



21 May 2014

## PRESS SUMMARY

**Secretary of State for the Home Department (Appellant) v MN and KY (Respondent) [2014] UKSC 30**

*On appeal from [2013] CSIH 68*

**JUSTICES:** Lord Neuberger (President), Lord Clarke, Lord Carnwath, Lord Hughes and Lord Hodge

### BACKGROUND TO THE APPEALS

It is central to each of the appellant's claims for asylum that they came from a particular region of Somalia where they were at risk of persecution. In each case, in dismissing those claims, the Secretary of State relied on linguistic analysis to the effect that their mode of speaking was linked to Kenya not Somalia. That evidence came in the form of "linguistic analysis reports" provided by a Swedish commercial organisation called "Sprakab". Those decisions were upheld on appeal to the Upper Tribunal ("UT") but reversed by the Inner House which made a number of criticisms of the form of the reports and the reliance placed on them by the Asylum and Immigration Tribunal ("AIT").

In another case raising similar issues, a special three-judge panel of the Upper Tribunal gave guidance on the use of such reports in the future. They endorsed the use of the Sprakab reports, subject to certain safeguards. Their approach was in general supported by the Court of Appeal in *RB (Somalia) v Secretary of State for the Home Department* [2012] EWCA Civ 277 ("RB").

The issues for consideration by the Supreme Court are:

- Whether the immigration judges were entitled to attribute any weight to the Sprakab reports;
- In what circumstances should witnesses providing evidence in such appeals be granted anonymity;
- Whether there are any particular rules governing expert evidence tendered in the name of an organisation rather than an individual;
- To what extent can such evidence be accepted in a form not prescribed by the Practice Directions; and
- To what extent, and with what effect, can the Upper Tribunal give guidance as to the weight to be given to such reports, or the conclusions to be drawn from them.

### JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Carnwath gives the lead judgment, with which Lord Neuberger, Lord Clarke, Lord Hughes and Lord Hodge agree.

### REASONS FOR THE JUDGMENT

The Practice Directions contain valuable guidance on the general principles applying to expert evidence. The absence of any specific provision in the Practice Directions for evidence in the form of the Sprakab reports was not in itself a bar to their admission. Where the tribunals were faced with a new form of evidence, of potential value in resolving issues of common occurrence, it was entirely appropriate for the UT to select a suitable case with a view to giving general guidance. The Practice

Directions did not have to be rigidly applied. The UT were right in *RB* to address questions relating to Sprakab, its methodology and the presentation of its reports. Subject to appropriate safeguards, they were entitled to find no objection of principle to the admission of Sprakab reports [34-37].

The AIT has the power to make a direction for anonymity but in respect of an individual expert witness its exercise requires special justification. Sprakab's policy of anonymity would not absolve the tribunal of its duty to examine of itself the evidence said to justify a departure from the normal rule. However, there were valid reasons for taking a less strict view in the present context. This was not anonymous evidence in the ordinary sense. The evidence was advanced, and the expertise claimed, on behalf of an organisation, based on the collaborative work of individuals with different skills within it. There was no doubt about the identity of the organisation, its working methods or the qualifications and experience of those involved in preparing its report. The names of the individuals were available to the tribunal, and could have been made known to the parties if it became necessary to do so, for example to pursue a particular line of cross-examination. Subject to appropriate safeguards, and to satisfy themselves that in the circumstances of the particular case no prejudice was caused, the Upper Tribunal were entitled to determine that there was no objection in principle to anonymity [42-43].

For the most part, the general guidance given by the UT was helpful and appropriate but on two aspects the guidance appears unduly prescriptive and potentially misleading. The first is as to the weight to be given to such evidence in future cases. It seems to underplay the importance in any case of the tribunal itself examining such a report critically in the light of all the evidence, and of the reasoning supporting its conclusion. The other concern is similar, relating to the guidance on anonymity. It is important to emphasise that it would remain the duty of the tribunal in any future case to determine what justice requires, in the light of the evidence and submissions made to them [44-50].

In the present cases, there are clear reasons for dismissing the appeals on their own facts. The comments in the reports (upon which the Secretary of State originally relied) on knowledge of country and culture were inadequately supported by any demonstrated expertise of the authors. In some respects the evidence went beyond the proper role of a witness. Expert witnesses should never act or appear to act as advocates. The judge in the UT was entitled to regard the guidance in *RB* as persuasive on the procedural matters covered by it, but it was no substitute for a critical analysis of the particular reports relied on and of the reasoning of the first tribunal [52-60].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)