



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉS)

IN PRIVATE
HUIS CLOS
TA4-11070
TA3-15278
TA4-11071
TA4-11072

2005 CanLII 77837 (CA IRB)

CLAIMANT(S)

DEMANDEUR(S)

**XXXXX XXXXX XXXXX
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DATE(S) OF HEARING

26 September 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

29 November 2005

DATE DE LA DÉCISION

CORAM

Jiti Singh Grewal

CORAM

FOR THE CLAIMANT(S)

**Christian C. Chijindu
Barrister and Solicitor**

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

P. Stolworthy

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DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

CONSEIL DE LA MINISTRE

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The male claimant, **XXXXXX XXXXXX** (a.k.a. **XXXXXX XXXXXX XXXXXX**, his wife (female claimant) **XXXXXX XXXXXX XXXXXX** and their children **XXXXXX XXXXXX XXXXXX XXXXXX** (a.k.a. **XXXXXX XXXXXX XXXXXX XXXXXX** and **XXXXXX XXXXXX XXXXXX** (a.k.a. **XXXXXX XXXXXX XXXXXX** are citizens of Kenya. The claimants made their claims for refugee protection pursuant to section 96 of the Immigration Refugee Protection Act (IRPA). However, the panel has also considered whether the evidence adduced establishes that the claimants' removal to Kenya would subject them personally to a risk to life, to a risk of cruel and unusual treatment or punishment, or subject them to a personal danger of torture, believed on substantial grounds to exist. The male claimant, **XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX** was the principal claimant.

The female claimant was appointed the designated representative for the minor claimants.

Allegations

The claimants claim to have a well-founded fear of persecution in their country based on their political opinions and their membership in a particular social group.

The principal claimant alleges that members of the government targeted him because he refused to compromise his professional integrity and falsify the accounts for Mr. XXXXX XXXXX. On XXXXX, 2003, the principal claimant received a threatening phone call to stop undermining the government. Subsequently, the principal claimant was arrested and detained until XXXXX, 2003. On XXXXX, 2003 the principal claimant's home was searched before he and his family (wife and daughter) were asked to accompany these men. The principal claimant's wife and daughter were dropped off on the way and he was taken to an unknown location. He was hit with a blunt object, severely beaten and asked to produce documents. Before letting him go, his abductors threatened to kill him if he did not produce the documents. The principal claimant went home and learned that his wife was in the hospital due to pre-mature labour. At that point, the principal claimant went into hiding at his friend's house and made arrangements to flee Kenya.

The female claimant alleges that after her husband left the country she moved to her rural home. However, her husband's family brought the issue of circumcision in order to make her a member of the community. She claims that her father on the other hand wanted her to marry another man from her own tribe i.e., Kissi. As a result of all this harassment she returned to her hometown. On XXXXX, 2003, three of the principal

claimant's cousins visited the female claimant and raped her because she was not circumcised. They warned her that her daughter too would be circumcised. The female claimant learned that a **XXXXX XXXXX** was travelling to Canada for a Conference; she met with the organizers and made her travel arrangements. The principal claimant made an inland claim for refugee protection in Montreal on July 22, 2003.¹ The female claimant and the minor claimants came to Canada on **XXXXX**, 2004 and made their claims for refugee protection on July 20 2004.² The principal claimant's claim was joined to the female claimant's file.³

Determination

The Refugee Protection Division determines the claimants not to be Convention refugees or persons in need of protection within the meaning of subsections 96 and 97(1) of IRPA, because key aspects of the claimants' testimony were not credible.

¹ Exhibit C-1(a).

² Exhibit C-1 (b) (c) (d).

³ Exhibit C-11.

Analysis

Identity

The panel accepts that the claimants have established their identities as citizens of Kenya, based on original copies of their passports, birth certificates,⁴ which were presented at the hearing.

Credibility

The central issues in this claim are whether

1. The authorities targeted the principal claimant because he refused to fabricate accounts for a **XXXXXX XXXXXX**.
2. The female claimant was being forced to into an arranged marriage
3. The female claimant and her daughter were being forced to undergo circumcision.

⁴ Exhibit R-2, Information from CIC.

Male Claimant's Testimony

The central issue in this claim is whether it is credible that a **XXXXXX XXXXX** was targeting the principal claimant because he refused to falsify his accounts when instructed to do so.

The panel finds the principal claimant to be neither a credible nor a trustworthy witness. The existence of contradictions and discrepancies in the evidence of a claimant or of a witness is a well-accepted basis for finding of a lack of credibility.⁵ This also applies to omissions in the claimant's previous statements whether made to immigration official at the time of arrival in Canada, in a previous hearing of the claim, or in the Personal Information Form (PIF).⁶

A claimant's sworn testimony must be presumed to be true unless there are reasons to doubt its truthfulness.

The panel does not believe that Kenyan police ever wanted the principal claimant while he lived in Kenya. The panel reached this conclusion due to the following.

⁵ DanAsh v. Canada (Minister of Employment and Immigration) [1988], 93 N.R.33 (F.C.A.).

⁶ Exhibit C-1, Personal Information Form narrative.

The panel has valid reasons to doubt the principal claimant's contentions that he was arrested and detained. In the principal claimant's oral testimony, he stated that on **XXXXX**, 2003 he was arrested and detained without any charge, for meddling with the government. He added that in detention he was mistreated, however, he was allowed to retain a lawyer, who subsequently provided a bond for his release. The principal claimant's evidence is conflicting with the port-of-entry (POE) notes. In the CIC documents schedule 1 question 4 (j) page 3 of 6, when asked, "have you ever been detained or put in jail", the claimant stated, "No". The panel notes that the question further states if the answer to any of the above is "YES, provide details here". When this contradiction was pointed out the principal claimant he stated that he assumed it was not related to his claim. The panel does not find the principal claimant's explanation to be reasonable. The question clearly states to mention any detention. The claimant filed his refugee claim with the assistance of a lawyer. The panel finds it reasonable to believe that if the principal claimant was truly detained as alleged he would have provided information in this question.

The claimant submitted a bail bond document to support his contentions.⁷ There is no mention in the principal claimant's PIF narrative that he was allowed to retain a lawyer, or that he was released on bail. The principal claimant's explanation for this omission was that he wanted to provide detail at his refugee hearing. The panel does not accept the principal claimant's explanation to be reasonable because in his PIF narrative he clearly stated, with a hint of speculation "I was eventually released". Which appears that the principal claimant was released without any assistance. The panel notes that in April the principal claimant amended his PIF narrative line 31 of this particular paragraph, however he made no efforts to include this information. The panel finds it reasonable to believe that if the claimant was released because of his lawyers efforts he would have mentioned it. The panel draws an adverse inference with respect to the principal claimant's credibility.

⁷ Exhibit C-2.

Further to that, in the principal claimant's written evidence he stated that he was detained without any offence or crime. However, the Bond and Bail document states that the principal claimant was charged for participating in unlawful assembly. When this information was pointed out the principal claimant stated that they just wrote it. The panel does not find it credible that he stated in his PIF that he was put in jail without being charged. The panel finds it reasonable to believe that if the principal claimant was truly detained he would have mentioned the accusations as stated on this document. This incident is central to the principal claimant's claim. The panel believes this document is specifically prepared to support the principal claimant's refugee claim hence, the panel does not give any weight to this document in establishing that the authorities are targeting him. The panel finds on a balance of probabilities that the principal claimant was not arrested and detained, as alleged.

The principal claimant provided conflicting evidence regarding the account of events that took place on XXXXX, 2003. The principal claimant testified that Mr. XXXXX men came to his house in search of some documents. When asked if they took any documents the principal claimant stated, 'No, they did not'. However, in the principal claimant's PIF narrative line 37 he stated, "they carried away some files..." when this contradiction was pointed out, the principal claimant stated that the files they took did not belong to

Mr. **XXXXX**. The panel does not find the principal claimant's explanation to be reasonable because he was simply asked if the attackers took any files. The panel finds the claimant's explanation to be an excuse to conceal this inconsistency. In the panel's opinion if the principal claimant's house was truly ransacked and some documents were confiscated, he would have remembered how the account of events unfolded.

Further to that, the principal claimant testified that after dropping his wife and daughter in town Mr. **XXXXX** men took him to an unknown location and threatened to kill him next time if he did not provide documents. In the principal claimant's oral testimony he stated that he walked home, spoke to his lawyer and then went to his doctor's office to get his injuries treated before going to visit his wife at the hospital. However, in the principal claimant's PIF narrative there is no mention that the principal claimant contacted his lawyer or that he sought medical treatment for his injuries. The panel does not find the principal claimant's explanation that he wanted to provide details at his refugee hearing to be reasonable because there is no reference to these incidents and the gravity of the situation in the PIF. This omission leads the panel to draw an adverse inference with respect to the principal claimant's credibility.

The principal claimant testified that in **XXXXXX** 2003, Mr. **XXXXXX** men went to his office in search of crucial documents although they did not take anything, but they ransacked his office. This information is also not in the principal claimant's PIF. The principal claimant's explanation for all these omissions was that he tried to be brief. The panel does not find accept the claimant's explanation as reasonable. The panel notes that question 41 of the PIF clearly instructs "to set out all significant incidents...". The panel notes that the principal claimant retained the services of an experienced counsel who regularly appears before the Board. The principal claimant presented himself as a reasonably well-educated and sophisticated individual. The panel does not find it credible that in summarizing ones story would lead a person to omit significant information central to their refugee claim. The panel does not accept the principal claimant's explanation for these omissions reasonable in that this information is goes directly to the heart of the principal claimant's claim. In the panel's opinion, if Mr. **XXXXXX** and his thugs were truly ransacking the principal claimant's office, he would have mentioned it in his PIF narrative. Therefore, the panel does not accept the principal claimant's explanation that he provided a brief summary. The panel believes that the principal claimant embellished his claim.

In the oral testimony, the principal claimant stated that from **XXXXXX** until **XXXXXX** 2003 he was in hiding at a friend's house. He stated that on four different occasions, Mr. **XXXXXX** personally called him and three times unknown individuals called and threatened to kill him. This information is also not in the principal claimant's PIF. The principal claimant's explanation for this omission was that he tried to give a brief account. The panel does not find the principal claimant's explanation to be reasonable in that being brief does not mean one should completely omit significant information that led him to flee the country of his nationality. This information is central to the principal claimant's alleged fear. The panel finds it reasonable to believe that if the principal claimant was truly being targeted and threatened as alleged he would have included this information in his story. The panel is unable to give the principal claimant the benefit of the doubt and this incident allegedly took place prior to August 8, 2003 the date on which the claimant signed his PIF. The panel finds on a balance of probabilities that the principal claimant was not being threatened as alleged. It further leads the panel to find that Mr. **XXXXXX** as alleged was not targeting the claimant principal.

Based on the foregoing, the panel finds the principal claimant's allegations that he was being targeted because he refused to forge documents for a prominent politician, not to be credible.

Female Claimant's Testimony

The female claimant testified that subsequent to her husband's disappearance, her mother-in-law and some other women tried to forcibly circumcise her. The panel has valid reasons to doubt the female claimant's contentions.

The female claimant testified that in **XXXXXX** 2003, she went to her rural home to escape the harassment (as strangers were calling to know about her husband's whereabouts), however her husband's family expressed the desire to have her circumcised.

The panel notes that the claimant's got married in **XXXXXX** 1999. When asked if the issue of circumcision emerged at that point, the female claimant stated, 'yes, it did', however, she and her husband were able to dismiss it because they are Christians. The female claimant further stated that her mother in law did not put forward the issue of circumcision for four years and the only time it surfaced again was after her husband disappeared. In addition, the female claimant stated that in **XXXXXX** 2003, one day after

the birth of her son, her mother-in-law and some women suddenly came to her room and told her that they had come to circumcise her. The female claimant excused herself under the pretext of going to the washroom, but one of the women accompanied her. She requested the women to fetch some toiletries for her, and immediately locked the door from inside and started screaming for help. Immediately a number of women from the neighborhood came to her rescue. At that point the female claimant's mother-in-law and the other women fled. Firstly the female claimant demonstrated her ability to defend herself. Moreover, the behavior of female claimant's mother-in-law and the traditional women fleeing her house speaks volumes about their ability to target the female claimant.

During the refugee hearing the female claimant added another dimension to her story. The female claimant further stated that her neighbors reported this incident to the police by phone, however, the police were busy and told them to report in person. This information is not in the female claimant's PIF narrative.⁸ The female claimant's explanation for this omission was that she wanted to be brief and wanted to explain it in her oral testimony. The panel does not find the female claimant's explanation to be reasonable in that if she and her neighbors truly made efforts to seek protection from the police she would have stated it in her story. This information goes directly to the heart of

⁸ Exhibit C-2.

her alleged fear. The panel finds on a balance of probabilities that the female claimant or her neighbors did not approach the police, as alleged.

The panel has valid reasons to doubt the female claimant's contentions that her husband's cousins raped her. In the female claimant's PIF narrative she stated that on **XXXXX**, 2003 her husband's cousins' came to visit her. At night, all three of them raped her one by one, because she refused get circumcised. This information is in conflict with the female claimant's evidence. Firstly, in an interview with the Immigration Officer (IO) at the POE, the female claimant was asked the reasons why she fled Kenya, the female claimant did not tell the IO that she were raped. When this omission was pointed out, the female claimant stated that she was not asked about it. The panel does not find her explanation to be reasonable in that the onus is on the female claimant to provide her story and the reasons why she feared returning to the country of her nationality. The panel does not find credible that the female claimant failed to mention significant incident central to her refugee claim.

Further to that, in the female claimant's oral testimony, she stated that she reported this incident to the police however, the police refused to assist her. Again this information is not in the female claimant's PIF. The female claimant's explanation for this omission was that she summarized her story so as to be brief. The panel does not find the female claimant's explanation to be reasonable in that being brief, she

completely omitted crucial information relevant to her refugee claim. The panel draws an adverse inference with respect to the female claimant's credibility.

The female claimant presented a medical report⁹ to support her contentions that she was raped. In the female claimant's PIF narrative she stated: "At night they raped me one after the other, three of them". However, the medical report states that two men raped her. When this information was pointed out to the female claimant, she stated that she does not know why the doctor stated incorrect information. In the panel's opinion, a medical professional provided reasons based on the story the female claimant allegedly told him. The panel notes that this discrepancy is material to the female claimant's claim. In light of all the credibility concerns and the discrepancy between the female claimant's testimony and this document the panel is unable to give any weight to this document in establishing that the female claimant's claim is credible. The panel finds on a balance of probabilities that the female claimant was not raped as alleged. It further strengthens the panel's findings that she was not being forced to undergo circumcision. The panel finds that the minor claimant is not at risk of being circumcised as her parents have and will be able to demonstrate their ability to protect her.

⁹ Exhibit C-11.

Taking into consideration the overall testimony of the female claimant and the credibility concerns noted, the panel further finds the female claimant's allegations that her father tried to force her to marry his business associate, not to be credible. The panel notes that the issue of forced marriage surfaced only because her mother-in-law wanted her to get circumcised.

Based on the foregoing analysis, the panel finds the principal claimant's allegations that Mr. XXXXX and the authorities were targeting him, not to be credible. The panel also finds the female claimant's allegations that she was in a forced marriage situation and that she was being forced to undergo circumcision, not to be credible.

Conclusion

The panel finds there not a serious possibility that the claimants would be persecuted for a Convention ground, were they to return to Kenya. The panel also finds that their removal to Kenya would not subject them personally to a risk to life, cruel and unusual treatment or punishment, or subject them personally to a danger of torture, believe on substantial grounds to exist.

The Refugee Protection Division rejects their claims.

“Jiti Singh Grewal”

Jiti Singh Grewal

DATED at Toronto this 29th day of November, 2005.

REFUGEE PROTECTION DIVISION / RACE / POLITICAL OPINION /
DETENTION / PARTICULAR SOCIAL GROUP / GENDER / MARRIAGE OF
CONVENIENCE / GENITAL MUTILATION / RAPE / HIDING /
CONTRADICTIONS / OMISSIONS / FACTS / EVIDENCE / MEDICAL
EVIDENCE / MALE / FEMALE / CHILDREN / NEGATIVE / KENYA