

## THE HIGH COURT

## JUDICIAL REVIEW

[2016 No. 682 J.R.]

AND IN THE MATTER OF S. 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, AS AMENDED

BETWEEN

SZ

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY, THE REFUGEE APPEALS TRIBUNAL, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms. Justice O'Regan delivered on the 6th day of February, 2017

**Issues**

1. The applicant brought an application by way of ex parte docket on the 24th January, 2017 seeking the relief of *certiorari* of the decision of the Refugee Appeals Tribunal of the 3rd of August, 2016 which declared that the applicant was not a refugee.
2. Submissions were filed to support the application of the applicant bearing date of the 7th December, 2016. 3. The issues identified in the submissions and in the currently undated statement of grounds are as follows:—
  1. Was there a necessity to conduct a forward-looking test?
  2. Whether the decision maker was entitled to revisit positive findings of the Commissioner.
  3. Whether the impugned decision was so unclear as to be unlawful.
  4. Whether the RAT considered the claim based on race.
  5. Whether the proper standard was applied as to what amounts to persecution.

**Brief details**

4. The applicant is a 50 year old man from Zimbabwe and he has claimed persecution due to his political opinion. In his initial questionnaire the applicant stated that the Minister of Miners authorised Zanu-PF personnel and illegal gold miners and squatters to empower themselves by digging for gold anywhere they could find in his constituency.
5. In or about the month of March, 2012 persons mined in an area adjacent to the applicant's property. Some people sought to mine the applicant's property, however the applicant and his sister refused to allow them permission as a consequence whereof matters became rowdy.
6. The applicant fell and broke his finger. The applicant reported the issue to the authorities to no avail. The applicant and his sister went to the Mines Office to complain about being attacked by Zanu-PF miners and apparently matters calmed down after that.
7. The applicant also gave a history of being requested to put up propaganda of Zanu-PF in his taxi and he refused to do this. The applicant was also asked to take Zanu-PF passengers for half price and again he refused. Following such refusals, the mining issue aforesaid occurred.
8. The applicant worked and lived in Zimbabwe from 2007 until he arrived in Ireland in 2013. The height of the applicant's position appears to be that the miners were mining approximately 15 metres from his house and accordingly occasioned cracks to the wall of his house.
9. The applicant also complains that when he broke his finger he attended hospital but had to wait for 4 hours.

**Conclusion**

10. At para. 5.12 of the impugned decision of 3rd August, 2016 the Tribunal found that there was no clear or coherent evidence before it that would suggest that the appellant suffered as a result of his failure to acquiesce with Zanu-PF's requests during the relevant years.
11. At para. 5.16 it was noted that following the attendance of the applicant and his sister at the Mines Office matters calmed down.
12. At para. 5.18 it was stated that while the applicant may have had a subjective suspicion as to why he was waiting so long in hospital there was no clear or coherent evidence to support that he was being deliberately sidelined.
13. At para. 5.22 the Tribunal found that the appellant did not give any clear or coherent evidence in relation to past discrimination based on his ethnicity and the Tribunal does not accept that he had suffered in this respect.
14. In its conclusion, the RAT said that the applicant had not provided clear evidence of being targeted by Zanu-PF, either for his political beliefs, or due to his Ndebele background. The applicant did not provide evidence of being in fear of those mining but rather his evidence that he and his sisters challenged them without adverse consequences.
15. Based upon the foregoing I find:—
  1. There was no history of persecution found by the RAT and this was a decision which was within the remit of the RAT

to make, and is a rational finding in the circumstances.

2. If there was no past persecution there was nothing to base a forward-looking test on.

16. The appeal to the RAT is a full appeal and the RAT by definition is entitled to revisit positive findings of the Commissioner. The case *A v. Minister for Justice & Refugee Applications Commissioner* [2009] IEHC 215 is authority for the proposition that the RAT is fully entitled to substitute its own appraisal of facts and evidence in cases involving an oral hearing, such as in this case. A similar principle was identified by the Supreme Court in *M.A.R.A. v. Minister for Justice* [2014] IESC 71.

17. The decision clearly found that the applicant did not provide evidence of having been targeted for political beliefs or due to his Ndebele background.

18. Although the applicant suggests that the offending miners were sent by Zanu-PF members nevertheless when the appellant reported to the Mines Office matters improved.

19. Difficulty with miners is not within s. 2 of the Refugee Act.

20. It was within the privilege of the RAT to find that the activities of those mining in the vicinity of his house did not or could not amount to persecution. Although, there is no universal definition of "persecution", nevertheless it must constitute a severe violation of basic human rights.

21. The applicant did not recount any history of persecution based upon the fact that he was of an Ndebele background.

22. In all of the circumstances there is nothing irrational contained within the RAT decision, there is no evidence of past persecution, no nexus to support a forward-looking test, the decision was clear and in the circumstances the applicant has not provided substantial grounds for seeking leave to quash the decision.

23. The application is therefore refused.