

THE HIGH COURT

JUDICIAL REVIEW

[2013 No. 49 J.R.]

BETWEEN

A.O.K (NIGERIA)

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 31st day of July 2015

1. The Applicant is a national of Nigeria who arrived in the State on the 15th July 2012 and who applied for asylum in the State on the 16th July 2012. The relief sought by the Applicant is an order of *certiorari* by way of application for judicial review quashing the decision of the first named Respondent to affirm the decision of the Refugee Applications Commissioner dated the 23rd November 2012. The grounds upon which relief was sought were:-

1) The Tribunal, having determined the Applicant's appeal substantially on the basis of adverse credibility findings, erred in law in foreclosing on speculation in respect of the likelihood of the Applicant being exposed to future persecution in Nigeria by reason of his land ownership and family membership.

2) Without prejudice, the manner in which the Tribunal determined the Applicant's claim carries the hallmarks of prejudgment including the startling and undue deference to the Commissioner (the Applicant has stated in the course of his explaining an inconsistency perceived by the Tribunal to exist in his evidence, that at interview he was shouted at and unable to give all appropriate evidence, but the Tribunal stated that no credence was being given to the explanation) and also the statement made by the Tribunal at the outset that she had "read a bank of country of origin information in relation to Nigeria".

3) The procedures and tactics adopted by the Tribunal were manifestly unfair. The Applicant stated that his entire family, parents and four siblings had been killed by Boko Haram in a Church attack, and was challenged with country reports stating that three persons had been killed in the attack. The Tribunal later relates "an internet document" stating that "at least 50 people in the bombings and in reply". This information was never put to the Applicant, or the presenting officer in the course of the oral hearing. Had it been done it might well have lead to a different approach being taken by the presenting officer.

4) The Tribunal erred in law in making credibility findings on the basis of incorrect findings of fact including that he did not know the identity of the killer who informed the Applicant of the danger he was in. The Applicant had named that person as T.C.O both at interview, in his ASY1 form and on conjecture. Further findings were made in respect of peripheral matters including a total over-emphasis upon the Applicant's travel. While no clear findings were made in respect of the central land issue or on the fate of the Applicant's family.

5) In finding that the Applicant is "most likely an economic migrant" the Tribunal erred in law in failing to consider that regardless of such a finding the Applicant may also hold well founded fears or persecution. Further there was no evidence before the Tribunal upon which to base such a finding.

6) By reason, *inter alia*, of the improper deference to the Commissioner, and also the lack of independence of the Refugee Appeals Tribunal, as seen e.g. in the absence of any stated reason for the dismissal of individual members of the Tribunal, the Applicant had been denied an effective remedy for the purpose of giving effect to the provisions of Article 39 of Council Directive 2005/85/EC. As a result of this denial, the Applicant's asylum application has not been lawfully determined.

7) The Tribunal erred in law in failing to adequately consider the notice of appeal and country reports supportive of the Applicant's claim.

8) The decision of the Tribunal lacks coherency and fails to provide a clear and rational basis for the Minister upon which to make a decision on the Applicant's claim.

9) The finding in respect of internal relocation was made wholly inconsiderate of the light of facts or in accordance with the statutory scheme or UNHCR Guidelines.

10) Having accepted the lack of effective police or court protection, the Tribunal erred in law in finding that "it is a requirement that an Applicant must seek the protection of their own country and be refused before they can seek international protection".

11) The Tribunal erred in law in taking into account matters irrelevant to its determination and/or failed to take into account relevant considerations.

2. The Statement of Grounds was verified by the affidavit of the Applicant who stated that he was a national of Nigeria and was born on the 13th July 1980. His parents and four siblings were killed in a church bombing by the Boko Haram on the 17th June 2012. He said he was the beneficiary of his father's will, including land with oil value which his cousins wanted and indeed procured hired killers to eliminate him. He says that in such circumstances, he fled in fear of his life and arrived in Ireland on the 15th July 2012 and applied for asylum. He said the oral hearing before the first named Respondent took place on the 20th November 2012 and by letter dated the 7th January and received on the 10th January 2013 he was notified that his appeal was unsuccessful.

Grounds of appeal

3. The first named Respondent indicated that the Applicant's claim was based on thirteen grounds of appeal attached to the notice of appeal, the Applicant's evidence, the submissions made in the notice of appeal and at the hearing, country of origin information, the information provided in the ASY1 application and the Applicant's asylum questionnaire and the replies given in response to the questions by or on behalf of the Commissioner on the report made pursuant to s. 13 of the Act. It is noted that once again that one of the matters which is relied upon by the first named Respondent, that is the Applicant's evidence, is not attached to the decision of the first named Respondent. This court has notes made by the solicitor for the Applicant at the hearing and while no criticism is directed at the solicitor they are, in this court's experience, never full notes of evidence that is given before the Tribunal. However this court notes that no objection has been taken to the absence of the Applicant's evidence before the Tribunal.

The Applicant's claim - evidence before the Tribunal

4. At the beginning of the hearing the first named Respondent advised that the hearing was *de novo*, inquisitorial, and informal and that all matters appropriate to the case would be taken into consideration and that all relevant country of origin information would be examined. The first named Respondent indicated that she had read a bank of country of origin information relating to Nigeria. However the Tribunal invited the Applicant's legal representation to bring to her attention any piece of country of origin information which she felt might be particularly relevant to the Applicant's case. The Applicant's solicitor did not refer to any specific document but the first named Respondent bore in mind all aspects of the country of origin information she had read regarding customs and events which she had come across in such country of origin information in the context of the Applicant's situation. The presenting officer handed into the Tribunal an extract from the UK Border Agency Operational Guidance Note Nigeria and dated the 4th October 2012 and para. 2.3.3 noted in particular. The first named Respondent stressed that it was incumbent on an Applicant to be truthful in giving his evidence and to cooperate with the Tribunal. The procedure to be adopted was outlined at the outset.

5. The Applicant said he had filled in the questionnaire himself in his own handwriting. On file there is a refusal report from the Garda National Immigration Bureau in Dublin indicating that the Applicant arrived at Dublin Airport on the 15th July 2012 on board an Etihad Airways and sought asylum at the airport. The Applicant stated he was born in Gbagada General Hospital, Lagos, Nigeria on the 13th July 1980 and gave his last address in Lagos but at a previous home address in Lagos where he said he lived with his family since he was born until they moved to Kaduna. He said he is of the Igbo tribe and is a Catholic by religion. The Applicant said he is a single man with no children. He said he had primary and secondary education and gained his SSCE in 1996. He told the first named he was a trader dealing in cloth and had a shop in Lagos. He said he had travelled to South Africa to compete in a boxing competition and he visited China also. He said he ran a very successful business in Lagos and he indicated that both of his parents, four siblings, two sister and two brothers were deceased having been killed in a bomb blast in a catholic church in Kaduna in June 2012. In the information provided for ASY1 the Applicant stated that he had travelled on his own Nigerian passport. He said he lost his own Nigerian passport between Dubai and Ireland and could not find his passport when he arrived in Ireland. The Applicant said he did not have a visa to come to Ireland, he never had a visa for Ireland. The Applicant attended for interview on the 7th August 2012. The interviewer asked the Applicant where his passport was and the Applicant said he lost it. When where he lost it he said "I was stressed, and it was lost in Dubai". He said it a Nigerian passport. When asked what passport he used to get from Dubai to Dublin he kept saying someone helped him to get on the plane and when pressed for an answer he said "I was helped. God helped me". The Applicant gave the following reasons why he claimed asylum. He said his father was given land by his own father, i.e. the grandfather of the Applicant, in a village called Awo Omamma in Imo State. He also said it was in 2003 and it had oil on it. Cousins of the Applicant's father learned of the oil finding and tried to get his father to give over the lands to them, but he refused, following which they threatened the life of his father so often that his father who was employed with a construction company in Lagos moved with his family, that is the Applicant's mother and his four siblings, to Kaduna. He indicated this event took place in 2005. He said he himself remained in Lagos because he had a thriving business, a shop to attend to, and had no problems with the relatives of his father up until the father and the entire were killed in a bomb blast on the 17th June 2012. The Applicant said his father had made a will, making the Applicant as heir to his property and the relatives had known that as the eldest son, he would inherit the lands in the village of Awo Omamma. The Applicant said the relatives summoned him to a meeting in the village and before local community leaders, but the Applicant said while he went to the meeting, he did not release the lands to the relatives as it could be very valuable in time. He said he had returned to Lagos and he had given the file containing the will and other important documents to his friend in Lagos for safekeeping. He said he did not have death certificates for either his father or his mother or his two brothers or two sisters. He said the bombings were carried out by the Islamist group called Boko Haram. The Applicant told the Tribunal he could not get the death certificates for his as they cannot be found, their bodies were not found and they were not identified so "where they cannot be found, were they not identified". He also said everyone knew his parents and siblings went to church regularly where the bomb went off. The Applicant said he was at a supermarket when a man came to him and showed him a photograph and asked him if he was AOK and the Applicant said he was. The Applicant had failed to recognise the man as the person he had given the money to in 2010. The man told the Applicant that he was paid by the Applicant's relatives to kill him but as the Applicant had been kind to him and given him US\$500 back in 2010, he would spare his life but said the Applicant would have to leave the country and not just relocate to another part of Nigeria but to go far away out of Nigeria. The Applicant then described flying to Egypt and they explained the intricacies involved in getting a visa from Nigeria, which he said was easy as he had US\$3,000 in Lagos and that ensured he got a visa. The Applicant said at this point of the hearing "In Egypt there are no jobs, I could not survive there". He also said "they don't speak English, only Arabic. I have my Nigerian passport and I paid €200 for a visa to Dubai. I sent the company name to the Egyptian Embassy and they checked the balance and what money I had. They looked for \$3,000 as a basic sum in my account. I satisfied them that I had a clothing business and the \$3,000". The Applicant said he spent one day in Dubai. The Applicant said when he got to Cairo, Egypt, he met a woman at the airport and she told him to go to Tahrir Square where tourists gathered and he would meet foreigners who spoke English. When he was there he met a man called JB who the Applicant said he thought was an Englishman, a white man and they had coffee together. The Applicant said he told the story to this man who had great sympathy for him. He told him he would help him. This man said he was staying at the Intercontinental Hotel in Cairo and the Applicant said he spent two days at the hotel with the man and slept with him in his room. The Applicant said the man took him to a shopping mall and bought him a lot of new clothes and indicated that the jeans he was wearing at the hearing and his jacket were purchases made by JB in Cairo for him. The Applicant said "he said he would go with me to Dubai. He was maybe gay. I spent two days with him in a room. He then asked me to be his husband. He said he was living in Ireland". The Applicant said he would go to Dubai but knew he could not stay there. He said he could only stay for 14 days with the visa he had and he could not seek asylum in Dubai. The Applicant said after one day in Dubai JB said he had a plan and as the Applicant had no family he would help him out. The Applicant said "he said he wanted me to be his husband and see me every day, the man said he would come with me". He gave in two passports and they boarded a plane to Ireland. The first named Respondent asked the Applicant if he was gay and he said he was not. The first named Respondent who paid for the ticket to Ireland and he said the man did. The Tribunal asked the Applicant why he could not buy his own ticket as he had US\$3,000 in a bank account in Lagos and he said he had to keep the cash in the account for his visa situation. The man said he feared returning as "I would be a dead man and would fear the armed robbers and gangsters who were paid to kill me". The Applicant said he could not make a complaint to the police because they are corrupt. He was asked why he could not go and live in another part of Nigeria and relocate but he said he would be found no matter where in Nigeria he tried to hide. The Applicant said that a hired killer told him not to go to any part of the country. The first named Respondent asked the Applicant why he could not go to South Africa where he said he had been before and he said he could not get a visa. The first named Respondent why he could not go to one

of the neighbouring countries which did not require Nigerians to have a visa and he said he could not survive in any one of them. The Applicant was asked if he had any news of his lands now and he said he had not. The Tribunal asked the Applicant considering he was in Ireland for nearly five months, why he had not produced the file with his father's will which would give credence to that aspect of his story and he said he had not got his friend's phone number. The first named Respondent asked why did not write to his friend in Lagos at his home address, considering the contents of this file were of such importance and the Applicant said maybe his friend was not living at his home address anymore, and he might have moved somewhere else and he might have got afraid of the people who were after the Applicant.

6. The Applicant was asked who the three children named as dependents were, and he said they were his uncle's children, the children of his mother's younger brother and whom he was very close. When asked if he was in touch with them since his arrival he said no, and he did not know where they were in Ireland.

7. The information provided to the interviewer is different in aspects of the details he provided about his travels. He said he got a visa on the 8th July from Nigeria where he went and then to Dubai where he spent one day there and five days in Egypt and then came on to Ireland. The Applicant gave his reasons for choosing Ireland as the fact as Egypt and Dubai were Arab and did not grant asylum. When pressed as to who helped him, when he said he got help after he lost his passport in Dubai, he said God helped him. The Applicant told the interviewer he feared for his life in Nigeria. He said he feared his relatives would kill him. He said he reported the situation to his community in Awo Omamma and they said they would settle the dispute when the family sent killers and he was not killed because one of them knew him, he survived. At interview the Applicant said his father did not sell the land to a developer as he did not want to. The Applicant was asked why his father would relocate from Lagos to Kaduna and live in fear and he could sell such valuable land and the Applicant said he might regret selling the lands. He agreed that his father, mother and family were never harmed by the relatives in the seven years they lived in Kaduna despite the alleged threat to their lives so the relatives could get their hands on the father's lands, nor apparently did the relatives make any other moves to get their hands on the said lands. The Applicant said the family were at mass when the terrorist blew up the church and they all died but no bodies were found. The Applicant was asked why the other members of the group sent to kill him did not do so, when they found him and he repeated and said he had told them not to. The first named Respondent had questioned how he escaped hired killers when he left Nigeria and he said he moved to a friend's place in Lagos and he was in hiding and he went shopping using his car and the hired killers spotted him and knew the number of his car and he ran away. He said they were told by the leader of the group not to kill him as he knew him. The Applicant said the hired killer told him he felt sorry for him as he was the only one of his family left. He said he not know and did not care what was happening to his land. He said the community were aware of the situation involving the land and once they were aware the relatives can do nothing. When asked at interview why he could not relocate to Port Harcourt or Ibadan, the Applicant said the killers would find him anywhere in Nigeria. It was put to the Applicant that the family appeared to have no trouble from those threatening them for the seven years they were in Kaduna and he said he never had a business in Lagos and would not run away but then said that god probably protected his family in Kaduna. The Applicant was asked by the interviewer about JB, who the Applicant said had helped with his travels and said "Who is he?" and the Applicant said "I met him when I was on the streets of Egypt. On the streets they don't speak English, they speak Arabic. God sent him and he was a gift from god. I do not know him". Further when the Applicant was asked why this man would go so far as to pay for the Applicant's illegal travels from Egypt to Ireland, he said "he just decided to help. He was sent as a favour". The interviewer requested the Applicant to tell the truth about the details of his travels and the Applicant replied "it was a favour from god". The interviewer referred to country of origin information relating to the bomb blast in Kaduna's Catholic Church on the 17th June 2012 which refers to the death of three people in one attack and a number of children in another attack. When asked what the Applicant had to say to that country information he replied "I told you what happened to my family. I don't have the documents. My family went to church that day. I can't get the report. I am telling the truth. I am the only surviving person now". The presenting officer and the Tribunal questioned the Applicant, inter alia, about several aspects of his story which presented credibility problems. The Applicant was asked why he had never mentioned the issues about JB and his being gay and helping there Applicant because he wanted the Applicant as a husband and the Applicant said it was because the interviewer kept shouting at him all the time during the interview. The presenting officer asked the Applicant why he had not mentioned all this information in his detailed questionnaire or at his ASY1 interview and the Applicant went into a lot of incoherent repetition about the interviewer shouting at him and he was telling the truth and he would be killed if he went back to Nigeria.

8. Having regard to the very detailed examination and cross examination of the Applicant it is incumbent on the Refugee Appeals Tribunal to have a recording of this interview before the first named Respondent and this court repeats that the failure to do so must result in issues of credibility being ignored as the court is required to rely on the report of the person whose decision is being challenged. No issue was raised in the statement of grounds in relation to this and in those circumstances this will not form part of the judgment of the court.

The analysis of the Applicant's claim

9. The first named Respondent indicated that she had studied in depth the country of origin information in the context of the Applicant's credibility and the evidence he gave. She said the Tribunal had examined the country of origin information which was an extract from a World News report where the Applicant said his whole perished in a bomb blast in a catholic church in Zaria. She quoted a report from the Guardian website (www.guardian.co.uk), dated Sunday 17th June 2012 headed "Nigerian church explosions prompt reprisal attacks" and states that: "Blasts at three churches in northern state of Kaduna kill at least seven people and will lead to retaliatory attacks against Muslims". It also gave a quote from a Reverend who said: "Three people are confirmed killed. Others have been taken to hospital for treatment". Another bystander said: "Militants threw bombs at another church, killing four children who were playing on the streets outside". She further said the militants were later caught by a mob and killed.

9. On an internet document from BBC News Africa, dated the 18th June 2012, the information provided by the Red Cross said at least 50 people died in the bombings and in the reprisals.

10. The Tribunal accepted that the country of origin information confirmed certain aspects of the evidence as given by the Applicant when he said the police were corrupt and there was no point in making a complaint to them because they would not do anything. For example, she stated that up to date country of origin information indicated that Nigeria was one of the most corrupt states in the world, that there was a two tier social system, the rich and the poor and the police are corrupt at all levels, judges can be influenced with the running of cases and can be "bought off". In the country of origin information handed into the Tribunal at the hearing by the presenting officer, that is the Operational Guide Note Nigeria, it sets out the construction, operations and hierarchy of the NPF, the Nigerian police force, the largest institution in Nigeria and also the countries largest employer. However she also identified that "corruption within the NPF is rampant". The following section lists a catalogue of the most serious crimes committed by the police force, e.g. extra judicial killings, torture, arbitrary arrests and extortion related abuses. Embezzlement of police funds is rife among senior police officers who often demand monetary "returns" from money extorted from the public by their subordinates. She also indicated from country of origin information that then new President Goodluck Jonathan had promised major changes to the Nigerian police force but it would be naive to think that major change would occur overnight. She then remarkably suggested that the Applicant made no effort at all to seek police assistance or make a complaint to any police station in Lagos where he claims a threat was made

to his life. She then states "it is a requirement that an Applicant must seek the protection of their own country and be refused it before they can go and seek international protection."

11. The first named Respondent had never mentioned at his ASY1 interview or his questionnaire that the man he referred to as JB, who he said paid his fare and organised his flight to Ireland from Dubai and travelled with him, made homosexual overtures to him and brought him to his hostel to sleep with him and make sexual proposals to him after they had taken coffee in a café in Cairo shortly after he went to find English speaking people. This was not plausible, believable or credible. She stated that this contradiction was of extreme importance because the filling in of information on the questionnaire can be done carefully and without unreasonable time constraints and even if forgotten at that stage, the fact he never mentioned such serious events in his interview on the 7th August 2012, makes such claims neither plausible, believable or credible. When this was put to the Applicant at the hearing when he was asked to explain why he did not refer to that aspect of the situation at the interview, the Applicant would only repeat that the interviewer kept shouting at him during the interview itself, a fact this Tribunal gave no credence to.

12. She further stated it was not credible that a person whose family were killed in a bomb blast, father, mother, two sisters and her brothers would not go to the scene of the tragedy and make enquiries themselves and seek to establish beyond a doubt what happened to their entire family. The fact that the Applicant made no such enquiries and did not give any convincing reasons for not doing so casts a huge doubt over his whole story.

13. The first named Respondent then said there may well have been a row over inherited land between the Applicant's father and his cousins but the embellishment by the Applicant of ridiculous situations and incidents, makes it neither plausible nor believable nor credible. The claim by the Applicant that he could not relocate within Nigeria because a gang of killers would find him is a nonsensical claim in the light of the size and population of Nigeria. On the one hand he said he was the only one of the family who was not under threat from the relatives of his father and did not flee with them to Kaduna, and it appears that the family lived without any trouble or visits from the threatening relatives in Kaduna for seven years. But then the Applicant states the relatives knew the family were at mass in one of the churches bombed in Kaduna and knew that the Applicant had been made heir to the lands. She said this suggestion is absurd when examined carefully. She stated that it is highly unlikely that the Applicant's father and family would flee to Kaduna from the cousins who said they would kill them and at the same time to keep the cousins informed they were diligent in the practice of their religion in Kaduna. It is unacceptable that the cousins could have any idea where in Nigeria the family had relocated. The various parts of the story provided by the Applicant do not add up. It could not be accepted that once the Applicant's family were allegedly killed in the blast that the cousins could immediately get a gang of thugs to target the Applicant and kill him nor to get their hands on the land in the village. The further observed embellishment was that the head of the killer gang happened to be the man the Applicant was so generous and kind to in 2010. She summed up that his story was a series of incoherent contradictions and the changing of the story in its details. She stated that it was clear that the Applicant was not prepared to be candid with the Tribunal in his explanation of how he managed to get on a flight to Dublin from Dubai and be without a single document when he met immigration at Dublin Airport. The Applicant was warned that his lack of cooperation in telling the truth surrounding his travel and events would not help his situation. However the Applicant did not give acceptable answers to the questions put to him. She also suggested that he had made silly excuses about getting documents for a man who had a big and successful business in Lagos. She said that taking every aspect of his story into consideration, there were no grounds for giving him the benefit of the doubt. She took the view that the Applicant is most likely an economic migrant and stated that the Tribunal affirmed the original recommendation of the Refugee Applications Commissioner made in accordance with s. 13 of the Act.

Summary of arguments on behalf of the Applicant

14. Counsel on behalf of the Applicant Mr. Conlon SC, having summarised the evidence made the following submissions:

- a) The decision was vitiated by reason of the Tribunal's treatment of the country of origin information. The Tribunal should, as a matter of fair procedures have drawn attention to the fact that the first named Respondent had accessed an undisclosed BBC report so as to allow representations to be made by the Applicant. This was particularly the case as far as this report stated at least 50 people died "at least 50 people died" and countered the earlier recollection by the first named Respondent of the evidence that the Interviewer referred to country of origin information in relation to the bomb blast in Kaduna's catholic church on the 17th June 2012, which refers to the death of three people in one attack and a number of children in another church attack and asked the Applicant what he had to say to that contradictory information and referred to the decision of Cooke J. in *I.R. v. Minister for Justice Equality and Law Reform* [2009] IEHC 353.
- b) Having referred to the undisclosed BBC report, the first named Respondent failed to consider it as providing objective support to the Applicant's claim that six family members were among the casualties and argued that the first named Respondent acted in breach of regulation 5 of the European Communities (Eligibility for Protection) Regulations 2006.
- c) He accepted that country of origin information supported the Applicant's claim that seeking police protection would be pointless, the first named Respondent negated this finding by erroneously holding that it was a requirement that an asylum Applicant must first seek the protection of their own country.
- d) Counsel submitted that the Tribunal's finding that the failure of the Applicant to disclose in his questionnaire or s. 11 interview details of his sexual encounters with JB is "of extreme importance". Counsel argued that at its height this relationship was a peripheral matter and lacks a cogent nexus to the claim of the Applicant.
- e) The finding that the preferred explanation that "the Interviewer kept shouting at him during the interview, a fact that this Tribunal gave credence to" is indicative of a canteen culture and cited *F.U. (Afghanistan) v. Refugee Appeals Tribunal* [2015] IEHC 78.
- f) Further that the second credibility finding that the Applicant made no inquiries in relation to his not travelling to Kaduna after the killing and did not give any convincing reasons for not doing so and this cast huge doubt over his story. Without stating any reason for a rejection of the Applicant's evidence that he could not travel to Kaduna as he feared for his life.
- g) Counsel argued that the first finding in respect of the perceived "embellishments" were mostly based on conjecture and the finding that the Applicant could not remember the person who gave such a huge sum of money was made in this regard of the Applicant's identification of TCO, both the section 8 and section 11 interviews.
- h) He urged that the finding in respect of travel was peripheral. In finding that the Applicant "is mostly an economic migrant, the Tribunal failed to appreciate that economic migrants of a refugee status are not incompatible".

i) Finally in *C.C.A v. Minister for Justice Equality and Law Reform & Ors* [2014] IEHC 569 reference was made to the decision in *Keagnene v. Minister for Justice Equality and Law Reform* where a number of credibility findings were struck down and the effect that this had on the overall position was considered by Herbert J.

Summary of arguments on behalf of counsel for the Respondents

15. Mr O'Connor BL appeared on behalf of the Respondents and submitted as follows:-

a) In relation to country of origin information, the first named Respondent explicitly stated that the first named Respondent had indicated that she had read a bank of country of origin information in relation to Nigeria. The first named Respondent invited the Applicant's legal representative to bring to her attention any particular piece of country of origin information she felt might be particularly relevant but the legal representative failed to do so and quoted Clark J. in *A. v. Minister for Justice Equality and Law Reform* [2009] IEHC 157 submitting that the extract from Hardiman in *G.K. & Ors v. Minister for Justice Equality and Law Reform & Ors* [2002] 2 IR 418 where a person claiming that a decision-making authority had, contrary to express statements, ignored representations which it has received and must produce some evidence direct or inferential to that proposition.

b) Counsel for the Respondent argued that there was no contradiction between the country of origin information contradicting the Applicant's claim that six adults did not die in one church blast and country of origin information evidence stated that 50 people died in blasts on subsequent reprisals.

c) In relation to state protection, counsel argued that it was a requirement for refugee status that an Applicant is unable or unwilling to avail of the protection of their country of origin and quoted La Forest J. in *Canada (AG) v. Ward* [1993] 2 S.C.R. 689.

d) In respect of credibility, counsel cited the well known judgment of Cooke J. in *I.R. v. Minister for Justice Equality and Law Reform* [2009] IEHC 353 where he stated:-

"The determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision-maker."

e) Counsel argued that the finding in respect of travel is one required to be considered by the provisions of s. 11B(b) of the Refugee Act 1996 (as amended). Counsel also argued that the obligation to give reasons as explained by the Supreme Court in *F.B & A.L. v. Minister for Justice Equality and Law Reform* do not require the decider of fact to give reasons why she or he is applying common sense and life experience to a particular account.

f) The claim that the Applicant was being shouted at was only made when challenged on this radical change of account and counsel pointed to the Applicant recording himself at Q. 77 of the interview as being happy in the matter in which the interview was conducted. There was no mention of being shouted at in the grounds of appeal.

g) Counsel argued that a finding by a person who is supposedly close to his family and his entire family has been wiped out but would take no steps whatsoever to find out what happened to them is not believable.

h) A bland assertion that the findings were based on conjecture is not sufficient especially where the findings in relation to the Applicant's lack of a coherent credible account are well-reasoned and well-founded.

i) Counsel submitted that these Applicant's submissions misstate the finding in relation to the identification of the supposed killer. He submitted that the Applicant's change of his account from the s. 11 interview undermines his credibility.

j) Finally the finding that the Applicant was most likely an economic refugee is subsequent on the findings that he had not fled Nigeria due to any well-founded fear and was a finding of fact.

Discussion

16. Once again this court draws the attention of the Refugee Appeals Tribunal and the Minister for Justice Equality to the failure to provide this court with the typed notes of the hearing before the Tribunal and in particular because in this case very substantial statements are made by the first named Respondent in relation to what took place "at the Applicant's claim" and this court is reliant on the decision-maker whose decision has been challenged to set out what took place at this hearing. This is in marked contrast to the provision of the ASY1 form, the questionnaire, the s. 9 interview, the s.11 interview, the s.13 decision of the Commissioner and the notice of appeal. I note that no complaint has been made by the Applicant in this regard but this court is making a complaint.

17. Three issues of the report of the first named Respondent were issues which were raised by Counsel for the Applicant:-

1) The first named Respondent finds that it is a requirement that an Applicant must seek the protection of their own country and be refused it before they can go and seek international protection.

2) The issues arising in the different country of origin information reports relating to the 17th June 2012 and the number of people killed in those explosions.

3) Counsel for the Applicant then stated that when the Applicant was being questioned by the first named Respondent and his failure to raise the issues regarding the man JB and his sexual orientation, he was asked to explain why he did not refer to that aspect of the situation in the interview, but the Applicant stated that the interviewer kept shouting at him during the interview. The first named Respondent deals with this by saying "a fact this Tribunal gave no credence to". There is no question of making further enquiries of this.

18. Nothing in the Convention requires a person to seek the protection of their own country and be refused it before they can go and seek international protection. This is a misstatement of the law as Article 1(A)(2) of the Convention provides that the term refugee shall apply to any person who:-

"Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country or who not having nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear was unwilling to return to it." (the court's emphasis).

However the court notes that the second named Respondent does not rely on this issue in reaching her decision.

19. In relation to the second issue, which relates to the country of origin information, the European Communities (Eligibility for Protection) Regulations 2006 and in particular regulation 5 mandates the protection decision-maker to take account of a number of matters:-

"(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the protection Applicant including information on whether he or she has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the protection Applicant including factors such as background, gender and age, so as to assess whether on the basis of the Applicant's personal circumstances, the acts to which the Applicant has been or could be exposed would amount to persecution or serious harm;

20. Regulation 2 provides:-

"The fact that a protection Applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall be regarded as a serious indication of the Applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated, but compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the Applicant is eligible for protection."

This falls part of the legal obligation on the Refugee Appeals Tribunal system.

21. The second named Respondent quotes in her analysis from a number of sources in relation to explosions in Kaduna. She states:-

"A report from www.guardian.co.uk, Sunday 17th June 2012 headed "Nigerian Church explosions prompt reprisal attacks" and states "blasts at three churches in northern state of Kaduna kill at least 7 people and lead to retaliatory attacks against Muslims". Further on in the report it gives a quote from a person who said: "Three people are confirmed killed. Others have been taken to hospital for treatment". Another witness who lived opposite the church is reported to have said that "Militants threw bombs at another church, killing four children who were playing on the streets outside". She said the militants were caught by a mob and killed."

22. On an internet document from BBC News Africa, dated the 18th June 2012, the information provided by the Red Cross said at least 50 people died in the bombings and in the reprisals. It is unclear when the latter country of origin information from the BBC came to be known to the first named Respondent but counsel for the Applicant complains that they criticised the first named Respondent for not putting this latter piece of information to the Applicant. If the Applicant's fears of being persecuted were related to the activities of Boko Haram, this would have proved fatal in my view to the Tribunal Member's decision. However the fear of persecution is relating to his inheriting certain lands, as a result of his father's death, however it occurred, and the threats of his cousins. In any event, the first named Respondent did not hold this as a major area of concern for the purposes of credibility.

23. A further issue which stands out to this court, is the issue of contradictions which exist between the questionnaire and the evidence before the Tribunal. The Tribunal Member mentioned the man whom the Applicant referred to as JB, and who had made sexual overtures to him. The first named Respondent says that he did not mention this in his questionnaire. The first named Respondent said that this contradiction was of extreme importance because the filling in of information in the questionnaire could be done carefully and without reasonable time constraints. The fact that he never mentions such serious events in his interview on the 7th August 2012, makes such claims neither plausible, believable or credible. The first named Respondent said that when this was put to the Applicant at the hearing and when he was asked to explain why he did not refer to that aspect of the situation at the interview, the Applicant only repeatedly said "that the interviewer kept shouting me during the interview". The first named Respondent goes on to state "a fact this Tribunal gives no credence to". The first named Respondent does not make any further enquiries of this and does not give reasons for her decision that the Tribunal gives no credence to this. Counsel on behalf of the Respondent argues that the Applicant recorded himself at Q. 77 of the interview as being happy with the manner in which the interview was conducted, nor was there any mention of being shouted in the grounds of appeal nor is there any averment in relation to this in the grounding affidavit. This court is unhappy with the approach taken by the first named Respondent and any credibility issues arising from that, in my view, cannot stand. However, numerous other credibility issues were identified by the first named Respondent.

24. One further issue which was raised by the first named Respondent was that she gave the view that the Applicant was most likely an economic migrant. In *Melkonian v. The Attorney General* [2003] 320 F.3D 1061, at p 1071. Fletcher J. states:-

"This court has previously held that a refugee need not seek asylum in the first place where he arrives. Rather, it is "quite reasonable" for an individual fleeing persecution "to seek a new homeland that is insulated from the instability of his home country and that offers more promising economic opportunities." We do not find it inconsistent with a claimed fear of persecution that a refugee, after he flees his homeland, goes to the country where he believes his opportunities will be best."

However again the first named Respondent finds no credibility issues other than presenting her conclusion that the Tribunal was satisfied that the Applicant would not be persecuted in Nigeria for the reasons he gave nor would he be persecuted if he returned there and is not a refugee.

25. Despite these issues, the first named Respondent found substantial credibility issues in relation to the claim of the Applicant. At para. 8 of Cooke J.'s principles in *I.R.* (supra) he noted:-

"When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an Applicant when testifying in person."

Decision

26. This court is satisfied that the decision made by the first named Respondent in dealing with the credibility of the Applicant was one which complied with the principles laid down by Cooke J.

27. In all of the circumstances, as this is a telescoped application for *certiorari*, this court will refuse to apply for judicial review.

Mr Michael Conlon SC and Mr Gary O'Halloran BL, instructed by Messrs Trayers & Co Solicitors, for the Applicant

Mr Tim O'Connor BL, instructed by the Chief State Solicitor, for the Respondent