Neutral Citation [2015] IEHC 451

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 451 JR]

[2011 No. 452 JR]

BETWEEN

J. O. AND O. O.

APPLICANTS

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 13th day of July, 2015

1. These telescoped judicial review applications are grounded upon the respective notices of motion of the applicants, dated the 4th of July, 2011, for leave to seek judicial review in respect of decisions of the Refugee Applications Commissioner. Both applications were heard together.

2. The first and second named applicants are nationals of Nigeria and have made separate claims for asylum. These applications were grounded upon a fear of harm which they attributed to black magic or "juju". It is the claim of the applicants that the applications were also grounded upon the fear of past persecution and future harm not necessarily caused by black magic. Both applicants have identified themselves as husband and wife though the first named applicant indicated, during the course of his s. 11 interview, that the parties were not, in fact, formally married.

3. The first and second named applicants submitted to the Commissioner that they went to a "cleansing ceremony" because the second named applicant was pregnant before marriage. They believed that the death of a child, and a miscarriage, were caused by black magic and this was why they went to the ceremony. The first named applicant said he was told at the ceremony that it was in fact a sacrifice. Before the end of the ceremony, they left. The applicants feared that those elders threatened to use "juju" on them and they attributed harm caused to the father of the first named applicant and their daughter to this. The first and second named applicants claimed that they would be unable to return to Nigeria due to the fact that they may be subject to "magic or voodoo" .

4. The first named applicant was asked, during the course of his s. 11 interview, if there was any other reason that those who seek him harm could find him other then by way of supernatural means. He responded that they could find him upon the basis of his surname. The applicants submit that the decision maker failed to consider this as a fear of future harm not linked to "juju".

5. The applicants rely on decision of this Court in the matter of *P.D. v Minister for Justice and Law Reform & ors*, [2015] IEHC 111, para. 1 as follows:-

> "The consistent jurisprudence of the Superior Courts is that intervention by way of judicial review in respect of decisions of the Refugee Applications Commissioner is rarely permitted and only in cases which at least involve errors as to jurisdiction but even then, the court retains discretion to refuse."

6. The Applicants' supplemental written submissions dated April 2015 identify alleged errors as to jurisdiction which I now address in turn.

> *(a) "…the confinement of the consideration of the claim made to aspects thereof which involved "juju" and fear of, or belief in juju, and the failure to consider or deal with aspects not relating to juju constituted a breach of the Commissioner's duty to investigate the claim as made and amounts to an error as to jurisdiction."*

I am satisfied that the s. 13 report adequately identified the entirety of the claimed fear expressed by the applicants. It was expressed by the applicants as a fear of persons practising "juju". If some confinement occurred it was of a trivial nature. No error sufficient to warrant *certiorari* is made out under this head.

7. (b) "In circumstances where it appears that the Applicant's account of his wife's ill treatment and suffering of serious injury at the so called "cleansing ceremony" was itself accepted as credible then the failure of the Tribunal to address Article 5(2) of S.I. 518/2006 was an error as to jurisdiction."

I am not of the view that this alleged failure is any kind of error. Multiple manifestations of the effects of "juju" are described by the applicants. It was not incumbent on the decision makers to consider each as a form of past persecution. The Commissioner was entitled to consider all of the events as part of a general fear from practitioners of "juju". No error has occurred to warrant court intervention at this stage under this heading.

8. (c) "In circumstances where it was found (Paragraph 3.3.7 of decision) that the applicant's testimony fell "*considerably short of what would be required in terms of credibility for him to be given the benefit of the doubt and has therefore failed to establish a well founded fear*" it was an error as to jurisdiction to exercise discretion in favour of denying the Applicant an oral hearing of his appeal."

The rejection of credibility expressed in para. 3.3.7 of the decision in J.O.'s case is in respect of his travel to Ireland and his assertions that he had never been outside Nigeria before seeking asylum in Ireland. The s. 13 report details evidence (which was put to him at interview) that his finger prints were used to obtain a visa in South Africa to travel to the U.K.. The basis upon which he is refused an oral hearing is not connected to his lack of credibility. It is expressly stated to be based on the failure to establish a Convention nexus and the availability of internal location and State protection. The decision makers were legally entitled to conclude that these factors indicated that he had a minimal basis for the contention that he was a refugee and being thus satisfied they made

no legal error in exercising powers under s. 13(6) of the Refugee Act which had the effect of denying him an oral hearing.. If the applicant wished to persuade the court that an oral hearing was needed to undo negative credibility findings some explanation as how an oral hearing in either of these cases would avail the applicants would be necessary. The respondent was legally entitled to invoke s. 13(6) even in a case where serious credibility issues were found. An applicant could only succeed on such a point if it were established that the use of s. 13(6) was constitutionally prohibited in a case involving rejection of credibility and no such claim was presented in this case. I find no jurisdictional error here.

9. (d) "...the decision makers did not operate under the understanding that any discretion whether or not to invoke section 13 (6) (a) in fact was vested in them, but rather appear to have been of the view that once findings were made that "*the application showed either no basis or a minimal basis for the contention that the applicant is a refugee*" - then they were obliged to invoke section 13 (6) (a), which is not the case, as clarified by the High Court in the S.U.N. case referred to in the main submissions. This, it is submitted, is a further example of the decision erring as to jurisdiction."

The applicants have failed to demonstrate that the decision makers were not aware of the fact that the powers in s. 13(6) are discretionary. No basis for the assertion is attempted on the pleadings, on affidavit or in various written submissions. In any event even if this claim were made out factually, it seems to me that the applicants would need to demonstrate that the s. 13(6) decisions would not have been open to the decision makers on an exercise of discretion. It should be borne in mind that the s. 13 reports make plain that even if everything the applicants say is true, the fears they have could never be a basis of a successful claim for refugee status. It is a striking feature of these proceedings that no complaint is made about this finding which, if correct, is fatal to their claims for refugee status.

10. (e) "By analogy with paragraph 63 of P.D. it is submitted that the matters raised in the main submissions relating to state protection also constitute errors as to jurisdiction."

It is an incorrect invocation of what is said in *P.D.* to suggest that all laws in a country of origin must be investigated. The heart of the decision in *P.D.* is that laws which are said to cause persecution must be investigated. No such claims are made in these cases and thus this ground of challenge is rejected.

11. (f) "As to internal relocation it is submitted that the failure to examine the manner in which laws are applied in the Applicant's county of origin contrary to as required by the minimum standards directives also amounts to an error of jurisdiction. The error as to jurisdiction is the result of the decision makers' failure to apply a provision of the EEC Directive 2004/83. Article 8 of the Directive sets out the precise investigation required by law to be conducted a decision maker. (sic) Article 8 of the Directive:

> *1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.*
>
> *2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.*
>
> The decision maker did deal with internal relocation as part of the assessment and claimed that it would be reasonable to expect the applicant to return to Nigeria and live elsewhere in the country. However, the decision maker did not identify a specific area of the country to which the applicant could relocate and consequently failed to have regard to the general circumstances prevailing in the unknown area of relocation or to the applicant's personal circumstances."

As has been said many times by this Court, the degrees of specificity required in internal relocation findings depends on the facts and circumstances of each case. Where a fear is localised, the idea that relocation to another part of a country of any size, much less a country with a population of more than 150 million people, does not seem to be unreasonable However I do accept that best practice does involve identifying a part of the county where the applicant might live though in some cases it will be perfectly plain that the suggestion relates to any part of the country other than the place of the feared harm. In so far as there is an error in these internal relocation findings it is not of such gravity as to warrant intervention by the court.

12. In any event no attempt has been made by the applicants to say what personal circumstances ought to have been considered which were not and how such consideration, had it happened, might have aided them. In addition, no evidence has been adduced as to the unreasonableness of internal relocation. For these reason I would refuse the reliefs in exercise of discretion under these headings.

13. "g) "In the case of PD the court concluded that there was a precise investigation required by law when determining whether the fear of persecution was well founded. The decision maker was required, by Article 4 (3) of the Directive, to take into account all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied. The failure to carry out this investigation amounts to an error of jurisdiction."

I have already dealt with this above, at para. 11, but add that the applicants fail to inform the court either by pleadings, on affidavits, or in written submissions what matters were not investigated and so it is impossible for the court to do anything other than reject this complaint, what ever it is.

14. "(h) "It is submitted that the failure of the decision makers to make known to the Applicant or his wife that a negative decision had been reached in his wife's case prior to his second section 11 interview is also a significant breach of fair procedures amounting to an error of jurisdiction."

This matter is not pleaded. Even if it were, it would be rejected. The husband had no entitlement to be informed of the decision in his wife's claim at any stage. There is no mention of the negative decision of the wife's claim in the husband's decision. Had the husband been informed of the negative decision of his wife's case, he would have had no entitlement in his own case to suggest it was wrong. The only forum in which that can happen is at the Refugee Appeals Tribunal. The R.A.T. frequently hears separate applications from family members together.

15. I refuse this application.