

Federal Court



Cour fédérale

**Date: 20121210**

**Docket: IMM-2114-12**

**Citation: 2012 FC 1452**

**Ottawa, Ontario, December 10, 2012**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**DAMALIE NUNDWE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] In 2010, Ms Damalie Nundwe fled Ethiopia for Canada out of fear of her abusive husband. She filed an application for refugee protection, but a panel of the Immigration and Refugee Board dismissed it. The Board found that Ms Nundwe was eligible for citizenship in Uganda, where she was born, and that she did not present credible evidence of a well-founded fear of persecution there.

[2] Ms Nundwe argues that the Board's decision was unreasonable because it overlooked important evidence that she provided at her hearing, and ignored documentary evidence showing that state protection is rarely available in Uganda to women who report domestic violence. She asks me to quash the Board's decision and order another panel to reconsider her application.

[3] I agree that the Board's decision was unreasonable and must, therefore, allow this application for judicial review.

[4] Originally, Ms Nundwe contested the Board's finding that she could obtain Ugandan citizenship. However, she now concedes that point. Accordingly, the sole issue is whether the Board's decision was unreasonable.

## II. The Board's Decision

[5] Since Ms Nundwe has Malawian citizenship through her husband, and had to relinquish her Uganda citizenship when she married, the Board originally embarked on a hearing into Ms Nundwe's claim against Malawi. She had not concentrated on Uganda in her personal information form (PIF).

[6] However, once the Board realized that Ms Nundwe was eligible for Ugandan citizenship, it adjourned the hearing to allow her to provide evidence in relation to her fear of harm in Uganda.

[7] The Board accepted that Ms Nundwe was a victim of domestic abuse. However, it was not satisfied that she was at risk in Uganda. Her family was there and could provide support. While Ms Nundwe had testified that her family did not want her to leave her husband, the Board found that that contention was belied by the fact that she had left her husband in Addis Ababa to visit her family on two occasions in 2008 and 2009 for a number of weeks. If her family opposed her decision, she would not have returned to them. In any case, the fact that they might disapprove of her conduct did not amount to persecution.

[8] In addition, the Board noted that Ms Nundwe did not try to obtain a divorce while she was in Uganda. Instead, she went back to her husband in Ethiopia.

[9] While Ms Nundwe testified that her husband could seek her out and cause her harm in Uganda, she did not provide any evidence that he would be immune from penal consequences if he did so.

[10] Finally, the Board found that Ms Nundwe could seek state protection in Uganda if her husband caused her harm. Uganda has enacted the *Domestic Violence Act*, which criminalizes domestic violence. State protection is not perfect, but it is adequate.

[11] Accordingly, the Board dismissed Ms Nundwe's claim.

III. Was the Board's decision unreasonable?

[12] Ms Nundwe's evidence regarding the risk to her in Uganda included the following information:

- She was born in Uganda and, until 2008, had Ugandan citizenship and a Ugandan passport.
- When she visited her family on two occasions in 2008 and 2009, they urged her to go back to her husband, in part because her husband had paid a bride price for her. This created an obligation for her to remain with her husband, even if he mistreated her. The family feels that she has disgraced them by leaving her husband. They feel the same way about her son, who remains in Uganda.
- She could not obtain a divorce in Uganda while her husband was in Ethiopia.
- Her husband has strong connections in Uganda, including with her own family. He travels there often for meetings. In fact, he visited her family in 2011 and was looking for her. He will continue to look for her because she has disgraced him.
- She could not go to the police because they are corrupt and regard domestic violence as a family matter. They would contact her family to find out why she was leaving her husband. She knows of other women who have gone to police in similar circumstances. They police simply speak to the husband and urge the wife to go home.

- She could not move elsewhere in Uganda because she would have language difficulties in other regions.

[13] In addition, the documentary evidence before the Board showed that:

- violence against women is widespread in Uganda;
- in most cases, the perpetrator is an intimate partner;
- two-thirds of households experience domestic violence;
- due to police insensitivity, few women report gender-based violence;
- law enforcement officers rarely intervene in domestic violence cases because wife-beating is considered a husband's prerogative.

[14] None of this documentary evidence was cited by the Board.

[15] The Minister argues that the Board's decision was reasonable. It properly recognized that Ms Nundwe did not display a subjective fear of mistreatment in Uganda as she had travelled there to visit her family. She did not present evidence that her husband would pursue her in Uganda. He did not follow her there in 2008 or 2009 when she visited her family. Further, the Board reasonably found that adequate state protection is available to victims of domestic violence in Uganda. In fact, Ms Nundwe had never approached the police, so she failed to present clear and convincing evidence that protection was unavailable.

[16] I disagree with the Minister's position.

[17] In 2008 and 2009 Ms Nundwe simply visited her family in Uganda. There was no reason why her husband should have followed her there. The fact that he did not do so does not mean that he would not pursue her if she separated from him. Her evidence was that he could easily travel there, had numerous contacts, and obviously knew where her family resided. In fact, he went looking for her there in 2011. Indeed, if Ms Nundwe were in Uganda, her husband could likely count on the family's help to find her and take her back to Ethiopia.

[18] On the subject of state protection, Ms Nundwe gave testimony about how similarly situated women had been treated by police. Her evidence on that subject was supported by the documentary evidence before the Board. The Board did not analyze that evidence. In my view, the Board failed to consider whether Ms Nundwe had met her evidentiary burden to provide clear and convincing proof of a lack of state protection.

[19] Accordingly, I find that the Board's decision does not provide a justification for its conclusion. The outcome does not represent a defensible result based on the facts and the law. It was unreasonable.

#### IV. Conclusion and Disposition

[20] The Board failed to appreciate the evidence relating to Ms Nundwe's fear of mistreatment by her husband in Uganda. It also failed to consider the documentary evidence that supported her fear. Accordingly, the Board rendered an unreasonable decision. I must, therefore, allow this

application for judicial review and order a new hearing before a different panel of the Board.

[21] Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. A new hearing is ordered before a different panel of the Board.
3. No question of general importance is certified.

“James W. O’Reilly”

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Judge

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

**DOCKET:** IMM-2114-12

**STYLE OF CAUSE:** DAMALIE NUNDWE  
v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 21, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** December 10, 2012

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