



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/14263/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision and Reasons**

**On 17 May 2019**

**Promulgated**

**On 21 May 2019**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**MN  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr V. Sharma, Solicitor

For the Respondent: Ms S. Jones, Senior Home Office Presenting Officer

**DECISION PURSUANT TO RULE 40(3)(a) OF THE TRIBUNAL PROCEDURE  
(UPPER TRIBUNAL) RULES 2008**

1. The appellant, a citizen of Kenya, appealed to the First-tier Tribunal (“FtT”) against a decision dated 13 December 2018 to refuse a protection and human rights claim. The FtT dismissed the appellant’s appeal.
2. At the hearing before me on 17 May 2019 it was agreed between the parties that the FtT erred in law by:

- (i) proceeding to determine the asylum/protection claim in circumstances where the appellant had purported to withdraw that claim at the hearing;
  - (ii) by apparently failing to consider rule 17 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 in terms of the reasons for the purported withdrawal of that aspect of claim and thus the validity of the withdrawal;
  - (iii) in rejecting the protection claim without apparently taking into account the appellant's claim that her daughter in the UK, born in November 2017, would be at risk of FGM on return to Kenya as asserted in an email dated 23 February 2019 in response to the decision letter, and to be found in the respondent's bundle that was before the FtT.
3. It was also agreed between the parties that the errors of law are such as to require the decision of the FtT to be set aside and for the appeal to be remitted to the FtT for a hearing *de novo*.
4. In the circumstances, I set aside the decision of the FtT for error of law and remit the appeal to the FtT for a hearing *de novo*, on **all** grounds including Article 8 of the ECHR as well as in terms of the protection claim, before a judge other than First-tier Tribunal Judge Anthony, with no findings of fact preserved.
5. In remitting the appeal I have had regard to paragraph 7.2 of the Practice Statement of the Senior President of Tribunals.
6. Pursuant to rule 40(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008, no reasons (or further reasons) are required, the decision being made with the consent of the parties.

**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 her or any member of her 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.

Upper Tribunal Judge Kopieczek

dated 17/5/19