Neutral Citation Number: [2006] IEHC 46

THE HIGH COURT

Record Number: 2005 No. 351 JR

BETWEEN

JENNIFER OKEKE

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, ELIZABETH O'BRIEN, REFUGEE APPEALS TRIBUNAL, THE ATTORNEY GENERAL, AND IRELAND

RESPONDENTS

Judgment of Mr Justice Michael Peart delivered on the 17th day of February 2006

1. The applicant is Nigerian and came to this country on the 22nd September 2003 via Amsterdam. In her interview she stated that she was born in Lagos on the 25th December 1975, but that she was living in Kano prior to her departure. She stated that prior to that she had lived in Onitsha from 2000 to 2002. Prior to 2000 she had lived in Lagos where she had been born. By way of some further background she appears to be well-educated, and stated at interview that she had worked in Nigeria as a cashier and as a receptionist, and had also studied law. Those studies were apparently interrupted by her marriage to a man who did not want her to continue them. She stated at her interview that she was promised in marriage to a man in settlement of some debt due to that man. She had not wanted to be married to him but it went ahead in any event in January 2000. It was according to her interview a traditional marriage and was not registered.

2. She stayed with her husband for about two years, but she stated at interview that she left him because of beatings and threats of circumcision. She left the marriage and went to her aunt's house, but it appears then that the aunt told her husband ("the Chief") where she was because he had come to the village looking for her. She left for another location, but had some motor accident on her way there which resulted in her going to hospital. She stated that the Chief went to see her there on two occasions as did her family. She sustained a very severe injury to her leg which eventually resulted in its amputation below the knee due to infection.

3. She had also met up with another man, "Sariki", who she had met at a bank where she lodged money, and with whom she formed some type of relationship after she left hospital. He is the father of her child. It appears that her husband "the Chief" heard about this relationship, became angry as a result, and hit her causing her to bleed from a wound in her head. It appears that this Sariki wanted her to leave the area with him, but she was afraid to do that because of what the Chief might do to her husband. In any event she later fled to Kano and at the airport there was an ambulance waiting for her because infection had set into her leg injury. She was taken to hospital where it was found that gangrene had set into the wound and her leg was amputated as I have stated. Sariki appears to have been instrumental in her receiving this treatment. When she left the hospital she went to live in the house of a college friend of his.

4. She stated also that Sariki's family were not happy about her with him because she is from a different tribe, the Ibo tribe, whereas Sariki was Hausa, and they had some other lady in mind for him to marry in due course. She became pregnant. She told Sariki. His father and family were very upset about him seeing her, and they began to meet less often. She was advised to go out of the house only in the evenings and she did so with a friend of Sariki's named Ahmed. Ahmed appears to have arranged matters so that she could escape from the back of the house she was living in if she had to. Ahmed apparently came back one day and she told him she wanted to go out for some air. It was getting dark and she dressed in a purdah to cover herself. She stated that when she and Ahmed came back to the house she went to lie down. She heard the bell ring and heard someone speaking in Hausa. The man apparently rushed in and a fight ensued between Ahmed and this person who was carrying a dagger. Ahmed shouted to her to flee which she did in spite of being pregnant and having a prosthesis on her leg. She says that she went to the house of a lady called "Zenab" who let her in and she told her what had happened. They hailed a taxi apparently and went to a guest house together. Zenab was able to ring Sariki on her mobile phone. It appears that he was at that time in a place called Jos but he said he would fly down to Kano and this Zenab told Sariki where she was. He duly arrived about six hours later and he went to Ahmed's house because Ahmed's mobile phone was switched off, whereupon he was told that Ahmed was in hospital having been stabbed. The applicant says that she felt very guilty about this because it was on account of her that this injury had happened to Ahmed. Sariki came back and told Zenab to go back to her house to get belongings but she did not want to. It appears that Sariki wanted Zenab and the applicant to go to Lagos and stay with a friend named Chioma. But she said that they could not stay with Chioma. Sariki said that he would have to stay with Ahmed to care for him and that he would come to Lagos later.

5. She stated that she went to Lagos in September 2003, but that there was nobody in Chioma's house, and that a security man told her that she was in her husband's village and would be back in a few days. She says that she gave Zenab's mobile phone number to him and they stayed in a guest house, and that in due course when Chioma returned she took them in, and the applicant explained everything that had happened to her. In the meantime, Sariki was also keeping in touch by mobile phone.

6. Later the same evening Sariki arrived and said that Ahmed would be alright, and he apparently told the applicant that she would be leaving for Canada and that he would meet the person who would arrange this on the following morning. He stayed the night and met that person the following morning, but was told that she would not be going to Canada but rather to Britain or Ireland, since it would be three weeks before she would be able to go to Canada. Sariki thought that was too long to wait and said that she could leave for Dublin or Britain the next day.

7. At interview she was asked why she did not stay in Lagos since her parents were there, to which she stated that the Chief would still go back to get her and that her father was scared of the Chief. It was put to her that Lagos was a big place and that she could have stayed away from her family, and that they could have visited her. She stated that the problem was the pressure that the Chief could exert on her father, and also that Chioma could have helped her but if the Chief were to get hold of her (the applicant) her child would be in danger, and that by tradition the Chief would take the child and that there would be nothing which Sariki could do about it.

8. It was put to her then that she could have gone to "another city", but she said that she was born in Lagos, had gone to Onitsha and Aba and Kano. She was asked if she could have gone to Warri since Sariki stays there. But she stated that she could not because his business is there.

9. At the conclusion of her interview she was asked whether there was anything which she wished to add. In answer to this the applicant said that there was an incident which she had not spoken about and which occurred before she had left the Chief. She stated that she had been to the Central Police station in Onitsha and had explained her situation and that she was being forced into

being circumcised. It appears that the Chief had threatened to have her forcibly circumcised as this might stop her seeing other men. Without going into the matter in full detail it appears from her answer that she received no assistance or sympathy for her predicament. She stated also that when she left the Station and went home, and that when the Chief came home he burst into her room as he had found out that she had gone to the police. She was hit and fell to the floor but stood up again. He said that she had disgraced him in the eyes of the police. She had by this time been used to the beatings and that to go to the police had been a mistake, and it was after this incident that she had left and gone to her aunt's house, as already described.

10. She stated at interview that her fear of returning is that she would be circumcised if the Chief found out where she was. It was suggested to her at interview that if she were to go back to Lagos nobody would know she was back there. But she replied that Lagos is the only place she knows well, and that even though it is big it was small in the sense that news would get around that she was back and that the Chief would reach her.

11. The Decision of the Tribunal Member is very detailed, running to twenty three pages. It sets out very fully the factual history of the case as given at the hearing, as well as the submissions made on the applicant's behalf. The analysis and assessment of the applicant's case takes up almost the last nine pages. An important part of the decision ands assessment as far as the present application for leave is concerned is that part in which the Tribunal Member concludes that the applicant could have addressed the risk of serious harm by relocating to another part of Nigeria where "effective State protection could be accessed". I do not propose to set out in detail all that is stated by the Tribunal Member about the option of relocation, and it suffices to say that the matter is dealt with in considerable detail both on the law in that respect and the facts of the applicant's case.

12. But Shane Dwyer BL on behalf of the applicant, submits that she was not given an adequate opportunity to address the issue of relocation, and that no evidence was produced to the Tribunal to support the contention that she could access state protection by moving to places such as Benin, Port Harcourt and Lagos. He submits that the applicant could not have been expected to be in a position during the course of the appeal to produce documentary evidence in relation to the human rights situation in Benin, Port Harcourt or Lagos as she had not been forewarned that this was an issue.

13. The decision noted that she appeared to have a network of friends within Nigeria, and that she presented as an extremely capable and intelligent young woman who speaks excellent English and is highly educated, highly employable and would have no difficulty in locating suitable employment in these locations. The decision notes that the applicant did not give any reason (other than that she had never been there before) why she could not relocate to either Benin or Port Harcourt since she had stated that she could not be safe in Lagos because she would be found by "the Chief".

14. The Tribunal Member also accepted that in the area where the Chief resides it could well be difficult for her to access State protection but stated also that there are other locations within Nigeria where the threat which faced the applicant would be neutralised. The applicant submits that she stated at the appeal hearing that she did not know Benin or Port Harcourt and therefore submits that she could not have been in a position to know whether State protection would be available there.

15. The applicant submits both in regard to this finding and the finding that she could be safe if relocated in Benin, Port Harcourt or Lagos that there is no evidence to back up these findings and that the Tribunal is merely speculating. However, Robert Barron BL for the respondents submits that an approach of so-called "curial deference" should be adopted in relation to the Tribunal which he submits is an expert body charged by the legislature to hear appeals in this particular area, and that this Court should not lightly interfere with a decision which has been fully considered and where the findings are fully and clearly set forth, unless of course there is an apparent error of law or a complete absence of rationality. He suggests that the Tribunal is a body with a particular expertise and experience in these matters and the fact that no evidence is set forth in the decision to back up the finding that the applicant could have relocated internally in Nigeria in order to escape the dangers she faced does not mean that it is not within the competence of the Tribunal to make that finding since it has a great deal of experience in these matters and knowledge built up over the years relating to conditions in a country such as Nigeria.

16. The applicant submits also that the Tribunal made no inquiry whether in the proposed relocation sites there would be a risk of further persecution of the same kind or whether there are other risks which would amount to persecution, and that therefore the Tribunal has failed to take into account relevant considerations.

17. The decision is also criticised in so far as the Tribunal Member states that it would not be "unduly harsh to expect the appellant to relocate to the locations identified within the country of origin". Mr Dwyer submits that there is no explanation for this finding and no consideration of the effect of displacement on the applicant, or the extent of the applicant's connection to any area she is expected to relocate to, or to the fact that the applicant is physically disabled, having had a below knee leg amputation arising from an accident which she gave details about at the hearing.

Conclusions

18. This is an application for leave only, and the onus on the applicant is therefore to satisfy the requirement to show that there are substantial grounds for contending, as this applicant does, that decision of the Tribunal failed to take into account relevant considerations when deciding that the applicant could relocate to another part of Nigeria, erred in law by considering the issue of relocation in complete isolation from what is said to be "the general prevalence and acceptance of the conduct of which the applicant complained in Nigeria", made an unreasonable evaluation of the applicant's credibility, and did not accord to the applicant fair procedures in that the issue of relocation arose for the first time in the cross-examination of the applicant at the appeal hearing, and in circumstances where this matter had not arisen at all in the determination of the Refugee Appeals Commissioner.

19. In relation to the question of whether the Tribunal failed to take into account relevant considerations when finding that the applicant could have relocated, I do not believe that there are substantial grounds for so arguing. Mr Barron is correct to refer to the notion of curial deference. It allows this Court to afford to the Tribunal a measure of appreciation in this regard, and certainly in circumstances where the applicant herself has failed to provide any evidence as to any reason why such locations might afford reasonable protection, it is a factor to be given some weight to. Clearly the Tribunal is entitled to the assumption that it is generally aware of the size and population of Nigeria, as well as the general political situation, and the nature and extent of the state protection authorities which exist in that State. The Tribunal Member addresses the issue of relocation and the law relating thereto in some considerable detail. She refers to relevant case law such as the judgment of the Canadian Supreme Court (La Forrest J.) in *Canada (Attorney General) v. Ward* [1993] 2 SCR 689, 709 (SC:Can.) where, inter alia, that Court stated that clear and convincing confirmation of a state's inability to protect must be provided, as, absent some evidence, nations should be presumed capable of protecting their citizens. The member quotes the following passage from pp. 724-726 that judgment:

> *"The issue that arises, then, is how, in a practical sense a claimant makes proof of a State's inability to protect its nationals as well as the reasonable nature of the claimant's refusal to seek out that protection. On the facts of this*

case, proof on this point was unnecessary, as representatives of the state authorities conceded their inability to protect Ward. Where such an admission is not available, however, clear and convincing confirmation of a state's inability to protect must be provided. For example, a claimant might advance testimony of similarly situated individuals let down by the state protection arrangement or the claimant's testimony of past personal incidents in which state protection did not materialise. Absent some evidence, the claim should fail as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state apparatus, such as that recognised in Lebanon in Zalzali, it should be assumed that the state is capable of protecting the claimant."

20. The member also referred to a passage from a case of Kadenko, and to a passage from Prof. Hathaway's well known work on The Law of Refugee Status (Butterworths, 1991) at p.133 where the learned author states:

"A person cannot be said to be at risk of persecution if she can access effective protection in some part of her state of origin. Because refugee law is intended to meet the needs of only those who have no alternative to seeking international protection, primary recourse should always be to one's own state."

21. The correctness of this approach and the reliance of the Tribunal Member upon it is not contested in this application. What is stated rather is that the member had no evidence before her in order to arrive at a conclusion in the applicant's case that she would be able to seek refuge in another part of Nigeria. The member stated that she was not satisfied that the applicant could not access meaningful protection by relocating within Nigeria, and was of the view that Benin, Port Harcourt or Lagos would be such places. She had already referred to the fact that this applicant was highly educated and employable, and that she had a network of friends in the country. I am satisfied that it cannot be substantially argued that this was a conclusion which could not be properly arrived at by the Tribunal Member. Curial deference certainly permits in the case of Nigeria that a certain knowledge of that country would be available to the Tribunal. I will come to the fair procedure point shortly. At the moment I simply deal with the submission that the member failed to take into account relevant country of origin information in that regard. But that submission totally disregards the responsibility which is shared by an applicant and the Tribunal to bring forward relevant information and material. The applicant brought forward no evidence or material herself which the Tribunal might have considered, but that is not to say that the Tribunal was bereft of any information or basis on which to make a judgment that the applicant's safety could be reasonably assured elsewhere in Nigeria. That decision does not take place in a vacuum. It is formed against a backdrop of knowledge of the overall situation in Nigeria. This Court on the basis of curial deference is entitled to make that assumption in the absence of anything to the contrary being put forward by the applicant. Among the facts of this case also is that the applicant did not even report an incident of rape to the police, yet she claimed that she did not in the past benefit from state protection, albeit that she has stated that when she went to the police about the threat of female circumcision they told her to go away. That could not in my view amount to substantial grounds for arguing the absence of state protection in a nay part of Nigeria. I am satisfied that there are no substantial grounds for arguing that the Tribunal failed to have regard to relevant considerations. Indeed there has been no attempt even in the course of this application to show in any way substantial way what material or what considerations were not taken into account, except perhaps the fact that she was told to go away by the police when she states she went to them about the threat of circumcision. The Tribunal member clearly did have regard to that matter since it is referred to in the decision itself at p. 16 thereof.

22. It is also submitted that the Tribunal Member erred in law by not considering the applicant's claim in the context of the wider human rights situation in Nigeria, and this is referred to in the context of the member's conclusion that the applicant could relocate safely in Benin, Port Harcourt or Lagos. In doing so Mr Dwyer referred to the judgment of Gilligan J. in *BP v. Minister for Justice, Equality and Law Reform* [2003] 4 I.R. 201 in which substantial grounds were found to exist for quashing the decision of the Tribunal arising out of the manner in which it was concluded that the applicant could relocate in his country of origin. The frailty identified in that case was that the Tribunal Member had failed to undertake any detailed consideration of whether the risk of the applicant facing persecution extended to any other areas of Georgia to which it was proposed that the applicant ought to have internally relocated. Mr Dwyer submits that the very same frailty exists in the present case, since the Member has simply speculated, or assumed without any inquiry as to the position or evidence to support it, that the applicant would be able to access meaningful state protection from the persecution she fears in the part of Nigeria where she used to reside. It is, however, essential to appreciate the nature of the persecution in BP. In that case the applicant had been threatened/persecuted by the Georgian police themselves, as a result of involvement by the applicant in efforts to expose corruption among government and law enforcement officials. I can see how in such a situation there would be substantial grounds for considering that before one could conclude that the applicant could access police or other state protection in some other part of Georgia it would be necessary to make enquiry in that regard, given that the persecution feared was at the hands of the police themselves. In the present case it is important to keep in mind the nature of the alleged persecution. It emanates from the applicant's husband, and the ending of the relationship between the applicant and her husband. That is a very different situation. It arises essentially from a domestic situation, and the absence of state protection emanating from the fact that because the police were acquainted with the applicant's husband – a prominent chief in the area – they would not assist the applicant in her complaints against her husband. In my view there could be no substantial grounds for arguing that the Tribunal Member, particularly when the applicant's reason for not agreeing that she could relocate to avoid the difficulty was stated by her to be that her husband would be able to find her, could not reasonably conclude without specific evidence and inquiry, that in a country of the size and population of Nigeria the applicant could access meaningful state protection from any further threats from her husband.

23. It is submitted also on behalf of the applicant that the Tribunal Member made an unreasonable evaluation of the applicant's credibility. Firstly, it is worth pointing out that the decision records that for the most part the story told by the applicant was consistent, and where there were inconsistencies, the Member states that she chose to ignore the inconsistencies. In other words the benefit of any doubt was afforded to the applicant. She does however go on to state that she finds it difficult to believe the applicant, given the population of Lagos, when she states that if she went to Lagos she would be found by the Chief. It was in these circumstances that she went on to find that even if that were so, there would be other parts such as Benin or Port Harcourt to which she could relocate safely.

24. There can in my view be a distinction drawn between a situation where a fact –finder makes an adverse credibility finding in relation to a fact alleged by an applicant which is part of the story itself, where the fact-finder concludes that the applicant is not credible (i.e. euphemistically stating that she is not believed), and another situation such as the present one where the Tribunal Member is not disbelieving the applicant as to a fact which is given as part of the story, but rather an opinion expressed by the applicant that she would be found by the Chief if she relocated.

25. In the former instance it is clear that there must be some rational basis disclosed for not believing the matter alleged, and this is sometimes on the basis of established country of origin information. In the latter however it is open to the Tribunal Member to have an opinion on a matter which differs from the opinion of the applicant as to whether she would or would not be found by her husband. That is not a factual matter in the same sense as the former to which I refer. It is not something which can be verified in any way

whatsoever. It is not a fact – it is a belief, a view or an opinion. What the Tribunal Member stated was that she found it "difficult to believe" given the population of Lagos. I find nothing objectionable in the manner in which that view is expressed. It is unnecessary for her to have evidence as such for that difficulty in belief. In any event she has stated the reason for it, namely the size of the population of Lagos. It is not conjecture and speculation in the sense often used in these applications where a Tribunal Member is alleged to have simply speculated that an event did not occur, and without making any effort to check country of origin information, and I do not believe that there are substantial grounds for so contending.

26. As far as the issue of fair procedures is concerned, it is submitted that the fact that the question of relocation was raised only during the cross examination constitutes a lack of fair procedures, in that the applicant was taken by surprise and had not been prepared for having to address the question of relocation, especially since there had been no reference to relocation in the s. 13 Report and Recommendation. It is contended that therefore the applicant was not in a position during the course of the appeal to produce documentary evidence in relation to human rights in these other locations to which it was being suggested she could safely relocate. As I have stated already in a different context, the applicant shares the responsibility to bring forward material and facts to support her claim. The concept of relocation as an antidote to a well-founded fear of persecution is well-known, and it is relevant that the applicant was legally represented by experienced lawyers in this area. It must have been clear to all concerned even before the appeal itself that even in a situation where the Tribunal might arrive at a view that the applicant has a well-founded fear of persecution, she would not be granted a declaration of refugee status unless there was no reasonable prospect of safety being assured through relocation. This is not something novel. This Court cannot accept that there are substantial grounds for contending for a lack of fair procedures in a situation where the applicant simply did not anticipate that this question might arise. The question of relocation is inextricably linked to the question of whether a declaration of refugee status is to be granted. In my view the issue was properly addressed and in accordance with fair procedures, and if the applicant had any evidence or material relevant to the issue of relocation, she can reasonably have been expected to have been in a position to present same at the appeal even if the issue was not flagged prior thereto, as it would be in a pleadings process in a civil case. In fact I note, as mentioned by Mr Barron, that the issue of relocation had in fact arisen during the course of the interview with the applicant, even if it is not adverted to in the s. 13 report.

27. For all these reasons I refuse leave to seek relief by way of judicial review because no substantial grounds have been disclosed in the application. In my view the grounds put forward fall more within the concept of "tenuous" rather than "weighty".