

Federal Court



Cour fédérale

**Date: 20230320**

**Docket: IMM-4121-21**

**Citation: 2023 FC 374**

**Ottawa, Ontario, March 20, 2023**

**PRESENT: Mr. Justice Norris**

**BETWEEN:**

**HABAB AMIN ALI MOHAMED KHAIR  
AHLAM OSMAN ABDELRAHMAN  
YAGOUB  
NOURAN EBDELRAHIM MUDDATHIR  
HASSAN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] Habab Amin Ali Mohamed Khair, her mother Ahlam Osman Abdelrahman Yagoub, and her daughter Nouran are citizens of Sudan. On March 17, 2020, they entered Canada from the United States and claimed refugee protection. They allege that they face a risk of persecution in

Sudan because Ms. Yagoub refused to sell the family home in Khartoum to the Rapid Support Forces (“RSF”), a military organization that is affiliated with the Sudan National Intelligence and Security Service (“NISS”). (The RSF grew out of the Janjaweed militias.) The applicants further allege that in the course of trying to coerce Ms. Yagoub to sell the home, RSF officers threatened Ms. Khair with reprisals for her past opposition to the government.

[2] In a decision dated May 26, 2021, the Refugee Protection Division (“RPD”) of the Immigration and Refugee Board of Canada rejected the claims. The RPD concluded that the determinative issue is the absence of objective forward-looking risk in Sudan. The RPD did not express any concerns about the overall credibility of the applicants’ account of their experiences in Sudan, including the interest of the RSF in obtaining their home. Instead, the RPD found that the applicants had failed to establish a serious possibility that, if they sold the home (whether to a third party or to the RSF itself), they would be of continued interest to the RSF. The RPD also found that the applicants had failed to establish that they face a serious possibility of persecution because they are female or, in the particular case of Ms. Khair, because of her political profile. As a result, the RPD concluded that the applicants are neither Convention refugees nor persons in need of protection.

[3] The applicants now apply for judicial review of this decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”). As I explain in the reasons that follow, I am not persuaded that there is any basis to interfere with the RPD’s decision. This application for judicial review will, therefore, be dismissed.

## II. BACKGROUND

[4] Ms. Khair, the principal claimant, was born in July 1983. Her mother, Ms. Yagoub, was born in June 1954. Ms. Yagoub also has an older daughter who lives in Canada and is a Canadian citizen.

[5] Ms. Khair graduated from the Faculty of Law at Al Neelain University in Khartoum in 2005. While in university, she had been a member of a law student society that advocated on behalf of detainees and prisoners. She stated in her Basis of Claim (“BOC”) narrative that the NISS had monitored the group’s activities and had warned members (including Ms. Khair) of severe consequences if they continued their advocacy.

[6] Ms. Khair became a licensed lawyer in Sudan in 2008 and a member of the Sudan Bar Association in 2009. She practiced as a lawyer in Khartoum from 2010 until November 2017, when she left for Saudi Arabia after she was married. While in Saudi Arabia, Ms. Khair worked as a freelance translator. Her daughter Nouran was born there in May 2019. After her marriage broke down, on December 23, 2019, Ms. Khair returned to Sudan with her daughter. She and her husband divorced a short time later. Ms. Khair’s ex-husband, who is also a national of Sudan, remained in Saudi Arabia.

[7] Ms. Yagoub owns a home in an affluent neighbourhood in Khartoum. When she and her husband (Ms. Khair’s father) divorced in 1989, Ms. Yagoub continued to live in there but rented

out part of the house to tenants. On the record before me, it is unclear how long she has owned the home but it appears that it was where she raised her family, including Ms. Khair.

[8] While Ms. Khair was away in Saudi Arabia, Ms. Yagoub's cousin, Omar Salih Abdelrahman Yagoub, who lived nearby, would come around the house to check on Ms. Yagoub.

[9] According to the applicants, the RSF owns a neighbouring property, a large four storey building that was once a school. A number of RSF soldiers are based there. The building has also been used as a temporary detention facility.

[10] While working as a lawyer in Sudan, Ms. Khair had continued to work on behalf of detainees, including one person who was detained in the RSF facility next door to her mother's home.

[11] Late in the evening of April 17, 2019, ten armed men stormed into Ms. Yagoub's house, claiming to have a search warrant. Both Ms. Yagoub and her cousin Omar were present at the time. Some of the men were wearing RSF uniforms; others were in plainclothes (the applicants believe the latter were members of the NISS). The men searched the ground floor of the house, claiming that they were looking for foreign currency and weapons. When they were leaving, the men told Ms. Yagoub that they intended to take over the house but she would be compensated for this. When later asked in her port of entry interview why the RSF had targeted her, she

explained: “Because my house is beside their property and they want both houses. The whole neighbourhood is now the national security agency Janjaweer [*sic*].”

[12] Fearing further contact with the RSF, Ms. Yagoub reached out to Ms. Khair, who then obtained a Saudi visitor’s visa for her mother. Ms. Yagoub arrived in Saudi Arabia on May 10, 2019, and stayed with her daughter there.

[13] In mid-May 2019, Ms. Yagoub was informed by one of her tenants that members of the RSF had come by the house again and were looking for her. The officers had told the tenants that they would be taking the house and that they (the tenants) should leave in a week. The tenants moved out as instructed but the RSF did not take over the house.

[14] Early in the morning of August 24, 2019, 15 armed men stormed Omar’s family home while he, his wife and their children were asleep. Some of the men were in RSF uniforms; others were in plainclothes (again, the applicants believe the latter were from the NISS). The men searched Omar’s home for some three hours, claiming to be looking for foreign currency and weapons. They also asked where Ms. Yagoub was and when she would be back. Omar was handcuffed and, at one point, struck on the head with the butt of a gun. As they left, one of the men told Omar to tell Ms. Yagoub that they were awaiting her return.

[15] In October 2019, Ms. Yagoub had to return to Sudan because her Saudi visitor’s visa was expiring. Still fearing the RSF, she did not stay at her own home. Instead, she stayed with Omar

and his family. However, after Ms. Khair and her daughter returned from Saudi Arabia on December 23, 2019, the three of them stayed in the family home.

[16] In the late afternoon of December 29, 2019, eight men appeared at the house. Three were in RSF uniforms; the others were in plainclothes. All were armed. They asked to come in. One of the plainclothes men, who appeared to be in charge, told Ms. Yagoub that they had come with a good offer this time. If she turned the house over to them, she would receive \$50,000 USD. (According to the applicants, this is “only a fraction” of what the house was worth.) Ms. Yagoub said she did not want to leave the house because she needed it for her daughters. The men told her she did not have any choice in the matter; if she made trouble, they would take the house anyway and she would receive nothing. When Ms. Khair attempted to intervene, the men threatened her. Ms. Yagoub told the men she would think about the offer. The men said they would be back soon but warned Ms. Yagoub and Ms. Khair that in the meantime they should not tell anyone about what was going on.

[17] On the evening of January 24, 2020, two men came to the house and told Ms. Khair to come with them. Ms. Khair believes they were members of the NISS. They took her to a security office where a third man questioned her. The third man told her that she had been brought there because her mother was wasting their time. He told her to tell her mother to give the RSF her house and she would be rewarded. Otherwise she would be driven out by force and she would not receive anything. The man told Ms. Khair that they knew she was an opponent of the government. If she did not cooperate and enlist her mother’s cooperation, they would open her files relating to her past opposition to the government. The man said that they knew

everything about her and there was nowhere she or her family could hide. Although Ms. Khair attempted to respond politely, at one point one of the men suddenly grabbed her left arm, twisted it behind her back, and scratched it with a pen.

[18] Ms. Khair was eventually driven home, arriving there at around 12:30 a.m. She told her mother what had happened. They stayed the night at Omar's house, although they eventually returned to their own home.

[19] The applicants began to make arrangements to leave the country, including applying for US visas. Ms. Khair's US visa was issued on February 26, 2020. Her daughter's and her mother's were issued on March 3, 2020.

[20] Leaving the house in Omar's care, the applicants left Sudan for the United States on March 15, 2020. An associate of Omar's assisted the applicants pass through exit controls in Khartoum.

[21] After arriving in New York City on March 16, 2020, the applicants went directly to the Fort Erie, Ontario, port of entry and made claims for refugee protection.

[22] In their testimony before the RPD, the applicants confirmed that they were unaware of any further targeting of their family in Sudan or attempts by the Sudanese government to locate them.

[23] It appears that Omar left Sudan a short time after the applicants. A statement he provided in support of the applicants' refugee claims dated June 19, 2020, states that he is "currently living [*sic*] the USA" and has "no further information" about the applicants' home.

### III. DECISION UNDER REVIEW

[24] In concluding that the applicants are not Convention refugees or persons in need of protection, the RPD began by observing that it is "firmly established in Canadian refugee law" that where a refugee claimant can take reasonable steps to reduce the risk of harm in the country from which they seek protection, they must do so. The member noted that, as the Federal Court of Appeal had held in *Sanchez v Canada*, 2007 FCA 99 at para 16, where a claimant can "make reasonable choices and thereby free themselves of a risk of harm," they "must be expected to pursue those options."

[25] The RPD observed that an exception to this principle "is where a claimant can only avoid harm by relinquishing something that engages with a principle of fundamental human rights or dignity, such as the ability to freely practice religion, express a political view or give expression to an immutable personal characteristic [citing *Sanchez* at para 18]." The RPD found that this exception does not apply to the applicants because all that is at stake is an interest in property. The RPD considered that, in this respect, the circumstances of the present case were analogous to those of *Kenguruka v Canada (Citizenship and Immigration)*, 2014 FC 895, and *Malik v Canada (Citizenship and Immigration)*, 2019 FC 955, which both concerned relinquishing a claim to an inheritance in order to avoid a risk of harm. The RPD therefore concluded that it was not unreasonable to expect the applicants to sell the house in Khartoum.



[26] The RPD also found that the applicants had failed to establish that the RSF had any interest in them apart from their interest in obtaining the house. The RPD noted that the applicants had cited specific examples of the RSF taking over people's homes; however, they provided no evidence that the RSF continued to be interested in the former owners after they had acquired their property. Furthermore, there was no objective country condition evidence suggesting that "the RSF continues to target people it extorts property from after that property is relinquished." The RPD also noted that while the RSF had attempted to use Ms. Khair's past political activities as leverage to obtain the house, "it is quite clear from the evidence that the RSF regarded this simply as a tool and did not have any independent interest in [her] because of her previous legal work." As well, the applicants had confirmed that they were unaware of any further targeting of their family in Sudan or attempts by the Sudanese government to locate them since they had left Sudan.

[27] In summary, the RPD concluded that there is less than a serious possibility that the applicants would continue to be of interest to the RSF if they sold their house. The RPD member added: "While such a sale may be at well under market value, I find that the deprivation of the claimants' equity in the property does not constitute a form of persecution."

[28] Prior to their RPD hearing, the applicants had provided detailed written submissions in support of their claim. Among other things, anticipating that the availability of an internal flight alternative ("IFA") could be in issue, they submitted that they would be at risk anywhere in Sudan. At the hearing, the member requested further submissions on the application of the IFA test in this case, focusing on whether the applicants could safely relocate to a new home in

Khartoum. The applicants provided these further submissions shortly after the hearing. They continued to maintain that they would be at risk anywhere in Sudan, including anywhere in Khartoum. The member ultimately concluded, however, that in view of the determinations set out above, it was not necessary to consider the IFA test. Nevertheless, in the alternative, the member conducted an IFA analysis and concluded that selling the house and moving to another one in Khartoum was a viable IFA.

[29] The RPD also concluded that Ms. Khair's political activities did not create an independent risk of persecution. Her evidence was that she had worked as a lawyer from 2010 until 2017, taking on at least some cases in opposition to the government. However, there was no evidence that she had worked as a lawyer since 2017. While Ms. Khair had been an activist when she was a law student and had described being threatened by the authorities at that time, a letter from a friend and colleague did not mention any threats post-dating their time at law school. As well, as already noted, the applicants did not provide any evidence of an ongoing interest in them (including Ms. Khair) since they had left Sudan in March 2020.

[30] In addition, the RPD observed that Ms. Khair's political activities had taken place during the period when Omar Al-Bashir was in power. The member found that there was considerable objective evidence that the civilian-led transitional government that had replaced the Al-Bashir regime had "substantially reduced the risk to many Sudanese citizens of expressing critical opinions." After reviewing this evidence in some detail, the member concluded that there had been a significant decrease of political repression by the Sudanese state. To the extent that there continued to be a risk, this depended on the individual's particular profile (such as supporting

militias opposing the current government). Ms. Khair did not fit this risk profile because, even if she took up work advocating for detainees on her return, she would be doing so through official channels as a lawyer; she would not be involved in “higher-risk political activities.”

[31] Finally, the RPD concluded that the applicants had not established that they were at risk of gender-based persecution. The country condition evidence demonstrated that there had been some improvements in the treatment of women in Sudan, although that evidence also showed that rape and domestic violence remained widespread. The applicants, however, do not fit the profiles of women who, according to country condition evidence, would be at risk. They do not live in conflict or rural areas. They are members of the majority ethnic group. While the adult applicants are both divorced, they have a family network that includes male relatives and this mitigates the risk of sexual violence. The family would have sufficient capital and other resources to secure housing (even if they had to sell their current home). Ms. Khair is educated and was previously able to find work in her profession. The RPD found that there was no evidence that they would be at a higher risk of gender-based violence than any other middle-class unmarried women. While the risk under section 96 need not be personalized, in the present case, it did not rise to the level of establishing a serious possibility of persecution.

[32] The RPD accepted that there was evidence that the applicants could face some forms of gender-based mistreatment, such as barriers to employment or access to housing. However, the RPD found that this treatment constitutes discrimination and not persecution. Furthermore, if the applicants faced such discrimination, they could draw on the funds from the sale of the home to cover their needs and expenses to become self sufficient. The applicants could also stay with

their relatives in Khartoum, one of whom, according to Ms. Khair, is a wealthy businessman. The member did not accept Ms. Khair's testimony that these relatives would not assist them because of their problems with the RSF, finding that this assertion was speculative and not credible.

[33] For all these reasons, the RPD concluded that the applicants are neither Convention refugees nor persons in need of protection.

#### IV. STANDARD OF REVIEW

[34] The parties agree, as do I, that the RPD's decision should be reviewed on a reasonableness standard. Judicial review on this standard considers not only the outcome but also, where reasons are required (as is the case here), the justification for the result (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 29).

[35] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136).

[36] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual

findings unless there are exceptional circumstances (*Vavilov* at para 125). At the same time, reasonableness review is not a rubber-stamping process; it remains a robust form of review (*Vavilov* at para 13). The reasonableness of a decision may be jeopardized where the decision maker “has fundamentally misapprehended or failed to account for the evidence before it” (*Vavilov* at para 126).

[37] The onus is on the applicants to demonstrate that the RPD’s decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

## V. ISSUES

[38] The applicants challenge the reasonableness of the RPD’s decision on a number of grounds. In my view, the central issues arising in this application are as follows:

- a) Did the RPD err in finding that it is not unreasonable to expect the applicants to sell their home?
- b) Did the RPD err in finding that there would be no objective forward-looking risk to the applicants if they sold their home (whether to the RSF or to a third party)?

VI. ANALYSIS

A. *The Sale of the Home*

[39] As set out above, the RPD concluded that it was reasonable to expect the applicants to sell their home to avoid the risk posed by the RSF. The applicants challenge this determination in a number of respects but at the hearing of this application they focused on what they say are two key reviewable errors by the RPD: (1) presuming that the RSF would actually compensate the applicants for taking their property; and (2) failing to consider that the refusal to give up the home to the RSF was itself an expression of political opinion. I am not persuaded that the RPD erred in either of these respects.

[40] Looking first at the potential financial impact on the applicants of giving up their home to the RSF, while I agree with the applicants that one should not simply presume that the RSF would act in good faith and follow through with their offer to compensate the applicants for losing their property, I do not agree that this is how the RPD approached the issue.

[41] The applicants had pointed to specific examples of the RSF seizing property but they did not adduce any evidence that they had done so without compensating the owners. The RPD accepted that the applicants might not receive fair market value for their home. However, there was no evidence of the impact that receiving little or even nothing for the home would have on the applicants' financial circumstances. Put another way, while in objective terms the loss might be significant, there was little evidence of its impact on the applicants relative to their means.

Notably, in their post-hearing written submissions, the applicants said only the following about the impact losing their home would have on them:

In the scenario that the house is sold to the agents of persecution at a low price, or the claimants abandon the house altogether and eliminate their rental income, the claimants would face difficulty finding proper employment to sustain their family of three, simply because they are women in a Muslim-dominated country.

[42] The RPD found that even accounting for the high cost of living in Khartoum, the applicants “have failed to provide evidence to establish that they will not be able to use the proceeds of the sale to cover their needs and expenses even if gender-based barriers makes [sic] take longer for the household to become self-sufficient.” In my view, even if the RPD should have expressly considered the possibility that the applicants could receive nothing for their home, in the absence of any evidence of the impact this would have on them, it was still open to the RPD to find that it was not unreasonable to expect the applicants to relinquish the property.

[43] Taking a broader view of this issue, there can be no question that it would be unreasonable to expect a refugee claimant to give up a business or property to avoid a risk of harm if doing so would involve a deprivation of fundamental human rights (by, for example, leaving them homeless or unable to earn a basic income): see *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 738-39; *Sanchez* at paras 18-19; *Malik* at para 30; and *Singh v Canada (Citizenship and Immigration)*, 2021 FC 595 at paras 16-17. The applicants argue that the jurisprudence relied on by the RPD (*Sanchez*, *Malik* and *Kenguruka*) is distinguishable because it concerns the loss of a business or an inheritance, not a home. These cases do indeed differ from the present one in this respect. However, in the absence of any evidence that the applicants could not find a new home or would otherwise be affected in a fundamental way by

the loss of their home, the RPD reasonably determined that the underlying principle for which those cases stand is applicable here. On the record before it, the RPD reasonably found that, even if there would be an adverse impact on the economic or property interests of the applicants, this was insufficient to engage a principle of fundamental human rights.

[44] As well, it must not be forgotten that the RPD also found that the applicants had another option besides giving up their home to the RSF (whether for fair compensation or not). This was selling the home to a third party (whether for fair market value or otherwise). The applicants had maintained before the RPD that they would be unable to sell the home to a third party but the RPD found that there was “no reliable evidence to that effect.” The applicants have not pointed to any evidence that calls the reasonableness of this determination into question.

[45] Second, I do not agree that it was unreasonable for the RPD to fail to consider that the applicants’ refusal to sell the home was (or would be perceived to be) the expression of political opinion.

[46] In advancing their claim before the RPD, the applicants did not say this was why they were refusing to turn their home over to the RSF, nor did they suggest that their agents of persecution would attribute their uncooperativeness to political motives. In the joint BOC narrative, the only reason Ms. Yagoub gave for not giving up the home was that she needed it for her daughters. And the only basis on which the applicants claimed to fear the RSF was the simple fact that they had refused to give up their home. There was no suggestion that they were also at risk of because of why they were doing so.



[47] On judicial review, however, the applicants now submit that their refusal to sell their home to the RSF was an expression of political opinion that “challenged vested political interests of the RSF” given that expropriating property was a common practice on the part of the RSF. This link was, at best, only implicit in their narrative as presented to the RPD. Certainly, it was never drawn explicitly in their extensive written submissions to the RPD.

[48] In my view, in the particular circumstances of this case, the reasonableness of the RPD’s determination is not called into question by its failure to address an argument that was not advanced in the proceedings before it and for which there is little, if any, support in the record.

B. *Forward-Looking Risk*

[49] The applicants submit that it was speculative for the RPD to conclude that the RSF would have no further interest in them if they gave up their home to them. I do not agree.

[50] In my view, it was open to the RPD to conclude on the record before it that the RSF were not acting from mixed motives – that is, that they had not targeted the applicants both because of where they lived and because of who they were but rather simply because they happened to live in a place the RSF wanted for its own operational purposes.

[51] The burden was on the applicants to establish that, if they gave up their home, the RSF would continue to take an interest in them such that there was at least a serious possibility that they would be at risk of persecution at the hands of the RSF (or some other agent of persecution). The RPD concluded that the applicants had not established such a risk. While threats referencing

Ms. Khair's political activities were made in connection with the RSF's efforts to obtain the home, the RPD found that this was purely for instrumental purposes and that state authorities otherwise had no interest in her. On the record before it, this conclusion is not unreasonable. Among other things, that record suggested that, apart from when she was a student over 15 years ago, Ms. Khair's political activities had not attracted any adverse attention from state authorities and, further, that in the meantime there had been significant political changes in Sudan.

[52] The applicants also submit that, separate and apart from the issue of their home, the RPD erred in its assessment of the risk to the applicants both generally and at the hands of the RSF specifically because of their gender. I do not agree that the RPD's decision discloses any error in this regard. The applicants' submissions do not amount to anything more than a disagreement with the RPD's weighing of relevant evidence and an invitation to the Court to reweigh that evidence and come to a different conclusion. That is not this Court's role on judicial review (*Vavilov* at para 125; *Doyle v Canada (Attorney General)*, 2021 FCA 237 at paras 2-3).

[53] Finally, in their written submissions on this application, the applicants contend that the RPD erred in failing to conduct a proper analysis of their risk in relation to section 97 of the *IRPA*. I do not agree that the decision discloses a reviewable error in this regard. It is clear from the RPD's decision that it understood the applicable tests under sections 96 and 97 of the *IRPA* and that it was alive to the issue of risk under both provisions. It reasonably determined that the applicants had not established that they were either Convention refugees or persons in need of protection. The applicants have not established any grounds for interfering with that determination.

VII. CONCLUSION

[54] For these reasons, the application for judicial review will be dismissed.

[55] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

[56] Finally, the notice of application for judicial review names Ms. Khair as Habab Amin Ali Mohamedkhair, as did the RPD in its decision. Her counsel has confirmed that the correct spelling of the principal applicant's name is Habab Amin Ali Mohamed Khair. Thus, as part of this judgment, the style of cause is amended to name the principal applicant as Habab Amin Ali Mohamed Khair.

**JUDGMENT IN IMM-4121-21**

**THIS COURT'S JUDGMENT is that**

1. The style of cause is amended to reflect the correct spelling of the principal applicant's name, Habab Amin Ali Mohamed Khair.
2. The application for judicial review is dismissed.
3. No question of general importance is stated.

“John Norris”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4121-21

**STYLE OF CAUSE:** HABAB AMIN ALI MOHAMED KHAIR ET AL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 13, 2022

**JUDGMENT AND REASONS:** NORRIS J.

**DATED:** MARCH 20, 2023

**APPEARANCES:**

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