Neutral Citation: [2015] IEHC 645

THE HIGH COURT

[2015 No. 518 J.R.]

BETWEEN

G. O.

APPLICANT

AND

THE REFUGEE APPLICATIONS COMMISSIONER

RESPONDENT

EX TEMPORE JUDGMENT of Mr. Justice MacEochaidh delivered on the 13th day of October 2015.

1. I refer to the decision of this court in *S.F.A. v. Minister for Justice, Equality & Ors* [2015] I.E.H.C. 364 and in particular to the summary of the law governing the circumstances in which this court will entertain judicial review of a first instance decision maker in the asylum process. I refer to the various paragraphs in my judgment as to what is an error as to jurisdiction. I also refer to the *dicta* of Hogan J. in *C.E. v. Minister for Justice Equality and Law Reform* [2012] I.E.H.C. 3 and to the decision of Reid L.J. in *Anismimic Ltd. v. Foreign Compensation Commission* [1969] 2 A.C. 147 in relation to errors as to jurisdiction and judicial review and the modern view as to what that constitutes. Finally, I refer to my own conclusions as to the desirability of the *Anismimic* approach, it being simple.

2. Effectively, all of those rules require the person seeking judicial review of a first instance decision maker to identify an error as to jurisdiction which I interpret to be an error of law in the decision and to put forward arguments as to why the error is of a particular quality which merits intervention at this stage. Not all errors as to jurisdiction attract judicial review and the interests of justice is a paramount consideration in considering whether judicial review is appropriate in any given case following a first instance decision in the asylum process.

3. In this case the applicant is not the sort of person who induces feelings of great sympathy from the Court. The applicant has presented on his own account applications for asylum in Ireland, England, Germany, Austria and Switzerland. He has done so using multiple identities and advancing multiple and conflicting claims for asylum. His credibility is in shreds. He has sought to re-enter the asylum claim and that has been rejected in Ireland. He has presented multiple applications for subsidiary protection containing conflicting accounts as to identity and as to reasons for seeking international protection. He was invited to re-present a claim for subsidiary protection. He did so by way of continuing a much earlier claim for asylum which for various reasons had not been pursued.

4. There is an obligation on persons seeking subsidiary protection to co-operate with the State and to present the claim in a reasonable fashion. A claim was presented, a form was filled and there was an indication as to the basis of that claim. Following the interview in the matter which took place on the 14th of January, 2015, the applicant's solicitors, who were new solicitors in the case, called Synnott Solicitors, sent a letter to the first instance decision maker some days after the oral procedure introducing for the first time an entirely new ground for international protection that the applicant feared suffering indiscriminate violence in Nigeria.

5. No reference was made in the letter that this new claim was being presented for the first time many years after the original claim for subsidiary protection. No apology is made as to why it is introduced after the form has been filled, after the interview has been conducted and I note that one of the questions asked in the interview was whether the matters discussed in the interview constituted the entirety of the claim to which the applicant responded "yes".

6. When the decision was taken at first instance by the authorised officers no mention was made in the decision of the late and new claim presented on behalf of the applicant that he feared the consequences of indiscriminate violence contrary to art. 15(c) of Directive 2004/83 E.C.. I accept that that is an error of law in the decision of the first instance decision maker.

7. However, having regard to the undoubted role that the applicant and his lawyers played in the late submission of the new ground without explanation, the fact that it was introduced after the oral procedure had been concluded, the fact that no explanation for this has ever been provided either to the decision maker or to this court and having regard to the very significant rejection of credibility of the applicant and to the fact that he has, and I say this without any hesitation, abused the asylum process, not just in Ireland but in many countries, it seems to me that the interests of justice would not be served by permitting intervention to set aside the decision of the first instance decision maker and to correct the error of law which undoubtedly has happened in the case. I am satisfied that an adequate remedy lies to the Refugee Appeals Tribunal where this matter can be fully and properly pursued and no injustice is thereby caused. In these circumstances I reject the application for leave to seek judicial review in this case.