

Federal Court



Cour fédérale

Date: 20250502

Docket: IMM-15609-23

Citation: 2025 FC 806

Ottawa, Ontario, May 2, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SIMON NJUGUNA KARANJA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Simon Njuguna Karanja, made a claim for refugee protection. Mr. Karanja fears harm from a family member and a criminal gang in Kenya because of his refusal to sell his ancestral family land. His claim was rejected by the Refugee Protection Division (“RPD”). The Refugee Appeal Division (“RAD”) also dismissed his appeal.

[2] Mr. Karanja limited his appeal to the RAD to the issue of whether he could relinquish the land in dispute. Mr. Karanja accepts that he would no longer be at risk from the family member or the gang if he gave up his interest in the land. He argues that he cannot avoid this risk by selling the land because it would require him to violate his belief systems according to the Kikuyu tribe and the Christian faith.

[3] While the RAD accepted the sincerity of Mr. Karanja's beliefs that he and his family members would be cursed if he did not follow his mother's wishes and keep the land, the RAD found he had not established on an objective basis the existence of these beliefs in either the Kikuyu or Christian belief systems. Mr. Karanja challenges this determinative finding of the RAD on judicial review.

[4] It is well-established that where a claimant can avoid risk, they ought to, unless to do so would involve a deprivation of their fundamental human rights: see *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC) at 738-39; *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at paras 18-19; *Malik v Canada (Citizenship and Immigration)*, 2019 FC 955 at para 30; and *Singh v Canada (Citizenship and Immigration)*, 2021 FC 595 at paras 16-17.

[5] The RAD's analysis of whether relinquishing his interest in the ancestral land would violate Mr. Karanja's fundamental human rights is the sole issue on judicial review. The parties agree, as do I, that I ought to review the RAD's determination on this issue on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 23).

[6] The RAD accepted the sincerity of Mr. Karanja's belief that a curse would befall his family if he were to allow for the sale of his family's ancestral land. Mr. Karanja testified about this belief, including his view that others he knew who had not followed the wishes of their parents with respect to keeping the land, died or became sick. Mr. Karanja also provided the affidavits of two Kikuyu elders who confirmed the curse and their instruction to him to not sell the land on this basis.

[7] The RAD made no comments about the credibility of Mr. Karanja's evidence or that of the elders. As noted, the RAD accepted that Mr. Karanja genuinely believed that a curse would happen if he did not follow his mother's instructions. The RAD described the elders' evidence in detail and then found insufficient evidence was provided to establish that Mr. Karanja's belief in a curse was grounded in the Kikuyu belief system.

[8] Insufficiency findings must be explained: see, *Allahbakhshihafshejani v Canada (Immigration, Refugees and Citizenship)*, 2023 FC 1614 at para 15; *Ahmed v Canada (Citizenship and Immigration)*, 2022 FC 618 at para 35; *Sarker v Canada (Citizenship and Immigration)*, 2020 FC 154 at para 11; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 35.

[9] The RAD's finding that the evidence provided was insufficient is based solely on its view that if this belief existed among the Kikuyu people, then it should be in the country condition evidence. The RAD states: "I note that country condition evidence indicates that the Kikuyu ethnic group is one of over 40 ethnic groups in Kenya and represents approximately 17 percent

of the population; for this reason, I find it reasonable to expect that some objective evidence would be available about the Kikuyu belief that the Appellant seeks to rely on.”

[10] Given the specificity of the Kikuyu belief at issue, that a curse would befall those who do not respect the wishes of their parents in relation to ancestral land, I am not convinced that the RAD’s conclusion that it ought to be confirmed in country condition evidence is a reasonable one. The only basis for the assumption that this particular belief would be described in the country condition evidence is the size of the Kiyuku tribe. The RAD fails to explain why the size of the group means that a specific spiritual or cultural belief ought to be documented in country condition evidence. Without more explanation, I cannot follow the RAD’s chain of reasoning on this critical point (*Vavilov* at paras 102-104).

[11] More importantly, the RAD, like the RPD, did not put this question of the availability of further corroboration of the Kiyuku belief to Mr. Karanja. Though his evidence and that of the elders on this issue was in the record before the RPD, no questions were asked of Mr. Karanja about why he could not provide other evidence to establish the Kikuyu belief system. As explained by Justice Grammond in *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968, “a decision maker who is of the view that corroboration is required in respect of a specific issue should put the matter to the claimant at the hearing. This will provide the claimant a genuine opportunity to explain why documentary evidence was not reasonably available” (para 35).

[12] Overall, I find that the RAD's assessment of the evidence relating to Kikuyu's belief system is unreasonable. As this is a sufficient basis to require redetermination, I have found it unnecessary to address Mr. Karanja's arguments about the engagement of the Christian faith.

[13] I also note for the benefit of redetermination, though this was not a determinative issue for me on judicial review, there appears to be some confusion in the reasons between the need to establish sections 96 and 97 risk on an "objective basis" and the corroboration of the belief system at issue. The RAD, relying on *Ajayi v Canada (Citizenship and Immigration)*, 2007 FC 594 [*Ajayi*] at paragraph 16, noted that "a person's fear of the spiritual may be genuine on a subjective basis but that it also must be so on an objective basis." In *Ajayi*, the risk at issue was a fear of the spiritual. The Court noted that sections 96 and 97 risk had to be established objectively. This is of course true, but not relevant to the issue in this case.

[14] Here, the risk claim is based on Mr. Karanja's fear of his family member and the gang. The spiritual belief is relevant in assessing whether his fundamental human rights are violated in relinquishing his interest in the ancestral land. While I agree that the *Ajayi* case is not relevant to Mr. Karanja's case, I do not agree with the Applicant that the RAD's reference to this case is a significant shortcoming. When reading the RAD's reasons holistically, it is clear that the RAD was not suggesting that the existence of the curse, itself, had to be proven on an objective basis. But rather, the RAD's concern related to corroborating the existence of the belief among the Kikuyu people.

[15] Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-15609-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated November 14, 2023 is set aside and sent back to be redetermined by a different decision-maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-15609-23

STYLE OF CAUSE: SIMON NJUGUNA KARANJA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 4, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: MAY 2, 2025

APPEARANCES:

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