

**THE HIGH COURT****JUDICIAL REVIEW****Record No. 2009 / 690 J.R.****Between:/****C. I. AND A. F. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND C.I.) [NIGERIA]****APPLICANT****-AND-****THE REFUGEE APPEALS TRIBUNAL THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM****RESPONDENTS****JUDGMENT OF MS JUSTICE M. H. CLARK, delivered on the 8th day of November 2013.**

1. The applicant seeks an order of certiorari quashing the decision of the Refugee Appeals Tribunal (RAT) to affirm the recommendation of the Refugee Applications Commissioner (RAC) that the first named applicant should not be declared a refugee and remitting the claim for fresh determination by a different member of the Tribunal.

**Background**

2. The first named applicant is the mother of the second named applicant ('the child'). The mother is a national of Nigeria who arrived in the State on the 16th May, 2007. The child was born in Ireland on the 5th October, 2008.

3. The mother claimed that she fled Nigeria due to issues related to the rigging of an election. She had completed her university studies and was in the process of setting up a non-governmental organisation (NGO) in Nigeria which aimed to encourage Africans to wear clothing more in keeping with their traditional styles. She said that her problems began when she agreed to accept money from her godfather to fund her organisation in exchange for helping his party the People's Democratic Party (PDP) to rig elections in April 2007. She recruited several of her university friends to interfere with ballot papers which were cast in favour of other parties. She was given money to pay them for their assistance but before she could do so the money was stolen. The election victory went to the PDP candidate and the friends were aggrieved at not being paid and disclosed the fraud to the opposition Action Congress (AC) party. The friends then went to her home and assaulted her and her mother and threatened that they would return to collect their money. She went to the police to report the assaults without mentioning the vote rigging and the police came to her home and took a note of her complaint. She then tried various refuges to escape from the accomplices including a friend's house where was not permitted to stay. When she returned to her home her mother encouraged her to move on so she went to another village outside the city for a while, then to Port Harcourt and eventually to Lagos. She was located in Lagos and fled to her boyfriend's house. He was English and he discussed her problem with another English friend who told the applicant that he had a job for her abroad. They left Nigeria together flying to Amsterdam on a false United Kingdom passport which the friend provided for her and which he retained throughout the journey. From Amsterdam they travelled to Dublin where she forced into prostitution and lived in the basement of a brothel for several months. She and the other girls working there were not permitted to leave the premises. She then became pregnant as a result of a relationship that she had formed with a man who she met in a nightclub while working as a prostitute. The brothel-keeper arranged for a termination when her pregnancy was obvious and when he was bringing her to have the procedure done she made her escape from the car while he was paying for petrol.

4. She went to the Gardaí but they were unable to find the brothel as she did not know the address. She then made an application for asylum on the basis that if returned to Nigeria she would face persecution from the political party for which she rigged the election and from the people who pursued her due to her failure to pay them. She also claimed that she feared the problem of trafficking would arise again if she returned to Nigeria. On behalf of her infant daughter, she claimed that her child would face FGM if returned because her family would insist upon it and she was also at risk of being trafficked, as due to her illegitimacy she would be rejected by the family and discriminated against. The RAC made a negative recommendation in their case and the applicants appealed to the Tribunal.

**The Tribunal's Decision**

5. In a very comprehensive decision the Tribunal found that the applicant's claim was undermined by several credibility findings. However, the only findings disputed that are disputed are those that refer to trafficking and the risk of FGM. The main credibility findings related to:

- Her description of her travel to Ireland - it was not credible that she would have managed to travel through three international airports en route to the State with such limited knowledge as she claimed to have of her travel documents, her travel companion and her travel plans.
- Given the time that had elapsed since the rigged elections and also the fact that the High Court of Nigeria had annulled the election of the PDP candidate and declared the AC Party candidate the victor, it was unlikely that her godfather's party, the PDP, would have sufficient motive to target the applicant, particularly as she allegedly organised the fraud at its request.
- The fear of the people awaiting payment for their assistance in the election rigging was found to be unrelated to any Convention ground.
- The actions of the people seeking payment were criminal in nature.
- State protection was available as on her own evidence the police were in fact willing to act against the persons who beat her up, although it was noted that the applicant had not told the police anything about her role in the rigging of the elections or of the fact that her fear of the attackers was related to this matter.

- Any fear which she had was related to prosecution for criminal activity and not persecution.

6. A previous positive Tribunal decision which supported the claim that internal relocation was not always an option available to those seeking to escape FGM was distinguished on the basis that it concerned an uneducated woman whose characteristics bore no relevance to the attributes of the present applicant..

### **The Applicant's Submissions**

7. The applicant does not dispute the findings made in relation to the 'political' aspect of her claim, i.e. her fear of persecution from those who assisted her in rigging the election. Instead, she focuses on the trafficking, FGM and internal relocation findings in the decision under challenge. She also challenges the treatment of COI.

8. The applicant argues that the Nigerian State cannot provide protection against human trafficking or FGM and that while COI refers to a large number of NGOs and lists a number of refuges that are available, the reality is that they are poorly resourced and unable to assist persons in accessing protection and thus in practical terms, there is no effective protection available. The Court was referred to extensive reports outlining the described availability of assistance and to others which outlined that very few women had actually availed of the described assistance. Similarly, it was submitted that while a number of refuges were listed only one refuge was funded by the government. The Tribunal Member only relied on the optimistic aspects of the reports and ignored the realities.

9. The applicant further submits that the internal relocation assessment was defective as no real consideration was given to her personal circumstances and whether it would be reasonable to expect her to relocate and further, no particular location was identified where this particular applicant and child could relocate. She contends that the law requires a decision maker to consider whether the applicants would find it unduly harsh to relocate there.

10. The applicant also contends that the decision should be quashed on several other grounds, namely; (1) there is no clear finding that she was not a refugee; (2) the summary rejection of documentation such as country reports which were capable of supporting her claim constituted failure to consider relevant materials, contrary to Reg. 5(1)(a) of the *European Communities (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006); (3) the Tribunal Member failed to have regard to the evidence that the applicant herself had been circumcised; and (4) in preferring some COI reports over others the Tribunal relied on a UK Operational Guidance Note which was not the most up to date report before the Tribunal.

### **The Respondents' Submissions**

11. Mr. Moore B.L. for the respondents argued that the Tribunal Member had detailed regard to the availability of state protection in the contexts of FGM and trafficking. He consulted COI which showed that the police could offer protection, that the applicant's own State banned the practice, that the Nigerian authorities are involved in combating FGM and that an individual can seek protection if she is unwilling to undergo FGM or is unwilling to have her children exposed to the practice. A further volume of COI consulted supports the Tribunal's finding that human trafficking is prohibited, investigated and prosecuted and that the Nigerian State is making progress on this problem. The finding that state protection is available in Nigeria is supported by COI and by judgments such as *E. v. Refugee Appeals Tribunal* (Unreported, High Court, Clark J., 13th November 2009) and *G.O.B. v. Minister for Justice* [2008] IEHC 229 where the Tribunal was held to be entitled to conclude that state protection is available in Nigeria unless clear and convincing evidence is shown to the contrary. The respondents submitted that the combination of the presumption of state protection, the objective COI before the Tribunal and the applicant's own account of how she had complained to the police when she was attacked and how they had responded, entitled the Tribunal to conclude that state protection would be available to her. Equally, there was no basis for arguing that the Tribunal was unlawfully selective in its application of COI as the Tribunal acknowledged the COI submitted by the applicant and explained why other reports were preferred.

12. The respondents dispute the applicant's contention that the Tribunal did not consider her personal circumstances in finding that internal relocation to another part of Nigeria was an option. It was noted that she is an educated lady with great organisational capacity and intelligence. Under Section 11A(3) of the Refugee Act 1996, the onus of proof is on the applicant at the appeal stage. Considering that the Commissioner had already found that internal relocation would be available to her, she was on notice that such a finding could also be made by the Tribunal and that it would be for her to show that internal relocation would be unreasonable or unduly harsh.

### **The Court's Analysis**

13. As it was accepted by the applicant that the 'political' aspect of her claim does not fall under the Refugee Convention it is not necessary to assess that part of the case further. The remaining substantive issues are those of state protection and internal relocation which encompass the asserted fears of FGM and trafficking for the child.

14. Criticisms of and challenges to the adequacy of the consideration given to the applicant's personal circumstances, to the pin pointing of a relocation site and the reasonableness of such proposed relocation form a considerable number of cases in the asylum judicial review list. Unfortunately, there is the assumption that once the term *internal relocation* is used, the *ECs (Eligibility for Protection) Regulations 2006* and in particular Section 7 apply. Equally, protection decision makers tend to consider that the failure of the applicant to move to another part of his/her own country as part of the assessment of whether the applicant has established a well founded fear of persecution. In those circumstances, it is argued that the decision must fall because Regulation 7 has not been followed to the letter. This is not a correct statement of the law, as the identified option of moving away is in effect no more than a suggested practical cure for a claim which has been rejected because either because it was found to be untruthful or because it did not satisfy the definition of persecution for a Convention ground and where the applicant generally has been found not to be in need of international protection. Suggesting that it would be reasonable to expect the person to move away from an asserted fear of non-state actors with a personal grudge (often for reasons with no connection to the Convention) is a fairly normal part of the holistic evaluation of the subjective part of any such claim.

15. Refugee status is not awarded and was never intended to be available to people who have disputes with their accomplices in a conspiracy to defraud or for well educated resourceful young women who claim to fear FGM or human trafficking for their daughters. Such people are expected to avail of state protection and to take reasonable steps for their own safety rather than spending large sums of money to arrange for travel on false documents to another state to claim asylum. Such people are not refugees because they do not meet the criteria of a refugee. They do not have a well founded fear of persecution for which there is no state protection and there is therefore no reason why they should not simply move elsewhere in their country of origin, away from their asserted fears. It is illogical to suggest that a person such as the applicant who could come to Ireland, a country totally unknown to her, could not have moved away from the accomplices in her own country, or that if returned to Nigeria she could not move away from anyone who she felt might insist on her daughter being circumcised. The obvious question to be asked in her case is why she did not find the money to pay off her accomplices rather than travelling all over Nigeria and then to Ireland to escape from them.

16. Internal relocation as an alternative option to leaving one's country when a well founded fear of persecution for a Convention reason is established - which is not the case here - requires serious and careful consideration. This is clear from the *UNHCR Guidelines on International Protection: "Internal Flight or Relocation Alternative"* (2003) and from the wording of Section 7 of the Protection Regulations of 2006, which states as follows;

"7. (1) As part of the assessment of protection needs, a protection decision maker may determine that a protection applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of his or her country of origin where there is no well founded fear of being persecuted or real risk of suffering serious harm.

(2) In examining whether a part of the country of origin accords with paragraph (1), the protection decision-maker shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."

17. In this case, it is perfectly clear that the applicant's claim to be a refugee was not accepted and she was not in need of protection. It is disingenuous to suggest that her claim failed only because there was no Convention nexus. The criminality of the activity was only one of the alternatives relied on to reject the claim of the fear of her accomplices on return to Nigeria. It is perfectly clear from the Tribunal decision that the claim was peppered with negative credibility findings, not least of which were her travel arrangements. It was also found that state protection was in any event available to protect her from her asserted fears for herself or her daughter.

18. The decision cannot be divorced from the facts presented. This applicant presented as a confident young woman with a third level education pursuing her personal interests and beliefs on appropriate dress for Nigerian women and a return to Nigerian customs. She produced a full page newspaper article of an interview with her, which depicts her as able, successful and accomplished. She described travelling freely and apparently alone within her country. She had a boyfriend in Lagos and friends in different and distant places within Nigeria and she was able to call on her university friends to be her accomplices in an election fraud. If her story of being duped into the sex trade in Ireland is true, she showed that notwithstanding this appalling betrayal and her lack of liberty, she was able to form a relationship with another foreign national, become pregnant, escape and go to the police and an NGO in Ireland which advocates for women who are or were prostitutes and maintain a relationship with her daughter's father. In those circumstances, it could not reasonably be suggested that locating to another part of Nigeria away from any relatives who disapproved of her unmarried status would be an unreasonable option. This Court is aware from reading many reliable reports on Nigeria that marriage is a more flexible state of affairs in Nigeria than in Ireland and that there is no social stigma for non-marital children. The same information must surely also be available to the applicant and to the Tribunal.

19. While the applicant's counsel has carefully selected COI to find reasons for why state protection or assistance from NGOs who campaign against FGM would not be available to the applicant's child if she were to be faced with a threat of FGM, he ignores her own opposition to the practice, the fact that government campaigns on educating the population on the dangers of FGM have reduced the prevalence of the practice, and the fact that she, the child's mother, is a well educated urbanite and not an ill-educated rural dweller who would be unlikely to have the knowledge or wherewithal to seek out help to resist pressure to submit to FGM. These were the personal factors and circumstances attributable to the applicant when the Tribunal member was considering the fairly obvious relocation option available to her. The Court fully accepts the arguments of the respondents in this regard, particularly the fact that the applicant was on notice that relocation had been considered by the Commissioner in assessing the claim. The applicant did not address this possibility at her appeal beyond asserting that she would be lonely without her family and then at the same time asserting that the family would ostracise her and her child because she was not married to the father and/or that she would be ostracised because she would not submit her daughter to FGM. While she may say she fears that she and her daughter would be shunned there was no objective information before the Tribunal or the Court which indicates that those fears are well-founded. The Court finds little reality in the arguments and cannot identify any substantial ground for quashing the decision for any of the reasons argued.

20. The same issues have been ventilated on numerous occasions where the Courts have accepted the many objective and reliable reports of fact finding missions to Nigeria on the issue of FGM and the reality of protection available. The evidence is that if a person wishes to resist the practice in Nigeria it will generally be possible for her to do so. The evidence suggests that this conclusion is all the more true when an individual opposing the FGM of her daughter was herself subjected to the cutting and further is educated and assertive and lives in an urban area. The applicant's claimed fear that her daughter might also be trafficked as the applicant claims she was, ignores the fact that her mother is now a great deal wiser and would be unlikely to let her daughter be equally duped by the lure of a good job in Europe. She accessed the help of the Nigerian police in the past and demonstrated no reason why she would not do the same in the future if she had any reason to fear that her daughter was being exposed to such a risk. COI cited in the Tribunal decision noted strong political will to solve the trafficking problem and there are systems in place to deal with the crime.

21. The law on state protection is clear: in the absence of a complete breakdown of the state apparatus, a presumption exists that a state can and does protect its own citizens from acts of persecution perpetrated by non-state actors. Cogent evidence is required to displace this presumption. As Birmingham J. held several years ago in *G.O.B. v. The Minister* [2008] IEHC 229, the issue of the availability of state protection in Nigeria is not a new one and protection decision-makers are not coming to the issues as novices; "*A great number of other cases will have raised issues about seeking assistance from the Nigerian police. Those officials who deal with these issues must be considered to have acquired a broad familiarity with the general perception of the Nigerian police force.*" The Commissioner and the Tribunal must be presumed to be aware of the law enforcement position in Nigeria. While it is not perfect, it exists with the assistance of a functioning police force and a functioning judicial system. No state can provide perfect protection nor does refugee law require such perfect protection. In this case, while the risk of forced FGM and child trafficking may exist as a remote possibility as opposed to a probable risk, the risk that the Nigerian State would be unable to protect the child is also remote. The Court prefers the respondents' arguments on the reality of the availability of protection as demonstrated by COI reports.

22. The Court is not in any way persuaded that the Tribunal unfairly selected certain COI over that presented by the applicant. A tribunal member is obliged under Regulation 5 of the *ECs (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006) 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 for protection, including laws and regulations of the country of origin and the manner in which they are applied*" and "*the relevant statements and documentation presented by the protection applicant including information on whether he or she has been or may be subject to persecution or serious harm*". This does not mean that she / he has to accept the contents of everything presented on an applicant's behalf. It has to be first assessed for relevance. If not relevant, such information does not have to be expressly considered. If relevant, it must be assessed with all the other evidence and such weight attached to it as the decision maker deems appropriate. The Court is satisfied that the Tribunal Member dealt with all COI before her in a fair manner. The Tribunal Member considered the relevant information and preferred an Operational Guidance Note (OGN) over certain information provided by the applicant. The applicant considers this to be unfair, but the decision maker provided a very valid reason for this preference: the OGN

is comprehensive and has been sourced from a variety of documents which are referenced at the end of each page and at the end of the document and thus is a reliable document. On the other hand, as noted by the decision maker, the document provided by the applicant refers to children and teenage girls from northern Nigeria – not educated adults such as the present applicant who does not come from northern Nigeria and is not a Muslim.

23. For these reasons the decision of the Tribunal Member must stand and the application is refused.