

Case Name: Lucretia Kaombo Mupahua against The Secretary of State for the Home Department

Case Ref No: P317/22

Date of Hearing: Wednesday 1 February 2023

Division: Extra

Agents:

Drummond Miller/OAG

Case Description

This reclaiming motion concerns a petition for judicial review of a decision of the Upper Tribunal dated 2 February 2022 refusing the petitioner's application for permission to appeal. By interlocutor dated 6 July 2022, the Lord Ordinary refused permission for the petition to proceed. The petitioner appeals against the Lord Ordinary's decision under section 27D(2) of the Court of Session Act 1988.

The petitioner is a Namibian national. She claimed asylum on the basis that (a) she fears gender-based violence from her husband and (b) her daughter is at risk as a result of her sexuality. On 15 April 2020 the Secretary of State for the Home Department refused her asylum application. The petitioner appealed to the First-tier Tribunal. On 14 August 2021 the FTT refused her appeal. It held that, while she may have been a victim of domestic violence prior to fleeing Namibia, she could access protection or internally relocate to alleviate any risk to her upon return. The

petitioner first applied to the FTT for permission to appeal to the UT. He advanced three grounds, namely (a) that the FTT failed to give appropriate weight to documentary evidence; (b) that the FTT erroneously gave little weight to the expert report instructed and lodged by her; and (c) it gave inadequate reasons for its decision. The FTT refused permission to appeal. The petitioner renewed her application direct to the UT which also refused permission to appeal to itself.

The petitioner advanced two grounds of challenge before the Lord Ordinary. He contended that (a) the FTT erred by taking into account evidence it should not have, namely the Organisation for Economic Co-operation and Development, which it relied on in concluding that the petitioner had not exhausted all legal remedies available to her against her husband and (b) it erred by failing to take into account, or by giving little weight to, the expert report. Following an oral permission hearing, the Lord Ordinary refused permission for the petition to proceed. Reliance on the OECD report did not deprive the petitioner of a fair hearing. She was aware of the report and it was relevant to the issues the FTT had to consider. The complaints against the FTT's treatment of the expert report could not be characterised as an error of law. It followed that the petition did not have a real prospect of success.

The petitioner argues the same grounds before the Inner House. He contends that the UT erred by failing to recognise these errors by the FTT in its decision, that the

consequence was that the fairness of the proceedings were compromised and this amounts to a compelling reason for permission to be granted, such that the “second appeals test” is satisfied.