

Federal Court



Cour fédérale

Date: 20120928

Docket: IMM-9736-11

Citation: 2012 FC 1147

Ottawa, Ontario, September 28, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

DESERE KATJIUANJO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is a citizen of Namibia who claims protection from her first cousin, Richard. Her family wants her to marry him but she says that he was aggressive towards her, and harassed, beat, and raped her.

[2] The Refugee Protection Division of the Immigration and Refugee Board dismissed her claim on two independent bases: credibility and the adequacy of state protection.

[3] In my view, some of the specific findings of the Board that led it to determine that the applicant was not credible are unreasonable; however, its state protection analysis was reasonable and on that basis this application must be dismissed.

[4] The Board found that, “though not perfect,” Namibia is both “willing and able to protect women.” By going to the same local police station only twice, failing to report her treatment to other or higher authorities and failing to avail herself of several state-run programs for assaulted women, the applicant “did not fully take the initiative to secure available protection in Namibia” during her ten years of alleged abuse.

[5] The applicant says that she had a subjective fear of the police and, citing the Supreme Court in *Ward v Canada (Minister of Employment & Immigration)*, [1993] 2 S.C.R. 689, submits that it would defeat the purpose of international protection to require her to risk her life to demonstrate the lack of state protection.

[6] The respondent submits, citing *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 [*Flores Carrillo*], that the applicant was required to do more than show that she went to some members of the local police force and that those efforts were unsuccessful. The following passages from *Flores Carrillo* are, in my view, applicable to the applicant’s situation:

[33] The Board found that the respondent had failed to make determined efforts to seek protection. She reported to police only once during more than four years of alleged abuse: appeal book, at page 45.

[34] In addition, the Board concluded based on the evidence before it that the respondent did not make additional effort to seek protection from the authorities when the local police officers allegedly did not provide the protection she was seeking. She could have sought redress through National or State Human Rights Commissions, the Secretariat of Public Administration, the Program Against Impunity, the General Comptroller's Assistance Directorate and the complaints procedure at the office of the Federal Attorney General: appeal book, at page 49.

[35] Finally, the Board noted the respondent's omission to make a complaint about the involvement of the abuser's brother, who allegedly is a federal judicial police officer, when the evidence indicates that substantial, meaningful and often successful efforts have been made at the federal level to combat crime and corruption: appeal book, at pages 46 and 49.

[36] Considering the principles relating to the burden of proof, the standard of proof and the quality of the evidence needed to meet that standard defined as a balance of probabilities against the factual context, I cannot say that it is an error or unreasonable for the Board to have concluded that the respondent has failed to establish that the state protection is inadequate.

[7] The applicant agrees that the Board did a credible job analyzing the laws in Namibia aimed at the protection of women, but submits that it failed to do the same with respect to its analysis of the adequacy or effectiveness of those laws. I disagree.

[8] The record before the Court shows that the Board examined a number of country condition documents and while they show that state protection is not perfect, that is not the test. In my view, the following passages from two of these reports serve as illustrations supporting the Board's finding on the adequacy of state protection:

The law defines rape in broad terms and allows for the prosecution of spousal rape. Numerous cases of rape were prosecuted during the year, and the government generally enforced rape penalties, which provide for sentences of between five and 45 years'

imprisonment. According to police statistics for 2009, 11,882 cases of gender-based violence were reported, 1,036 of which involved rape.

Source: 2010 US DOS Report on Namibia
(published April 8, 2011)

The upswing in [reported] rape cases could also be attributed to the increasing number of police stations established since Namibia's independence in 1990, when 75 stations existed. This number had increased to 106 stations by 2005, including 26 sub-stations and 15 Woman and Child Protection Units, and meant it was easier for people to report crimes. About 60 percent of the country's two million people reside in rural areas.

Most rapes (68 percent) were reported and the arrest rate was 70 percent, and served as an illustration that most rapists were known to their victims, the report said, which also said 13 percent of the rapists were males under the age of 18.

If those arrested for rape, 40 percent resulted in criminal trial, while one third of reported rape cases were withdrawn by the complainant. One of the reasons cited for withdrawal of charges was that complainants resorted to compensation under customary law, although this action could be pursued in tandem with criminal charges.

The conviction rate of rapists is 16 percent, the report said, which "could be improved but Namibia is doing a much better job than other countries. South Africa only has a 7 percent conviction rate, Germany 21 percent," Hubbard said.

Source: UN Integrated Regional Information Networks Report
(June 4, 2007)

[9] The record supports the Board's finding that the steps the applicant took in Namibia did little or nothing to rebut the presumption that she was able to avail herself of government programs and initiatives aimed at protecting women, and that they were able to protect her.

[10] For these reasons, the applicant has failed to demonstrate that the Board's decision is unreasonable.

[11] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9736-11

STYLE OF CAUSE: DESERE KATJUANJO v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 27, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: September 28, 2012

APPEARANCES:

Solomon Orjiwuru FOR THE APPLICANT

Rachel Hepburn Craig FOR THE RESPONDENT

SOLICITORS OF RECORD:

SOLOMON ORJIWURU FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario