**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/14127/2010

**THE IMMIGRATION ACTS**

| **Heard at Columbus House, Newport** | **Date Sent** |
|---|---|
| **On 9 September 2013** | **On 27 September 2013** |
| | …… |

**Before**

**UPPER TRIBUNAL JUDGE STOREY**

**Between**

**MS FANTA BAMBA**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Duncan, Solicitor, Duncan Moghal Solicitors and Advocates (Newport)
For the Respondent: Mr I Richards, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a citizen of the Ivory Coast born on 14 December 1965, claimed asylum on arrival in the UK in April 2008. When the respondent refused her claim in 2010 she appealed. In November 2010. First-tier Tribunal Judge Woolley dismissed her appeal.

Subsequently, upon grant of permission, her case came before Upper Tribunal Judge Grubb who, in a determination sent on 28 November 2011, found that Judge Woolley had not erred in law. That prompted an application for permission to appeal to the Court of Appeal which was eventually granted by Sir Stephen Sedley and resulted in a consent order of 24 January 2013 remitting the matter to the Upper Tribunal. In the Statement of Reasons it is stated that the respondent accepts that the Upper Tribunal materially erred in law in its consideration of the country guidance determination in **MD (Women) Ivory Coast CG [2010] UKUT 215 (IAC)** by finding that the First-tier Tribunal's failure to recognise the appellant as a member of a particular social group was immaterial to the finding as to whether the appellant could safely relocate within the Ivory Coast. The statement concluded:-

> "The parties are in agreement that this matter should be remitted to the Upper Tribunal for consideration to be given to whether the Appellant, as a Member of a Particular Social Group, can safely internally relocate within the Ivory Coast without undue hardship, having regard to the Appellant's particular circumstances and the conditions prevailing in the area to which relocation is proposed".

2. In the grant of permission Sir Stephen Sedley had drawn attention to the "*Shah and Islam* risk facing [the appellant] and women like her in the Ivory Coast" and stated that "[t]he relationship between the character of an established risk of sexual violence and safety by relocation is a question of general importance."

3. Following discussion with the parties I ruled, with their consent, that given the terms on which the appeal had been remitted to the Upper Tribunal, my starting point should be that it is accepted that (1) the appellant experienced persecution in her home area of Abidjan in July 2010 when she was the victim of an attack in the course of which she was raped and her father killed; (2) she had a well-founded fear of experiencing persecution again at the hands of the same perpetrators in her home area; and (3) she is a member of a particular social group, namely women. Mr Duncan submitted that in the light of Sir Stephen Sedley's grant of permission I should also treat as a starting point that (4) the attack on the appellant in July 2010 was carried out by state actors, namely soldiers of the government (members of the Forces of Côte d'Ivoire (FRCI)), and they should not be classified (as they had been by Judge Woolley) as rogue elements. Mr Richards did not seek to argue against that and accordingly I shall approach the appellant's case on the basis of (1)-(4) above. The essential question to be asked is whether the appellant has a viable option of internal relocation.

4. I heard submissions from the parties.

5. Mr Duncan submitted that in relation to internal relocation and the "safety" limb, the appellant would still face a risk of further persecution because the soldiers who attacked her would still have access to the state infrastructure and its intelligence systems and would have a continuing interest in tracking her down so as to ensure she could not become a witness against them for crimes of impunity. Because she would be relocating

from an urban to a rural setting and as a single woman, she would stand out. So as to avoid the errors of the First-tier and Upper Tribunal judges who dealt with the appellant's case previously, it was necessary to look at the issue of her safety holistically so as to take account of the fact that she had been active in her local branch of the RDR, had been detained twice for her RDR activities, was a Muslim from the North, of immigrant stock and was also a woman and as such, in the context of the Ivory Coast, a member of a particular social group, namely women of that country.

6. In relation to the "reasonableness" limb of the internal relocation test, Mr Duncan submitted that the appellant was a person who had been the victim of rape at the hands of the authorities and her experience had not only left her with physical but also mental scars. Furthermore there was recent medical evidence to show that her medical circumstances had worsened. In this context also, the fact that she was a Muslim, from the North, of immigrant stock and a woman would increase the likely difficulties she would face.

7. Mr Richards submitted that the case law and recent political developments up to the date of hearing before me, was against the appellant. Her political profile was low, she had only been active at a local level. Even assuming the soldiers who raped her before were likely to act again with impunity they would have no incentive to go 200 miles for that purpose, they could do that against women in their own area. The case of **MD** accepted that internal relocation was possible even for women. On the evidence before the First-tier Tribunal she had family in Bouake where she herself had lived until she was 16/17. The medical evidence did not establish she could not live a normal life in Bouake.

8. At this point Mr Duncan intervened to say that there was evidence which had been placed before the Secretary of State establishing that the appellant was currently unfit to travel even more than a mile in the UK and had only attended today because she had been refused an adjournment and the Welsh Refugee Council were accompanying her. He identified two medical appointment cards and a précis of the appellant's current health problems as prepared by the Welsh Refugee Council. I informed the parties that unless they objected I would wait until the end of the day for Mr Duncan to fax the documents to which he referred, as these could not immediately be located in the file. Before the end of the day I received a number of items of correspondence confirming that in November 2012 the appellant was involved in a road traffic incident and has been attending appointments at a Pain Clinic for chronic pain, at Hospital Orthopaedic and Neurosurgery departments, and is also in psychiatric care after an attempted suicide in July 2013. On 29 April her GP stated that she was currently unable to leave her flat without the assistance of at least one other person and she has no family in the area to help her leave her house. On 18 July 2013 UKBA waived her reporting condition requesting her to sign at Cardiff Reporting Centre. She has assistance currently of the Welsh Refugee Council with attending appointments.

**My Assessment**

9. Errors of law on the part of the First-tier (and Upper Tribunal) Judge having been identified by the Court of Appeal, my task in this appeal is to re-make the decision. As

already explained I take as my starting point in this appeal that the appellant had been targeted for persecution by state actors who had brutally raped her and targeted her on account of her membership of a particular social group.

10. In approaching the issue of relocation I bear in mind that Article 8 of the Qualification Directive provides that:

> "1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.
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> 2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."

and that in consequence there is a two-limbed test of (a) safety (well founded fear of being persecuted) and reasonableness and that even if someone is considered to be safe in another part of the country, they can still succeed in a claim for international protection if it would be unreasonable to expect them to stay there. It is also essential that the other party of the country be accessible.

11. As regards "safety", I do not consider that the evidence demonstrates that the appellant will face any further risk of persecution or ill-treatment from state or non-state actors, whether the individual soldiers who raped her previously or anyone else. Although she had in the past been detained for her political activities, the last occasion was in 2004 and as a result of the political changes that have taken place in the Cote d'Ivoire, former president Gbagbo's political party, the Ivorian Popular Front (FPI) is no longer in power. Her own party, the Rally of the Republicans (Rassemblement des Républicains, RDR) is presently the country's governing party; the party's leader, Alassane Ouattara is the current President. No doubt because he was alive to the changed political situation, Mr Duncan put his argument concerning lack of safety on the footing that the soldiers who raped the appellant in 2010 (even assuming their own position had been unaffected by the toppling of Gbagbo) would continue to have an interest in tracking down the appellant to ensure she could not emerge as a witness against them for their acts of impunity against her in 2010, but there is no evidence to indicate that these soldiers would come to learn of her return or, even if they did, that they would have any real concern about her being a potential witness against them. This was pure speculation on Mr Duncan's part and I reject it. Nothing in the background country evidence indicated that soldiers who had committed criminal acts against women or low-level political oppositionists in 2010 would now face being prosecuted. Indeed, as Mr Duncan himself drew attention to, the US State Department report for 2013 indicated, if anything, that the climate of impunity remained, notwithstanding that Gbagbo and his party were no longer in power. Eighteen months after the post-election crisis, only people associated with former President Gbagbo's government had been arrested. No members of the former

Forces Nouvelles, nor any military officials or civilians responsible for serious human rights abuses supporting President Ouattara, had been brought to account. In that context I concur with Mr Richards in considering that the individual soldiers who had acted with impunity against the appellant in 2010 would not have any interest in travelling 200 miles to commit further acts of sexual violence which they could carry out in their home area.

12. The background evidence contains no suggestion that the FCPI would hold lists of low-level members of the RDR in whom the previous, ousted, government of Gbagbo had an adverse interest. Nor is there anything to indicate that the fact of the appellant being a Muslim, from the North and of immigrant stock, would give rise to any real risk that her past persecutors or other state actors would seek to pursue her in Bouake. In the Ivory Coast as a whole, women face a range of discriminations and harassment is widespread but the evidence does not indicate that such difficulties are sufficiently severe to mean that women per se face a real risk of persecution or ill treatment.

13. As regards the "reasonableness" limb of the internal relocation test, I do not consider that the appellant's circumstances, even when viewed cumulatively in conformity with Article 8(2), would give rise to undue hardship. Indeed, it would appear that in certain respects her circumstances in Bouake would be more amenable to her than those she faced in the capital. Bouake was the area where she had grown up and had her family origins. It was where one of her sisters lived; it was in the North of the country so she would not face any ant-Northern sentiment; it was an area where many Muslims lived (although Muslims only comprise 2% of the total population the main base of the Muslim majority from the Dioula people is Bouake; Bouake is an area where she had lived without any significant problems and so it would not remind her of the trauma of her past experiences as might a return to live in the capital. For the avoidance of doubt I do not accept that the appellant would not be able to receive family support in Bouake. The appellant has been involved in employment previously and has a university degree, so would not be confined (in the longer term) to obtaining work in the low-paid sector of the economy.

14. Mr Duncan has submitted that the appellant's ability to live reasonably in Bouake would be significantly impeded by her health problems. So far as concerns her medical problems arising from the 2010 incident, she was found by Dr Gibson in his medico-legal report of July 2010 to suffer from severe back pain, difficulties in walking, problems with eating and chewing, lower abdominal pain, sleeplessness, flashbacks, depression, symptoms of post-traumatic stress disorder and depression. It was also noted she had considered suicide.

15. However, the same report also noted that she was able to walk with crutches and her GP had already started her on appropriate medication and referred her for counselling. Despite the Tribunal giving directions requesting any further evidence relied on to be produced, there has been no further medical report nor country information evidence relating to access to medical facilities in the Ivory Coast. There was no evidence before the Tribunal previously nor presently to suggest that in respect of her medical condition she would not be any less able to manage in Bouake than in the UK and, indeed, one of her

psychological symptoms noted in 2010, alienation from the rest of (UK) society (see page 36 of the report), would clearly not apply in the area where she had family and grown up.

16. Mr Duncan has adduced further evidence in connection with an application for an adjournment (which was previously rejected and not renewed before me). Albeit late, I take it into account. It shows that the appellant had a traffic accident in late 2012 which has compounded her previous problems. It also establishes that she has continuing psychological difficulties. However, it does not indicate that her physical and psychological difficulties would prevent her from being able to live in Bouake where (unlike her situation in the UK) she would have family to help her. So far as concerns her psychological problems, none of this new evidence indicates that these are likely to be aggravated by return to an area of Ivory Coast away from any danger. Indeed the evidence indicates that return to an area where she has family ties would mean she would no longer feel isolated and alienated from surrounding society.

17. Given the high threshold set by established cases relating to ill-health cases, it is plain that the appellant's health circumstances come nowhere near establishing any real risk of ill-treatment – or indeed of any violation of her Article 8 right to physical and moral integrity. I should emphasise that in reaching my decision I bear in mind that the appellant currently requires a Zimmer frame and/or crutches to walk and that she needs help from others to travel. In my judgment she would be able to arrange for such help to be available to assist her journey to Bouake and once there, the state of the evidence satisfies me should be able to rely on family support.

18. The background evidence continues to indicate that in the Ivory Coast women face discrimination and a background risk of sexual violence, but the appellant's own circumstances, the fact that she has a university education and a history of work in large companies, indicates that she is used to engagement with the outside world would be able to live in Bouake without such discrimination and background risk causing her any significant detriment.

19. Whilst the appellant's medical problems may make it more difficult than when she was in the Ivory Coast previously to find employment – and in the short-term because of her accident employment is not a realistic option - the fact that she has family roots (and at least one sister) in Bouake, means that there is no reason to think she would face destitution.

20. For the above reasons I conclude that the appellant has a viable option of internal relocation in the Ivory Coast and further, that it would not be a breach of her human rights to return her to the Ivory Coast. Hence:

- the First-tier Tribunal Judge erred in law
- the decision I re-make is to dismiss the appellant's appeal.

Signed Date

Upper Tribunal Judge Storey