

Federal Court



Cour fédérale

**Date: 20130307**

**Docket: IMM-7383-12**

**Citation: 2013 FC 237**

**Ottawa, Ontario, March 7, 2013**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**MATHEW MUTUA MULI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant challenges the decision of the Refugee Protection Division of the Immigration and Refugee Board that found that he was neither a Convention refugee nor a person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, respectively. The determinative issues challenged by the applicant are the Board's findings of state protection and the availability of an internal flight alternative (IFA).

[2] In my view, the Board's section 97(1) findings were reasonable and this application must be dismissed.

[3] The applicant is a citizen of Kenya. In his early teens, his parents sent him off to attend secondary school with relatives in order to avoid recruitment by the "Mungiki," a "politico-religious" criminal group and movement in Kenya whose views are generally antithetical to "western" values. Their influence, especially in rural and impoverished areas, is significant; one main tactic is to recruit boys and young men into the organization. Like many gangs, it extorts vulnerable people in exchange for its "protection."

[4] Around or after graduating from college in the early 2000's, the applicant claimed that he and some members of his family and extended family started "a group known as "Tethya Uthetheke" whose main goal was to educate the youth on better means of living apart from living on the hand outs that they collect from people for protection, fight against female genital mutilation, right for girl child education and women empowerment." In short, this group was aimed at counteracting the influence of the Mungiki.

[5] The applicant claimed that because they had started that group, the Mungiki killed his brother, Henry, in 2002. No corroborating evidence was provided that Henry was deceased, or killed by the Mungiki, or killed by the Mungiki because he started or participated in Tethya Uthetheke. Furthermore, there was no evidence that the applicant or anyone else attempted to have the police investigate Henry's alleged murder, or to obtain a police report. The applicant testified that "we did not get police reports or anything about it, so we believe there was

something behind it.” The applicant also testified that Tethya Uthetheke “started in 2003 that is when actually started,” i.e. after his brother’s death. Perhaps surprisingly, the Board did not challenge the applicant’s credibility or the accuracy of his evidence regarding his brother’s death.

[6] Between 2001 and 2009, the applicant moved to and resided in Botswana where he met his current wife. With the exception of the alleged murder of the his brother and the description of one incident involving the applicant’s cousin and that cousin’s wife in 2004, for which no link to the Mungiki or Tethya Uthetheke was even alleged, the applicant’s PIF is entirely silent as to that period of time and, more specifically, what Tethya Uthetheke was doing. The applicant’s evidence at the hearing shed little light on how Tethya Uthetheke operated during this period, who was involved, or whether there were further incidents with the Mungiki. Again, the Board did not challenge this evidence, or lack thereof.

[7] In 2009, according to his PIF, when the applicant “got a chance to come and school here in Canada,” despite the alleged deadly friction between his family’s opposition group and the Mungiki, he ...

“had to send [his] wife back to Kenya [i.e. where the Mungiki operated] where she established a small business of chicken rearing. Unfortunately the business lasted only 8 months since Mungiki had demanded her to pay protection fee, which she could not afford. At that time Mungiki had become more of a government arm that operates without fear. She was threatened with circumcision and had to flee to her home district in Makueni where she lives with her aunt [name]. She could not go to her parent’s house because it would be too easy to be traced.”

[8] It is not at all clear based on the record why the applicant “had” to send his wife back to Kenya in early 2009, into the path of the Mungiki. Moreover, in light of the Mungiki’s alleged threats to mutilate his wife after he departed, and their apparent pursuit of and speculated attempts at “tracing” her location, it is not clear why the applicant remained in Canada, studying accounting and working part-time on a student visa in Canada, without interruption. Whatever the reason, according to the PIF, this is what allegedly happened next:

While my wife was still in hiding in Makueni with our children, we still continued with our campaign through the Tethya Utetheke with my other sister Elizabeth. Unfortunately Elizabeth was killed by Mungiki in October 7, 2010 in Nairobi. She was attacked while she slept in her house in Huruma estate.

[9] As proof of Elizabeth’s murder at the hands of the Mungiki, the applicant provided the Board with a “Permit for Burial” issued by the Republic of Kenya, which shows nothing more than that Elizabeth passed away in October 2010. No cause of death is identified and there was no independent evidence that she had died at the hand of the Mungiki. Even the applicant’s evidence in this respect was hearsay.

[10] Despite that his sister had been brutally murdered by the Mungiki for her involvement in Tethya Uthetheke, the group he co-founded, and that his wife and children remained in Kenya and had previously been specifically threatened and forced into hiding by the Mungiki, the applicant remained in Canada studying accounting and working part time through the fall and winter of 2010, and into the spring of 2011, without status.

[11] Then, in April 2011, the applicant applied for another student visa in Canada. It issued on June 6, 2011, and was valid until September 30, 2011. Within a week of this visa being issued, the applicant was on a plane to Kenya “to see [his] wife and children due to the fear she was having after [his] sister [Elizabeth] was killed” some eight months earlier.

[12] He says that two incidents occurred to him while in Kenya. First, he was assaulted in his house at night by some youth whom he believed were Mungiki. They stole his passport and ran away when neighbours were awakened. He says that he went to the neighbouring police station and reported the incident. The policeman asked him if he had money because if he could pay then the policeman would see if he could get the passport back. The applicant says that he understood that the policeman would obtain it from the Mungiki if he paid. He did and he recovered his passport.

[13] Second, when visiting his father, he was attacked by “Cousin John” and seven men who asked why his wife had failed to pay the protection fees. It was at this point that he learned that his Cousin John was part of the Mungiki. When he informed them that his wife would not pay any money, they beat him. He says that “they slashed me with a machete on my right hand finger as I covered my head; I was also hit with a blunt object until I was unconscious.” He says that he was taken to Matuu district hospital after obtaining a P3 form from the police at Matuu Police station since he could not attend at the hospital without a police report. He says that he was admitted for two days. When he recovered, he returned to Canada.

[14] His oral evidence differed in substantial detail from this Personal Information Form (PIF) account; however, the Board made no mention of these differences. Moreover, the Board makes no reference to the fact that these police reports do not mention the Mungiki or Cousin John; rather, they mention “unknown” persons.

[15] The applicant claims that the Mungiki want to kill him and his family for supporting Tethya Uthetheke and not supporting them financially, that he is unable to obtain state protection, and that there is no IFA in Kenya. The board found that there was both state protection and an IFA in Kenya.

### **State Protection**

[16] The applicant submits in his memorandum that he:

... took all reasonable steps to seek state protection in Kenya before he fled. The applicant reported the incidents to the Police. It is further submitted that the respective institutions did not act appropriately within the urgency of the acts complained of and if the applicant had waited much longer, it would have put his live [sic] in danger. Applicant’s brother and sister were murdered and murders have not been resolved by the police.

[17] In my view, based on the record, the applicant did not take all reasonable steps to seek state protection in Kenya. First, there is no evidence that he or anyone made any effort to get the police involved in Henry’s alleged murder in 2002. Similarly, there was no evidence about the police’s involvement after Elizabeth’s alleged murder in 2010, although he claims that her son reported her death.

[18] The applicant himself made little effort to seek state protection after the two 2011 incidents involving him. The first attempt – to report his stolen passport – was only a local attempt. The applicant’s allegation of complicity or corruption for one police officer at the Matuu police station is no more than a single local failing in the state protection apparatus. It is trite that that is not sufficient evidence of failed state protection: See, e.g., *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paras 32–36. Regarding the second, far more serious incident, it is not at all clear based on the applicant’s evidence what steps he actually took to seek the protection of the state. While he produced a request for a police report allegedly made on July 3, 2011, the day after the alleged beating, it concerns only some electronics stolen on July 2, 2011; there is no indication whatsoever that any police report was made about the far more serious beating.

[19] The P3 form noted at various points that “unknown” persons allegedly attacked the applicant, even though the applicant testified that he knew at that point that it was Cousin John that had tracked him down and who was behind the attack. This contradicts the applicant’s claim that he identified Cousin John to the police. In any event, even if the applicant’s oral testimony is to be preferred, his second attempt was no more than another local attempt, and no less at the same police station he allegedly already knew was complicit with the Mungiki. Thus, objectively, the applicant did not demonstrate that he exhausted the state protection available to him in Kenya.

[20] The Board’s finding that the applicant had not rebutted the presumption of state protection, on these facts, is reasonable.

### **Internal Flight Alternative**

[21] The applicant's argument regarding IFA is terse: the Board failed to appreciate that Cousin John, "leader of Mungiki," awaits the applicant in Kenya and will track him down "through familiar connection[s]." Thus, it does "not really matter which part of the country the claimant may relocate."

[22] The simple answer is that the Board was faced with evidence that contradicts that submission. Despite Cousin John's alleged ability to find the applicant throughout Kenya, the applicant's wife and family have lived safely in Kenya since before the most recent incidents. Although the Board did not expressly decide so, it goes without saying that it was entitled to conclude that Cousin John was not in fact the kind of threat alleged by the applicant.

[23] Further, the Board, citing independent reports, does a credible job of setting out the geographic areas in which the Mungiki operate and it finds, reasonably, that the organization is not pervasive throughout Kenya. The applicant has the burden of establishing that there is no IFA. Quite simply, he failed to do so.

[24] This application must be dismissed. No question was proposed for certification.



**JUDGMENT**

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

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-7383-12

**STYLE OF CAUSE:** MATHEW MUTUA MULI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 26, 2013

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

**DATED:** March 7, 2013

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