the hearing being curtailed but otherwise she was composed and very well able to give evidence and reply to questions.

7. In dismissing the appeal the Adjudicator did not believe the Appellant's story. She did accept from the objective evidence that female circumcision was prevalent and customary and performed on young girls or at puberty as a right of passage, that since December 1998 it is a crime but eradication is proving an uphill struggle. She found it incredible that the age range is so high and especially that the sister's circumcisions would be left as long, as claimed, if her mother was the head of the group who performed the operation and it was considered such a point of honour in the family. The Appellant and her sister were able to avoid circumcision for a very

considerable period of time and could have continued to avoid circumcision by living elsewhere and/or that her mother was not as determined as claimed that her daughters be excised. She found it totally incredible that her sister would be so foolish to return voluntarily to the village for no greater reason than the village feast during the very time that circumcisions were performed. The Adjudicator also found it incredible that any mother would threaten to kill her daughter if as claimed the Appellant's sister died as a result of circumcision. Furthermore the death certificate stated that the sister died as a result of violent death. The death certificate was not signed. As the original had been allegedly lost, the Adjudicator placed no weight on the photocopy. The Adjudicator also found it implausible that the Appellant's brother had witnessed his sister's circumcision in the village and also that her mother had called her uncle, with whom the Appellant was living, as an emergency when her sister had bled during circumcision and that the uncle and her brother had gone to the village together and taken her sister to hospital. The Appellant was living an independent life with her partner and son in Abidjan and such evidence mitigates her claim adversely.

8. Although Articles 3 and 8 of the Human Rights Convention were also raised, for the same reasons as found in an asylum appeal, the Adjudicator found no likelihood that the Appellant would be in danger if returned to the Ivory Coast.

9. The Grounds of Appeal submitted inter alia that the refusal to grant an adjournment for medical reports prevented the just disposal of the appeal and also took issue with the Adjudicator's credibility findings. It was also submitted that the Adjudicator failed to have regard to whether removal to Ivory Coast would be a breach of the Appellant's right to physical and moral integrity in view of her serious mental problems. It was upon these grounds that leave to appeal was granted.

10. Counsel told the Tribunal that she was looking for a remittal due to the Adjudicator's adverse credibility findings. Even though she accepted that the Appellant would not be able to give evidence, her cousin would be able to give evidence concerning matters that arose in relation to the Appellant's credibility. She told us that the Appellant's cousin came to the United Kingdom on 25 July 1998 and has been granted asylum. The reason the Appellant's cousin was not called to give evidence at the Appellant's hearing was that she could not find anyone to look after her three children.

11. Mr Saunders objected to a remittal and the Tribunal were not disposed to remitting this appeal. The Appellant did give evidence before the Adjudicator. We now had before us a psychiatric report from Dr Sinclair on the Appellant dated 18 June 2002 indicating that the Appellant has symptoms of Post Traumatic Stress Disorder relating to the death of her sister. She is currently being treated with anti-depressant medication and is waiting for specific psychological treatment. In the circumstances to remit the appeal so that the Appellant's cousin could give evidence at a time when she was available to but did not, would not serve any useful purpose. Furthermore, in the Appellant's bundle were statements from two cousins which we felt we could take into account in our consideration of this appeal.

12. Counsel asked us to look at this appeal in the light of Dr Sinclair's Psychiatric Report which was obtained after the hearing of the Appellant's appeal. According to the

psychiatric report the Appellant gets panic attacks which might in turn affect her attention and concentration to such a degree that she would be unable to understand court proceedings. On 27 June 2001 she attempted to commit suicide. She has been offered twelve sessions with a team of psychiatrists. Counsel submitted that the Appellant did not have these problems before the death of her sister, on 25 August 2000. The Appellant told Dr Sinclair that she thinks her mother will undertake all possible efforts to get her undergo circumcision and even if she lived in a different part of the country her mother would eventually find her. She also feels that she would not get adequate treatment in Ivory Coast. Dr Sinclair was not however in a position to comment on how realistic both expectations were.

13. Counsel took issue with the Adjudicator's assertion that it is common knowledge that village girls marry young and that it is incredible that the age range of 18 and 30 was so high. Counsel referred us to a fact sheet issued by the UNHCR entitled "Harmful Traditional Practices Affecting the Health of Women and Children". At page 6 it states that the age at which mutilation is carried out varies from area to area. FGM is performed on infants a few days old, on children from 7 to 10 years old and on adolescents. Adult women also undergo operation at the time of marriage. Since FGM is performed on infants as well as adults, it can no longer be seen as marking the rights of passage into adulthood. She also pointed to a report at page 34 of the Appellant's bundle, the source of which is not clear, which states that some women undergo FGM during early adulthood when marrying into a community that practices FGM or just before or after the birth of the first child (Mali and Nigeria). At page 48 another report states that the procedure is carried out at a variety of ages ranging shortly after birth to sometime during the first pregnancy, but most commonly occurs between the ages of 4 and 8. According to World Health Organisation, the average age is falling which indicates that the practice is decreasingly associated with initiation into adulthood, and this is believed to be particularly the case in urban areas. In the light of all this evidence Counsel submitted that FGM is not just carried out at puberty.

14. Counsel further submitted that the evidence of the Appellant's cousin, Rose Virginie Tierou, who is from the same village and tribe as the Appellant, indicates that even though she had a child she was also pursued for FGM. The Appellant's sister, who was 30 at the time of her death, was older than the Appellant. In the Appellant's bundle is a statement of another cousin Briehe Bertine Tierou who confirms to the best of her knowledge that what the Appellant said was true.

15. Counsel submitted that the Adjudicator placed no weight on the death certificate because it was a photocopy. This was a wrong approach. The Appellant has submitted a further death certificate. The one that the Adjudicator referred to simply said that the Appellant's sister died a violent death. Counsel's instructions are that this certificate was provided by the Accident and Emergency Department of the hospital where the Appellant's sister was taken. The Appellant has provided a further death certificate which was issued by the local hospital where the body was transferred to. It was apparent to the Tribunal that the second death certificate was also issued in Abidjan on 25 August 2000 and this time the cause of death was shown as "following a post-circumcision haemorrhage". Counsel took instructions on this and was told by the Appellant that it is possible for two death certificates to be issued in one case by two different hospitals.

16. Counsel submitted that the Appellant has confirmed to her that the aunt and uncle who were murdered were her cousin Bertine's parents. They were murdered because they refused to allow their daughter to undergo FGM. Counsel explained that Bertine and Rose are sisters; they have the same father but different mothers.

17. As to the risk on return, Counsel submitted that the Appellant has provided a statement suggesting that her mother had written to her in the UK threatening her. Although the original letter is lost, her cousin Bertine confirms seeing the letter as it was shown to her by the Appellant. According to the October 2001 CIPU Report, the courts and police generally view domestic violence as a family problem, unless serious bodily harm is inflicted or the victim lodges a complaint, in which case they may initiate criminal proceedings. There is no national plan to assist in the eradication of FGM. It is seen as a traditional ritual. The US Stated Department reports that FGM remains a serious problem. It says the new law on FGM was enacted in December 1998, six girls in Abidjan have been mutilated. Police and social workers neither acted to prevent the mutilation or to arrest the girls' parents. Counsel accepted that there have been two arrests in July 2000 of women practising FGM on girls aged between 10 and 14, but in the context of the law enacted in 1998, two prosecutions is little effort for a huge problem. The Appellant will not be able to get free legal assistance and she is not able to work because of her mental state. Furthermore we have no evidence that the authorities carried out any investigations on the death of her sister.

18. Counsel then distinguished this case from that of **Muchomba [2002] UKIAT 01348** which was decided by a Tribunal which was chaired by me by me in May 2002. Counsel said that **Muchomba** concerns Kenya as opposed to Ivory Coast. The Kenyan government is doing more than the Ivory Coast Government is, in that they have a national plan to eradicate FGM through two presidential decrees. There are instances when injunctions have been granted followed by prosecutions. In Ivory Coast as many as 60% of women have undergone FGM. In Kenya there is a decline in FGM. In **Muchomba** the Appellant did not know where her family were but this Appellant does know where her family are. It would therefore be unduly harsh for the Appellant to relocate in Ivory Coast. In an earlier case the Tribunal said that those undergoing FGM form a social group. That Appellant was also from Yopougon. The Appellant says that all women in Yopougon undergo FGM and therefore it is not voluntary and amounts to an immutable characteristic.

19. As regards internal flight alternative, Counsel submitted that the Appellant's mother and people in her tribe wish her to undergo FGM. If she were to reside with other members of the family, her whereabouts would immediately become known. It would be unduly harsh for her to relocate because of lack of family for support. She would not be able to work. Her mother is one of the leaders who carries out the circumcision and it is an embarrassment for her that one daughter has died and the other refuses FGM. This is the more reason why she would be determined to have the Appellant do it.

20. Counsel submitted that FGM would be a violation of the Appellant's rights under Article 3. Her right to physical and moral integrity under Article 8 is paramount. Twelve sessions have been arranged with a psychologist to assist her recovery.

21. Mr Saunders submitted that if we look at the Appellant's case on the basis of what she said, her case fails on internal flight alternative and protection. It fails on the internal flight alternative because the Appellant had already successfully resorted to an internal flight option for several years and there was no indication of any pursuit by any members of the family or any unforced return to the family home. Her sister's return appears to have been entirely voluntarily. The Appellant said in evidence that they were due to be excised in August 2000 and yet her sister Solange went there to attend the village feast.

22. As for protection, the Appellant has not reported her mother because they would have her up for murder. According to the background evidence in the CIPU Report, there have been only six prosecutions out of how many reports, we do not know. Although the CIPU Report at paragraph 6.64 says that FGM is practised particularly among the rural population in the north and west and to a lesser extent in the centre, this is not determinative and conclusive. The Appellant and her people live in Yopougon which is part of Abidjan in the southeast. It is neither rural, northern, western or central. It is certainly not in the area of prevalence of this custom. The Appellant's documents do not generally bear out her account. It would seem that a date was set in August 2000 although we do not know why this was. Her sister would have been 30 and the Appellant 22. According to the UNHCR document adult women undergo FGM at the time of marriage. We have no evidence here that the date was picked to coincide with marriage. It is difficult to find specific information about Ivory Coast. To the extent that there is objective evidence, it does not bear out the Appellant's account.

23. As regards the specific points on credibility, Mr Saunders asked the Tribunal to find that the Adjudicator made perfectly proper findings. There is always room for doubt when in this case there is no fear of a government agency and yet the person concerned arranges an agent to take her out of the country.

24. In reply to Mr Saunders submission that the Appellant successfully evaded FGM, Counsel submitted that the Appellant had been pressurised over a number of years to undergo FGM. She cannot relocate now. As to the sister going voluntarily to the village, Counsel submitted that the Appellant's sister did not anticipate that it would be so soon. She knew of the month but not the date. It should be taken into account that the Appellant's evidence has been consistent throughout.

25. The Appellant's claim, as appears to the Tribunal, is that on her return to Ivory Coast, she would be forced to undergo FGM even though she is now 24 years old (Dob 17 July 1978) and cannot relocate in Ivory Coast. This is because her mother who is leader of the group that performs FGM, has threatened to kill her. According to Counsel her mother's honour is at stake; that has been her consistent evidence throughout.

26. The Tribunal is of the view that the Adjudicator rightly looked at the Appellant's evidence in the context of the objective evidence and properly accepted that FGM was prevalent and customary.
27. Putting aside the issues of credibility, we have two main issues to consider. The first is whether the Appellant will be offered adequate protection against her mother and

the people in Yopougon if she is forced to undergo FGM; Secondly whether she has an internal flight option.

28. As regards protection, the new law, concerning crimes against women, enacted in December 1998, specifically forbids FGM and makes those who perform it subject to criminal penalties of imprisonment for up to five years and a fine. The Appellant in reply to question 4 (A10) SEF said that she could not report her mother or the group's activities to the police because her mother would have been arrested for murder. In the circumstances the Adjudicator's finding that the Appellant was thereby acknowledging that the police would indeed intervene to uphold the law was a proper finding to make. Indeed, according to the objective evidence, in July 2000 two Ivorian women were arrested for practising FGM on girls aged between 10 and 14. We agree with Counsel that this may be little effort for a huge problem; but the fact is there is a law and it is for those such as the Appellant who fear such practice to use the law to prosecute those who practice it. The arrest of the two Ivorian women does indicate that the authorities will act when called upon to do so. Although eradicating FGM it is proving an uphill struggle, the objective evidence does indicate that the authorities will use the law to prosecute practitioners if they are brought to their attention. The fact that the delegation went to the remote regions of Ivory Coast urging former colleagues to stop FGM following the revelation that an elderly woman had been practising FGM for 40 years, does not support the Appellant's evidence in her statement at paragraph 5 that the authorities are unable and unwilling to intervene in such practice. It also belies her statement that the authorities would not investigate her position as this is not considered a crime, but a custom. The Tribunal does not find that the practitioners in her village can be considered as agents of persecution because the enactment of the law in December 1998, shows that the government does not condone the practice. Therefore the law is there to protect the Appellant and we find that the authorities would be willing and able to use the law to protect her.

29. As regards the internal flight alternative, the Appellant, until she left Ivory Coast, was able to successfully evade circumcision. The Appellant's evidence was that she and her sister both knew that circumcision would be carried out in August 2000. We consider that the fact that they did not know the actual date was irrelevant. The fact is her sister did voluntarily return to the village in that month to attend the village feast. Her voluntary return belies the Appellant's claim that they were being pursued for female circumcision. The Appellant was living with her uncle and it would appear that her mother knew this. If indeed she was being pursued for circumcision, she could have been caught at anytime. On such evidence, the claim that the Appellant cannot relocate in Ivory Coast is not sustainable.

30. However, there are credibility issues to contend with. A question mark hangs over the cause of death of the Appellant's sister. The photocopy of the death certificate submitted to the Adjudicator indicates that she died as a result of violent death on 25 August 2000 and that her usual place of residence was Abidjan. According to Counsel's instructions this was issued by the hospital that her sister was first taken to. The second death certificate, which is also a copy and which was issued by the Accident and Emergency Medical Centre at Yopougon City Abidjan and also dated, gives the cause of death as "following a post circumcision haemorrhage". We find it highly improbable that two death certificates would be issued in one day in one case

by two different hospitals giving two different reasons for the cause of death. In the circumstances we place no weight on the death certificates.

31. As to the age range for circumcision being high, the objective evidence leans towards circumcision being performed on young girls or at puberty as part of the right of passage. It may be that in this Appellant's case it could still be performed even though she is an adult, has a child and was living with her partner. Nevertheless, the fact remains that the Appellant was able to avoid circumcision while she was in Ivory Coast and we have not heard any cogent arguments as to why she cannot continue to do so. We find it incredible that the Appellant's mother would threaten to kill her as a matter of honour. According to the evidence, when her other daughter was bleeding during circumcision, she called the uncle with whom the Appellant was living, as an emergency, in order to take the daughter to the hospital. This would suggest an attempt to save her daughter's life. It therefore beggars belief that if indeed one daughter has died through circumcision, the mother would then threaten to kill the other daughter if she returned to Ivory Coast.

32. Therefore on the totality of the evidence we do not find that the appellant has established to the appropriate standard of proof that she would be persecuted for a Convention reason if she is returned to the Ivory Coast or that there are substantial grounds for believing that she would suffer ill treatment in breach of Article 3 of the ECHR.

33. We also find on the evidence before us that there would be no breach of the Appellant's physical and moral integrity were she to return to Ivory Coast. Whilst we accept that the Appellant has symptoms of PTSD, and is being treated with anti-depressants and is due to undergo 12 sessions with a ream of psychiatrists, we have no evidence before us to indicate that such treatment is not available in the Ivory Coast, or that removal would cause a deterioration of her mental condition. Her appeal is therefore dismissed.

MISS K ESHUN
VICE PRESIDENT