

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2009 No. 626 J.R.]**

**BETWEEN**

**B.J.**

**APPLICANT**

**AND**

**THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM**

**RESPONDENTS**

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2010 No. 1124 J.R.]**

**BETWEEN**

**O.A.I.A. (SUING BY HIS MOTHER AND NEXT FRIEND, B.J.)**

**APPLICANT**

**AND**

**THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER JUSTICE, EQUALITY AND LAW REFORM**

**RESPONDENTS**

**JUDGMENT of Mr. Justice McDermott delivered on the 5th day of September, 2014**

1. This is an application by a mother and infant son seeking orders of *certiorari* quashing decisions of the first named respondent ("the Tribunal") made 19th May, 2009, and 16th July, 2010, respectively, affirming recommendations that neither be declared a refugee.

**Background**

2. The applicants' cases were heard separately by the Refugee Applications Commissioner and the decisions were delivered on 19th May, 2009. An oral hearing before the same tribunal member was held on 15th September, 2009, and a Tribunal decision was delivered on 16th July, 2010.

3. The first applicant was born in Sierra Leone on 2nd May, 1975. The following is the account which she gave in support of the two applications. Her parents are dead and she has no siblings. She claims to have been married to W.A., a pastor and former member of a rebel group known as "Mosquitoes". She arrived in the state on 22nd February, 2005, having travelled through an unknown airport in the company of an agent called John, who provided her with a false passport. She applied for refugee status on 23rd February. Her son was born in Drogheda on 13th April, 2005, and an application for refugee status was made on his behalf on 28th November. His application was based largely on the same facts as his mother's citing a fear of persecution in Sierra Leone on grounds of:-

- (a) Membership of a particular social group, that of a single or widowed woman with a child in circumstances where country of origin information reveals widespread discrimination and violent abuse against such women;
- (b) Political opinion as the wife or widow of a former member of a rebel group;
- (c) Religious beliefs as a member of a church and wife or widow of a pastor who condemned female genital mutilation and the activities of the rebel group "Mosquitoes";
- (d) A risk of becoming a sex worker if forced to return to Sierra Leone;
- (e) A fear that her son would be forcibly conscripted into the rebel army when he gets older;
- (f) A fear that her son will be persecuted as a result of his mother.

4. The first applicant claimed that she was threatened and attacked by the rebel group, "Mosquitoes" who raped her and abducted her husband, her son's father on 12th September, 2004, as they prepared to go to church. She said that her husband was a former member of the rebel group, but left on religious grounds and became a pastor. He preached against their activities and condemned the practice of female genital mutilation which made him very unpopular in the wider community, which viewed FGM as an intrinsic part of their culture. She did not report the matter to the police because the rebel group was well known and she believed that the police would not have taken any action against them. She was too embarrassed to report the rape to the police. She was pregnant

at the time with the second applicant. She claimed that a week later the rebels returned and attacked the house by throwing stones at the window and shouting at her. She hid under the bed. The local pastor, J.B., took her to Freetown where she stayed with his family for five months. A month later a number of the rebels returned and brought a bloodstained letter to the pastor's house which threatened that if she were permitted to stay, the area would be attacked as would the pastor's wife and children. Neither she nor the pastor saw who delivered this letter and she did not retain it. She states that she was confined indoors and that the pastor raised money and arranged for her to leave Sierra Leone.

5. An agent came to collect her one night and brought her to the airport in Freetown. He carried all the documents and spoke with the immigration authorities. She did not know the nationality of the passport on which she travelled. She landed in a non-English speaking country and remained in the airport for a few hours before boarding another plane which took her to Dublin Airport. The agent accompanied her from the airport and contacted a person by phone who dropped her at the Department of Justice. In the course of the application on behalf of the second named applicant she said that she gave the agent a ring as additional payment.

#### **Extension of Time**

6. A short extension of time is required in the case of the first applicant. Section 5(2)(a) of the Illegal Immigrants (Trafficking) Act 2000, provides that an application must be made within fourteen days of receiving notification of a decision. Her appeal was made three days outside this time. It is apparent from her grounding affidavit that she formed the intention to challenge the decision within that period. It was submitted that her case exceeds the threshold of substantial grounds which may be considered by the court when exercising its discretion to extend the time. The court is satisfied that the applicant formed the intention to initiate these proceedings within the time allowed and that it was not her fault that this did not occur. I am satisfied that there is good and sufficient reason to extend the time on the basis of the grounding affidavit submitted. In addition, the time limit is very short, so also is the period of delay. The first named applicant's case is closely linked to that of her son, a minor. I am, therefore, satisfied that it is in the interests of justice to extend the time.

#### **The Tribunal Decision in the Mother's Case**

7. The Tribunal accurately summarised the first named applicant's claim, but did not find it credible. The Tribunal made the following adverse findings:-

- (a) The Tribunal considered the first named applicant's evidence that her husband was involved in criminal activity including rape and attacks on property. It found her knowledge of her husband's involvement to be vague. She did not know any detail of his involvement and stated that her husband was a pastor before they met in 2001.
- (b) The Tribunal did not find it credible that a pastor who was so involved in heinous crimes would have no difficulties with the group for a period of three years notwithstanding his public position as a pastor preaching against them.
- (c) Though the applicant feared the treatment that she might receive at the hands of this rebel group who were targeting her husband, it was not thought credible that up to sixteen months would elapse from the first "threat" made on 1st August, 2002, to a second attack on 23rd January, 2004, if she and her husband were being targeted. They apparently remained unmolested during this period and he continued to preach.
- (d) The Tribunal did not accept that the applicant had established a "serious possibility" or a "reasonable chance" or a "real chance" of persecution. No effort was made to seek state protection with a view to finding her husband or seeking protection for herself.

#### **The Tribunal Decision in the Son's Case**

8. The son's claim was substantially based on the facts advanced by his mother as already described. In addition, it was claimed that he would be at risk as a member of a particular social group of children in that:-

- (a) There was a risk that he would be recruited as a child soldier into the rebel army or subjected to other serious human rights violations as a child;
- (b) He was at risk of being targeted because of the targeting of his parents by the group;
- (c) As the son of a single mother he would be at risk as a result of the widespread societal and legal discrimination against women and, in particular, single mothers.

9. The Tribunal was satisfied that those aspects of the child's claim which were dependent on his mother's evidence must fail. The contentions that his mother, as a single mother, would be forced into prostitution and that he would be forcefully conscripted as a child soldier were entirely speculative and there was no firm evidence that it could arise. Indeed, the civil war in Sierra Leone ended in 2002. There was nothing in the country of origin information to support these contentions.

#### **The Challenge**

10. It was submitted that grave concerns regarding the gender based violence and discrimination against women in Sierra Leone voiced in country of origin information submitted from the United States Department of State, the United Nations Committee on the Elimination of all Forms of Discrimination against Women and the United Nations High Commissioner for Human Rights were not considered by the Tribunal. It is, therefore, contended that the Tribunal erred in law in failing to apply a forwarding looking test against the risk of such persecution which arises from the first applicant's status as a single woman and the mother of a young child in Sierra Leone. It was further submitted that the Tribunal erred in requiring "firm evidence" that such persecution "will" occur as set out in the decision concerning the second applicant. Since the first applicant is accepted as a national of Sierra Leone and the mother of a young child it was appropriate, notwithstanding the findings in respect of lack of credibility, that the future risk be assessed and the applicants relied on the decision of Cooke J. in *M.A.M.A. v. Refugee Appeals Tribunal* [2011] IEHC 147.

11. In *M.A.M.A.* the applicant's account was entirely disbelieved but, nevertheless, Cooke J. determined that the Tribunal was obliged to consider the risk of persecution to her if returned to her country of origin having regard to the serious conflict which was occurring in the region and which, on the basis of country of origin information, posed a risk of persecution to those of the applicant's ethnic background. The learned judge stated:-

"18. It must be borne in mind that in making an asylum claim there is a basic onus of establishing the fundamental elements of a claim which rests with the applicant even if the examination of the claim is strongly investigative in

character on the part of the asylum authority and is to be carried out in cooperation with the applicant. Furthermore, one of the crucial elements in the definition of "refugee" as stated in s. 2 of the Act of 1996 based upon Article 1A of the Geneva Convention, is that the asylum seeker "is outside the country of his or her nationality" owing to a well founded fear of persecution for one of the Convention reasons. The assessment of the fear claimed thus involves identifying a country of origin. Accordingly, if the finding on credibility goes so far as to reject a claim that the asylum seeker has a particular nationality or ethnicity or that he or she comes from a particular region or place in which the source of the claimed persecution is said to exist, there may be no obligation upon the decision-maker to engage in "reasonable speculation" as to the risk of repatriation in the case. On the other hand, if the decision-maker concludes that the asylum seeker is opportunistically seeking to place himself in the context of verifiable events in a particular place but decides that while such events did occur, the asylum seeker was not involved in them, the risk of future persecution may still require to be examined if there are elements (the language spoken or obvious familiarity with the locality for example) which establish a connection with that place. Thus, opportunistic lying about participation in events involving previous persecution will not necessarily foreclose or obviate the need to consider the risk of future persecution provided there are some elements which furnish a basis for making that assessment."

12. This element of the claim arose at a very late stage of the asylum process. There was no evidence that the applicant had any gender related problems in Sierra Leone prior to her marriage. She had no difficulty in relation to any such issues during the course of her marriage prior to the alleged kidnapping of her husband and her transfer to Freetown. She had no complaint to make about any such discrimination or fear of sexual violence while in Freetown for five months prior to her departure. Furthermore, I am satisfied that the Tribunal considered the country of origin information submitted in the context of assessing a future risk of persecution on the basis of gender based discrimination and the possibilities of conscription of her son into a rebel army. It was concluded that these assertions were speculative. In a similar claim in *(C)B v. Refugee Appeals Tribunal* [2009] IEHC 332, Cooke J. found a claim in relation to Ghana which had been submitted on similar country of origin information to be "purely speculative and hypothetical" following examination of the evidence adduced.

13. The court is satisfied that the Tribunal in both cases conducted a forward looking test in considering the country of origin material submitted. It is not necessary that particular reference be made to each document submitted, but it is clear in this case that all the materials submitted were considered: there was no evidence to suggest otherwise. The Tribunal was entitled in the circumstances to consider that the submission made in respect of these matters was speculative. I am also satisfied that the reference to a requirement of "firm evidence" that persecution "will" occur must be considered in the context of the entire decision which proceeded on the appropriate burden and standard of proof referring at times to the "serious possibility", "reasonable chance" or "real chance" of persecution and the citation and reliance upon the relevant statutory provisions concerning those matters. I am, therefore, satisfied that the grounds in respect of this aspect of the case have not been established.

#### **Material Errors of Fact**

14. The applicants claim that the Tribunal decision contains a number of material errors of facts which vitiated it, namely:-

(i) The Tribunal is said to have mistakenly found that a period of sixteen months, rather than eight months, passed between two attacks on the parents. It is said that the Tribunal dated the first attack as of 1st August, 2002, and the second to 23rd January, 2004. In fact, the first date was the couple's date of marriage. Furthermore, this error was said to be material because the Tribunal partly based its adverse determination of credibility against the first named applicant upon it, holding that it was not credible that such a long period of time would have elapsed between attacks if they were generally at risk in the manner alleged. The Tribunal held that the first named applicant on her own evidence met her husband when he was a pastor, preaching against the group in 2001. The Tribunal also found that the mother was vague in her description of these events. In her evidence to the Tribunal contained in the notes supplied she states that her "problems started" when she married her husband on 1st August, 2002. She then described two attacks on 23rd January, 2004, and 12th September, 2004. There was no attack in the sixteen months between 1st August, 2002, and 23rd January, 2004, which was indeed a period of sixteen months, and it was the absence of interference from the group over this period which undermined her credibility. The court is satisfied that there is no substance in the suggestion that there was an important or relevant error made by the Tribunal in this finding which is sustainable on the evidence adduced by the first named applicant. It was entirely reasonable to relate the problems described to threats emanating from the "Mosquito" group.

(ii) It is submitted that the Tribunal also erred in referring to a three year period within which the first applicant's husband was not arrested and tried on account of his activities with the rebels without clarifying which period this referred to, and that the reference to the period indicates an erroneous understanding of the timeline of events in the applicant's case. It is clear that the first named applicant claimed she met her husband when he was a pastor in 2001, and that the alleged beatings took place in January and September, 2004. This was clearly the three year period referred to by the Tribunal and this contention is unsustainable.

(iii) Other factual errors identified in the decision concerning the second applicant, namely, a mistake of one month in the alleged date of the kidnapping of the father, the date of his grandfather's death and the mother's age at the time of the interview, stated as 33 when she was 34, are entirely immaterial to the central issue in the case and are of a minor nature.

15. I am not satisfied that any of the matters relating to alleged errors on the part of the Tribunal constitute grounds upon which either decision should be quashed.

#### **Relocation**

16. In both cases the Tribunal made a finding that it was open to the applicants to seek refuge in another part of Sierra Leone. It is claimed that this conclusion was unreasonable and irrational and breached the general principles of asylum law and, in particular, Regulation 7(1) and (2) of the EC (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006).

17. I am satisfied that the decision reached by the Tribunal in each case was based on a finding of lack of credibility of the account given by the first named applicant and in respect of both that there was evidence upon which the Tribunal could properly reach the conclusion that either or both had not established a well founded fear of persecution in Sierra Leone.

18. I do not consider, in the light of those findings, that it was necessary to consider the issue of relocation and the court regards the reference to relocation made in the decisions as being more relevant to the issue of the first named applicant's credibility insofar as country of origin information indicated that state protection was available against groups such as the one to which her husband was allegedly attached. I am satisfied that the references to internal relocation in Sierra Leone do not fundamentally undermine either

decision and fall to be considered in accordance with the principles set out by Clark J. in *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] IEHC 481. As noted by the learned judge, there are a large number of Tribunal decisions which refer to the relocation option, notwithstanding a finding that there was no well founded fear of persecution on credibility grounds. The Tribunal is really saying "if what you say is true, which is not accepted, you have given no credible explanation for coming to Ireland instead of moving elsewhere away from the claimed danger". The court is satisfied that the findings on relocation in this case are "even if" findings and the alleged failure to adhere to Regulation 7 is not a reason for impugning what is an otherwise lawful assessment of whether there is a well founded fear of persecution for Convention reasons. The applicants are not entitled to relief on these grounds.

19. Criticism was made that the Tribunal delayed in delivering its decision some ten months after the oral hearing in the case. I am not satisfied that this gave rise to any demonstrable prejudice or error on the part of the Tribunal such as to vitiate the decisions in either case. It is clear that notes were available of the hearings and that the alleged errors said to be contained in the decisions do not, in fact, arise. The minor errors in the second applicant's decision were of no importance and were irrelevant to the decision reached.

### **Conclusion**

20. For all of the above reasons, I am satisfied that the applicants have not established substantial grounds upon which to grant leave to apply for judicial review. These applications are refused.