Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04744/2018

THE IMMIGRATION ACTS

Heard at Field House
On 11th September 2018

Decision & Reasons Promulgated
On 9th November 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

M A R

(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Fitzsimons, instructed by Duncan Lewis Solicitors.

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

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1. The appellant was granted permission to appeal a determination of First-tier Tribunal Judges Nightingale and S H Smith, which dismissed the appellant's appeal on refugee, humanitarian protection and human rights grounds (Article 3) but allowed it on Article 8 ECHR grounds. The Secretary of State had, on 21st March 2018, refused the appellant's asylum and human rights claim.

2. The appellant, a national of Liberia born on 5th June 1980, claimed to have arrived in the United Kingdom in September 2006 and his asylum claim was refused in 2006. His appeal was dismissed in October 2006 and he became an appeal rights exhausted on 25th October 2006. He submitted a series of further representations but finally on 20 September 2010, he lodged further submissions which were the subject of the respondent's refusal on 21st March 2018. Within further submissions, he included medical evidence from Miss Maria McMillan, a Specialist Psychotherapist with the Tavistock and Portman NHS.

3. Whilst in Liberia, in 2004, the appellant claimed he was attacked by a group of men in uniform who searched the vehicle he was travelling in, robbed him and beat him. In December 2005 the appellant's kiosk shop was burnt and although he reported it to the police he ran away from the area.

4. The First-tier Tribunal judge in 2006 considered the background evidence and accepted that the appellant may well have been assaulted but noted that by the date of the hearing in 2006, the situation had improved in Liberia and rebel combatants no longer retained control of the relevant areas. The judge did not accept the shop was destroyed and even if it were there was nothing to suggest the appellant was personally targeted. The improving conditions in Liberia were noted.

5. The Tribunal of 2018 identified at [10] that the appellant's present claim related to his physical and mental health. The appellant had been diagnosed with a major depressive disorder and complex post-traumatic stress disorder. He claimed he was considered to be at real risk of committing suicide in Liberia not least because of his significant health problems: mental health, chronic abdominal pain owing to the violent assault in Liberia, hepatitis B, glaucoma and ptosis of the eye. It was submitted that return to Liberia would breach Article 3 because he would face a real risk of suffering serious harm. The appellant was using a TENS machine and was prescribed antipsychotic medication and monitored by the local mental health trust. The appellant had also presented with suicidal gestures.

6. The Tribunal set out the respondent's case at [11]. The respondent cited **Devaseelan v SSHD** [2002] UKIAT 00702. The report of Dr Thomas, a Consultant Clinical Psychologist, dated 20th December 2014, had been

based on an account from the appellant and it was not clear whether she had taken into account findings the judge in 2006. The previous judge had found the attack of 2004 to be a criminal attack only and the appellant had not shown he would be unable to access state protection on return to Liberia. The appellant had not shown that he lacked family support in Liberia who could assist with integration. The respondent had taken into account the availability of financial support to a returnee through the voluntary returns programme. It was accepted that the appellant was suffering with a major depressive order and complex PTSD but there were many other ways he could have developed the condition. He was not at risk from the authorities returned Liberia. The appellant had no family in the United Kingdom. Article 8 was not engaged on the basis of family life and that there was medical treatment available in Liberia. It was not accepted that the appellant met the high threshold as set down in **N [2005] UKHL 31** (endorsed by the ECtHR in 2008) such that his return would breach article 3.

7. It was accepted that there was limited psychiatric treatment for PTSD and outpatient treatment for pain management. The country only had one psychiatrist, but the country was enhancing its medical provision. The report of Dr Thomas, in the respondent's view, did not ameliorate the findings of the judge in 2006, at which time he made no acknowledgement in his asylum interview that he had mental health problems. The appellant did not meet the high threshold ill-treatment and foreign cases set out in **J** and the appellant's case could be distinguished from that of **Y** in that the appellant's claim had been found not to be credible. The appellant had not evidenced that he would be without family or friends to assist in Liberia. The conditions he would to return to Liberia would not breach article 3.

8. At paragraph 20 the Tribunal recorded that the previous hearing had been heard under the detained FastTrack rules 2005 and the respondent had failed to consider the appellant's severe medical condition and that he was a vulnerable individual. The medical professionals had confirmed that the appellant presented as a severe suicide risk if returned to Liberia.

9. At paragraph 27 the judges recorded this

> *'we asked Miss Fitzsimons if it was correct, with a view to her substantive skeleton argument, that the appellant now relied on mental health as a particular social group in his asylum claim and, in the alternative, articles 3 and 8 on mental health and suicide (physical and moral integrity) grounds in addition to paragraph 276 ADE (1)(vi). Miss Fitzsimons agreed that this was now, in essence, the appellant's case'.*

Application for Permission to Appeal

10. The application for permission advanced the following grounds

(i) there was a failure to allow the appeal grounds of humanitarian protection on the basis of the findings made under paragraph 276ADE.

The panel accepted the appellant was a victim of violent assault, Liberia was a very poor country [74], he had significant physical health problems, mental health problems and a voluntary assistance grant would be temporary [79]. Cumulatively, the appellant would be returned to the country with no support network no prospects of being able to access care or support and was be likely to be unwell and destitute. That was the equivalent of article 3 conditions and amounted to serious harm for the purposes of the qualification directive.

(ii) suicide risk – there was a rejection of the expert evidence without adequate reasons and a failure to have account to relevant considerations.

The panel accepted the appellant had a genuine subjective fear on return to Liberia and that he suffered from serious a mental health condition. At [63] and [64 and [74] the panel concluded that removal would not breach article 3 on suicide grounds because the evidence did not show a causal nexus between suicidality and removal. That was contrary to the evidence of Dr Thomas in her 2017 report who found the appellant would be 'considerably re-traumatised owing to the return to his traumatic experiences and the fact of his psychiatric condition was that he strongly believed in his actual future risk of harm and this would have a significant impact on his already fragile psychiatric condition. It was noted that he was already currently suicidal in the absence of removal directions and had reported ideation suicidal impulses and enactment. Dr Thomas in her report of 14th October 2017 stated that

> '*his suicidal risk in the event of removal directions being issued will be even more augmented. Mr R does not have any protective familial, professional or social relationships in Liberia that could act as psychologically protective factor for him against such risk*'. AB B95/96.

Dr Thomas' clear clinical opinion was that the fear was genuinely held that the appellant was already suicidal, and that removal would increase the risk of suicide.

The panel in not accepting the evidence established a causal nexus between thoughts and the actions of the Secretary of State failed to give cogent reasons for departing from the clinical opinion of Dr Thomas who had assessed the appellant twice in 2014 and in 2017. The panel accepted her clinical expertise. The fact his mental health had

deteriorated over time did not prevent him from establishing a causal nexus between removal and increased risk of suicide. This was supported by his medical records from his GP which highlighted the increase stress the appellant was under owing to his removal and confirmed his mental health condition. The appellant's GP noted

> *"his mental state is still fragile, and he is at risk of regression to overtly psychotic symptoms and suicidal ideation and behaviours"*

The evidence of Dr Thomas should also be seen in the context of the 9th May 2018 report of Maria Macmillan, psychotherapist at the Tavistock and Portman NHS trust. She stated

> *"Mr R remains in dire need continued support in respect of his complex health conditions which span physical and psychological pathology stop in respect of his health conditions his illnesses are chronic and as such are being managed rather than treated. His capacity to undertake travel for extended periods is seriously compromised due to complex psychological and physical conditions…*
>
> *The consensus was that he was too disturbed to use the more intensive and orthodox therapeutic methods used at the Institute. He was assessed as suffering with extreme symptoms of PTSD which leave him vulnerable to debilitating panic attacks which are triggered by sensory perceptions which lead to flashbacks of brutal attack suffered by the militia in Liberia. These states of mind cause him to become physically affected and lead to bizarre behaviours which have led to him being apprehended by police when in a public area. These behaviours are manifestations of psychotic phenomena which are treated with antipsychotic medication (Quetiapine) and monitored intermittently by the local CMHT"*

It was submitted the evidence was sufficient to establish a causal nexus between the act of removal and an increased suicide. It was not a matter of requiring clear proof of their claim that they would be exposed to proscribed treatment (**Paposhvili**).

(iii) there was a contingent failure to allow the appeal on humanitarian protection grounds regarding suicide risk in line with **MP (Sri Lanka)** C – 353/16 where the CJEU recognised that humanitarian protection is available to torture survivors whose removal would breach article 3 owing to its effect on my health. The appellant was a victim of torture, the assault place during the civil war, the expert evidence of Dr Ahmad also accepted by the tribunal showed Liberian states unable to provide for rehabilitation of persons affected by the civil war.

The Hearing

11. At the hearing, Ms Fitzsimons relied on her written grounds. She emphasised the nature and contents of the medical reports. There was

insufficient reasoning for rejecting the medical opinion that the appellant was suicidal and would be on removal. The **'Y and Z'** test was satisfied. There was simply a quibble with one part of the report that was the nexus. The extracts from the GP reports supported the expert evidence and it was the context for construing Dr Thomas' report rather than standing as evidence in its own right. The judges ignored this evidence. At paragraphs 63 and 64 the nexus was established.

12. Mr Avery submitted that the humanitarian protection and article 3 grounds were not met. The analysis of article 3 was comprehensive. The judges were entitled to take into account the medical expert report and there was no real attempt at self-harm. The expert was equivocal. The fact that the appellant was more agitated did not take the case further.

Conclusions

13. The Tribunal did not accept that the appellant's mental health placed him in a particular social group leading to engagement under the refugee Convention. That conclusion was not challenged in the application for permission to appeal. I have carefully studied the skeleton argument which was adopted, and recorded as being adopted by the tribunal at paragraph 32. The indication at paragraph 27 of the decision was that the appeal was being approached on article 3 mental health grounds only. The decision records

'We asked Ms Fitzsimons if it was correct, with a view to her substantive skeleton argument, that the appellant now relied upon mental health as a particular social group in his asylum claim and, in the alternative, Article 3 and 8 on mental health and suicide (physical and moral integrity) grounds in addition to paragraph 276 ADE (1) (vi). Ms Fitzsimons agreed that this was now, in essence, the appellant's case'.

14. It was the appellant's case that the appellant psychiatric health would rapidly deteriorate to a severe episode with much increased suicidality. There was a dearth of psychiatric care in Liberia and that the Ebola crisis and the legacy of the civil war had undermined the healthcare system which was in 'crisis'. It was also the case that article 3 was engaged on the grounds of suicidal propensity and owing to his fragile mental health.

15. At paragraph 88 of the skeleton argument it was stated

"in the light the jurisprudence it is submitted that removal of the appellant would be contrary to the U.K.'s obligations in respect of articles 3 and 8 of ECHR as he would be at high risk of suicide, unable to access resources and removal would clearly be contrary to the appellant's physical and moral integrity'.

As set out at paragraph 72 of the skeleton argument 'an additional significant risk factor is the appellant's precarious social status on return'. Although this argument was presented as a part of advancing the appellant's qualification as part of a particular social group, this claim was specifically made. Indeed, at paragraph 34 of Ms Fitzsimons' submissions the tribunal recorded

"in the alternative, if we did not find that individuals with mental health conditions were a particular social group in Liberia, she submitted that he was still at risk of serious harm and humanitarian protection applied in the alternative".

16. Paragraph 35 of the First-tier Tribunal decision recorded

*"the appellant was at risk on article 3 and 8 grounds on the basis of his mental health and the suicidal ideation which went to his physical and moral integrity. She [Ms Fitzsimons] referred us to **AM (Zimbabwe)** and asked us to find that the tests are done in **N** had been somewhat modified from that of imminent death to rapid experience intense suffering due to non-availability of medical treatment.*

The appellant's psychological deterioration is likely to be a rapid one on return and he had already shown a marked deterioration in the UK. His GP records were consistent with that. He had been in the UK for 12 years and had been cared for here. He had no family or financial resources in Liberia. It's clear that the availability of psychiatric services in Liberia was limited and it was accepted they were not as easily accessible as in the UK and that the appellant would have to pay. Dr Ahmed's report had looked in detail at the availability of treatment in Liberia. There were only 3 psychiatrists in Liberia the present time and only one of these Liberia. There were less than 300 doctors, in general, for the entire population of Liberia'.

17. In sum, it was quite clear that the case was put on the basis of the appellant's mental health. The destitution and lack of family was the *framework* for considering the grounds in relation to article 3 (and humanitarian protection). I do not find the tribunal can be criticised for approaching the appeal on the basis on it was specifically clarified.

18. In relation to ground (ii), the tribunal directed itself appropriately in law citing the relevant medical cases of **D v United Kingdom** (1997) 24 EHRR and **N** and **AM (Zimbabwe)** [2018] EWCA Civ 64. The decision also noted at paragraph 55 **MM (Zimbabwe) 2012** EWCA Civ 279 that

'Where an article 3 claim fails on health grounds it is considered that article 8 would be unlikely to see succeed without some separate or additional factual element which brings the case into the article 8 paradigm to be weighed in the balance with other factors which by themselves engaged article 8'.

19. However, the findings in relation to article 8 appear to rest on the medical grounds without more. The findings in relation to article 8 stated that

    '*we have found him to be a vulnerable and traumatised individual with a very real, if only subjective, fear of returning to Liberia. We add to this that the appellant is without family support in Libera and we also accept it is likely that he has no remining ties by way of friends'… We add also in considering the obstacles, this appellant's present physical health. … we note the lack of availability of medical facilities in Liberia in general*'. [78] and [79].

    …

    '*we are also mindful of the concerns expressed by Dr Thomas and Ms McMillan relating to this appellants' possible relapse and risk of further psychotic episodes*'. [80]

20. In relation to Article 3, the tribunal made various findings from paragraph 56 onwards

21. The appellant was attacked and seriously assaulted in 2004 by armed men in uniform. Part of that attack involved stabbing to his abdominal region and the appellant awoke to find himself in hospital [56]. That finding was not challenged.

22. The previous judge had not found the kiosk shop was burned, the appellant's evidence as to the perpetrators was vague, but even so, there was no convention reason disclosed [57]. The appellant was accepted as a vulnerable witness and that his mental health may have been present when he arrived in the United Kingdom and underwent his first appeal [58]. The Tribunal specifically noted that it could depart from the previous findings but there was no additional evidence relating to the events in Liberia. There was no finding that he appellant was attacked by the authorities. It was accepted that his attack was potentially capable of giving rise to a subjective fear on return and, indeed, to have led to his long-term mental health problems. [59]

23. The Tribunal found the criticism by the respondent of Dr Thomas' report which diagnosed a depressive disorder and complex post-traumatic disorder, was not well founded. The diagnosis was supported by further medical evidence over time, and, the appellant had been receiving treatment for a number of years. Dr Thomas *had* reviewed the previous decision the tribunal and set out her clinical observation. There was nothing in the report which lacked objectivity was not a reliable insight into the appellant's mental health condition. Dr Thomas was a consultant clinical psychologist with over 15 years post qualification experience and had been employed at the Tavistock and Portman NHS foundation trust [60].

24. The report from the Tavistock and Portman NHS foundation trust dated 9 May 2018 described the appellant as suffering from complex PTSD and the

> *"consensus of the several referring physicians was that the appellant's presentation was too disturbed to use more intensive and orthodox therapeutic methods. He was assessed as suffering with extreme symptoms of PTSD which left him vulnerable to debilitating panic attacks which were triggered by sensory perceptions leading to flashbacks of the brutal attack suffered at the hands of the militia in Liberia. This had caused the appellant to become physically affected and led to bizarre behaviours which had led him to be apprehended by the police in public areas. His behaviour was considered to be a manifestation of psychotic phenomena which has been treated with antipsychotic medication monitored intermittently by the local community mental health trust'.*
>
> …
>
> *His GP regards his mental health is still fragile and considers the appellant to be at risk of a regression to the psychotic symptoms and suicidal ideation and behaviours. We find, on the totality of the evidence relating to the appellant's mental health, that he is suffering from a severe depressive illness and complex PTSD which, on the evidence of Dr Thomas, appears to have worsened in the intervening years between 2014 when she first saw him and her most recent report dated 14th of October 2017'.* [61]

25. The tribunal also accepted that the appellant suffered from a number of chronic health conditions which were managed rather than treated for example coma, chronic hepatitis B and advanced liver disease suggestive of cirrhosis. He has centralised abdominal pain. [62]

26. The decision recorded at [63] that the appellant's attempts to hang himself was *'now some years ago'*. The tribunal opined

> *"whilst Dr Thomas notes that the appellant fears letters from the respondent, and weeps on seeing them, this does not form part of the causal link to the appellant's reported suicidal ideation which does, from paragraph 44 to 48, appear to arise more from his frustration at his considerable ongoing health problems. Dr Thomas does, however express her concerns, at paragraph 72, that she considers it "very possible", given the high levels of fear the appellant presents in the context of psychiatric illness, that he could make a suicide attempt either prior to boarding or whilst on the plane. She does not consider him fit to fly also on the basis of his physical difficulties. She expressed the view that whether the actual future risk of harm in Liberia held by the appellant is correct or not, he appears to strongly believe it to be true. She regards the appellant is already recurrently suicidal in the absence of removal directions and considers that this risk would be augmented in the event of removal directions being issued. She also considers return to Liberia to carry*

a risk of re-traumatisation and fears that he would become too psychiatrically unwell due to his fear to reintegrate into Liberian society. She also regards him as physically and mentally able to work'' [63].

27. The tribunal did not reject the professional qualifications or assessment by Dr Thomas and Dr Thomas wrote the medical report in accordance with **JL (medical reports-credibility) China** [2013] UKUT 00145. The respondent did not challenge that the appellant experienced a serious mental health condition. Further the tribunal found that the appellant had no family in Liberia to whom he could turn.

28. In the assessment of the suicide risk, the tribunal, however, failed give adequate reasoning for countering the clear professional opinion of the Consultant Psychologist, Dr Thomas and the GP evidence with regards the appellant's suicide risk and the causal nexus between removal and suicide. It was accepted he had indeed a very serious mental health disorder documented over many years, was on anti-psychotic medication, there was a dearth of medical facilities in Liberia and he had previously made a suicide attempt by trying to hand himself. The evidence was supported by the context of the report of the psychologist, Ms MacMillan, and the GP notes. It is also the case that Dr Thomas had seen the appellant over time both in 2014 and 2017 and had written comprehensive reports. There was no indication that she had failed to comply with the Practice Direction on Expert reports cited in **JL (medical reports-credibility) China** [2013] UKUT 00145.

29. With reference to the article 8 findings the tribunal found the appellant

'to be a vulnerable and traumatised individual with a very real, if only subjective, fear of returning to Liberia'

30. It was accepted that the appellant had been attacked, albeit it was not accepted that this was anything other than a random attack, it appeared to be accepted that the appellant genuinely believed he was at risk of persecution. In the light of this finding, it was Dr Thomas' professional opinion as recorded in the judgment that

'the appellant is already recurrently suicidal in the absence of removal directions and considers that this risk would be augmented in the event of removal directions being issued.

This sets out a clear causal nexus between the removal to Liberia and suicide. Applying the principles in **J v SSHD** [2005] EWCA Civ 629, the focus should be on the foreseeable consequences of the removal of the applicant; the threshold is high, the risk of breach in article 3 should be objectively well founded and further there should be an assessment of whether the receiving state has effective mechanism to reduce the risk of suicide. **Y (Sri Lanka) v SSHD** [2009] EWCA 362 confirmed that a

subjective fear of renewed torture and abuse may sometimes be just as real and its potential consequences just as grave. In this case unlike **Y**, no sustainable fault was found in the psychiatric material before the Tribunal and in support of the appellant's case. Nothing was so controverted in the appellant's case so as to undermine the medical evidence. As **Y** sets out at paragraph 13.

> *'it is the reality and the consequences of such subjective fear as each appellant may nevertheless have'.*

And at paragraph 16

> *'one can accordingly add to the fifth principle in J v SSHD [2005] EWCA Civ 629 that what may nevertheless be of equal importance is whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return'.*

31. It should be noted that the standard of proof is 'real risk' and the risk must be more than something 'just fanciful'. In view of the evidence that I have set out I find that the medical evidence clearly explains the evident nexus between the act of removal and the inhuman treatment (suicide). As Dr Thomas found

> *'his suicidal risk in the event of removal directions being issued will be even more augmented. Mr R does not have any protective familial, professional or social relationships in Liberia that could act as psychologically protective factor for him against such risk'.* AB B95/96.

32. The appellant's appeal should be allowed on Article 3 grounds because of the risk of suicide.

33. With regards the application on the combination of *general health grounds and destitution grounds*, the authority **Secretary of State for the Home Department v Abdulkadir Ahmed Said** [2016] EWCA Civ 442, cited the importance of **D v United Kingdom** (1997) 24 EHRR 423 and **N v United Kingdom** 47 EHRR 885. These cases emphasised the need for very exceptional circumstances in medical cases.

34. In **D** the applicant '*was critically ill and appeared to be close to death, could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care for him or provide him even a basic level of food, shelter or social support: para [42]'.*

35. As **Said** set out at [14] and [15] with reference to the case of **N**:

> *''Its overall conclusions are found in paras 42 to 45 of the judgment. In short:*
>
> > *i) Those subject to expulsion are not entitled to remain to continue to benefit from medical, social or other forms of assistance provided by the expelling*

state. The fact that he would find himself in reduced circumstances, or with reduced life expectancy, does not of itself give rise to breach of article 3 ;

ii) The decision to remove someone suffering from a serious physical or mental illness to inferior facilities in the receiving country would give rise to a violation of article 3 only in a very exceptional case, where the humanitarian grounds against removal are very compelling;

iii) The circumstances of D's case provided such exceptional and compelling circumstances.

iv) There may other exceptional cases but the high threshold should be maintained because "the alleged future harm would emanate not from the intentional acts or omissions of public bodies or non-state bodies, but instead from the a naturally occurring illness and the lack of sufficient resources to deal with it;

v) The Convention is essentially concerned with civil and political rights. There is no obligation to alleviate disparities in the availability of treatment across the world through the provision of free and unlimited medical treatment;

vi) These principles apply to the expulsion of any person with a serious, naturally occurring physical or mental illness which may cause suffering, pain and reduced life expectancy and require specialised treatment not available in the receiving state.

15 The significance of point (iv) in the summary is that the paradigm case, as Laws LJ described it at para 39 of the GS case , in which article 3 prevents removal involves the necessary risk of being subject to an intentional act which constitutes torture, or inhuman or degrading treatment. Medical cases, and I would add cases where the complaint is that someone returned <u>would be destitute on arrival, do not fall within that paradigm</u>. Laws LJ reviewed the decisions of the Strasbourg Court in the case of MSS, Sufi and Elmi , SHH and Tarakhel which, in addition to the medical exception narrowly defined in the D and N cases, illuminate the limited circumstances in which it is appropriate to depart from that paradigm in article 3 cases.

…

[18] These cases demonstrate that to succeed in resisting removal on article 3 grounds on the basis of suggested poverty or deprivation on return which are not the responsibility of the receiving country or others in the sense described in para 282 of Sufi and Elmi , whether or not the feared deprivation is contributed to by a medical condition, the person liable to deportation must show circumstances which bring him within the approach of the Strasbourg Court in the D and N cases .

[31] An appeal to article 3 which suggests that the person concerned would face impoverished conditions of living on removal to Somalia should, as the Strasbourg Court indicated in Sufi and Elmi at para 292, be viewed by

*reference to the test in the **N** case. Impoverished conditions which were the direct result of violent activities may be viewed differently as would cases where the risk suggested is of direct violence itself''.*

36. In respect of **Said**, the Court of Appeal in **Secretary of State for the Home Department v MA (Somalia) [2018] EWCA Civ 994** had this to say at paragraph 64

    *'the decision of this Court in **Secretary of State for the Home Department v FY (Somalia)** [2017] EWCA Civ 1853 could be read as departing from **Said** [2016] EWCA Civ 442 and as accepting that it was sufficient for art.3 purposes that a person returning to his country of origin might end up living in an IDP camp. Although the holding of the FTT in that case ([22]), which this Court held had not erred in law ([23]), could be read as so holding, **Said** [2016] EWCA Civ 442 was not cited and therefore in my judgment to the extent that there is any conflict between the decision of this Court in **Said*** [2016] EWCA Civ 442 *and that in **FY Somalia** , the decision of this Court in* Said *should be followed'.*

37. The Court of Appeal in **MI (Palestine) v Secretary of State for the Home Department** [2018] EWCA Civ 1782 did not depart from **Said** but found that conditions in Gaza were attributable to the direct and indirect actions of the parties to conflict within the meaning of [282] of Sufi and Elmi.

38. The conditions in Liberia that this appellant faces are limited medical treatment, rather than total absence, impoverished living and lack of family support. The case was argued on medical grounds and not on the basis that the conditions were attributable to the direct or indirection actions of parties to conflict. The case was, specifically, not argued on that basis and that is important. Further, the applicant is not *through his illness* on the brink of death. The harm he will suffer is not as a result of the commissions or omissions of public bodies or non-state agents but from his own naturally occurring illness. Further to **AM (Zimbabwe)**, save for my findings in relation to suicide, it has not been shown that the appellant is to be exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering or to a significant reduction in life expectancy.

39. I find, therefore, that the appellant cannot succeed in relation to Article 3 save in relation to my findings with regard to suicide. The panel did not err in this regard despite the findings they made.

40. Nor in relation to ground (iii), on the grounds put as they were, am I persuaded that the panel erred in relation to the assessment under humanitarian protection.

41. In **M'Bodj v Etat Belge case C-542/13** CJEU Grand Chamber, it was held that the risk of deterioration of health of a third country national suffering from a serious illness as a result of the absence of appropriate treatment in his country of origin was not sufficient to warrant the grant subsidiary protection unless the person was intentionally deprived of health care.

42. The judgment of **MP v SSHD** [2018] CJEU C-353-16 (a decision on a preliminary point on referral from the Supreme Court) found that Articles 2(e) and 15 (b) of Directive 2004/83 should be interpreted as meaning that for a third country national, who has been tortured by the authorities of his country in the past but no longer faces a risk of such on return, but whose physical and psychological health could, if so returned, seriously deteriorate leading to a serious risk of him committing suicide on account of trauma resulting from the torture he was subjected to, is eligible for humanitarian protection (subsidiary protection). That, however is not the case here. The First-tier Tribunal judge in the decision of October 2006 accepted that the appellant was assaulted but he did not know who had assaulted him and it was concluded that the attack on the appellant was a criminal attack. There was no finding that the was the fall out from the civil war. The account of his shop being burned down was rejected was also considered a criminal attack. There was nothing to suggest this was personal, it was found to be merely a random attack. The appellant continued to live safely in the border town of Ganta for nine months after the fire.

43. I am therefore not persuaded that the judges erred in relation to their assessment of humanitarian protection.

44. The Judge erred materially for the reasons identified. I set aside the decision (only to the extent of my findings below) pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007) and remake the decision under section 12(2) (b) (ii) of the TCE 2007.

45. In the light of the above I find that the decision should be set aside in relation to the finding on Article 3 (suicide) only. In that respect I set aside the conclusion remake the decision and allow the appeal on Article 3 (suicide) grounds.

46. The appeal remains refused on humanitarian protection grounds.

47. The appeal remains allowed on Article 8 grounds.

48. The appeal is allowed on Article 3 grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Helen Rimington* Date 12th October 2018

Upper Tribunal Judge Rimington