Neutral Citation: [2015] IEHC 253

THE HIGH COURT

JUDICIAL REVIEW

[2009 No. 1194 J.R.]

IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED), IN THE MATTER OF THE IMMIGRATION ACT 1999 (AS AMENDED), IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED) AND IN THE MATTER OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ACT 2003, SECTION 3(1)

BETWEEN

A. O.

APPLICANT

AND

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

RESPONDENTS

AND

HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Mr. Justice Barr delivered the 17th day of April, 2015

Background

1. The applicant is a young woman of Nigerian nationality. While there was some initial dispute as to her correct age, it seems to have been accepted that she was born on 10th May, 1991. She was 15 years of age when she arrived in Ireland on 9th January, 2007.

2. The applicant's case is that following on the death of her parents, she was sent to live with her uncle Patrick, who had no children. The applicant says that she was sent to live with him when she was 13 years of age. She did not attend school and on occasion her uncle sent her out to sell bread in the streets. The applicant claimed that in 2006, her uncle tried to force her to marry a friend of his known as *"the Chief".* Both her uncle and his friend were members of the Ogboni Society. The applicant stated that when she refused to marry the Chief, her uncle threw her out of the house.

3. The applicant stated that when she was thrown out, she was abducted by a number of men who brought her to the Chief. She was put in a room and not provided with any food. The next day, the Chief came and tried to rape the applicant. She screamed and the Chief left the room. Sometime after that, while there was a party going on at the Chief's house, one of the Chief's servants allowed the applicant to escape.

4. The applicant stated that she did not go to the police as she was young and she did not know where the Chief's house was located. She said that she would not have known what to say to the police. She stated that while she was roaming the streets, she was knocked down by a motorcycle. A woman who witnessed the accident came to her aid and brought her to hospital. It is not clear how long the applicant was detained in hospital. It may have been a number of hours or as long as one day.

5. When she was discharged from the hospital, the applicant went with the lady who had come to her aid with a view to staying with her for a few days. However, when they reached the lady's house, they saw that it was burning. The applicant stated that there was a letter on the gate which instructed the lady to bring the applicant to the Chief and stated that if she did not do so, she and the applicant would be killed. The letter did not give the name of the Chief, nor did it give any contact details for him nor any address.

6. The lady told the applicant that she could not stay at the house as she did not want any further trouble. The applicant stated that when she was on the road crying, another lady assisted her and brought her to the African Refugee Foundation. The applicant said that she stayed in this place for ten days and was not allowed outside. Her picture was taken after three days in this place. The applicant said that she did not meet any other people at the foundation as she was not allowed to go out. The lady who brought her to the foundation brought her food in her room. The lady told the applicant to call her *"aunty".* The applicant stated that people came to the foundation and made threats as it was known that the applicant was in the foundation.

7. After a number of days, the applicant was brought by the lady called *"aunty"* to an airport. She did not know the name of the airport that she flew from. At the airport she was given a refugee card and a letter from the foundation. During the journey, the lady known as aunty would walk in front of the applicant. They landed in an unknown country which the applicant said was not an African country. The applicant was not told where she was going. After they arrived in Ireland, the applicant said that she could not find this lady.

8. The applicant applied for asylum in the State. She was sent for examination to Sir Patrick Dun's Hospital where she was deemed to be an adult. As a result she was sent to an adult refugee centre. However, the medical team there felt she was a minor. She was accepted as being a minor aged 15 when she arrived in Ireland. The asylum application was carried out when she turned 18 years of age.

Accompanying Documentation

9. Upon arrival in Ireland, the applicant had the following documents: a letter purportedly from the African Refugee Foundation setting out the applicant's history and asking that she be treated as a refugee. There were a number of discrepancies concerning this

document:-

> (i) The document stated that the applicant was raped; the applicant's own evidence was that she was not raped.
>
> (ii) The document claimed that the applicant remained under the care of AREF for three months; the applicant's own evidence was that she remained there for ten days.
>
> (iii) The document recounted that the applicant left her uncle's home in August 2006. The applicant's evidence at her s. 11 interview was that she left her uncle in November/December 2006.
>
> (iv) The name of the auditors of AREF on the letter is spelt incorrectly (Price Waterhouse Coppers) as is the acronym UNHCR (spelt UNICR).
>
> (v) As outlined in the s. 13(1) report, some contact details on the correspondence do not match the details contained on the AREF website which would be unusual for the official letterhead of such a reputable organisation.

10. The second document which the applicant had was an identity card apparently issued by AREF stating that the applicant was a refugee.

Extension of time
11. The RAT decision dated 28th September, 2009, was notified to the applicant by letter dated 27th October, 2009. The notice of motion in this matter issued on 16th November, 2009. In the circumstances, it was necessary to grant a short extension of time to enable the applicant to bring the proceedings herein. Counsel for the respondent indicated that the State did not object to this extension of time. Accordingly, I extend time up to and including 16th November, 2009.

Grounds of Challenge to the RAT Decision
12. The decision of the RAT is challenged on the following limited ground:-

> *"9. Without prejudice to paragraph 8 herein, the adverse credibility findings arrived at by the second named respondent were made without proper regard to the tender age of the applicant, the tender age of the applicant at the relevant times, the life experiences of the applicant and the totality of evidence presented by or on behalf of the applicant. Further, the said respondent failed to discharge the burden of proof in circumstances where adverse findings were based on a finding that a significant document was unlikely to be authentic. Further, insofar as the decision of the second named respondent is based on a finding in respect of internal relocation, this was made without any reasonable regard to the submissions made in the notice of appeal submitted on behalf of the applicant, including submissions to the effect that internal relocation is not a viable option in the particular circumstances of the case. In addition, the said respondent failed to have any regard to the 2003 UNHCR Guidelines on Internal Relocation."*

13. Thus, the decision of the RAT falls to be considered under two headings: first, in relation to the credibility findings that were made against the applicant; and secondly, in relation to the question as to the availability of internal relocation within Nigeria.

The Credibility Findings
14. The RAT made a number of adverse credibility findings against the applicant. First, in relation to the note left at the lady's gate, the applicant stated that there was no name on the note. The applicant was not aware of the Chief's name or address. The lady did not know the Chief. The note apparently stated that the lady should bring the applicant to him, or he would kill both of them. The RAT held that it was not credible that the Chief would not have given some indication of his address or contact details to enable the lady to comply with his instructions. Furthermore, the RAT held that it was not credible that the Chief would not send someone to get the applicant, rather than leave a note on the front gate, thereby allowing the applicant a further opportunity to escape.

15. The RAT pointed out that the applicant did not know the name of the lady who had brought her to hospital and who had brought her to her home with a view to the applicant staying with her for a number of days. The RAT held that it would be reasonable to expect that the applicant would have known at least the first name of this lady.

16. The applicant had submitted a document from AREF. As pointed out earlier in this judgment, there were a number of discrepancies, both in the form of the letter and in the narrative contained therein. The Tribunal found that *"many discrepancies arise with these documents and it is unlikely that they are authentic"*.

17. The applicant makes the following points in relation to the credibility findings made by the Tribunal. In relation to the allegedly forged document from AREF, they rely on the case of *Nya v. Refugee Appeals Tribunal & Anor* (Unreported, Clarke J., 5th February, 2009) where Clarke J. referred to the decision in *R.P. (Proof of Forgery) Nigeria* [2006] UKIAT 00086, where the only evidence of forgery was limited to the Entrance Clearance Officer's assertion of his own view of the remittance advice. There, the IAT held that evidence to be *"wholly insufficient to establish that a document is a forgery"*. Clarke J. also referred to the decision in *O.A. (Alleged Forgery; Section 108 Procedures) Nigeria* [2007] UKIAT 00096, where the question involved whether a bank statement was a forgery. The immigration judge having heard evidence pursuant to s. 108 of the Immigration Act 2002, accepted the evidence of forgery given at the private portion of the hearing without giving reasons for doing so. An order for reconsideration was made on the basis that the judge's determination gave rise to a procedural irregularity in respect of the s. 108 hearing.

18. When the matter was reconsidered by another immigration judge, that judge affirmed the following general principle:-

> *"In RP (Proof of Forgery) [2006] UKIAT 00086, the Tribunal emphasised that any allegation of forgery must be proved by the person making the allegation. The standard to which the allegation must be proved is the civil standard of a balance of probabilities but, due to the seriousness of the matter in issue, it is at the upper end of the scale. Whether the document in question is proved to be a forged document will have to be decided on the evidence as presented in the case as a whole. It will not be determined solely on the basis of the evidence (if any) which shows whether the document is a forged one."*

19. Having referred to the two English decisions, Clarke J. continued as follows:-

> *"I am satisfied that although these cases relate in part to the procedures under s. 108 of the UK legislation, of which there is no Irish equivalent, the general principles set out in relation to the evidentiary obligations of the decision-makers in cases where documents are alleged by the decision makers to be forged are equally of application in this jurisdiction. I*

accept that in the vast majority of cases where documents of dubious authenticity and provenance are produced, the cases are invariably determined on a multifaceted credibility assessment and rarely rely on the acceptance or rejection of a single document…it may well be documents are forged. This Court cannot tell whether they are genuine or fake but fair procedures require that if the Tribunal Member makes findings pertinent to the authenticity of key documents, that finding should be based on something more than the Tribunal Member's own opinion. If the falsity of the documents was patently obvious, he ought at the least to have explained in his decision how and where the documents were found to be falsified, fake or contrived."

20. The applicant made the case that the RAT should have carried out its own investigation of the AREF letter. In particular, they should have telephoned the numbers given in the letter to see if the document did in fact emanate from the AREF. The RAT did look at the website of the African Refugees Foundation and noted that some of the contact details on the website differed from those given in the letter. However, they did not contact that organisation in an effort to establish the authenticity of the document.

21. The applicant made the case that where the decision maker suspects that the document is a forgery, they should carry out some investigation to try to ascertain the authenticity of the document. The respondents argue that the present case is distinguishable from the decision in the Nya case. In that case, the decision maker dismissed the birth certificate as a forgery following a simple inspection of the document. In this case, it was submitted by the respondent that the Tribunal Member explained her decision as to why she did not consider the letter authentic. They submitted that the case falls within the category of documents identified by Clarke J. at para. 40 of the *Nya* case, where she held as follows:-

"To the foregoing I would add the following cautionary note. The obligations identified in the preceding paragraphs are in circumstances where the document that is alleged to be a forgery is important to credibility findings or can make the difference between a possible and probable conclusion that the applicant is telling the truth and where no obvious tampering, alteration or forgery is evident from an examination of the document. Common sense dictates that the same obligations do not arise when documents are clearly suspect and where even a very cursory examination demonstrates glaring inconsistencies and improbabilities obvious to a lay person. In such circumstances – in contrast to a situation such as the present case – the requirements of fair procedures are less onerous and may not demand recourse to experts, explanations and inquiries."

22. The respondent further submitted that the cited reasons for questioning the authenticity of the AREF letter were not unreasonable or irrational and that in such circumstances the court should have regard to the first principle set out by Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform & Anor* [2009] IEHC 353:-

"1) 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-makers."

23. The respondents also argued that the Tribunal Member complied with principle No. 9 as set out by Cooke J. in the I.R. case:-

"9) Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated."

24. The respondents argue that having regard to the applicant's age (15) at the time that the events took place, it was reasonable to expect the applicant to know the name of the woman who had come to her assistance when she had been knocked down by the motorcycle and had brought her to hospital and had brought her to her home. The respondents stated that it was not unreasonable or irrational for the Tribunal to expect that the applicant would at least have known the first name of the woman.

25. The respondents further submitted that it was open to the Tribunal to find that the applicant's story of the note on the gate and the fact that she did not know the name of the Chief, lacked credibility. The respondent cited the decision of Herbert J. in *Kikumbi v. Refugee Appeals Tribunal* [2007] IECH 11, where the learned judge held as follows:-

"Once properly admitted, the weight (if any) to be given to any evidence is exclusively a matter for the decider of fact. This generally involves evaluating an account of events in his or her country of origin given by the Applicant for asylum. The probative value (if any), to be given to information or material properly received and considered by the decider of fact may sometimes be ascertained by reference to the cogency of the account itself and the absence of inherent contradictions and errors of substance in that account. Sometimes, it is possible also to compare various elements of the account with extrinsic material which the decider of fact can accept or, which is admitted to be reliable, viz., country of origin information from sources of proven and accepted accuracy and reliability, such as United Nations Reports. Sometimes, however, there is no yardstick by which to determine whether a particular account or part of an account is credible or not, other than by the application of common sense and life experience on the part of the decider of fact in the context of whatever reliable country of origin information is properly before him or her. Also, the decider of fact may have had the advantage of having seen and heard the Applicant for asylum relating his or her story, making all due allowance for the various factors indicated by the UNHCR Handbook as uniquely relevant to such an account giver. The obligation to give reasons, as explained by the Supreme Court in F.P. and A.L. v. The Minister for Justice, Equality and Law Reform (above cited), does not, in my judgment, require the decider of fact to give reasons why she or he applying such common sense and life experience found that a particular account or aspects of such an account to be not credible."

26. The respondents submitted that the credibility findings made in the Tribunal decision constitute the view or opinion of the Tribunal on the applicant's own evidence and as such were not based on speculation or conjecture.

27. The applicant submitted that the credibility findings made by the Tribunal were made without any proper regard to the tender age of the applicant at the relevant time, the life experience of the applicant and the totality of the evidence led by or on behalf of the applicant. It was submitted that the credibility findings in respect of the Chief's actions and not knowing the name of the lady, were based on conjecture.

28. In relation to the credibility findings on the matters other than the letter from AREF, I am satisfied that in reaching a conclusion that the narrative was not credible, the Tribunal failed to take adequate account of the fact that the applicant was a minor and an orphan at the time of the matters recounted by her. On her account she was subjected to a very frightening experience. The fact that she did not know the name of the lady, who came to her aid after the road traffic accident, was understandable given her young

age at the time. Furthermore, the fact that she did not know the name or address of the Chief was likewise understandable.

29. In relation to the questioned authenticity of the AREF documents, being the letter and the identification card, there was a duty on the decision maker to take steps to investigate the authenticity of the documents. They could have telephoned the numbers given in the letter itself, or as found on the website, and tried to ascertain whether the letter was genuine. Neither of these steps were taken. In the Australian case, *Sun Zhan Qui v. Minister for Immigration and Ethnic Affairs* [1997] FCA 1488, the following was stated in relation to the duty on a decision maker to carry out investigations in relation to questioned documents before the hearing:-

> *"In my opinion these omissions [referring to investigations which could have been carried out] rendered her decision manifestly unreasonable, within the principle explained by Lord Greene MR in Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1 KB 223. It is now established that a failure by a decision maker to obtain important information, on a central issue for determination, that the decision maker knows to be readily available may result in the decision being branded an exercise of power so unreasonable that no reasonable person could so exercise the power…"*

30. In the circumstances, I am satisfied that the Tribunal did not carry out sufficient investigation of the letter and ID card. The discrepancies identified in the letter certainly raised serious questions in relation to its authenticity. It was up to the Tribunal to take active steps to ascertain the authenticity of the documents. As already noted, the Tribunal could have tried to make contact with the Federation to see if the documents were genuine. They could have sent copies of the documents to the Federation and asked them to verify whether the documents were genuine. In the circumstances, it is appropriate to quash the decision of the RAT dated 28th September, 2009, on this ground.

Internal Relocation

31. In its decision, the RAT found that internal relocation was available to the applicant. This finding was based on a consideration of country of origin information in the form of a report of a joint British-Danish Fact-Finding Mission to Lagos and Abuja, Nigeria, 19-27 September 2007 and 5-12 Janurary 2008. In its decision the RAT quoted extensively from that report to make the finding that internal relocation was available to the applicant.

32. The applicant took issue with this finding and in particular with the reliance on the joint British-Danish report. The applicant made the case that the RAT in reaching its decision only had regard to the earlier paragraphs of the report. They maintained that in its decision, the RAT quoted from paras. 1.7 through to 1.16. The applicant stated that by so doing, the RAT got an unbalanced view of the report. The applicant made the case that in later sections of the report, a much different picture emerges as to the availability of internal relocation in the circumstances in which the applicant found herself.

33. In particular, the applicant points to paras. 1.18 and 1.19, where it was stated that young single women are very vulnerable to abuse, harassment and trafficking when locating to another area without economic means or family networks. The NGO BAOBAB, stated that from a legal point of view internal relocation is an option for any woman in Nigeria because there is full freedom of movement in the country. However, they state that this first step – even to take a bus – can be difficult as women are dependent on their relatives, family or husbands and may not have the money to allow them to relocate. As a consequence of this, a woman will need relatives in her new location who are ready to accommodate her. It was emphasised that it is technically possible for victims of domestic violence, FGM, or forced marriage to relocate in Nigeria, but economically it is not easy. Even language may pose a problem for women who relocate to areas where members of their own ethnic group do not live.

34. The applicant also pointed to paras. 1.25 to 1.40, which dealt with the availability of shelters to women who are fleeing from domestic violence or forced marriages. The report stated that such shelters as are available, only provide temporary accommodation as there is a limit on the amount of time that a person can stay at the shelter.

35. The applicant also pointed to the section of the report under the heading "Social and Humanitarian Constraints." This states that it is very difficult for a woman to relocate unless she has family or friends in the area to which she intends to travel. It stated as follows at para. 1.80:-

> *"WACOL (Women Aid Collective) believed that, in general, it would be difficult for a girl or a woman to relocate in Nigeria without relations who can assist her. WACOL considered that if an underage girl does not want to enter into a marriage, and she is ready to relocate elsewhere in Nigeria in order to escape the marriage, it is a precondition that she has a family member or relative in the new location that is ready to support her. Furthermore, regarding forced marriage it was emphasized that internal relocation might be much more difficult for a daughter/woman of an influential family than for a daughter/woman of an ordinary family. A daughter/woman from an influential family might find it more difficult to find a location in the country where she would not be recognised and maybe returned to her family or husband."*

36. The applicant also pointed to para. 1.83, which stated as follows:-

> *"UNIFEM (United Nations Development Fund for Women) considered that, in practical terms, if a woman chooses to relocate she could face a number of economic and social constraints depending on her situation. The woman would be in a more favourable situation if she has an economic foundation of her own in the form of savings, which can sustain her until she can get a job. There is no social security system in Nigeria that can support a woman without any means of existence."*

37. The applicants also pointed to para. 1.88, which is in the following terms:-

> *"BAOBAB explained that social welfare structures in Nigeria are not well equipped to perform their statutory and social functions. Accordingly women who have relocated will find that there are no shelters to protect them, no jobs, no access to justice, and they may find it difficult to be accommodated. In addition, gender stereotyping labels single women as 'unattached' and they easily become vulnerable. Finally, laws are very often not implemented or enforced."*

38. In *K.D. (Nigeria) v. RAT & Anor* [2013] IEHC 481, Clark J. looked at the criteria involved in the consideration of the question as to whether internal relocation is available. The applicant submitted that the respondent was in breach of principles 8 and 11 thereof, which are in the following terms:-

> *"(8) Reasonableness: It is not enough for the protection decision-maker to determine that the risk of persecution is absent from the proposed area of relocation. He or she must go on to consider whether it would be reasonable to expect the applicant to stay in that place, having regard to his / her personal circumstances and the general conditions prevailing on the ground, in accordance with Regulation 7(2) of the Protection Regulations. The reasonableness*

assessment is not concerned with assertions such as 'I won't know any one', but rather with matters of substance such as whether the applicant is old, infirm, ill, has many small children or is without family support and other real issues.

…

(11) Fair procedures: As a matter of fair procedures the proposed safe area should be notified to and discussed with the applicant to establish whether he/she could reasonably be expected to stay there. The applicant is obliged to cooperate, to answer truthfully, to provide all relevant information available to him / her to determine the reasonableness of the relocation area and to provide information on any personal factors which would make it unreasonable or unduly harsh for him / her to relocate rather than being recognised as a refugee."

39. In *E.I. (A Minor) v. Minister for Justice, Equality and Law Reform & Ors* [2014] IEHC 27, Mac Eochaidh J. endorsed the principles set out by Clark J. in the *K.D.* case. In the *E.I.* case, where the mother's evidence was that her family were spread across Pakistan, the Tribunal Member did not identify a particular place for the proposed internal relocation. The degree of specificity required depends upon the nature of the risk of persecution. The nature of the persecution will indicate what level of specificity is required as to the local the proposed internal relocation. In the circumstances of that case, the judge held that greater inquiry into the proposed internal relocation was required.

40. I am satisfied that taking all the factors into account, the RAT did not approach the issue of internal relocation in a proper manner. By referring only to the first 16 paragraphs in the British-Danish report, a misleading picture was given. They did not refer to the remaining paragraphs in the report which established that accommodation in shelters was limited both in terms of availability and duration of stay. Furthermore, the RAT failed to have regard to the personal circumstances of the applicant, who was a teenager, who did not have any family left in Nigeria apart from her paternal uncle from whom she was fleeing.

41. The RAT seems to have ignored that portion of the report which stated that it would be very difficult, if not impossible in practical terms, for a young woman to relocate to an area unless she had family or friends in that area who were willing to support her. In failing to deal with the issues set out in the portion of the report headed "Social and Humanitarian Constraint" and by only quoting from those sections of the report which supported the feasibility of internal relocation within Nigeria, the RAT fell into error by failing to have due regard to the circumstances pertaining to this applicant. In particular, the Tribunal failed to give any weight to the difficulty which would be encountered by the applicant in attempting to relocate without family or friends and without funds to support her.

42. Accordingly, I would quash the RAT decision on this ground as well. I direct that the matter be referred back to the Tribunal for reconsideration by a different member of the Tribunal.