

**THE HIGH COURT
JUDICIAL REVIEW**

[2015 No. 96 J.R.]

BETWEEN

N.N. (CAMEROON)

APPLICANT

AND

**REFUGEE APPEALS TRIBUNAL,
MINISTER FOR JUSTICE AND EQUALITY,
IRELAND AND ATTORNEY GENERAL**

RESPONDENTS

JUDGMENT of Mr. Justice Eagar delivered on the 26th day of November, 2015

1. This is an application for an order of *certiorari* by way of an application for judicial review in respect of a decision of the Refugee Appeals Tribunal (hereinafter referred to as "the Tribunal") to affirm the decision of the Refugee Applications Commissioner ("the Commissioner") that the applicant not be declared a refugee.

2. By way of a notice of motion on 27th April, 2015, the applicant sought:-

- a. An order of *certiorari* by way of an application for judicial review quashing the decision of the first named respondent (hereinafter referred to as "the Tribunal") affirming the recommendation of the Refugee Applications Commissioner (hereinafter referred to as "the Commissioner"), and notified to the applicant not earlier than 4th February, 2015.
- b. An order remitting the appeal of the applicant for a fresh determination by a separate member of the Tribunal.
- c. A declaration that the Tribunal made errors of fact so basic such as to deprive her of jurisdiction to adjudicate in the matter.
- d. A declaration that the Tribunal's decision contained errors on the face of the record.
- e. A declaration that the Tribunal erred in law.
- f. A declaration that the first named respondent acted contrary to natural justice requirements and fair procedures in all the circumstances.
- g. A declaration that the first named respondent, having found that the law forbidding homosexual activity in Cameroon could be considered as a legal measure which is of itself discriminatory, failed to make any determination as to whether such law and discrimination could constitute persecution *per se* in respect of the herein applicant for the purposes of Regulation 9(2)(B) of the European Communities (Eligibility for Protection) Regulations 2006 (hereinafter referred to as "the Regulations of 2006").
- h. A declaration that the Tribunal acted irrationally and unreasonably in all the circumstances.
- i. A declaration by way of an application for judicial review that the Tribunal has acted in breach of the European Convention on Human Rights Act 2003 (hereinafter referred to as "the Act 2003") and/or the constitutional and legal rights of the applicant.
- j. If necessary an extension of time.
- k. Such further or other relief this Honourable Court shall deem meet and just.

Grounds upon which relief is sought

3. The grounds upon which relief is sought are:-

- a. The Tribunal erred in fact and in law, in having found that the law forbidding homosexual activity in Cameroon should be considered as a legal measure which is of itself discriminatory, failed to make any determination as to whether such law and discrimination could constitute persecution *per se* in respect of the herein application for the purposes of Regulation 9(2)(B) of the Regulations of 2006.
- b. The Tribunal made a material and fundamental error of fact in stating that "no Medical Reports were submitted by the appellant in relation to any medical issues she had since her arrival in Ireland" when in fact she had submitted a medical report from the Galway Rape Crisis Centre to three weeks in advance of her oral hearing.

- c. The Tribunal made a material error of fact in failing to state that the applicant's contemporaneous medical report from Cameroon, which she was satisfied was an authentic document, also stated and certified that "after a medical examination of the named, N Kajouengan Njoya, victim of rape and physical attack" and erred in law and breached natural and constitutional justice in failing to make an assessment or finding on this medical certification.
- d. The Tribunal erred in law and breached natural and constitutional justice in the manner in which she assessed the applicant's credibility and in failing to address the contents of her written "Grounds of Appeal" and written "Supplemental Grounds".
- e. The Tribunal erred in law and breached natural and constitutional justice requirements in applying the incorrect degree of proof to the applicant's claim, being the civil degree of "balance of probabilities" as opposed to the lower standard of "reasonable degree of likelihood" which is applicable to all asylum claims.
- f. The Tribunal made errors of fact and breached natural and constitutional justice in relation to what the applicant had omitted to state in her questionnaire and that she could have sought the assistance of her daughter in Ireland in completing this questionnaire, when in fact she had no legal assistance in completing this questionnaire by reason of being given a communication in English of where she could get legal assistance which she did not understand and that she had completed this questionnaire on the date of her arrival in Ireland on 23rd January, 2013, before she could have met her daughter allied to her very poor mental and physical condition as set out in her much later Galway Rape Crisis Centre Report, on which she received no medical assistance or advice on where she could receive same in the State in order to claim asylum.
- g. The Tribunal breached natural and constitutional justice requirements in relation to making credibility findings pertaining to the discovery of the bodies of two women in the City Lake of Yaounde on 2nd January, 2011, when in fact the applicant did not know them very well, was not related to them or lives near them, was a different age group and while members of the late founded ADMIS (Association for the Defence of Sexual Minorities) association may have figured with them before their deaths and before ADMIS was founded, their deaths occurred over four months before ADMIS was founded in May 2013, so they could not have been members of that association. However, the applicant had used their suspicious deaths, in conjunction with a lawyer to bring a case against Cameroon after ADMIS was founded and got one of the named, Mariama correct, which the first named respondent gives her no credit for.
- h. The Tribunal erred in law in engaging in conjecture and speculation with regard to a company supplying t-shirts advertising the company, to the applicant's association, without any basis in fact or any supporting country of origin information, more particular as she notes in her decision that "some members of society make attempts to stand up for the rights of the gay community in Cameroon notwithstanding the potential for coming to adverse police attention".
- i. The first named respondent erred in law and breached natural justice in discounting the photographs the applicant had produced with regard to her houses being burned, when she gave oral evidence at her hearing in respect of the location and ownership of the houses in conjunction with the photographs and in giving no reasons as to why she did not accept her explanation in respect of any inconsistency between the two reports, more particularly given the applicant's poor medical condition, with her eyesight affected as a result of police assaults, allied to her great fear of them.
- j. The first named respondent erred in law and breached natural justice requirements in stating that the submission of photographs of women in African dress itself, does not amount to supporting evidence of the applicant's claim, when the applicant had in fact given oral evidence at the hearing in respect of the location and identity of the protestors wearing this African dress and the reason that they were protecting was to defend against children being killed.
- k. The first named respondent erred in law and breached natural and constitutional justice in discounting the photograph that the applicant had produced in respect of her in a hospital bed. When she gave oral evidence to the first named respondent, identifying herself to her, the reason she had been hospitalised and the date, more particularly given the contents of the applicant's medico-legal report, dated 10th January, 2013, which the first named respondent had accepted as authentic.
- l. The first named respondent erred in law and breached natural and constitutional justice in engaging in speculation and conjecture in respect of the applicant's "Associated Documents", the majority of which she was named in, without any basis in fact and without any issue raised by the first named respondent prior to or at the applicant's oral hearing with her or her legal representative or any further issue raised by her in relation to them subsequent to the oral hearing and before she made her decision.
- m. The first named respondent erred in law and breached natural and constitutional justice requirements in failing to make any assessment of what protection the applicant would obtain if she were returned to Cameroon, more particularly given that when the burning of her two family houses were reported to the police they took no action when they found out who they belonged to, with which the first named respondent makes no mention of, or assessment on, in her decision under the heading "Houses Burned".
- n. The first named respondent's decision contains several errors on the face of the record as outlined above.
- o. The first named respondent acted irrationally and unreasonably in reaching her decision.

Applicant's claim to the Refugee Appeals Tribunal

4. The hearing of the Tribunal took place on 17th November, 2014. The report notes that the applicant completed an asylum questionnaire and was interviewed pursuant to s. 11 of the Act of 1996 on 15th February, 2013. A report pursuant to s. 13 of the aforementioned Act was issued by the Officer of the Refugee Applications Commissioner (hereinafter referred to as "ORAC") was issued on 13th May, 2013 wherein the applicant's claim was rejected on the basis that the risk which she may face in Cameroon is not severe enough, by its nature or repetition, to amount to persecution.

5. In respect of the applicant's claim it is noted that she is a 61 year old woman from Cameroon who made a claim for protection to ORAC on 23rd January, 2013, on the basis that if she returned to Cameroon she would face persecution based upon her membership of a particular social group and political opinion.

6. The applicant is from Douala, Cameroon, and is married with five children – two boys and three girls. Two of her children reside in Cameroon while the others reside in Ireland, Switzerland and Holland. She is a member of the Bamum tribe. She served as president of the Association for the Defence of Sexual Minorities (ADMIS). In this regard, she fought for the rights of homosexuals in Cameroon, and held meetings, to this effect.

7. In January 2011, a young boy was killed as a result of his sexual orientation; his mother was a member of ADMIS. In the wake of the killing, the association gathered for meetings in order to prevent further children being similarly murdered.

8. In December 2012, two girls were killed as they were involved in a lesbian relationship. Prior to this, one of the girls had sought out the applicant to speak to her. She sought her advice as her father wanted to arrange her marriage, but due to her sexual orientation, she did not want to go through with it. The applicant advised the victim not to be open about her sexuality, but as she refused to go through with the arranged marriage her father knew that she had a girlfriend. In December 2012, her father returned to find his daughter and her girlfriend in the house. He started beating them. Neighbours also became involved, beating the two girls also. The applicant received a phone call regarding the beatings; she proceeded to the scene and called the police. The police arrived when the two girls were near dead. It is reported that "the police left without doing anything as they were lesbians".

9. As a result of this the association decided to march. They did so on 29th December, 2012, in the centre of Douala. It was a peaceful march, during which they shouted "stop killing our children". After approximately 30 minutes the police arrested the applicant alongside approximately six other protestors – other members fled.

10. The applicant was informed that she was arrested as homosexuality is illegal in Cameroon. She was detained for two days. While detained she was beaten and raped at the hands of the Cameroonian police. She was threatened to the effect that "if she speaks out they will know it is her". The applicant was not brought to court.

11. Her husband organised her release by paying the police. Upon her release she was admitted to hospital where she remained under 10th January, 2013.

12. Whilst in hospital her two homes, one in Douala and one in Yaounde, were burned down. The police were called, but when they realised to who the homes belonged, they did not come.

13. She received threatening phone-calls from the police to effect that "she is supporting a problem which is above her".

14. The chief in her area was advised by the police that she was in danger. The chief knew her husband so he relayed this information to him. He said that the police who raped and tortured her could still get her and that she is starting to raise a problem in Cameroon, one which Cameroonians do not talk about.

15. After her release from hospital she went into hiding. All her family were fearful.

16. One of their neighbours told her husband that he knew someone who could help her leave Cameroon. Her husband subsequently paid the agent and she flew from Douala via Paris to Dublin.

17. She fears she will be killed by the police if she returns to Cameroon.

Analysis of the applicant's claim by the Tribunal

18. The Tribunal member analysed the claim of the applicant under various headings, holding that the applicant's stated fear was not believed by the Tribunal and her claim of persecution based on the police was not considered credible, on the balance of probabilities. The headings under which the appeal was analysed were:-

- a. Breach of directives,
- b. Section 13 report finding on discrimination,
- c. Death of two girls in lake,
- d. Company sponsored t-shirts of group,
- e. Houses burned,
- f. Photos of women in African dress,
- g. Medical report,
- h. Association documents.

Section 13 report finding on discrimination

19. Pursuant to the section 13 report, a finding was made that, while country of origin information states that members of LGBT rights organisations claim they are subjected to discrimination in Cameroon, there is no evidence to indicate that this discrimination amounts to persecution.

20. The Tribunal member, having regard to the judgment of Mac Eochaidh J. in *EPA v. Refugee Appeals Tribunal* [2013] IEHC 85 was not minded to follow the above finding.

21. The Tribunal Member had regard to the dicta of EPA as follows:-

"14. The other matter which caused some concern was the provisions of Regulation 9(2)(b) of the European Communities (Eligibility for Protection) Regulations 2006, which provides that:-

"(2) Acts of persecution as qualified in paragraph (1) can, inter alia, take the form of (a) acts of physical or mental violence, including acts of sexual violence; (b) legal, administrative, police and/or judicial measures which are in

themselves discriminatory or which are implemented in a discriminatory manner”

15. I raised the question as to whether the criminalisation of homosexuality in Ghana could constitute persecution per se for the purposes of Regulation 9. The Ghanaian code is probably an administrative measure or a legal measure which is discriminatory.”

22. The Tribunal considered relevant country of origin information in relation to the law forbidding homosexual activity in Cameroon; accordingly it found that it could be considered a legal measure which is, of itself, discriminatory. Therefore, the issue to be decided upon by the Tribunal was whether or not the applicant's claim of being involved with an association promoting LGBT rights and the consequences she faced as a result of involvement in same were credible.

Death of two girls in lake

23. The applicant submitted a document entitled "Complaint against Person Unknown" which she states is a document compiled by a lawyer in an effort to have the association legalised. The document outlined the deaths of two women on 2nd January, 2011, both of whom figured prominently within the ranks of ADMIS. The document notes the dubious circumstances surrounding their deaths, given that they sustained strangulation marks and that prior to their deaths they had been subjected to threats due to their sexual orientation. The applicant was asked as to why she failed to previously mention the deaths of these two women, to which she replied that, "she did not know she had to say it". It was put to her that she mentioned that a member of the association's child was killed, but she did not mention these two women and she stated that they were not members but that the boy's mother was a member. It was put to her by the presenting officer that the submissions of this document was an attempt to make the Tribunal believe that it was due to the connection of these two women with the association that they were killed. The applicant replied that "homosexuals were coming to see them in the association". She was asked when they died and she answered it was in December 2012. It was put to her that the response given did not correspond with the document she submitted. When asked to comment on this discrepancy, she gave no reply. She was asked the names of the women who died and she said that one was called Mariana. She was asked, did she not know the names of these women and she gave no reply.

24. The Tribunal did not accept that the applicant would not realise that she should mention this information in the questionnaire or at the interview since she thought to mention the death of the boy and of two other girls who were killed due to their sexuality. Furthermore, the applicant's evidence in relation to these women was scant, and completely lacking in detail and inconsistent with a document she had produced, especially given that she was the president of the association.

25. The Tribunal member noted that:-

"One would expect that a woman in her position and who claims to be a defender of the rights of homosexuals in Cameroon and who submits documents to support her contention that she was a member of such an organisation would know considerably more about such a serious incident, contained in a document which she had submitted".

26. The lack of knowledge raised doubts as to the truthfulness of the applicant's evidence and of the document submitted, and this affected her overall credibility at appellate level.

Company sponsored t-shirts of group

27. When asked by the presenting officer if the association had flags or badges, she stated that they "just had t-shirts printed advertising a company". In this regard it was put to her that it is surprising that a company would want to be associated with a cause such as theirs, she replied that "they just wore it for the protest".

28. The applicant was asked if the company wanted to be associated with their protest and she said that "she could not say if they were supporting the cause, they told the company they needed the t-shirts and they gave them to them".

29. In this regard, the Tribunal deemed her evidence implausible, given the country of origin information provided on behalf of the applicant which highlights the intolerance of the issue of homosexuality.

30. The decision noted that whilst it is clear that some members of society make attempts to stand up for the rights of the gay community in Cameroon notwithstanding the potential for coming to adverse police attention, it was deemed implausible that a company would be willing to provide t-shirts with their logo on it for use in a protest about homosexual rights unless they were active supporters of the cause.

31. The decision stated that "one would reasonably expect that the appellant would know like minded people and supporters of this cause in her community and the fact that she did not is considered to be lacking in credibility".

32. The applicant submitted a large number of photographs depicting a group of women wearing matching t-shirts and asserted these photographs were supporting members of ADMIS's involvement in a protest. However, the decision notes that there is nothing in the photographs which indicates what the group of women were doing or what event they were attending as they are not holding any placards or signs regarding gay rights.

33. Therefore, based on this point and on the above finding that it was implausible that a company, whose views regarding gay rights are unknown to the applicant, would provide t-shirts with their logo on it for a protest about such rights. It was considered by the Tribunal, on the balance of probabilities, that these photographs are not depictive of the protest, as was asserted by the applicant.

Houses burned

34. The applicant gave evidence at the hearing of her appeal that two of her homes in Cameroon were burned down following her release from detention. It was put to her that she did not mention anything about a house burning in the questionnaire and she replied that "when she arrived she did not write everything down".

35. It was put to her that she had a daughter in Ireland who was familiar with the asylum process and she had time to discuss matters with her before filling out the questionnaire and she was asked again why she did not mention house fires. In this regard she replied that she did not ask her daughter for help in completing the questionnaire.

36. It was put to her by the presenting officer that the fact that she missed out on such an important part of her claim leads to a belief that it is not true; however she stated that it is true and that she had said it at the interview.

37. The applicant submitted two documents which she states relates to the burning of her houses. The documents were entitled

"Minutes of Fire Report" and "Minutes of Report". The applicant states that she was in hospital when the fires occurred and it was her husband who organised the inspection of the homes and subsequent reports.

38. It was put to her that in the report entitled "Minutes of Fire report" it states that she and her husband discovered the house fire after returning from a trip and she replied that her husband did not want to reveal to the man writing the report that she was in hospital so he said they were returning from a trip.

39. She was asked if this was the case, why did the report entitled "Minutes of fire Report" state that she was in hospital and she replied that she had already been raped and made her afraid. It was further put to her that both reports were dated the same day and she was asked why one states that she was coming from a trip and the other stated she was in hospital, she replied that she "explained that it was because of the fear". It was put to her that the inconsistency between the two reports calls into question their authenticity and she was asked if she wished to comment and she replied that the documents are proof that she is telling the truth and she is still afraid for her life.

40. The report noted that not only did she fail to mention such serious events but the authenticity of documents submitted in support of these events was highly questionable. The Tribunal considered that the applicant failed to provide a reasonable explanation to overcome these issues and inconsistencies. In this regard the Tribunal member ultimately found the applicant's evidence to not be credible.

41. The applicant submitted pictures of a burned building, however the location of the building is not apparent from the pictures, and given the credibility findings regarding the applicant's evidence of these events, the Tribunal member considered these photographs not to be of evidential value.

Photos of women in African dress

42. The applicant stated that the association's uniform consisted of African dress. She stated that it did not have a logo or writing depicting the name of the association. She submitted some photographs of women all wearing the same African dress and it was put to her by the presenting officer that the photograph depicts some other group. She replied that the association was there already and following the death of the son of one of the members they decided they had to defend against the murder of children. The Tribunal noted that again, this was in the absence of the photographs showing any connection with an association defending gay rights in Cameroon. The Tribunal member was of the opinion that these photographs could have been of any group associated with any cause.

43. Therefore, the submission of the photographs, of itself, did not amount to supporting evidence of the applicant's claim.

44. Given the other credibility concerns, detailed above, the Tribunal member considered the submission of these photographs did not override the findings regarding the applicant's lack of credibility.

Medical report

45. The applicant submitted a medical report which states she obtained from the hospital where she was treated following being raped by police. The decision noted that whilst there is nothing obvious on the face of this document which would serve to question its authenticity, the Tribunal, it stated, was not in a position to have the document authenticated and thus, could not, with clarity, confirm its provenance. However, as there is no requirement on the applicant to authenticate documents which they submit, in the absence of any obvious error on the face of the document, the Tribunal member stated that she was willing to give the applicant the benefit of the doubt, as she is obliged to do.

46. The decision continued that the report was only helpful to the extent that it shows the applicant attended hospital and the report, whilst finding the examination showed signs of overall injuries such as "anal pain, abrasions, and cuts and bruises and pelvic pain", does not and is incapable of saying who causes these ailments and therefore cannot rule out the possibility that these injuries were carried out by persons and in circumstances other than that claimed by the applicant.

47. Given the credibility concerns in relation to other elements of the applicant's core claim, the Tribunal member was unwilling to accept that the submission of this report overrides these concerns.

48. The applicant submitted a photograph which appears to show her in a hospital bed. Again, the Tribunal member stated that the submission of this photograph does not, of itself, support the applicant's claim in circumstances where it has been accepted that the applicant did attend the hospital but it was not held, for the reasons advanced above, that this fact overrides the other negative credibility findings.

Association documents

49. The applicant states she is president of ADMIS. She submitted the following documents in relation to the association, "Association for the Defence of Sexual Minorities of Cameroon – Articles of Association", "Association for the Defence of Sexual Minorities of Cameroon – 1st General Meeting of the Year 2011" and "Interrogatory Summons".

50. The decision noted that the mere fact of submitting these documents does not mean that they are genuine and they must be viewed in the context of the whole claim, the applicant's evidence and an analysis of that evidence. Given that it has been found that some documents submitted by the applicant are questionable as to their validity and given that elements of the applicant's core claim were found not to be credible and that documents such as these are capable of being generated for the sole purpose of a claim such as the applicant's, it is considered, in weighing up all of the evidence that little weight should be attached to the submission of these documents.

Submissions on behalf of the applicant

51. Counsel on behalf of the applicant, Michael Conlon S.C., with James Healy B.L., recited the background of the applicant's case. She was born on 27th February, 1953, in Njindoun, Department of Noun (Foumban), West Cameroon. She produced her national identity card and birth certificate and accordingly the Tribunal was satisfied as to her nationality and identity. She has fifteen years of formal education and has obtained a number of qualifications. She worked as a technician with Delegation Provincial Agriculture, Doula. She is married and has produced her marriage certificate.

52. The applicant co-founded an LGBT organisation in Cameroon in May 2011, after a homosexual boy was killed in January 2011. Two girls who were accused of being lesbian were also killed. She arranged for members of her organisation to march in protest on 29th December, 2012. She was arrested along with some other members of the protest group. She was detained for two days during which period she was the victim of multiple rape, sexual assault occasioning grievous bodily harm and degrading treatment by the police.

during the time she was detained. She was not charged or brought before any court but released after her husband paid money. She was instructed not to "make any more noise about homosexuals". Upon release from police detention, she was in poor mental and physical condition. As a result of this she had to be immediately admitted to hospital on 31st December, 2012, where she remained until 10th January, 2013. During this period, during her stay in hospital, her houses were burned down, however the police refused to investigate the arson, when they discovered who the owner of the properties was. The chief in her area called on her husband while she was in hospital and told him that she should leave as the police wanted to kill her. She was also hassled on the phone by the police after she was discharged from hospital and she had to go into hiding until she left Cameroon on 22nd January, 2013. She arrived in Ireland on 23rd January, on which date she claimed asylum. She fears that she will be killed by the police if she returns to Cameroon, as in conjunction with her lawyer, her association, of which she is president, has taken a case against the State of Cameroon in respect of legalising homosexuality and how persons of sexual minorities are presently treated.

53. The Commissioner refused the applicant's application on the sole ground that while "on the balance of probabilities there is a reasonable degree of likelihood that the applicant may face treatment that could amount to discrimination due to her involvement in an LGBT group in Cameroon, however there is no evidence available to indicate that this treatment would be severe enough, by its nature or repetition, to amount to persecution. Therefore, it is considered that the applicant has not demonstrated a well founded fear of persecution in Cameroon".

54. The Commissioner's decision was appealed to the Tribunal, relying upon eleven written grounds of appeal, as well as Council Directive 2004/83/EC of 29th April, 2004, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and on the Procedures Directive. Certain provisions of the Law of Refugee Status by Hathaway & Foster (Cambridge University Press, 2014, 2nd Edition) were further relied upon, along with six recent decisions of the High Court which were of relevance to the applicant's claim.

55. Mr. Conlon S.C., advanced the following grounds:-

- a. The first named respondent, in having found that the law forbidding homosexual activity in Cameroon could be considered as a legal measure which is of itself discriminatory, failed to make any determination as to whether such law and discrimination could constitute persecution per se in respect of the applicant for the purposes of Regulation 9(2)(b) of the Regulations of 2006.
- b. It is submitted that no medical report had been forwarded to the Tribunal since the applicant arrived in Ireland, when in fact a medical report had been forward to the Tribunal member from the Galway Rape Crisis Centre three weeks prior to the applicant's hearing stating that she was in poor health, displaying symptoms consistent with post-traumatic stress, including sleepiness, poor appetite, somatic pains and conditions, depression, diagnosed with Hepatitis C, high blood pressure and suffered a heart attack in March 2014 and was hospitalised.
- c. The first named respondent failed to state in her decision that the contemporaneous medico-legal report from the applicant's country of origin had certified that after examination of her it was found that she has been the "victim of rape and physical attack" and in failing to make an assessment of same.
- d. Counsel submitted that the first named respondent ignored the applicant's written grounds of appeal alongside ignoring crucial and important corroboration.
- e. It is submitted that the incorrect degree of proof was applied by the first named respondent in the applicant's decision, namely, "balance of probabilities" as opposed to "reasonable degree of likelihood", which had been also applied by the Commissioner.
- f. It is submitted that the first named respondent made credibility issues in respect of what the applicant had failed to state in her questionnaire, when she had no legal assistance by reason of getting the notification of where she could get same in the English language which she did not understand, and having completed the questionnaire on the date of her arrival in the country before she met her daughter and in being in poor health on arrival and not being informed where should could get medical assistance.
- g. It is argued that the first named respondent made credibility issues in respect of the finding of the bodies of two women in the City Lake of Yaounde on 2nd January, 2011, when in fact the applicant did not know them very well, was not related to them, or lived near them, was of a different age group to them and while members of the later founded ADMIS association may have figured with them before their deaths and before ADMIS was founded, their deaths occurred four months before ADMIS was founded. In May, 2013, the applicant, as president of the association used their suspicious deaths, in conjunction with a lawyer to bring a case against Cameroon in December 2012, after ADMIS was founded and the applicant got one of the names of the victim, Mariama, correct. The first named respondent afforded her no credit in this regard.
- h. It is submitted that the first named respondent engaged in conjecture speculation with regard to a company supplying t-shirts advertising the company, to the applicant's association, without any basis in fact or supporting country of origin information, more particularly as she notes in her decision that "some members of society make attempts to stand up for the rights of the gay community in Cameroon notwithstanding the potential for coming to adverse political attention".
- i. The first named applicant discounted colour photographs the applicant had produced in relation to her homes being burned down, when she had given oral evidence at the hearing in respect of the location and ownership of the houses in conjunction with displaying the photographs and in giving no reasons as to why she did not accept the applicant's explanation in respect of any inconsistency between the two fire reports, more particularly given the applicant's poor medical condition, with her eyesight being affected as a result of police assaults, allied to her great fear.
- j. The first named respondent stated that the submission of photographs of women in African dress itself, does not amount to supporting evidence of the applicant's claim, when the applicant had given oral evidence at the hearing in respect of the location and identity of the protestors wearing this African dress and the reason that they were protesting was to defend against children being killed.
- k. The first named respondent discounted the photograph that the applicant had produced in respect of her in a hospital bed, when she gave oral evidence to the Tribunal member, identifying herself the reason that she had been hospitalised and the dates, more particularly given the contents of the applicant's medico-legal report which the Tribunal member had

accepted as authentic.

l. The first named applicant engaged in speculation and conjecture in respect of the applicant's "Associated Documents", in which she had been named in most of them, without any basis in fact and without any issue raised by the first named respondent prior to or at hearing with her or her legal representative or any further issue raised by her in relation to them subsequent to the oral hearing and before she made the decision.

m. It is submitted that the first named respondent failed to make any assessment of the large volume of country of origin information that the applicant had produced in support of her claim in respect of homosexuality and sexual minorities in Cameroon and the heavy fines and long prison sentences such persons face on conviction.

n. The first named respondent failed to make any assessment of what protection would be available to the applicant if she were returned to Cameroon (even as she did in finding her not credible), and in this regard made no mention of the failure of the police to investigate the burning of her houses when they found out to whom they belonged.

o. The first named respondent failed to make a lawful assessment of the applicant's claim, in the face of the disclosure of identifiable errors.

p. It is submitted that the first named respondent acted irrationally and unreasonably in all the circumstances in her arriving at her decision.

Submissions on behalf of the respondent

56. Counsel on behalf of the respondent, Helen Callanan S.C., pointed to "significant discrepancies" in the applicant's story. At her ORAC interview she said that in 2011 a "child" was killed. "It was a child member of our association" the applicant stated. She said that the child, a boy, was homosexual. She informed ORAC that the child was killed in January, 2011. She organised the women after the burial and they started to "speak up against the killing of our children". The dead child's name was Mbangue Paul. The applicant said that he was nineteen. He was killed by people on the street who "ganged up on him and beat him". The killing occurred in a place called Bepanda, not far from Douala, where the applicant lived. She later said that he was the child of one of the members of the association and that the association was set up after his burial. Counsel submits that "he was clearly not buried in May, 2011, some five months after his death".

57. The applicant avers on affidavit that the organisation was founded in May, 2011. However, she has also claimed that Mbangue Paul was a "child member" of the association, when, counsel suggests, "he could not have been".

58. The applicant said that she first personally encountered difficulties on 29th December, 2012. The applicant stated to the ORAC that she organised a march to demonstrate against the beating on 23rd December, 2012, of two girls by one of their fathers. One of the girls had previously come to the applicant for advice because she did not wish to marry as she was homosexual. According to the applicant, the girls were beaten to death by the father of that girl. The applicant claims on 29th December, 2012, she was arrested by the "political police" due to her involvement in the demonstration. She said that she was raped and beaten by the police during her two-day detention. The applicant was taken to hospital on 31st December and released on 10th January, 2013. She said that her house was burned down on 4th January, 2013, by unidentified persons who threatened her husband by telephone.

59. The applicant told the ORAC that the chief of the area told her husband on the 6th January, 2013, that she would have to leave if she wanted to stay alive. She stated that the chief said that the police wanted to kill her. The ORAC questioned her closely about this alleged threat as she had first said that it happened when she was discharged from hospital. She replied that she was tired and did not understand the question. After her discharge from hospital she received telephone threats. She says that she knew they were from the police by the "professional tone".

60. The ORAC recommendation concluded that there was no evidence that members of such gay rights organisations would be persecuted in Cameroon was overturned by the Tribunal. The Tribunal found that the applicant lacked credibility. Therefore, counsel submitted, the case did not centre on whether membership of the organisation to which the applicant claimed to belong was likely to result in persecution, which the Tribunal accepted it would, but whether or not the Tribunal was entitled to conclude based on the information provided by the applicant, including the following:-

- a. Her lack of knowledge of two women who she claimed had been killed and whose deaths were refereed to in the organisation's own documentation,
- b. The applicant's claim that the women died in December 2012 when the document she submitted in support of her claim reported that the women died in January 2011,
- c. The applicant's failure to reply when the above was put to her,
- d. The applicant's failure to mention the women's deaths in her questionnaire,
- e. The applicant's failure to mention the burning of her houses in the questionnaire,
- f. The discrepancies between the reports on the fires and the conflict in evidence given by the applicant about the reason for the discrepancies,
- g. The photographs submitted offered no indication that the protests were related to a gay rights organisation and were therefore not corroborative of the applicant's account;

It is submitted that the applicant had not credibly demonstrated that she was in fact such a member. The Tribunal observed that when challenged on contradictory evidence the applicant would make no reply.

61. A feature of the applicant's appeal to the Tribunal was that she challenged the provision of information in English and stated that the information leaflets referred to or information noted were not on the file. It was also claimed that there was no record of the applicant having been informed by the ORAC of health care centres. It stated in the appeal that the applicant "required urgent medical care and attention" at the time of the ORAC hearing. Counsel notes that, in fact, the applicant had not claimed that she

required medical attention and had confirmed that she was happy with her interview. The medico-legal report from the hospital in Cameroon stated that the applicant had been raped and had certain injuries as a result, but did not make reference to who the likely perpetrators were.

62. The Tribunal decision noted that the identity card was genuine according to the gardaí and accepted that the applicant was a national of Cameroon. It dealt with the point made about access to a legal advisor and noted that no medical reports were submitted in relation to any medical issues she had since her arrival in Ireland which would support the claim that she had been unwell at the time of the RAC interview. It was also noted by the Tribunal, it was submitted, that the claim that the applicant was sick during the interview was not recorded in the interview with the RAC and that in any event she had confirmed that she was very happy with the interview.

63. The Rape Crisis Centre letter, dated 30th September, 2014, refers to the applicant displaying symptoms which "are consistent with Post Traumatic Stress, including sleepiness, poor appetite, somatic pains and conditions and depression". Ms. Callanan notes that this letter was not before the RAC and, therefore, could not have supported a claim against the RAC in relation to the fairness of the interview or the failure of the RAC to suggest to the applicant that she get medical help. Ms. Callanan further notes that, it does no refer to an inability to give evidence to the Tribunal or suggest that any discrepancies were caused by her medical conditions, which are not disputed.

64. The Tribunal rejected the RAC's finding that there was no evidence to indicate that members of LGBT rights organisations faced persecution in Cameroon. The Tribunal Member was cognisant of the decision of MacEochaidh J. in *EPA v the Refugee Appeals Tribunal* [2013] IEHC 85.

65. The Tribunal then proceeded to examine the applicant's credibility. The Tribunal refers to the applicant's failure to mention or provide details about her own organisation's claim that two members of her organisation were thought to have been strangled rather than having drowned, as had been reported. It noted that it had been claimed in a document submitted by the applicant herself that the women were prominent members of the organisation to which the applicant belonged. It was noted that she had not mentioned their deaths in her ORAC interview. The applicant, the Tribunal noted, stated she did not know that she had to say it. She then stated that they were not members. However, Ms. Callanan notes that, "clearly it was then put to her that the document had been drafted so as to suggest that they were strangled because they were members of the organisation". It was also put to the applicant that she stated at the Tribunal hearing that those women were killed in December 2012. She did not reply when it was put to her that the document compiled allegedly on behalf of the organisation mentioned that they died in January 2011.

66. The Tribunal found that it was not credible that the president of an organisation would not know more details about the women referred to in the document she herself had submitted. The lack of knowledge raised doubts for the Tribunal in relation to the applicant's evidence and this affected her overall credibility, in concluded.

67. Ms. Callanan stated that the applicant now seeks to undermine this criticism by claiming that as the women were not members of the organisation, she ought not to be expected to know anything about them. She stated in her affidavit that she "*did not know them well*". Counsel continues that this suggests that she knew them, even briefly. She did not make that claim before the Tribunal. She did state the name of one of the women, which was written on the document she provided, but she would not reply when asked whether she knew their names. The Tribunal concluded that the lack of knowledge "raises doubts as to the truthfulness of the [applicant's] evidence"

68. The Tribunal felt that such was the intolerance in Cameroon towards homosexuality that it was not credible that a printing company would have provided it's t-shirts to the women for the protest in circumstances where the applicant could not say if the company supported gay rights. The Tribunal found that the photographs did not add to the applicant's story as there was no indication in relation to what the women in the photographs were actually doing. The claim not to know whether the company supported the organisation or not was assessed in the context of the applicant having claimed to be the president of the organisation.

69. Ms. Callanan submits that the Tribunal's treatment of the fire reports is not unreasonable; the applicant first claimed that her husband did not want to tell the authorities that his wife was in hospital (and that this is why the police report said that they both discovered the fire on their return from a trip) but it was put to the applicant that in fact the second document on the same date does note that she was in hospital.

70. Counsel submits that the Tribunal raised very valid points about the credibility of the applicant and adopted the correct test in relation to the claim made, namely, accepting that it could have amounted to persecution but then preceded to examine the applicant's credibility. Section 11A(3) of the Refugee Act 1996, places the burden of proof on the applicant to show that they are a refugee. The Tribunal adopts a two stage approach to the determination of refugee status as endorsed by the CJEU in ABC C-148/13:-

"55. As regards the assessment of the facts and circumstances under Article 4 of Directive 2004/83, that assessment takes place, as was held at paragraph 64 of the judgment in M. (C-277/11, EU, C: 2012:744), in two separate stages. The first stage concerns the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down by Articles 9 and 10 or Article 15 of Directive 2004/83 for the grant of international protection are satisfied,"

71. In the first stage, the Tribunal applies the civil standard of 'balance of probabilities' to establish the 'factual circumstances' of the claim. Facts may be accepted, rejected or considered uncertain. If a fact is considered uncertain, the 'benefit of the doubt' may be applied to that fact. In the second stage, the Tribunal applies the lesser standard of 'reasonable likelihood' in determining whether the factual circumstances disclose that the applicant is at risk of persecution for a Convention reason. This approach by the Tribunal has been agreed with the UNHCR. In this case, the facts of the claim were rejected. Therefore the Tribunal did not proceed to consider, either the benefit of the doubt, or the second stage of the process i.e. whether the applicant's fear was well founded.

72. Counsel states that the applicant in the within case did not make a claim that she was suffering from ill health at the Tribunal hearing. The fact that the applicant was suffering from high blood pressure and had had a heart attack in March 2013 is in and of itself not a ground for challenging a decision. No medical report was submitted which linked those conditions to any impediment in relation to giving evidence. Counsel for the respondent objects therefore to the purported linking of those listed illnesses to inconsistencies in the applicant's evidence. No such medical opinion was provided to the Tribunal.

73. It is submitted that the Tribunal clearly found that membership of the organisation claimed by the applicant would have attracted discrimination such as to amount to persecution. The question was then whether the applicant's claim to such membership and involvement was credible. MacEochaidh J. noted in *P.D. v Minister for Justice and Law Reform and Ors* [2015] IEHC 111 that:-

"It is an over simplification of this jurisprudence to say that a decision maker must decide on the truth of each element of a claim for asylum. The common thread in the judgments is the need for clearly expressed decisions in relation to the core claim. The extent to which the elements of a claim are required to be formally decided depends on the circumstances of each case".

74. The Tribunal's analysis in relation to the evidence given was very careful and considered, according to Counsel. Stewart J. noted in *HAA (Sudan) v Refugee Appeals Tribunal* [2015] IEHC 144:-

"It is equally well established that where the very core of an applicant's claim is not believed, the decision-maker is not obliged to carry out an artificial exercise and assess what might occur if a hypothetical person with the applicant's disbelieved history and characteristics were returned to the applicant's disbelieved history and characteristics were returned to the applicant's country of origin. This was the situation in Imafu v Refugee Appeals Tribunal & Anor. [2005] IEHC 416. However it is certainly arguable that this case is not one of the exceptional cases which equates to an Imafau type finding where the core of the applicant's claim was disbelieved."

Discussion

75. The decision of the Tribunal was based largely on credibility factors. Bearing in mind the comments of Cooke J. in *I.R. v. Refugee Appeals Tribunal* [2009] IEHC 353:-

"It is because in such cases the judgment of the primary decision-maker must frequently depend on the personal appraisal of an applicant, that it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision-maker. Its role is confined when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law."

This Court would seek to identify the issues of lack of credibility found by the first named respondent for the purpose of analysing same in the light of Cooke J's comment.

76. O'Hanlon J. in the case of *Lennon v. District Judge Clifford* [1992] 1 I.R. 382, described the role of the judicial review judge as:-

"...the High Court is not available as a court of appeal from decisions of other tribunals except where it is given such a function by statute, and that the scope for challenging the validity of orders made by lower courts by way of judicial review proceedings is confined to those cases where reliance can be placed on want of jurisdiction, or excess of jurisdiction; some clear departure from fair and constitutional procedures; bias by interest; fraud and perjury; or decisions containing an error of law apparent on the face of the record."

77. Judicial review remedies are, therefore, available in essentially three circumstances, that is where:-

- a. an applicant has not been afforded fair procedures;
- b. the decision making body has acted unreasonably; and
- c. the decision making body has acted in excess of jurisdiction.

78. Denham J. (as she then was) stated in the Supreme Court in *Stefan v. Minister for Justice, Equality and Law Reform* [2001] 4 I.R. 203:-

"Certiorari may be granted where the decision maker acted in breach of fair procedures. Once it is determined that an order of certiorari may be granted, the court retains a discretion in all the circumstances of the case as to whether an order of certiorari should issue. In considering all the circumstances, matters including the existence of an alternative remedy, the conduct of the applicant, the merits of the application, the consequences to the applicant if an order of certiorari is not granted and the degree of fairness of the procedures, should be weighed by the court in determining whether certiorari is the appropriate remedy to attain a just result."

79. The test of reasonableness which forms the ground for judicial review, was considered by the Supreme Court in *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3:-

"Thus a decision could be so disproportionate as to justify the court in setting it aside on the ground of manifest unreasonableness."

80. The finding of the Tribunal was, as follows:-

- (i) The applicant was a national of Cameroon.
- (ii) It was not accepted by the Tribunal that the applicant was not advised as to a right to obtain legal representation.
- (iii) The applicant has stated that she chose specifically to come to Ireland as her daughter was living here.
- (iv) The applicant's daughter was aware of the asylum process and the first named respondent stated that it was reasonable to conclude that she spoke to the she (the daughter) spoke to the appellant about the process – this Court notes that the applicant completed the ASY1 Form on the day that she arrived in Ireland the speculation of the first named respondent relating to her daughter explaining the process does not seem warranted on the facts.

81. It was stated by the first named respondent that no medical reports were submitted to the Tribunal in relation to any medical issues since her arrival in Ireland. It is true that no medical reports (from a doctor) were submitted. However, a letter from a counsellor in the Galway Rape Crisis Centre was provided. The Galway Rape Crisis Centre provides counselling and support services to

survivors of sexual violence and abuse. The centre has been in existence for twenty years and Rape Crisis Centres in Ireland have prided themselves on their work with survivors of sexual violence and abuse, have deservedly prided themselves. This document is not referred to by the first named respondent in relation to reports from the applicant since her arrival in Ireland.

82. Ms. Callanan, on behalf of the respondent, pointed out correctly that this is not a medical report from a qualified doctor. This Court finds that there is an error of fact which the first named respondent makes and indeed, the outline of the applicant's health issues related in the letter from the Counsellor in the Galway Rape Crisis Centre, appear to have been ignored by the first named respondent as she held that no medical issues were raised which could be deemed to prejudice her evidence.

83. It is noticeable that she described her consideration *"on the balance of probabilities whilst it appears to be accepted that the onus on an applicant in relation to issues of credibility is the easier burden of 'reasonable degree of likelihood'"*.

84. The first named respondent stated that the law forbidding homosexual activity in Cameroon *"could be considered as a legal measure which in itself this is discriminatory"* but says that the issue she must decide is whether or not the applicant's claim of being involved with the association promoting the rights of the gay community and the consequences she faced were credible.

85. In relation to the two women who had drowned at the lake, the first named respondent found:-

- a. That they died in January 2011; and
- b. that the applicant did not know their names and she did not mention it at her questionnaire in interview.

86. The internal contradiction in this Court's view is that these girls were two of many victims of sexual violence in Cameroon as evidenced by the country of origin information which was not mentioned by the first named respondent in her report, save that she stated:-

"All of the documentation provided, including the legal submissions and the relevant country of origin information has been fully considered."

87. The first named respondent stated that *"one would expect that a woman in her position and who claims to be a defender of the rights of homosexuals in Cameroon"* and who submits documents to support her contention that she was a member of such an organisation, would know about a serious incident contained in a document which she submitted to support her contention that she was a member of such an organisation and would know considerably more about such a serious incident. The first named respondent stated that this raised doubts as to the truthfulness of the applicant's evidence and the documents submitted. This is really the first credibility issue which this Court finds, complies with the rules set out by Mac Eochaidh J. in *R.O. v. Minister for Justice and Equality & Ors* [2012] IEHC 573. Under the heading "Assessing Adequacy of Reasons for Credibility Findings", Mac Eochaidh J. stated from Cooke J. in *I.R.*:-

"(5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding."

"(6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given."

Company's sponsored t-shirts of group

88. The first named respondent appended the heading *"Companies Sponsored T-Shirts of Group"*. However, it was never claimed by the applicant that the t-shirt company sponsored the group. She stated that they had t-shirts and she had told the company they needed t-shirts but in Cameroon it was not likely that anyone would be explaining the need for the t-shirts for the purposes of this particular group. However, these t-shirts could have been for Coca-Cola or Budweiser and in African countries to date, t-shirt company logos are freely distributed. The first named respondent appears, to this Court, to be engaged in conjecture and speculation with regard to what she described as *"the impossibility of a company willing to provide t-shirts with their logos on it for use in a protest about homosexual rights unless they were active supporters of this cause"*. The first named respondent also held that *"one would reasonably expect that the appellant would know like-minded people and supporters of this cause in her community and the fact that she did not is considered to be lacking in credibility"*. It is completely unclear as to why the first named respondent made that finding but in this Court's view, it is *"an unreasonable finding"* in the words of Denham J.

89. The first named respondent also commented on the photograph depicting a group of women wearing matching t-shirts with the assertion that these photographs were supporting evidence of members of ADMIS's involvement in a protest. However, the first named respondent required that the group of women should be holding a placard or sign regarding the rights, she considered that on the balance of probabilities, these photographs are not depicting the protest, as asserted by the applicant.

90. It appears to this Court that the first named respondent, at that stage, had decided that the appellant was not telling the truth and did not seem to be prepared to consider reasonably any of the further issues.

91. Under the heading *"Houses Burned"*, the appellant had given evidence at the hearing of the appeal that two her homes were burnt down following her release from detention. It is noticeable that the first named respondent did not, at that time, in her assessment, deal with the issue of her detention because her claim was that was when she was detained for two days, she was beaten and raped by police. She was also threatened that if she spoke out they will know it is her. She was admitted to hospital following her release. There is a medico-legal certificate of a neurosurgeon who worked in the Laquintinie Hospital in Douala on 10th January, 2013, certified:-

"After a medical examination of the named N.N., victim of rape and physical attack, interred on our services on 31st December, 2012, to 10th January, 2013. As a result of this exam, the person concerned presents with signs overall such as anal pain, abrasions and cuts and bruises and pelvic pain."

92. The first named respondent, however, said that as she had not mentioned the houses burning in the questionnaire and that she had a daughter in Ireland who was familiar with the asylum process and took time to discuss matters with her before filling out the questionnaire, she was asked why she did not mention about the house fires. The applicant said she did not ask her daughter for help in completing the questionnaire.

93. In relation to the two documents enclosing the fire reports, she told the police that she and her husband discovered the house fires (1) after returning from a trip and (2) the other was that she was in hospital. However, the importance of the timing is that, of course, she was making a report to the police in circumstances where she had, on her own account, been raped by the police. However, the inconsistency between the two reports according to the first named respondent called into question their authenticity and the first named respondent felt that because the appellant failed to provide a reasonable explanation that the applicant's evidence in this regard is not credible. Again, it appears to this Court that this is an unreasonable finding of the first named respondent in particular because she had ignored the issue of the recent detention and the allegation of rape by the police made by the applicant.

94. At this point, it appears that the first named respondent decided the issue and decided that the pictures of a burnt building which had been submitted by the applicant did not disclose the location of the building and *"given the credibility findings regarding the appellant's evidence of these events, it is considered that these photographs are not of evidential value"*. She also found the same with regard to the photographs of women in African dress but then deals with the medical report which says that she was willing to give the appellant the benefit of the doubt, as she was obliged to do. Again, there seems to be some confusion on the part of the first named respondent as to the onus of proof in the issue of credibility.

95. The first named respondent dismisses the documents regarding the association of ADMIS which were detailed and, therefore, put no weight on these documents. The first named respondent concluded by saying *"when looked at holistically, the applicant's stated fear is simply not believed by the Tribunal"*. Her claim of a fear of persecution based on the police is not considered credible, on the balance of probabilities, for the reasons given.

Decision

96. This Court finds:

1. The first named respondent failed to refer to the report from the counsellor in the Galway Rape Crisis Centre and in fact suggested that there was no evidence of the applicant's health. While she correctly states that there was no medical report from a qualified doctor the outline of the applicant's health issues outlined in the report from the counsellor appears to have been ignored by the first named respondent.
2. The finding of the first named respondent in relation to "company sponsored t-shirts group" was in this Court's view conjecture and speculation and in the words of Denham J. in *Stefan* was unreasonable.
3. The failure of the first named respondent to deal appropriately with the issue of the applicant's detention together with her dismissal of the applicant's assertion that she was making a report of the burning of the houses to the police in circumstances where she had on her own account been raped by the police was in the Court's view an unreasonable finding of the first named respondent. It also appears to this Court that the first named respondent having decided the first issue of lack of credibility in relation to the two girls in the lake, was not prepared to consider at all the possibility of anything else the applicant stated and in this Court's view this is not a correct way to view the items of evidence which had to be considered by the first named respondent.

97. As this is a telescoped hearing this Court gives leave to the applicant and grants an order of *certiorari* quashing the decision of the first named respondent and makes an order remitting the matter to be determined by another member of the Refugee Appeals Tribunal.