

**THE HIGH COURT
JUDICIAL REVIEW**

[2010 No. 729 J.R.]

BETWEEN

C.A.D.N. (CAMEROON)

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND EMMA TOAL SITTING AS THE REFUGEE APPEALS TRIBUNAL

RESPONDENT

JUDGMENT of Mr. Justice Eagar delivered on the 18th day of February 2015

1. This is a telescoped application for an order of *certiorari* quashing the decision of the second named Respondent and seeking on order remitting the appeal of the Applicant for determination *de novo* by a separate member of the Refugee Appeals Tribunal.

2. The Applicant is a citizen of Cameroon. The Applicant arrived in Ireland on the 4th November 2008 and completed an ASY1 application form on the 4th November 2008 and a questionnaire on the 11th November 2008. She was interviewed by the Refugee Applications Commissioner on the 20th January 2009 by way of a Section 11 interview and by letter dated the 11th February 2009 she received correspondence indicating that the Refugee Applications Commissioner recommended that she should not be declared a refugee. The Refugee Applications Commissioner report indicated that the Applicant's claim may be considered to constitute a severe violation of basic human rights and therefore may be considered as being of a persecutory nature and as such could satisfy the persecution element of the refugee definition. The report continues to say that this is without prejudice to an examination of the well-foundedness of the fear of being persecuted in accordance with s.2 of the Refugee Act 1996 (as amended). The decision of the Refugee Applications Commissioner indicated that the Applicant's statements had been found to be lacking in coherence and plausibility and her general credibility had not been established and that therefore it was considered that the Applicant had not demonstrated a well-founded fear of persecution in Cameroon. The report also dealt with the issue of State protection and internal relocation.

3. She appealed this decision to the second named Respondent and this hearing took place on the 5th November 2009. By letter undated but stamped the 7th May 2010 more than six months after the appeal before the second named Respondent the Applicant received correspondence that the Tribunal had affirmed the recommendation of the Refugee Applications Commissioner. It is hard to believe that it had taken more than six months to decide on the decision on this matter.

The Applicant's claim

4. The Applicant's claim was set out fully in the decision of the second named Respondent. The Applicant stated that she is from Douala, Cameroon and that she was born on the 19th June 1978. She is the mother of two children. She was educated from 1990 until 2002 and achieved a University Diploma in Physics from the University of Douala.

5. She states that lived most of her life with her aunt in Douala. She states that her mother died in 1980 and that her father lived in Balangou where he was a Notable. She states that her father had three wives and thirteen children. She states that he died on the 18th October 2008 and that she returned to Balangou to attend his funeral. She stated that on the day of the funeral, 18th October 2008 she was brought to the chief's house by his notables and told that she had to be his wife. She states that she refused and was told that she could not disobey his orders (On her questionnaire she said she was given a red powder and ordered to drink a glass of human blood. She refused to drink because she was a Catholic and drinking human blood would have had an impact on her body. The chieftain wanted to make love to her by force and she refused so he ordered one of his notables to hit her and said that one should not disobey. When he came back he would take drastic measures if she did not obey him). This information is not specified in the decision of the second named Respondent.

6. She states that she refused and was told she could not disobey his orders. She states she was held there for two days without food or water and she then collapsed. She states she was brought to hospital where she remained for two days. She states that during this time she was being guarded by one of the chief's men. She states that she asked him to go to the toilet which was in an outbuilding and that she escaped from the toilet. She states she was very weak as she had not had food or drink for four days. She states that she walked to the gendarmerie in Bangangte which is approximately 100km away.

7. She states that the gendarmerie told her that they could not protect her as they are under the control of the chief. She stated that the chief is a member of the Cameroon Peoples Democratic Movement (RDPC). She stated that he campaigns in the village in support of the party. She states she left Bangangte by bus and went to her home in Douala. She states that she was told that the authorities had been looking for her. She states she then went to Yaoundé where she stayed with her friend's father. She states that she remained there for 10 days. She states that as her friend's father contacted a friend of his for assistance and that friend told the Applicant that as the chief had a representative in 10 provinces she would be found anywhere she went in Cameroon. She states she left Cameroon on the 3rd November and travelled to France. She states she travelled with her friend's father's friend. She states he provided her with a passport when she was going through immigration and she is unaware of any of the details contained within it as she never looked inside. She states that while in Yaoundé she went to get passport photographs taken but does not know if it was her picture inside the passport. She states she arrived in Ireland on the 4th November where a man put her in a taxi and gave her €20 and she was brought to the Office of the Refugee Applications Commissioner. She states that since she arrived in Ireland her friend was given three summonses in relation to the Applicant which she forwarded to the Applicant in Ireland. She also said a wanted notice was given to her friend which she has submitted. She states that her children were with her at her father's funeral and after that she was taken by the chief. She was unable to have any contact with them. She states she has since discovered they are living with her aunt.

8. The notification to the Applicant dated the 7th May 2010 indicated that the decision that the recommendation that she should not be declared to be a refugee was reached in accordance with the provisions of the Refugee Act 1996 and the European Communities (Eligibility for Protection) Regulations 2006.

The decision of the Refugee Appeal Tribunal

9. The second named Respondent stated that the Applicant claimed to have a well founded fear of persecution on the basis of membership of a particular social group, race and nationality. She identified issues of credibility as follows:-

- a) In relation to the Applicant's escape she stated that it was considered curious that the man who was tasked with guarding over the Applicant would allow her to leave the building in order to use an outside toilet and not follow her.
- b) She found it implausible that the Applicant who stated she had not eaten or had water for four days would be able to walk for such a long time.
- c) It was simply not credible that the Applicant would not have been discovered during this time. From her own evidence there was a guard at her bedside in the hospital and it is reasonable to conclude that after some time when she did not reappear from the toilet that he would have checked where she was and on discovering that she had escaped he would have alerted the chief and the men to the fact that she had escaped.
- d) She said it was questionable that they were unable to find her since she was walking and was in a weakened state at the hearing.

Again it is unhelpful that the evidence of the Applicant both in examination and chief and cross examination was not summarised by the second named Respondent. It is the view of this court that in every case the evidence given in chief and cross examination should be provided in the course of the outline of the Applicant's claim. In finalising this aspect the second named Respondent stated that the Applicant's evidence of simply walking away from the hospital where the chief's guard was has cast doubt as to her credibility in relation to the core element of her claim.

10. The second named Respondent further identified issues of credibility in relation to the Applicant's evidence of going to the gendarmerie in Bangangte is considered highly questionable given that she stated that they are under the chief's control. She was asked at the hearing why she went to the police knowing that they were under the control of the chief and she stated she was not aware of the gravity of the situation as she was told by them that even if they protected her, the chief would still look for her.

11. The second named Respondent quoted from the Country of Origin Information. No evidence could be found in the Country of Origin Information that the authorities search for girls and women who have escaped from forced marriage. She also quoted, however, further that *"the police were ineffective, poorly trained, under paid and corrupt. Impunity was a problem. Individuals reportedly paid bribes to the police and the judiciary to secure their freedom. Police demanded bribes at checkpoints and influential citizens reportedly paid police to make arrests or abuse individuals involved in personal disputes"*.

12. The second named Respondent indicated that what is quoted above was not the Applicant's experience in relation to reporting to the police and stated that Country of Origin Information had to be looked at in the context of each individual claim.

13. The second named Respondent said that the Applicant was being less than truthful in relation to her attendance at the police station or at the very least in relation to the control she states the chief has over the police as it is simply not to be believed that she would have attended at a police station.

14. Reference was made to three summonses dated respectively the 18th February 2009, 2nd March 2009 and 11th March 2009. These documents were not in the papers handed to the court and were also not significant in respect of the application by the Applicant. The second named Respondent felt that they were considered to be of limited probative value.

15. The second named Respondent then indicates that the Applicant had refused to marry the chief since she was a Catholic and indicated that *"one has to question the strength of these religious convictions given that she has two children out of wedlock"*. This seems an extraordinary comment to make in the context of the early part of the 21st century.

16. The second named Respondent also held that the fact that the Applicant had said that she had not stated that she was in hiding while she was in Yaoundé but did go with her friend's father to have passport photographs taken and indicated that this created doubts as to the Applicant's willingness to disclose her activities while in Yaoundé.

17. Reference was made to the treatment of women in Cameroon and the prevalence of violence against women there and the Applicant stated at the hearing that single women in Cameroon have many difficulties including the risk of rape, robbery and violence and therefore claimed it would not be safe for her to return there. She noted that the Applicant had made no such claims in interview by the Refugee Applications Commissioner although it was clear from the Country of Origin Information submitted that women in general may face discrimination and abuse in Cameroon. However the second named Respondent held that it was not accepted that the Applicant holds any fears in this regard. The second named Respondent also took issue with the Applicant's account of her travel raising credibility issues and the fact that she was not in a position to state the nationality of the passport she used or the name on it despite having to pass through immigration. The second named Respondent felt that her lack of credibility coupled with all her credibility issues effected the subjective well founded fear of the element of the claim.

18. The second named Applicant then indicated that as the burden of proof lies on the person making the assertion, the Applicant had the burden of establishing the veracity of her allegations and the accuracy of the facts on which her claim was based. The duty of the Tribunal was to decide whether it was likely that the claim of the Applicant is credible. Credibility is established when the Applicant has presented a claim which is coherent and plausible and not contradicting general known facts and therefore is on balance capable of being believed.

19. The second named Respondent also dealt with the possibility of relocation. She stated that if she was incorrect on the issue of credibility, that Cameroon had a population of approximately 18.5 million people and it is not accepted that the Applicant would be found by the people of what she states is a small village. She said that in fact she resided in Yaoundé for a time without detection although she did not indicate that Yaoundé was the place that she should internally locate.

20. In my decision of *S.F v. The Refugee Appeals Tribunal and the Minister for Justice Equality and Law Reform* delivered by me on the 4th February 2015 I outlined the statutory framework of the decision making role of the Refugee Appeals Tribunal and also the

function of the High Court in judicial review. I adopted the 10 principles outlined by Cooke J. in *I.R. v. Minister for Justice Equality and Law Reform and The Refugee Appeals Tribunal* [2009] IEHC 353.

21. Counsel on behalf of the Applicant submitted that the findings in relation to the issues of credibility of the Applicant in relation to her escape from the chief were decisions based on perceived or gut feelings of the decision maker relating to her apparent disbelief of the Applicant's account of her escape. There was no rational basis to conclude that because the Applicant was not arrested by the gendarmerie on one occasion when she sought help from them that this somehow detracted from her claim that the chief exercised influence over them and would not help her. He pointed to the quotation which the first named Respondent identified from the US Department of State Report on Human Rights Practices in Cameroon in relation to the police but then points out that this was not the Applicant's experience. He also pointed out that the Applicant refused to marry the chief on the basis that it is against her religion but makes a comment in relation to the strength of her religious convictions given that she has two children out of wedlock. He also pointed out the view of the first named Respondent that it was not accepted by the first named Respondent that, although it was clear from the Country of Origin Information that women in general may face discrimination and abuse in Cameroon, it was not accepted that the Applicant held any fear in this regard and that this was not examined in any way.

22. Counsel on behalf of the second named Respondent stated that the circumstances of the escape were described as curious and also considered implausible that the Applicant was able to walk for such a long time (5 to 7 hours). It was a reasonable decision on credibility in accordance with Cooke J.'s decision in *I.R. v. Minister for Justice Equality and Law Reform, The Refugee Appeals Tribunal*.

23. Counsel for the Respondent said it was submitted that in the view of the clear and unequivocal findings on credibility that the Tribunal Member did not have to consider the issue of internal relocation.

24. It is not the role of this court to express its views on the Applicant's credibility or to reassess credibility and substitute my own view for that of the decision maker. I am satisfied that the process by which that conclusion has been reached is legally sound and not vitiated by any material law error.

25. I do find it gratuitously insulting to the Applicant however when the second named Respondent makes comments in relation to her religious convictions "*given that she has two children out of wedlock and yet made it clear that she was a Catholic*".

26. It does not in my view vitiate her decision but nevertheless it is unhelpful and is unnecessary. In the circumstances I believe that there is no necessity to consider the issue of internal relocation and I refuse the application for *certiorari*.