

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2009 No. 53 J.R.]**

**BETWEEN**

**C.C.A.**

**APPLICANT**

**AND**

**MINISTER FOR JUSTICE AND EQUALITY AND BEN GARVEY SITTING AS THE REFUGEE APPEALS TRIBUNAL**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Barr delivered on the 25th day of November, 2014**

**Background**

1. The applicant was born in Nigeria in 1967. He married in 2000 and is the father of four children. It is the applicant's case that he was a member of the Niger Delta Vigilantes ("NDV") and subsequently was a member of the Movement for the Emancipation of the Niger Delta ("MEND"). These organisations are said to engage in violent activities and ran a campaign of attack on Shell Oil installations in Nigeria.
2. The applicant states that he had participated in the activities of these groups by driving other members to various sites, including to the houses of people who were going to be kidnapped by the group. The applicant stated that in 2004, he obtained employment with a company called RANC which did work for Shell. He stopped carrying out work for MEND at that time. He was employed as a business development manager by that company.
3. In or about 2005, he obtained work directly with Shell. He was employed as a telephone and fax operator with the company. It is the applicant's case that while working for Shell he imparted certain information to the company about the activities of MEND and in relation to the location of some of their hideouts. As a result of this information, the company was able to secure the release of a number of hostages, who had been kidnapped by MEND. It is also alleged that a number of MEND operatives were killed in the rescue operation.
4. It states that as a result of imparting this information, MEND operatives came to his house one night in November 2007. They kidnapped the applicant and brought him to a forest where he was placed in a deep hole.
5. The applicant states that the MEND operatives left him in the hole because they had other operations in relation to a ship to attend to. According to the applicant a friend of his, who was also a member of MEND, came on the second day and provided a rope with which the applicant was able to make good his escape.
6. The applicant states that he fled first to Zimbabwe, where he spent approximately one month hiding out in a friend's house in the city of Bulawayo. He then went to South Africa where he stayed for three months. He states that due to an upsurge in violence towards foreigners he decided to leave South Africa.
7. For the sum of \$5,000, he was put in touch with an agent who secured his escape to Ireland via Dubai.
8. The applicant arrived in Ireland on 26th May, 2008. He sought asylum on arrival in the State. The applicant filled out the usual ASY1 form and filled out the questionnaire and had an interview. His application for refugee status was declined by the Office of Refugee Applications Commissioner ("ORAC"). He appealed to the Refugee Appeals Tribunal ("the RAT"), who upheld the ORAC decision holding that the applicant's story was not credible.
9. In these proceedings, the applicant seeks an order of *certiorari* against the decision of the RAT dated 7th December, 2008. In summary, the applicant claims that the credibility findings made in the RAT decision were made irrationally and without reasons.
10. Counsel for the respondent has argued that the credibility findings under attack in this application have to be viewed against the decision as a whole. In this regard, the following portion of the RAT decision entitled "*The Applicant's Claim*" is of relevance:-

*"The applicant maintains that because he spoke to the tea lady in Shell, members of MEND kidnapped and tried to kill him by placing him in a deep hole. He was referred to his Questionnaire where he stated he gave information to Shell about the secrets of MEND containing, inter alia, strengths, weaknesses, tactics, training methods, numbers and locations, and also forest and swamp areas where this terror group held hostages. The applicant stated that as a result of disclosing this information, Shell workers were released without paying a ransom. It was put to him that these details would not represent casual talk to the tea lady resulting in the applicant having to flee Nigeria. The applicant replied 'I told the tea lady only because I didn't like what MEND were doing to Shell'. He was referred to his interview where he stated the Niger Delta Vigilante group is not a violent one and his role was to look out for troublemakers. It was put to him that country of origin information states that it was a violent organisation responsible for many attacks and killings. The applicant replied 'they were not violent'. He was asked why he did not claim asylum in South Africa and he replied 'I never thought of it'. He said that it was only Mr. Morgan that introduced him to the idea of asylum. He was asked why if the captors wanted to kill him they would simply leave him in a hole. The applicant replied they had to leave as there was trouble elsewhere."*

11. At the leave stage, the High Court gave the applicant liberty to argue that the decision of the RAT should not stand due to the lack of reasoning underpinning three separate credibility findings. I will now turn to an examination of these credibility findings.

## The Credibility Findings

### The Message on a Rope

12. The first credibility finding in the RAT decision is in the following terms:-

*"His claim that his friend threw down a rope with a message on it is not believable."*

13. The applicant had stated that his rescuer was a friend from childhood who had also been a member of MEND at the time the applicant was involved with that organisation. The applicant named his friend. He further stated that in his hurry to escape he left the rope behind. Later someone said that they had seen the friend purchase the rope. His friend was beheaded by MEND.

14. No reason is given by the RAT as to why it found that the account given by the applicant was unbelievable. It would lack credibility if the RAT had found that the account of his kidnapping was not credible. However, the Tribunal did not make that finding, although they did hold that the account of his being left unguarded in a hole was not credible.

15. I am satisfied that it was rational and believable that a friend would come to the applicant's aid in such circumstances. This assertion by the applicant is dismissed by the Tribunal without any reasoning as to why it was rejecting that assertion. In the circumstances, this finding on credibility cannot stand.

### Leaving Nigeria and coming to Ireland

16. The finding of the Tribunal under this heading was as follows:-

*"The applicant travelled to Zimbabwe and spent a month there before going to South Africa. He spent three months in the latter country without seeking international protection and claims that he was supported by members of the Nigerian community. He also states that a friend of his in Nigeria sent him the money to pay an agent so that both of them could travel here via Dubai. The Tribunal does not find this credible."*

17. Again there is a lack of reasoning underpinning this finding. It makes sense that the applicant travelled first to Zimbabwe where he stayed for a month, before relocating to South Africa where he stayed for three months. He then met with an agent to secure his passage to Ireland via Dubai. There is nothing particularly unusual in this account. In the circumstances, the court cannot discern a rational basis for disbelieving the applicant's account. The court is not assisted in its efforts by the total lack of reasoning for this finding.

### Reasons for Seeking Asylum

18. In relation to this finding, the Tribunal stated as follows:-

*"Further, Prof. Hathaway has stated that if one is truly fleeing persecution and delays in seeking international protection, such conduct can go to credibility. The applicant was in a number of countries before arriving here and his reasons for failing to seek asylum in any of them is not credible. Section 11B of the Refugee Act, 1996, as amended, applies. The Tribunal is satisfied the applicant lacks credibility."*

19. The applicant had given reasons for his not seeking refugee status in South Africa. He said that he had gone to South Africa looking for work, but as it was getting dangerous for foreigners he decided to leave. In this notice of appeal, a number of media reports had been attached which stated that there had been outbreaks of violence directed at foreigners claiming lives and causing injury.

20. The Tribunal did not engage with the reasons put forward by the applicant. They did not provide any specific or cogent reason for its finding. The applicant did say the reason why he did not seek asylum in South Africa was because *"he never thought of it"*. That could be understood as meaning that he never thought of making the application simpliciter, or that because of the violence in that country he did not think of trying to seek asylum there. It is not sufficient for the RAT merely to say *"his reasons for failing to seek asylum in any of them is not credible"*.

21. In the course of argument before the court, the issue arose as to whether the whole finding of the RAT would have to be set aside if the three matters raised were found to be lacking in reasoning. In *Bisong v. Minister for Justice, Equality and Law Reform* [2005] IEHC 157, the effect of the striking down of a number of findings on credibility was considered as follows:-

*"Each of the three matters played a part (probably a minor part) in the assessment of the applicant's credibility. The crucial and in the view of the court the deciding matter is that each of these three errors relate to a single issue i.e. credibility of the applicant rather than, for example, some relating to credibility and some to some other issue such as the assessment of the internal conditions in the country of origin. If the errors each related to separate areas of assessment they would not necessarily have a cumulative effect. However, in this case, each of the errors was part of the one process i.e. assessment of credibility. In the judgment of the court, when taken together, they could have cumulative effect on the assessment of credibility. The effect of that accumulation could be to convert what is in each case a simple and insubstantial ground of complaint into the substantial ground needed to succeed in this application."*

22. Reference was also made to the decision in *Keagnene v. Minister for Justice, Equality and Law Reform* [2007] IEHC 17, where a number of credibility findings were struck down and the effect this had on the overall position was considered by Herbert J. The learned judge held as follows:

*"As the Court cannot be aware of what weight the Member of the Refugee Appeals Tribunal attached to each of the six reasons given by him for finding that the Applicant was not credible or trustworthy and his unsupported testimony was unreliable, the Court must conclude that as reasons four, five, and six cannot be permitted to stand as reached by the application of unfair procedures, the entire decision must of necessity be therefore set aside."*

23. It was also stated that the court should have regard to the following passage from *M.E. v. Refugee Appeals Tribunal* [2008] IEHC 192:-

*"The Tribunal Member has been criticised as engaging in speculation or conjecture in relation to the risk of persecution facing the applicant if returned to Sierra Leone. There is no doubt that a Tribunal Member should not base an adverse credibility finding on speculation or conjecture. As noted by Peart J. in *Da Silveira v The Refugee Appeals Tribunal* [2004] IEHC 436:-*

*'One's experience of life hones the instincts, and there comes a point where we can feel that the truth can, if it exists, be smelt. But reliance on what one firmly believes is a correct instinct or gut feeling that the truth is not being told is an insufficient tool for use by an administrative body such as the Refugee Appeals Tribunal. Conclusions must be based on correct findings of fact.'*

*On the other hand, a Tribunal Member is not expected to accept without challenge or question every account given to him or her. Rather, he or she is expected to weigh, assess, analyse and draw inferences. I have already set out in some detail the findings of the Tribunal Member in relation to credibility. From that, it will be apparent that this was a considered conclusion and went well beyond a mere gut feeling. Instead, the Tribunal Member's findings on credibility seem to have been arrived at following the accumulation up to some ten factors that she saw as being relevant."*

24. Finally, when giving judgment at the leave stage in this case, Mac Eochaidh J. stated as follows in relation to the adequacy of reasons for credibility findings:-

*"In my recent judgment in Omidiran (an infant) v. Minister for Justice and Equality (12th December, 2012), I examine the relevant case law with regard to the assessment of the adequacy of reasons for credibility findings and say that the following questions may be asked to discern if adequate reasons were given for credibility findings:-*

*(i) Were reasons given or discernible for the credibility findings?*

*(ii) If so, were the reasons intelligible in the sense that the reader/addressee could understand why the finding was made?*

*(iii) Were the reasons specific, cogent and substantial?*

*(iv) Were they based on correct facts?*

*(v) Were they rational?"*

## **Conclusion**

25. I am satisfied that the three findings on credibility at issue in these proceedings were arrived at without adequate reasons being stated. Each of them is discounted with the bald assertion that they are not credible. This was not sufficient. If the Tribunal Member was not going to accept the explanations given, it was necessary to set out in clear terms why this was so. This was not done in this case. As the three impugned findings were part of a wider set of credibility findings which had a cumulative effect in the decision, it is not possible to say whether these were major or minor credibility findings. In the circumstances, it is necessary to quash the entire decision.

26. I will grant an order of *certiorari* quashing the RAT decision dated 7th December, 2008. I will direct that the applicant's appeal against the decision of ORAC should be remitted back to the RAT for determination by a different Tribunal member.