

Federal Court



Cour fédérale

Date: 20171108

Docket: IMM-1199-17

Citation: 2017 FC 1018

Ottawa, Ontario, November 8, 2017

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

**STELLA MBULA-KOLELA
JAELE KERENE TSHIENDA
KALALA ONDO
(a.k.a. JAELE KARENE TSIENDA KALALA)
NOIYA LILYA NTANGA KALA ONDO
(a.k.a. NOIYA LYLLA NTANGA KALALA)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Ms. Stella Mbula-Kolela and her two minor children, Jaelle and Noiya, sought refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee*

Protection Act, SC 2001 c 27. They claimed that they feared persecution in the Democratic Republic of Congo [DRC] based on their religion and political affiliation as members of the Church of the Lord Jesus Christ. In a decision issued in December 2016, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada rejected their refugee claim as the panel found that, due to a lack of credible evidence, Ms. Mbula-Kolela was unable to establish her identity, and that of her daughters, as nationals of the DRC [Decision]. The RPD instead concluded that Ms. Mbula-Kolela and her daughters were of Gabonese nationality.

[2] In her application for judicial review, Ms. Mbula-Kolela is asking this Court to quash the Decision and to order a differently-constituted panel of the RPD to re-examine her claim. Ms. Mbula-Kolela submits that the RPD's Decision is unreasonable, as the panel overlooked critical evidence supporting her claim of Congolese citizenship. She also argues it erroneously relied on her Gabonese passport.

[3] The only issue raised by Ms. Mbula-Kolela's application for judicial review is whether the RPD's findings are unreasonable. More specifically, the Court must determine whether the RPD's assessment of the evidence as to the DRC citizenship of Ms. Mbula-Kolela and her daughters, and the panel's reliance on Ms. Mbula-Kolela's passport to find that they were Gabonese citizens, were unreasonable.

[4] For the following reasons, the application for judicial review of Ms. Mbula-Kolela and her daughters will be dismissed. Having examined the evidence available to the RPD and the applicable law, I see nothing that allows me to set aside the Decision. Nor can I identify any

error in the RPD's analysis and reasons. The RPD considered the evidence, the panel's conclusions are justifiable based on the facts and the law, and they fall within the range of possible, acceptable outcomes in the circumstances. There are therefore no grounds to justify this Court's intervention.

II. Background

A. *The factual context*

[5] Ms. Mbula-Kolela claims to have been born in Kinshasa, DRC, in 1982. She says that she and her husband sought refuge in Gabon after a spate of deadly protests which erupted in Kintambo, DRC, in May 2010. Members of the Church of Lord Jesus Christ, to which Ms. Mbula-Kolela and her husband belonged, were apparently fired upon by the Congolese military as they took to the streets to protest the imprisonment of three priests. Fearing for their lives, Ms. Mbula-Kolela and her husband went into hiding in Gabon by way of Brazzaville in neighbouring Republic of Congo.

[6] In Gabon, Ms. Mbula-Kolela kept a low profile for fear of being discovered and sent back to the DRC. Before leaving for the United States in April 2016, Ms. Mbula-Kolela claims that an acquaintance of her husband obtained Gabonese documents for her, in an effort to remedy the clandestine situation she found herself in. When she departed for the United States, she left her husband and one of her children behind.

[7] When crossing over into Canada from the United States in September 2016, Ms. Mbula-Kolela and her two minor children claimed to be citizens of the DRC. However, they presented Gabonese passports when they requested refugee status before the Canada Border Services Agency [CBSA] officer.

B. *The Decision*

[8] In the Decision, the RPD concluded that Ms. Mbula-Kolela and her daughters were unable to establish their identities as nationals of the DRC on a balance of probabilities, and were therefore held not to be credible. Relying on *Su v Canada (Citizenship and Immigration)*, 2012 FC 743 and *Duale v Canada (Minister of Citizenship and Immigration)*, 2004 FC 150, the RPD stated that the onus was on Ms. Mbula-Kolela to produce acceptable documentation establishing her identity, but that she had failed to do so. In the Decision, the RPD considered the Gabonese passport, the DRC electoral card, the birth certificates of the three applicants, and the Port of Entry [POE] notes and form provided by Ms. Mbula-Kolela.

[9] Since Ms. Mbula-Kolela claimed not to be a citizen of Gabon despite her Gabonese passport, the RPD verified the documents and relied on a biometric report showing that Ms. Mbula-Kolela had previously applied for a visa to travel to the United States, using her Gabonese passport in order to corroborate her Gabonese nationality. The report confirmed that the passport was genuine and upheld as proof that she was born in 1980 (not 1982), in Franceville, Gabon, and not in the DRC. The report also indicated that she was employed as an accountant in Gabon. According to the RPD, both the biometric report and the fact that the U.S. authorities had not challenged the authenticity of the passport indicated that it was more likely than not that Ms.

Mbula-Kolela was of Gabonese nationality. Given her Gabonese passport, the RPD inferred that Ms. Mbula-Kolela could not *currently* be a citizen of the DRC because DRC citizenship rules prohibit the holding of dual citizenship. The same holds for her two minor children.

[10] The RPD rejected Ms. Mbula-Kolela's DRC electoral card as evidence of her Congolese citizenship. The panel noted that the card was issued in 2016 and was a duplicate obtained by her uncle. The RPD underlined the ease with which the uncle apparently obtained the duplicate as a reason to doubt the reliability of the electoral card. A document analysis report further showed that the document was "probably authentic" but "apocryphal". The RPD attributed much weight to the visual comparison between Ms. Mbula-Kolela's card and the sample one, which showed differences in style and quality of the bar code as well as in the font of the word "sexe". For these reasons, the RPD gave no weight to the DRC electoral card as support of Ms. Mbula-Kolela's claimed identity, and drew negative inference with respect to her credibility.

[11] Turning to the birth certificates, Ms. Mbula-Kolela was only able to provide the RPD with a copy of her birth certificate dated November 2016, which her cousin was allegedly able to obtain on her behalf. The RPD noted the prevalence and availability of fraudulent, falsified documents in the DRC, especially birth certificates, which are apparently not recorded in the civil status register. Since anyone can go and ask for a copy of someone else's birth certificate, the RPD chose not to attribute evidentiary weight to the document in support of Ms. Mbula-Kolela's claimed identity. The RPD moreover refused to afford any weight to the "attestation of declaration of birth" documents for her two minor daughters, which states that their mother was born in Kinshasa, DRC, since Ms. Mbula-Kolela testified that she simply gave the information to

the doctor who did not then request to see any identification documents before drafting the “attestations”.

[12] To support her claim, Ms. Mbula-Kolela also submitted a handwritten letter from her husband, who is currently in Gabon with their other child, and a copy of his DRC nationality certificate. In addition, she presented her mother’s Canadian passport and birth certificate indicating that her mother was born in the DRC. However, the panel was not convinced by this evidence and observed that Ms. Mbula-Kolela did not present a certificate of nationality, driver’s license or another DRC identity card, and testified that she never held a DRC passport. Ms. Mbula-Kolela further testified to not being able to obtain school documents, or a letter of employment as she was a stay-at-home mother in the DRC.

[13] The RPD further noted that the POE form initially signed by Ms. Mbula-Kolela upon her arrival in Canada in September 2016 indicated that she was born in Libreville, Gabon, had Gabonese citizenship, was married in April 2000, and was a visitor in the DRC from 2006 to 2010. On the advice of her counsel, the form was later amended in October 2016 to show that she was rather born in Kinshasa, DRC, was a citizen of the DRC, was married in 2009 and was in Gabon from May 2010 to April 2016 as a visitor. To account for the discrepancy, Ms. Mbula-Kolela testified that the CBSA officer filled out the forms according to the information contained in her Gabonese passport. The RPD did not find this explanation reasonable and chose not to rely on the amended form since Ms. Mbula-Kolela had signed the initial form despite the fact that it allegedly contained false information. In support of her assessment, the RPD noted that the forms were in French, the only language Ms. Mbula-Kolela claims to speak, and that she should

therefore have understood what they meant. The RPD also relied on the fact that Ms. Mbula-Kolela had told the CBSA officer that she was born in the DRC and presented him the DRC electoral card, but still went ahead and signed the allegedly erroneous form.

C. *The standard of review*

[14] It is well-established that questions regarding findings of identity, including assessments of identity documents, are reviewable on the standard of reasonableness (*Katsiashvili v Canada (Citizenship and Immigration)*, 2016 FC 622 at para 10; *Behary v Canada (Citizenship and Immigration)*, 2015 FC 794 at para 7). Similarly, with regard to the credibility or plausibility of a refugee protection claimant, the RPD's conclusions are factual and command a high degree of judicial deference, considering the administrative tribunal's role as the trier of fact (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*] at para 59). Since *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], courts have systematically applied a standard of reasonableness when considering determinations of fact. The reasonableness standard requires deference to the decision-maker as it is "grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing" (*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at para 33).

III. Analysis

[15] Ms. Mbula-Kolela contends that the RPD was unreasonable in assessing the evidence before it. In particular, she claims that there was no evidence that U.S. authorities had verified

her Gabonese passport's authenticity and that the RPD had no valid reason for setting aside the presumption of validity of the documents emanating from the DRC. Ms. Mbula-Kolela further asserts that the RPD failed to consider that her Gabonese passport contained false information, notably relating to her place of birth.

[16] With respect to the DRC electoral card, Ms. Mbula-Kolela maintains that the RPD failed to acknowledge that the document provided was a duplicate of the original and unreasonably assumed that the card was not genuine because a third party had obtained it on her behalf. Ms. Mbula-Kolela further argues that the RPD erred in rejecting the birth certificate as proof of her citizenship, simply because false documents could easily be obtained in the DRC. She contends that the RPD further engaged in speculation in her analysis. Lastly, Ms. Mbula-Kolela contends that the RPD erred in both refusing to acknowledge the veracity of the amended contents to the POE form and inferring negative credibility in regard to Ms. Mbula-Kolela on that basis.

[17] I am not persuaded by Ms. Mbula-Kolela's arguments and instead conclude that the RPD's Decision fits within the boundaries of reasonableness.

[18] The RPD was entitled to find that the documentation Ms. Mbula-Kolela provided was insufficient proof of her claimed DRC identity in the face of the genuine Gabonese passport she was carrying and used to enter both the United States and Canada. The RPD's conclusion was based on the weight of the evidence before it, and its conclusion is entitled to the Court's deference on judicial review. A reading of the Decision suffices to convince me that the RPD did not ignore or fail to consider the evidence submitted by Ms. Mbula-Kolela. The RPD reviewed

the evidence in detail, and found it insufficient and unconvincing to corroborate Ms. Mbula-Kolela's assertion that she is a citizen of the DRC. This is not a case where the administrative tribunal overlooked some contradictory evidence when making its findings of fact. It is instead one where the reasons make it clear that the RPD carefully considered all the evidence adduced by Ms. Mbula-Kolela but did not find it persuasive.

[19] Throughout her submissions, Ms. Mbula-Kolela proposes alternative interpretations of the evidence before the RPD and submits that her evidence should have prevailed. The arguments put forward by Ms. Mbula-Kolela simply express her disagreement with the RPD's assessment of the evidence and ask the Court to prefer her own assessment to that of the decision-maker. Ms. Mbula-Kolela is inviting the Court to reweigh the evidence that she has presented before the RPD. However, in conducting a reasonableness review of factual findings, it is not the role of the Court to do so or to reassess the relative importance given by the decision-maker to any relevant factor or piece of evidence (*Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at para 99).

[20] When reviewing a decision on the standard of reasonableness, the analysis is concerned with the existence of justification, transparency and intelligibility within the decision-making process, and the decision-maker's findings should not be disturbed if the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing

court should not substitute its own view of a preferable outcome, nor can it reweigh the evidence (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at paras 16-17; *Khosa* at paras 59, 61).

[21] A decision is not unreasonable because the evidence could have supported another conclusion. The fact that there could be other plausible interpretations, and that one of them could support a conclusion more favourable to Ms. Mbula-Kolela, does not imply that the interpretation retained by the RPD was not reasonable. Reasonableness dictates that the reviewing court must start from the decision itself and the recognition that the administrative decision-maker has the primary responsibility to make the determination. The Court shall look at the reasons and the outcome and, if there is a justifiable explanation for the outcome reached, it shall refrain from intervening.

[22] Given that Ms. Mbula-Kolela's Gabonese passport had been verified and found to be genuine and authentic, it was reasonable for the RPD to rely on it. Given the problems with the DRC electoral card (namely, a duplicate obtained by her uncle and of doubtful authenticity due to the bar code and font anomalies) and other documentary evidence showing how easily obtainable fraudulent documents are from the DRC, it was open to the RPD to give little weight to the DRC documents compared to the Gabonese passport. In this case, upon her entry into Canada, Ms. Mbula-Kolela presented a Gabonese passport she had herself used to obtain a visa for the United States and to enter that country, and which had been found to be valid and authentic further to a biometric report. In the face of that Gabonese passport, and to support her claim that she was not a citizen of Gabon but of the DRC, Ms. Mbula-Kolela presented only

documents which the RPD had sound reasons to question: the DRC electoral card, the birth certificates and other documents such as the letter from her husband and her mother's passport. No other documents were offered by Ms. Mbula-Kolela to support her story.

[23] Given the lack of evidence showing that she was a Congolese national, and in light of the Gabonese passport, it was open to the panel to conclude that, on a balance of probabilities, Ms. Mbula-Kolela had Gabonese nationality, as opposed to being a citizen of the DRC.

[24] I also find that giving little weight to the amended POE form was a reasonable option for the RPD. In the Decision, the RPD provided a number of reasons explaining why she preferred to retain the first version of Ms. Mbula-Kolela's POE. I do not dispute that another panel or even this Court could have arrived at a different conclusion and put more weight on the amended form. But, again, this is not the question that I have to decide on a judicial review. The RPD drew an adverse inference from the fact that Ms. Mbula-Kolela signed the POE form while claiming, about a month later, that her whole story was incorrect. I underline that the amendments made by Ms. Mbula-Kolela were far from minor. It was a complete reversal of her story, not only on her citizenship but also on where and how she had spent the years material to her refugee claim.

[25] It is also well-recognized that a decision-maker is presumed to have weighed and considered all the evidence presented to it unless the contrary is shown (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). It is only when an

administrative tribunal is silent on evidence clearly pointing to an opposite conclusion that the Court may intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9-10; *Tovar v Canada (Citizenship and Immigration)*, 2016 FC 598 at para 26; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) at para 17). This is not the case here and Ms. Mbula-Kolela has not identified critical evidence that was overlooked by the RPD.

[26] Reasons are to be read as a whole, in conjunction with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3). On judicial review, a reviewing court is not to endeavour into a “line-by-line treasure hunt for error” and must instead approach the reasons and outcome of a tribunal’s decision as an “organic whole” (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 138; *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54; *Newfoundland Nurses* at para 14). The Court should approach the reasons with a view to “understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression” (*Canada (Minister of Citizenship and Immigration) v Ragupathy*, 2006 FCA 151 at para 15). When read as a whole, I am satisfied that the RPD’s Decision shows that the panel properly assessed all the necessary factors and provided an analysis of the evidence presented. Again, under a reasonableness standard, this Court’s role is to determine if the RPD’s conclusions have the attributes of justification, transparency and intelligibility, and fall within the range of possible,

acceptable outcomes. Further to my review of the RPD's reasons and the record, I detect nothing unreasonable in the RPD's factual findings. The intervention of this Court is not warranted.

IV. Conclusion

[27] For the reasons set forth above, this application for judicial review is dismissed. Although Ms. Mbula-Kolela might have preferred a different decision, I am satisfied that the RPD considered all the evidence before it and adequately explained why she concluded that, on a balance of probabilities, Ms. Mbula-Kolela and her two daughters were of Gabonese nationality and were not citizens of the DRC. The RPD's Decision is reasonable and provides sufficient reasons. It is intelligible, defensible and supported by the evidence, and I find that it meets the standard of reasonableness.

[28] Neither party has proposed a question of general importance to certify. I agree there is none.

JUDGMENT in IMM-1199-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs.
2. No question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1199-17

STYLE OF CAUSE: STELLA MBULA-KOLELA, JAELE KERENE TSHIENDA, KALALA ONDO, (A.K.A. JAELE KARENE TSIENDA KALALA), NOIYA LILYA NTANGA KALA ONDO, (A.K.A. NOIYA LYLLA NTANGA KALALA) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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DATED: NOVEMBER 8, 2017

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