Neutral Citation: [2015] IEHC 238

THE HIGH COURT

Record No. 2010/421/JR

JUDICIAL REVIEW

BETWEEN

Q. S. A.

APPLICANT

AND

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

RESPONDENTS

Judgment of Ms. Justice Faherty dated the 16th day of April 2015

1. This is a telescoped application for judicial review wherein the applicant seeks certiorari of the decision of the second named respondent dated 3rd of March 2010 affirming the recommendation of the Refugee Appeals Commissioner to refuse her refugee status.

Background

2. The claimed circumstances are as follows: the applicant was born on the 12th of December 1991 and is a national of Nigeria. Until 2008 she lived with her mother in Ogun State. She attended primary school there and was educated to grammar school level. In all she spent eleven years in education, five in primary school and six in secondary. After the applicant finished secondary school, her mother received a letter from her relatives asking her to go to her home village of Esan in Edo State. The applicant and her mother travelled to the latter's home place on the 28th of October 2008. A few days after arriving there they were told that the family had called for the elders and that the applicant was to be circumcised. The applicant's mother had stated that she did not want this to happen to the applicant but her family had said it was the law of the land and if the applicant were not circumcised, *"the gods would punish them"*. Her mother continued to resist but was told that the applicant had to be circumcised. The applicant's mother was beaten and, according to the applicant, when she tried to intervene they beat her also as a result of which she lost a tooth. Following this they began to watch the applicant and her mother. They were put in a house and were kept there for days. People came to speak to her mother to convince her to allow the circumcision to happen. One night her mother woke the applicant and told her that she knew what she was going through as she too had been circumcised. She told her that she had to go and that she had arranged with a friend to take the applicant away. This applicant referred to this person as *"Auntie"*.

3. The applicant's escape from the room was orchestrated by her mother engaging her in conversation, as a ruse to divert attention from those watching them, as she opened the window for the applicant to jump out. The applicant then left with *"Auntie"*, leaving her mother behind. She was taken to her mother's friend's house in Benin City where she was hidden at the back of the house. While there, *"Auntie"* had gone to the police regarding the applicant's circumstances but they had told her they could not intervene as circumcision was a tradition. *"Auntie"* advised her that she would make arrangements for the applicant to be safe. On the 8th of November 2008 a man, whom the applicant referred to as *"Uncle"*, came and took the applicant away with him. They travelled to Lagos and from there departed for Ireland, arriving in this state on 9th of November 2008. Upon arrival in Ireland, the applicant was taken by this man to a house where she remained until January 2009. He used her as a sex slave during that time. He threatened the applicant stating that he would bring her *"to circumcision"* and *"would not even let [her] have food."* The applicant claimed that she managed to escape from this house on an occasion when *"Uncle"* had left the house. She begged passers by for money and managed to telephone a sister of the applicant's best friend and whom the applicant referred to as *"Auntie Bettie"*, who resided in Ireland. When in Nigeria, the applicant and her friend had on occasion telephoned *"Auntie Bettie"* in Ireland. Having made contact with this person, the applicant managed to get to her place by bus after begging people for money and seeking directions.

Procedural history

4. The applicant's asylum process appears to have commenced on the 30th of January 2009 and she completed an ASY 1 form on 9th of February 2009. The applicant claims asylum on the basis of membership of a particular social group.

5. The applicant's questionnaire was submitted to ORAC on the 1ih February 2009 and she underwent a s.11 interview on 7th of March 2009.

6. The commissioner's s.13 report, dated 10th of March 2009, issued to the applicant on the 26th of March 2009 which recommended that she should not be declared a refugee. Her application was refused on grounds of credibility and, notwithstanding the rejection of her claim on credibility grounds, the commissioner found that *"the applicant has failed to demonstrate that she could not avail of protection in Nigeria"* and *"it is further considered that Nigeria has a population of over 140 million people and it is not considered plausible that [the applicant] could be found and harmed by [her] village people and family members.*

7. An oral hearing of the applicant's appeal to the Refugee Appeals Tribunal took place on 11th August 2009.

8. Holding against the applicant, the Tribunal Member noted that even if there was a genuine fear in the mind of the applicant, there had to be a valid basis for that fear. The Tribunal Member did not accept there was such a genuine fear for a number of reasons. She made the following findings:

> 1. She did not accept the applicant's account of the circumstances under which she and her mother travelled to Esan, stating: *"it is highly implausible that the mother and the applicant would travel the distance to Esan on the basis of some letter sent to her and not knowing what the purpose of the journey was. This is particularly so in circumstances where the applicant maintains that her mother's village and family had a tradition of FGM; her mother was aware of this tradition and had undergone this procedure herself; and she was opposed to this tradition. It is not credible that her*

mother, knowing of and objecting to this tradition would bring the applicant to this village on foot of a rather mysterious letter and where she may be at possible risk of FGM ...This undermines the applicant's claim. "

2. The Tribunal Member found the manner in which the applicant allegedly escaped from Esan *"equally incredible"* and queried whether she had in fact been detained at all. The Tribunal Member opined: *"If the purpose of the mysterious letter is to inveigle them back to Esan for the applicant's circumcision then their agreement to this is surplus to requirements and they could just have forcibly carried out the practice."*

With regard to the *"secret arrangement"* the applicant alleged her mother made with a friend to take the applicant away, the Tribunal Member concluded that this arrangement *"could not have been made at as alleged by the applicant as there was no opportunity to do so in the time between discovering the purpose of the summonsing and being locked up after being beaten. This undermines her claim too."*

The Tribunal Member found that the alleged escape out of the window did not ring true when one considered that the place *"was allegedly surrounded by people."* The Tribunal Member put it thus: *"While [the applicant] is at pains to explain how the mother opened the window and duped these people into thinking they were merely talking together she overlooks a rather critical point which is what the people surrounding the place thought when auntie suddenly appeared at this window. If she opened the window to highlight the fact that they are inside, merely talking, it is inevitable that she will also draw attention to the fact that Auntie is in attendance, outside, waiting for the applicant to emerge. Nor is it a reasonable explanation proffered as to how she and Auntie escaped once outside this window. The fact that it was night time does not explain how two adults emerge, one from a window and one from its environs into an area surrounded by people already (as the applicant's mother seems to have thought) alerted to the open window. This is not credible evidence. It is internally inconsistent and on any analysis makes little or no sense. "*

3. The Tribunal Member found the applicant's description of her journey to Ireland, her subsequent escape from *"Uncle" "not credible"* and her account of locating *"Auntie Bettie"* to be *"completely implausible"*. She noted that while the nature of the applicant's travel to Ireland was not a core issue, it was *relevant "in an overall assessment of her claim."* The Tribunal Member concluded that *"the* [applicant's] *core claim was not credible either for the reasons already outlined."*

Internal relocation

8. Having duly made the above findings as to the applicant's credibility, the Tribunal Member went on to state: *"Alternatively, if this claim is credible, the issue of internal relocation is relevant."*

9. After quoting the provisions of Regulation 7 the European Communities (Eligibility of Protection) Regulations 2006 and making reference to Hathaway and certain Canadian case law, the Tribunal Member continued as follows:

"The applicant claims that she is at risk from non- state agents, her mother's villagers and family.

The applicant stated that she cannot relocate in Nigeria because these village people and family members could find her. The applicant stated she would be unable to go anywhere in Nigeria because she doesn't know anywhere and has never travelled before and can only do what her mother asked her to do (Page 20 of interview notes). Nigeria has a population of over 140 million people and it is not considered plausible that she could be found and harmed by these village people and family members. She has secondary school education and is employable and could relocate in one of the bigger cities such as Lagos .....

Thus taking into consideration all the facts and circumstances of the applicant's case I am of the view that it would not be unduly harsh to require her to relocate.

That there is a difference between police protection and internal relocation (and that the existence of either of them is sufficient to preclude an applicant having a valid claim to refugee status), is clear from the EC (Eligibility for Protection) Regulations 2006. Thus as it is clear from the 2006 Regulations internal relocation is a complete answer to a claim for refugee status, as Regulation 7 deals with it as a separate basis for refusing a claim ...it follows therefore that the applicant herein is not a refugee. "

The grounds of challenge

10. The following grounds of challenge, as set out in the statement of grounds are relied on by the applicant:

"ii. The RAT erred in law and breached the principles of fair procedures and natural and constitutional justice in failing to adequately assess the subject of the availability of state protection to the applicant in Nigeria.

iii. The RAT erred in law and breached the principles of fair procedures and natural and constitutional justice in failing to give reasons/adequate reasons for the Decision and in engaging in conjecture in the evaluation of the Applicant's claim.

iv. The RAT erred in law and breached the principles of fair procedures and natural and constitutional justice in failing to have any adequate regard to the Notice of Appeal and further supporting documentation submitted by the Applicant in support of her claim to be a refugee.

v. The RAT incorrectly assessed the issue of internal relocation within Nigeria and failed to have regard to the applicable law in this area. "

The parties' submissions

With reference to the credibility findings made by the Tribunal Member, counsel for the applicant submitted that the Tribunal Member relied on conjecture in arriving at the various findings. Counsel argued that the Tribunal Member acted unlawfully in finding that the entire claim, as attested to by the applicant, was incredible owing to what the Tribunal Member cited as the implausibility of the applicant's mother's actions in returning to her village when she was opposed to circumcision and when she herself had undergone

FGM. It was submitted that this assessment of the applicant's mother's state of mind was made by the Tribunal Member without her knowing what that state of mind was, consequently this was speculation on the part of the decision maker. Moreover, in assessing credibility, the Tribunal Member did so without having regard to cultural differences. For these reasons therefore, the Tribunal Member's finding that the applicant's mother would not have gone back to her village in the circumstances claimed by the applicant cannot stand. Equally, there was no factual basis for the rejection of the applicant's account of how she escaped the house in Esan in which she had been kept. Counsel noted that the Tribunal Member placed emphasis on the place being *"allegedly surrounded by people"*, a phrase repeated by the Tribunal Member on a number of occasions, when the applicant's account of this issue was that *"there were people all round the premises."*

Thus, the applicant's claim to have been in fear of FGM was effectively wiped out on the basis of the two aforementioned credibility findings made by the Tribunal Member. Furthermore, Tribunal Member failed to have regard to the applicant's age when assessing credibility. All of the Tribunal Members speculative findings were made from an adult perspective. As the applicant was a minor at the time of the events in Nigeria and during her asylum process, the credibility findings made against her have to be called into question. Counsel submitted that the Tribunal Members approach to the applicant's credibility offended against the principles set out in *IR v. Minister for Justice* [2009] IEHC 354, in particular principles 4, 5, 6 and 9.

It was further contended on behalf of the applicant that the Tribunal Member's (contradictory) finding on internal relocation was made without any proper assessment of this question, in accordance with the requisite law and legal principles. There was no adherence to the provisions of Regulation 7 of the 2006 Regulations. It was submitted that the Tribunal Member carried out an inadequate assessment in that she failed to condusively identify a relocation site and to have regard to the general circumstances prevailing in that part of the country of origin and the personal circumstances of the applicant, as prescribed. The relocation site was not conclusively identified, the applicant only being found to be in a position to relocate to *"one of the bigger cities such as Lagos."* But there was no definite finding as to location. In this regard counsel relies on the dictum of Cooke J. in *SBE v. the RAT* [2010] IEHC 133:

> *"17. It is well settled law both generally in the application of the Geneva Convention and of the 1996 Act and specifically by virtue of Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006, that a finding that internal relocation will provide protection involves a two fold consideration: (a) First, the identification- if only in general terms- of an area or place in the country of origin which can reasonably be expected to be free of the particular source of persecution from which the applicant requires protection; and*
>
> *(b) Secondly, an inquiry sufficient to confirm that a relocation there is feasible and reasonable to expect of the applicant (even if it involves hardship,) having regard to the personal circumstances of the applicant and of his family.*
>
> *18. This second consideration is relevant because there may well be reasons of ethnicity, religion, political affiliation or family history why an applicant might not be able to move to or be safe in a given relocation and that can only be decided if the area or place is identified and has been made known to the applicant. In this case no particular area of possible relocation was mentioned either by the Tribunal Member or in the s. 13 report so the applicant has never had it identified. No consideration was given as to whether there were areas outside Anambra state where Massob was active and if so which areas they were. This omission is all the more surprising in this decision because the Tribunal Member quotes directly from para. 91 of the UNHCR Handbook: "In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would have been unreasonable to expect him to do so."*

Counsel further relied on the dictum of Clarke J. *K.D. Nigeria v. The Refugee Appeals Tribunal* [2013] IEHC 481 and that of MacEochaidh J. in *E.I v. The Minister for Justice and Ors* [2014] IEHC 27, as to the principles to be applied when assessing the option of internal relocation. Furthermore, insofar as the Tribunal Member's decision might suggest that the internal relocation aspect of the Decision was not one that might attract the benefit of a full analysis, counsel relied upon the judgment of MacEochaidh J. in E.I as to the necessity for a *"full blooded" assessment*. It was further submitted there was applicant's objections to internal relocation or to take her views on the matter into no effort on the part of the Tribunal Member to weigh in the balance any of the account given by the applicant.

14. The respondents advanced the following arguments. Firstly, in the context of the asylum process, the applicant's age was in issue. Following the initiation of that process on 30th of January 2009, it was initially believed that the applicant would come within the remit of s.8(5) of the Refugee Act 1996, as amended, as an *"unaccompanied minor"*. However, the student social worker at the HSE requested an age assessment of the applicant and in her referral letter stated as follows:

> *"Please be advised that [the applicant} does not appear to be her stated age. She has been observed by different Social workers and all agree that she is over 18. She admitted to Marisa Hardiman on the 30/01/200 (sic) that she was 20 years before correcting it to 17yrs. Also this morning when she presented to our office, she told staff that she was born in 12/12/1991 and that she will be 17 in December. There are quite a lot of discrepancies in the information she gave regarding her age.*
>
> *Presently [sheJ resides in a hostel accommodation for minors and we don't consider this appropriate. We therefore request that you carry out an age assessment as soon as possible. Please contact the duty social work service with your earliest available appointment. "*

On 9th February 2009, the applicant was informed that she was not accepted as an unaccompanied minor and consequently she was not referred to the Health Service Executive as an unaccompanied minor. The reasons given for the decision were that she did not provide *"a genuine Passport"* to prove her identity, she appeared to be older in appearance than her stated age and there were contradictions in her interviews in relation to her schooling, date of birth and family for which no plausible explanations were given. Counsel acknowledged that the applicant subsequently provided a birth certificate which stated that she was born on 12 December 1991, but the applicant had never challenged the finding that she was not a minor. It was therefore submitted that the Tribunal Member was entitled to proceed on the basis that the applicant was an adult.

15. Counsel argued that the decision in this case turned completely on the basis of the credibility of the applicant. The credibility findings accorded entirely with the principles set out by Cooke J. in I.R. and also with the decision of MacEochaidh J. in *R.O. v. Minister for Justice* [2012] IEHC 573. The respondents refuted any suggestion that the Tribunal Member failed to give reasons for her findings; on the contrary, clear reasons were given and there was neither conjecture nor speculation involved. It was submitted that the decision must be looked at in the round and that the Tribunal Member's assessment of credibility was entirely reasonable and substantiated and moreover, arrived at on the basis of common sense. It was thus sufficient to substantiate the Tribunal Members decision to reject the appeal.

16. On the question of internal relocation, it was submitted that while there was no requirement (in view of the credibility findings) for the Tribunal Member to look at the issue of internal relocation, the internal relocation finding that was made was properly decided and accorded with the principles set out by Clarke J. in *K.D. Nigeria*. Counsel submitted that the Tribunal Member specifically applied the applicable principles to the applicant's individual circumstances. She noted the size of Nigeria and the identity of those seeking applicant (village people and family members). Moreover, she noted that the applicant had secondary education; that she was employable; and thus could relocate to one of the larger cities in Nigeria such as Lagos. Counsel pointed out that the applicant had been able to travel from Esan to Benin City and onto Lagos and then complete the mammoth journey to this State. In those circumstances, it was neither irrational nor unreasonable for the Tribunal Member to conclude that the applicant could have relocated internally in Nigeria. Accordingly, for all those reasons, counsel submitted that the Tribunal Member's assessment of internal relocation was satisfactory. Alternatively, if the court were to find that the internal relocation assessment was flawed, it was submitted that as the assessment was a "belt and braces" approach only, and where there were unequivocal credibility findings made by the Tribunal Member, the findings on internal relocation could be severed from the rest of the decision. In this regard, counsel relied on the dictum of MacEochaidh J. in *I G. v. RAT* [2014] IEHC 207 where he stated:

> *"28. The Tribunal Member's assessment of his ability to relocate in Egypt is predicated on the fact that, quite simply, he does not believe that the applicant has shown that Egypt would not be a safe country for him. In any event, the Tribunal Member does proceed to make a separate and distinct finding in respect of internal relocation even though he did not find that the applicant had a well-founded fear of persecution. In carrying out this task, it is my view that the Tribunal Member was required to identify a particular area to which the applicant could have relocated if the particular provisions of Reg. 7(1) of the Protection Regulations are to be strictly followed. The Tribunal Member's failure to identify such an area within Egypt can be seen as a flaw in respect of his finding on internal relocation in that context. However, I do not deem the perceived flaw in the Tribunal's internal relocation finding to be of such consequence as to condemn the overall decision reached in this case. Although the Tribunal Member may have erred, it cannot be said to be a flaw substantial enough to justify an order of certiorari in the circumstances of this case.*
>
> *29. In any event, it is possible to sever the internal relocation finding made in this case from the various separate credibility findings made by the Tribunal Member. In my view, the various credibility findings and the finding on internal relocation are distinct and are not dependent on each other. As such, a flaw in the finding on internal relocation does not infect the credibility findings made by the Tribunal in this case as it is severed from the other robust findings. In reaching this conclusion I have regard to the decisions of A.A. [Pakistan] v. Refugee Appeals Tribunal (Unreported, ex tempore, Mac Eochaidh J, 18th September 2013) and Talbot v. An Bard Pleanala [2009]1 I.R. 375 on the severability of findings."*

Consideration

17. The first issue which arises is the applicant's age. She was referred for age assessment by HSE personnel after she was referred by ORAC to the HSE as a possible "unaccompanied minor". However, she was not accepted by the HSE as an unaccompanied minor. Subsequently, the applicant was *"deemed an adult"* at the section 11 interview stage notwithstanding that a week prior to the interview she produced a copy of a birth certificate. The birth certificate gave her date of birth as 12th December 1991, which accorded with the date she had given in the course of her s. 8 interview and when she was interviewed by the HSE. The applicant also cited the 12th December 1991 as her date of birth in the responses given in her questionnaire and she had therein referred to having her birth certificate as proof of her identity. It would appear that the applicant procured what she claimed was her birth certificate sometime between early February and the 17th February 2009. In the course of her section 11 interview, she outlined how she obtained the document she produced as evidence of her date of birth.

18. There was no specific analysis of the applicant's age in the section 13 report, save that while it recorded the applicant's date of birth as 12th December 1991, it added the words *"Deemed adult"* . Under "nationality", the report went on to state:-

> *"The applicant claims she is Nigerian. The applicant submitted identity cards and a photocopy of a birth certificate in support of this claim. ORAC is unable to verify the authenticity of these documents. However for the purpose of this report it is accepted that the applicant is from Nigeria. "*

19. In the Notice of Appeal to the Refugee Appeals Tribunal, the applicant's date of birth was stated to be the 12th December 1991. In her summary of "The applicant's claim", the Tribunal Member states: *"The applicant is called [] and was born in (sic) 12 December 1991."* The Tribunal Member also records the applicant's testimony that *"[her] birth cert. was sent over to her"*. The summary of the applicant's testimony under cross examination records the applicant stating that *"[i]n 2007 when she was 15 she went to the village"*. No further reference is made to the applicant's date of birth or age, as far as I can ascertain, save that in the course of her analysis of the claim, the Tribunal Member queries how *"two adults"* emerge from a window undetected. Specifically, there is no reference to the Tribunal Member either having found or having "deemed" the applicant to be an adult.

20. It seems to me that a specific finding as to the applicant's age was warranted, given that the Tribunal Member recited the applicant's claim to have been born on 12 December 1991, and in circumstances where the applicant was relying on a specific document in support of her claim to have been born on the said date, as would have been apparent to the Tribunal Member from her perusal of the s.l1 interview, in particular. Yet the decision is silent as to what view the Tribunal Member took of the applicant's evidence as to her age or the documents she furnished in support of her claim. If the reference to *"two adults emerging from a window"* purported to be a finding by the Tribunal Member on the applicant's age it is to say the least opaque. One of the obligations on a protection decision maker pursuant to the European Communities (Eligibility for Protection) Regulations 2006 is that *"the relevant statements and documentation presented by the protection applicant ..... "* must be considered (reg.5 (b)). Thus, the first failing on the part of the Tribunal Member was the absence of any clear finding as to whether the applicant was a minor or an adult at the time of the alleged events or indeed at the time of the hearing of her appeal. To my mind, the Tribunal Member was not absolved of this requirement solely on the basis on which ORAC had proceeded or on the basis of the HSE decision not to accept the applicant as an unaccompanied minor. Of course, once the applicant's statements and documents were considered, it was a matter entirely for the Tribunal to weigh the relevant evidence and decide accordingly. There is no indication on the face of the Decision that this was done. If the evidence as to age was considered and rejected, then the Tribunal Member should have stated as much and the reasons for the rejection. It was both necessary and imperative to do this. The age the applicant was at the time of the alleged events under consideration by the decision maker had the potential to inform the Tribunal Member's thinking on credibility. Essentially, the thrust ofthe applicant's narrative was that aged 16 after finishing school she accompanied her mother to the latter's home place. If the Tribunal did not accept the applicant's claimed age at the time and that there was no requirement (for the purposes of assessing credibility) to weigh in the balance the fact that the applicant's account of events was told from the perspective of a minor who accompanied her mother on a journey to the mother's home place, the rationale for not assessing the applicant's claim on that basis

should have been set out by a clear rejection of the applicant's evidence as to her claimed date of birth. The Tribunal Member's failure to do this undermines the credibility findings. Moreover, I note that after effectively rejecting the applicant's credibility, the Tribunal Member purported to deal with the issue of internal relocation. She found that it would *"not be unduly harsh"* to require the applicant to relocate in her country of origin. In the course of her assessment, she quotes reg.7 of the 2006 Regulations. Pursuant to that provision, one of the requirements on a protection decision maker is to have regard to *"..the personal circumstances o(the applicant"* (emphasis added). Nothing could be more personal than a person's age. On any analysis, the Tribunal Member was dealing with a young, possibly vulnerable, woman; thus it seems to me that it was incumbent on the Tribunal Member to make a clear finding as to whether the protection applicant was in fact child or adult, as part of the internal relocation assessment. Having said this, I do not intend that it be taken that a consideration of age is only relevant where a protection applicant is of tender years. Indeed, whether or which a protection applicant is a minor or an adult, age may be a salient factor in an assessment of whether internal relocation was a viable option having regard to all the circumstances.

I refer to the internal relocation issue in the context of age by way of general observation only, as will become apparent later in this judgment. My emphasis at this juncture is that, be it a credibility or an internal relocation assessment, the applicant's claimed story required a considered assessment as to whether she was child or adult at the relevant times.

21. I turn now to the credibility findings: Credibility is exclusively for the decision maker to assess; it is not for this court to substitute its view for that of the Tribunal Member. The court is concerned only to ensure that the process by which the conclusion on credibility is arrived at conforms to the requisite legal standards. The established jurisprudence shows that a decision maker is not at large when assessing credibility.

22. One of the Tribunal Member's key findings was the implausibility of the applicant's mother and the applicant returning to the mother's home place on the basis of *"some letter sent to [the mother] and not knowing what the purpose of the journey was"* in circumstances where the applicant's mother had undergone FGM and when she was opposed to circumcision. A number of issues arise from this finding. Firstly, not only the mother's but the applicant's actions in going back to the home place are deemed implausible. Scant regard appears to have been paid to the applicant's explanation, both in the course of her interview and at hearing that she herself was not aware of the contents of the letter her mother had received. The Decision recites as follows:-

> *"At hearing she stated that [her mother] received correspondence from relatives that they had to go home to Esan in Edo State. Her mother got the letter and she never saw it. "*

Moreover, on the applicant's account of events, neither her mother nor she became aware of the circumcision demand until they arrived in Esan, and the applicant claimed that she only became aware some days after their arrival in the home village of FGM having been carried out on her mother. I fail to see, in those circumstances, absent any factual premise for same how the Tribunal Member logically or rationally arrived at her conclusion of the implausibility of the *applicant* returning to her mother's home village in the company of her mother. The Decision also recites the applicant's testimony, under cross examination, of having visited the home village a year prior and that there had been no discussion then about circumcision. Yet, no account appears to have been taken of this evidence (either for the purpose of accepting it or rejecting it) when considering the plausibility of the applicant's account of visiting her mother's family and village in October 2008, as it should have been.

The Tribunal Member appears to have concluded that it was implausible that the applicant's mother would have returned to her home place *"not knowing what the purpose of the journey was"*. I fail to see the logic or rationality in that conclusion, which was adverse to the applicant, in circumstances when the most the applicant testified to was that she herself did not know the contents of the letter. Thus, there was no factual premise or rational basis for the Tribunal Member's conclusion as to the applicant's mother's lack of knowledge ofthe purpose of the journey since the applicant, having never seen the letter, was not in a position to offer an insight as to its contents. Any rational analysis of the applicant's evidence could only conclude that the applicant's mother had gone to her home place on the basis of the contents of the letter, whatever they might be.

23. In the absence of any evidence of what the letter contained, and where the Tribunal Member appears to have accepted that the applicant lacked knowledge of the contents of the letter, her finding as to the implausibility of the applicant and her mother travelling to Esan can only be described as speculative. This is all the more so given that the Tribunal Member appears to acknowledge that *"it was only on arrival in Esan that the mother was told the purpose of her summoning"*. In her s. 11 interview, the applicant was questioned as follows:

> *"Q It is difficult to accept as credible that you claim your mother, who was from this village and tradition, and who had undergone this fgm and was opposed to you being circumcised, brought you to the village when summonsed by the Elders. It is not rational. Can you please explain this?*
>
> *A She did not know what she called her for. She did not know it was for the circumcision.*
>
> *Q But she might have realised that this was probable, and that there was always a chance that they would do this to you at some stage?*
>
> *A She never knew that was their plan. They never said why they asked her to come in the letter.*
>
> *Q And in the letter were you told to come as well?*
>
> *A I don't know what was in the letter. "*

24. It seems to me that the Tribunal Member's mind was closed to the possibility that other family dynamics might have been set out in the letter which brought the applicant's mother back to her home village. Of course, one cannot know if this was the case and it is not for this court to speculate, no more than it is for the Tribunal Member to do so. Furthermore and more importantly, the perceived frailties attributed by the Tribunal Member to the mother's action in returning to her village could not in any event absolve the Tribunal Member of the task of ascertaining whether the applicant had a genuine fear of circumcision in circumstances where the evidence tendered by the applicant was that the practice of FGM was carried out in her mother's village. The primary function of the Tribunal Member was to investigate the *substance* of the alleged fear on which the applicant based her claim for asylum. A young girl's claimed fear of being subjected to FGM (irrespective of whether she was of age or not) should not have been so readily dismissed on the basis of knowledge imputed to her by the Tribunal Member as to what was likely to occur if she returned to her mother's home place, when there was no rational basis for the Tribunal Member's rejection of the applicant's claim of lack of prior knowledge of the purpose of her mother's summoning. I am satisfied that the conclusion arrived at by the Tribunal Member as to the implausibility of the applicant going to Esan offends against the principles set out in *IR. v. Minister for Justice Equality and Law*

Reform [2009] IEHC 353, in particular principles 4 and 5 as follows:-

> *"4. The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told*
>
> *5. A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding".*

Nor does the finding conform to the test set out in *R.O. v. Min. for Justice & Anor*. [2012] IEHC 573

25. I am equally satisfied that the findings made in respect of the applicant's account of the events in the home village cannot stand. The Tribunal Member stated as follows:-

> *"Equally incredible is the manner in which she allegedly escaped from this place and indeed the fact that she was allegedly detained at all. If the purpose of the mysterious letter is to inveigle them back to Esan for the applicant's circumcision then their agreement to this is surplus to requirements and they could just have forcibly carried out the practice. Instead her evidence is they beat her and her mother and then they were kept in a room where they "started to watch us". There the mother was able to make a secret arrangement with a friend to take the applicant away".*

Insofar as the Tribunal Member opined that the applicant and her mother's agreement to the circumcision were *"surplus to requirements and they could just have forcibly carried out the practice"*, I note the applicant's account of the claimed timeframe, as set out in her section 11 interview:-

> *"Q What exactly happened Can you tell me when they wanted to do this? When I finished secondary school and my mum got a letter to say to go to the (sic) village. We travelled on the 28th and she said I received a letter and you asked me to come, and they said we should wait, the elders are coming. A few days later they said to my mum im (sic) over 15 and they said ill (sic) start having boyfriend we have to circumcise her .... "*

Later in the interview, the applicant was asked:

"And what date did you meet up with the elders and were informed of the FGM decision." She answered*: "It was two days after we went to the village. They told her the people who were doing the circumcision. They had sent for them. "* The record of the applicant's testimony at hearing was that after her mother had stated that she would not allow the circumcision she was beaten and both were locked up in a room for days and that during this time *"people came to speak to the mother to convince her to allow the circumcision to happen*". The Tribunal Member appears to reject as *"incredible"* the notion that family members might be prepared to wear down the applicant's mother's resolve by keeping her locked up when they could have forcibly carried out the circumcision, but to my mind, the evidence tendered by the applicant did not offend the bounds of credibility to the extent that it could rationally be utilised as a reason to reject her claim to have been subjected to a threat of circumcision.

After reprising the applicant's evidence on the issue of the applicant's claimed escape, the Tribunal Member continued:-

> *"It is clear from a reading of her evidence that this alleged secret arrangement could not have been made at all as alleged by the applicant as there was no opportunity to do so in the time between discovering the purpose of the summoning and being locked up after being beaten. This undermines her claim too. "*

The Tribunal decision recites that the applicant was asked how her mother arranged for *"Aunty"* to be outside the window and she stated she did know. The section 11 interview records as follows:-

> *"Q. How was your mother able to arrange this escape secretly with Aunty? If you were being watch (sic), and she previously was unaware of the FGM?*
>
> *A. Maybe it was before we were beaten, I don't know. She just told me I have to go with the aunty. "*

The Tribunal Member's surmise was not unreasonable on its face. However, absent other compelling findings on credibility, it could not be an adequate basis to reject the applicant's core claim.

In rejecting the applicant's account of her escape out of the window and getting away with *"Aunty"*, the Tribunal Member focused on *"the place (being) allegedly surrounded by people"*, and on *"what the people surrounding the place thought when Aunty suddenly appeared at the window"* and *"the fact that it was night time does not explain how two adults emerge, one from a window and one from its environs into an area surrounded by people already (as the applicant's mother seems to have thought) alerted to the open window"*.

The account given by the applicant in the course of the section 11 interview was as follows:-

> *"After that, they started to watch us, and my Mum made an arrangement, a secret arrangement, with a friend to take me away. So I ran out of the place and left my Mummy there. It was in the middle of the night, we were in a room where we were kept, and they were around the premises, my Mum was pretending that we were talking, and she opened the window, and they thought we were talking together. That was how I ran out of the place, and met Aunty who was at the window. "*

In the course of the same interview, she was questioned as follows:-

> *"Q. You claim that you were in a room and that the people had surrounded it yet you were able to escape out a window. It is difficult to accept that if they had wanted to lock you in so you could not escape it would be that easy. It does not make sense. Can you please explain this to me?*
>
> *A. They thought me and my Mum were in the room talking. They did not think I could run away. They never knew it was my Mummy that was doing everything. "*

The record of the applicant's cross examination in the course of the Tribunal hearing states as follows:-

> *"She was asked how many days she was in the house and she said it was a few days after they told her about the circumcision. They refused and she and the mother were beaten. The room was not locked all the time. They were able to use the toilet. She was asked if she was supervised going to the toilet. The building was very big. It took two to three minutes to go to the toilet. They were not watched every time they went to the toilet. There were people all around the premises. She was asked if the guards did not see them and she said they were inside the house. She said maybe the person at interview did not get what she said (at p13). She was asked how it was that Aunty was outside and was not seen by anyone and she said it was night time. She said they never thought her mother would arrange such a thing. "*

Nowhere in the account of events given by the applicant does she suggest that there were people surrounding the outside of the premises in the manner suggested by the Tribunal Member. It seems to me that the decision-maker leapt with undue haste to her conclusion on this particular issue. I do not find anything in the applicant's account upon which the Tribunal Member could logically or rationally find the applicant's account internally inconsistent when the account she gave at the section 11 interview and the evidence she tendered at the hearing was that the guards were inside the house and indeed in the course of the s. 11 interview, the probing conducted by the interviewer was on that basis, as evident from the question *"You claim that you were in a room and that people had surrounded it....."* (emphasis added)

26. In her section 6 analysis, after reprising the evidence given by the applicant regarding being handed over to *"Uncle"*, her travel to Ireland, the circumstances in which she claimed to have been kept by *"Uncle"* until her escape, the assistance she was rendered by strangers and her ultimate contact with *"Aunty Betty"*, the Tribunal Member stated: *"Again this evidence is not credible"*. Other than this bald statement, which presumably refers to the evidence recited immediately preceding the statement, the Tribunal Member does not otherwise elaborate as to why she found the applicant's account of the aforesaid events not credible. The Tribunal Member then goes on to state:-

> *"She touched the door and managed to get out of this house and coincidentally it turned out she was in Ireland where she used to contact her Aunty Betty from a cyber cafe in Nigeria. She then met up with her auntie Betty. While this is not a core issue it is nonetheless completely implausible and is relevant in an overall assessment of her claim."*

It is not immediately apparent to the reader whether the Tribunal Member is restricting her *"completely implausible"* finding to the applicant's account of having managed to get out of the house and having ultimately contacted *"auntie Betty"* or whether the finding of implausibility also refers to the applicant's account of what she claims happened to her after being handed over to *"Uncle"*, which in any event, the Tribunal Member found *"not credible" .*

On any analysis, the Tribunal Member's findings regarding the applicant's claim of what happened to her from the time she was handed over to *"Uncle "* until she claimed asylum in this jurisdiction raises concerns. No reasons are cited as to why the applicant's account is found *"not credible"* or *"completely implausible"*. More particularly, these attributions would appear to cover not just the applicant's lack of detail or knowledge on her travel to this jurisdiction but also her claim to have been used *"as a sex slave"*. While the Tribunal Member appears to state that the applicant's account of events was not "a core issue", presumably in terms of credibility, nevertheless she factored it into her rejection of the applicant's claim to have been in fear of FGM. Bald assertions that someone is not credible or completely implausible cannot suffice to reject credibility. The dictates of fairness require a specific cogent reason for any stated disbelief. The Tribunal Member's findings as regards the applicant's claims of what happened to her after being handed over to *"Uncle"* in Benin City and subsequently fall foul of the principles set out in *I.R.*

27. The Tribunal Member rejected the applicant's "core claim", that is fear of being subjected to FGM, essentially on the basis of the findings made concerning her journey with her mother and her escape from her mother's home place. For the reasons set out above, those findings have been impugned. The Tribunal's findings surrounding the applicant's travel cannot withstand judicial scrutiny. The decision maker effectively has found that what the applicant asserted simply did not happen to her. She arrived at this conclusion on a flawed analysis of the applicant's narrative and where scant regard was paid to the principal aspect of the claim (the threat of FGM) either by reference to country of origin information or otherwise, and in circumstances where she failed to make a determination on the applicant's age before embarking on an assessment of her credibility. For all of those reasons the decision cannot stand and must be quashed.

28. I have already made reference, in the context of the issue of the applicant's date of birth, to the purported internal relocation finding made by the Tribunal Member. The option of relocation arises for deliberation where a decision maker accepts that the applicant has a well founded fear of persecution for a Convention reason. The Tribunal Member rejected (albeit on a basis found to be flawed by this court) that the applicant had such a fear, yet embarked on the wholly contradictory path of analysing the applicant's *"protection needs"* pursuant to reg.7 of the 2006 regulations. Having found that the Tribunal Member to be in error in the assessment of the applicant's persecution claim to such extent as warrants the quashing the Decision, the court in this case does not propose to embark on an analysis of the contradictory internal relocation finding.

29. For the reasons set out herein, I am satisfied to grant leave and make an order of certiorari quashing the decision and to make an order remitting the matter to the second named respondent for a de novo hearing before a different Tribunal Member.