Neutral Citation: [2014] IEHC 171

THE HIGH COURT

JUDICIAL REVIEW

[2009 No. 1012 J.R.]

BETWEEN

M. S. O. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND O.O.)

APPLICANT

AND

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

RESPONDENTS

AND

THE HUMAN RIGHTS COMMISSION

NOTICE PARTY

JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 1st day of April 2014

1. This is a 'telescoped' application for judicial review seeking to quash a decision of the Refugee Appeals Tribunal. Originally, reliefs were sought in respect of the decision of the Refugee Applications Commissioner dated 30th December 2008, but these matters are not now pursued by the applicant.

2. The applicant was born in Ireland on 26th May 2008, and she sues, through her next friend, O, her mother. The applicant's mother explained the fears she held for her daughter which related to her family circumstances. The mother was a Muslim to Christianity convert who says she fears negative consequences for her daughter because she had been baptized. The mother also described problems she had faced in Nigeria arising from six previous terminated pregnancies and her family's request that she terminate the pregnancy which resulted in the birth of the applicant. She feels that her family mistreated her and have scarred her in that they had sent her from her home in 2005. She also says that she stayed with her brother's girlfriend for two months and that this person helped her with her travel to Ireland. She indicated that she could not return to Nigeria because of the manner in which her family had rejected her and because she feared that the father of her first child would harm her because he was not the father of the applicant.

The Tribunal's Findings

3. The first negative credibility finding made by the Tribunal Member related to her narrative of religious conversion and background. The finding is in the following terms:

> "The Applicant's mother provided testimony to the effect that her family was a 'strong Muslim family' and she stated that she attended a Muslim secondary school. The Applicant's mother indicated to the Tribunal that she converted to Christianity after her arrival to Ireland. When asked where and when Muhammad was born, the applicant's mother stated 'I'm unsure. I did not follow the Muslim way but my parents are Muslim . . . I think Mecca'. Muhammad was born in Mecca in 570. When asked to name the daily Muslim prayers, the Applicant's mother stated 'Magri, Ishar, Alasari and Azuba'. The prayers are called 'Fajr, Dhuhr, Asr, Maghrib and Isha'. The Applicant's mother was unable to explain to the Tribunal the significance of Ramadan or why this holy month is observed/celebrated or why Muslims fast during this month. She could only give a vague reply to these questions, stating that the month was used to give praise to God, to forgive sins and it was a 'kind of praise to Muhammad'. Ramadan is considered important in the Islamic faith as in the Qur'an was first revealed during this month and according to the faith, the gates of Heaven are open, the gates of Hell are closed and the devils are chained up in Hell. The Applicant's mother was unable to correctly name the celebration/festival that celebrates the birth of Muhammad, calling it 'Eid Rahamin'. The correct name for this festival is Milad un Nabi, which falls on the 12 of Rabi-Ul Awwal. The Applicant's mother could not state the pillars of Islam. The five pillars of Islam are the five obligations that every Muslim must satisfy in order to live a good and responsible life according to Islam (namely - Shahadah, Salat, Zakat, Sawm and Hajj). When it was put to the Applicant's mother that her knowledge of the Muslim faith was not consistent with a person who states that she came from a strong Muslim family and attended a Muslim school, the Applicant's mother explained that she did not believe in the Muslim faith. The Applicant's mother explained that while growing up she did not blend with her family as a result of religion and her mind did not go with the Islamic faith. The Applicant's mother claims that she was brought up in a strong Muslim family and that this family are willing to kill for their religion (page 13, interview). While the Applicant's mother has left Nigeria for some years, she nevertheless was brought up a Muslim and attended a Muslim school and it would be reasonable to expect that she would still be familiar with the basic tenets of the Muslim faith. The Applicant's mother's lack of knowledge of the Muslim faith is not consistent with a person who states that she lived within a Muslim family for a significant portion of her life. The Applicant's mother's lack of knowledge in relation to the Muslim faith seriously calls into question the credibility of her stated account and therefore the well foundedness of the Applicant's claim is undermined."

4. The applicant complains that this finding is irrational and based upon conjecture and that it speculates about what level of knowledge a person reared in a devout Muslim family might have. This complaint is not specifically identified in the pleadings, though the statement grounding application for judicial review does make a general complaint that "The decisions of the Respondents are irrational and unreasonable."

5. In my view, it is not irrational to conclude, as the Tribunal Member did, that a person raised in the Muslim faith, who attended a Muslim secondary school and whose family is devout, would not have greater knowledge of the faith than that displayed by the applicant's mother. I might not have come to the same conclusion, but that is irrelevant. In order to make a finding of irrationality, I

must be satisfied that the Tribunal Member's conclusion flies in the face of fundamental reason and offends commonsense. I must be satisfied that the conclusion reached in the decision does not flow from the premise (see *The State (Keegan) v. Stardust Victims' Compensation Tribunal* [1986] I.R. 642. I could not reach such a conclusion in respect of the Tribunal Member's findings about the applicant's knowledge of the Muslim faith. I reject this complaint.

6. I also reject the complaint that the finding is unlawful because it is based upon conjecture. It must be recalled that the Tribunal Member asked the applicant's mother why she did not have greater knowledge of the matters which had been put to her and the applicant's mother said that her lack of knowledge was explained by the fact that she did not believe in the Muslim faith. It was not irrational to reject this explanation as to the absence of knowledge. The applicant's mother did not assert that persons in her position do not have the sort of knowledge that was the subject of the Tribunal Member's enquiries. The applicant's mother did not reject the contention that this level of knowledge might be expected. She sought to explain it away by connecting the absence of knowledge with an absence of faith, and self-evidently, one does not necessarily follow the other. In other words it is not irrational to observe that even a sceptical young person whose life has been immersed in Muslim faith should have a certain knowledge of the faith.

7. The principle addressed by Cooke J. in *I.R. v. The Minister for Justice, Equality and Law Reform* [2009] IEHC 353 in this connection is that "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". A proposition was put to the applicant that greater knowledge of Muslim faith would be expected of a person with her background and I accept that this involved supposition which was not displaced by the applicant's reply. Had the applicant replied saying, for example, that her level of knowledge was explicable because she did not receive religious instruction in her school or from her parents or that young people in Muslim schools and hosueholds don't pay attention to details of the faith, the Tribunal might have concluded differently. In view of the answers given by the applicant, the supposition as to faith-knowledge levels was not conjecture as to facts of the sort described by Cooke J., above. I reject the criticism made of this credibility finding by the Tribunal Member.

8. The second credibility finding is in the following terms:

> "The Applicant's mother indicated that after she left her family home, she lived with her brother's girlfriend for two months. This lady helped the Applicant's mother to Ireland. After some hesitancy, the Applicant's mother indicated at the appeal hearing that she could not remember her brother's girlfriend's name but that she had called her brother's girlfriend 'Mini'. According to the Applicant's mother, she lived with this person for two months in Nigeria after she fled the family home. It is not credible that the Applicant's mother would not know this person's name, considering the amount of time she lived with this person and considering that she states that this person helped her to Ireland. This issue raises further doubts about the Applicant's mother's testimony and therefore further undermines the well foundedness of the Applicant's claim."

9. The applicant complains that this finding is irrational and unreasonable in view of the fact that the Tribunal was told that the brother's girlfriend was now living in Ireland and that the Tribunal failed to raise at the hearing or consider the possibility that the failure of the applicant's mother to furnish this person's name was that the person may not have legal status in Ireland. I find it impossible to accept the submission that the Tribunal Member's decision in relation to this issue is irrational in the sense in which I have explained that phrase at para. 5 above. There is nothing unreasonable in a finding that it would be strange not to remember the name of a person with whom one had lived for two months and who had been of central importance in an enormous event in one's life - flight from one's country in fear of persecution to a place of safety.

10. The applicant urges the court to find that the decision is irrational because there might be another explanation for the initial inability of the applicant to remember or to utter the person's name and that this other possibility ought to have been considered. This proposition fails to take account of the duty on the applicant to present all relevant information to the Tribunal. If there was another explanation for why the applicant did not answer the question without hesitancy or fulsomely, this was a matter which ought to have been addressed by the applicant and by her legal advisers at an appropriate time. It was not the duty of the Tribunal Member to speculate as to what other reason there might be that the applicant did not seem initially to know or to utter the name of the person in question. I find no illegality in the Tribunal's conclusion on this aspect of the applicant's mother's credibility. I reject the complaint made.

11. The Tribunal Member found that:

> "The Applicant's mother made an application for a declaration for refugee status and her application was refused, as was the Applicant's brother's declaration for refugee status. Insofar as the Applicant's claim relates to that of her mother's, the Applicant's fears in this regard cannot be deemed to be well founded."

12. The applicant makes a complaint in these proceedings that the asylum claim pursued by the applicant and that pursued by the applicant's mother are different because the applicant is an illegitimate child whose father is not the same person as the father of her sibling and that she is the product of an adulterous relationship.

13. The Tribunal Member quotes from a decision of Clarke J. though the incorrect name of the decision is given. Reference is made by the Tribunal and by Clarke J. in the mis-titled passage to the principle that the Tribunal is entitled to apply a finding in one case to that of a minor where the minor's claims are based on precisely the same grounds as the other case which had been rejected. There can be no doubt as to the correctness of the principle identified by the Tribunal Member as expressed by Clarke J. in *Moyosola v. The Refugee Applications Commissioner et al* [2005] IEHC 218.

14. I accept that the applicant's claim and that of her mother are not the same and therefore it would not be open to the Tribunal Member to dispose of the minor applicant's case based upon the outcome of the mother's case. There is, however, likely to be a considerable degree of overlap, between the fears expressed by the mother on behalf of her daughter and the fears she expressed in her own claim. Whilst I have not seen a copy of that claim or of the decision in the mother's case, it can safely be assumed that the recitation of facts and narrative of life given in the mother's case is the same as that which she gave about her own life in her daughter's asylum claim.

15. It is clear in this case that the Tribunal Member does not dispose of the applicant's case based on the simple fact that the mother's claim had been rejected in an earlier decision of the Tribunal Member. The evidence given by the mother in the applicant's case on behalf of the applicant is carefully recited and assessed and discrete credibility findings are made in respect thereof. In addition, and critically, the Tribunal Member states that:

> "*Insofar* as the Applicant's claim relates to that of her mother's, the Applicant's fears in this regard cannot be deemed to

be well founded."[emphasis added]

16. The words chosen by the Tribunal Member limit the meaning of that sentence in an important way. The applicant's case is rejected as not being well founded only insofar as her claim is the same as that of her mother's. Therefore, I reject the complaint that the Tribunal Member acted unlawfully or took account of an irrelevant matter in this part of the decision.

Alleged Error of Fact
17. It is alleged that the Tribunal made a fundamental error of fact in finding that:

> "There is nothing on file to indicate the children in Nigeria are specifically persecuted because of their 'illegitimacy'."

18. In the applicant's notice of appeal to the Tribunal, disadvantage associated with being a mother of illegitimate children was raised and reference is made to the case of *Amina Lawal*. The Tribunal Member's conclusion in respect of this matter was as follows:

> "Reliance [is] placed in the notice of appeal on the case of Amina Lawal. Ms. Lawal was from the northern state of Katsinia, a state where Sharia Law has been implemented. Sharia law has not been implemented in Lagos State, where the Applicant's mother lived, and Christians are not the subject of Sharia law. Considering the Applicant's mother's lack of knowledge of the Islamic faith which raises serious credibility issues and the fact that Ms. Lawal was from a state in northern Nigeria that practices Sharia law, the unfortunate facts of Ms. Lawal's case are not relevant to the Applicant's stated claim."

19. It appears from the notice of appeal that Ms. Lawal was a mother who was not married and gave birth to a child and who was sentenced to death. However, the death sentence was quashed in 2004. As far as I can appreciate the applicant's case in this respect, the complaint appears to be that the Tribunal's statement that there is nothing on file to indicate that children in Nigeria are persecuted because of their illegitimacy is an error of fact, having regard to the mention of the *Amina Lawal* case in the notice of appeal which, apparently, is material which suggests that persons are persecuted because of their illegitimacy. I accept the submission by counsel for the respondents that if anything, the *Amina Lawal* case indicates negative consequences in Sharia States for woman who have non marital births. It does not indicate that there is a difficulty for the child. Therefore, the Tribunal Member did not fall into error by saying that there was nothing on the file in this case indicating negative consequences for children born outside of marriage. I also accept the submission by counsel that the pleadings are silent as to this complaint, raised for the first time in written submissions.

Internal Relocation
20. The Tribunal Member's decision with respect to internal relocation commences with the phrase:

> "Notwithstanding the aforegoing and were the Applicant's claim deemed well founded (which it is not), internal relocation would be a reasonable alternative for the Applicant and her mother to escape the non-State agents she states she fears."

21. In my view, this is a clear statement by the Tribunal Member which emphasises that the applicant's case is rejected because the well foundedness of the fear is not accepted. That is the principal basis upon which the applicant's claim is rejected. The complaint made by the applicant in respect of the relocation finding is summarised by the applicant as follows:

> "The Tribunal made findings in respect of internal relocation without any consideration of the particular circumstances of the applicant and without reference to either the UNHCR Guidelines on Internal Relocation or application of the principles applicable to such a finding . . . see para. 28 of *K.D. [Nigeria] v. RAT* [2013] IEHC 481 and *I. v. MJELR & RAT* (Unreported, High Court, Mac Eochaidh J. 30th January 2014). In particular, the Tribunal failed to take into account the circumstances that the applicant could only be expected to internally relocate with her mother and young brother, and that both she and her brother would be entirely reliant on their mother – who had limited education and a history of prostitution - for protection and support."

22. The Tribunal Member approached the question of internal relocation by examining some of the legal principles which permit a decision maker to decide that internal relocation is an appropriate answer to a persecution claim. Reference is made to the freedom of religion and the right to travel in Nigeria, reference is also made to country of origin information with respect to the possibility of internal relocation for adult women suffering fear of female genital mutilation, domestic violence or forced marriage. Reports by an organisation called WRAPA [Women's Rights Advancement and Protection Alternative] and by the United Nations Development Fund were cited in support of the proposition that relocation for women in Nigeria is possible. The Tribunal Member also notes country of origin information which indicates that the Legislative Advocacy Coalition on Violence against Women provides assistance to women who are victims of domestic violence, forced marriage or FGM and reference is also made to the report of a joint British/Danish fact finding mission to Lagos and Abuja in 2007 and 2008, which found that protection structures are in place and functioning in Nigeria although they need to be strengthened and capacity is weak.

23. The Tribunal Member expresses her conclusion as:

> "Considering the size and population of Nigeria and the country of origin information on file, internal relocation would be a reasonable alternative for the Applicant and her mother to escape any non-State actors."

24. In the context of the internal relocation finding, the Tribunal Member noted that:

> "[Women's Rights Advancement and Protection Alternative] WRAPA was founded in 1999. It has over 15,000 members as of December 2003 and has a network of volunteers in all of Nigeria's 36 states."

25. In particular, Abuja is identified as a place where WRAPA runs two skills acquisition and literacy training centres which train about 200 women and this organisation provides free legal assistance to women and children. In my opinion, this finding, coupled with the description of the existence of non-Governmental organisations throughout Nigeria, made in the context of a consideration of internal relocation, is sufficient to meet the requirements identified by Clark J. in para. 28(4) of *K.D.* "to identify (if only in general terms) a place or area within the country of origin where the risk of persecution does not exist and where the applicant might reasonably be expected to stay. Security from persecution or serious harm and meaningful State protection in the proposed area of relocation are key."

26. The assessment also accords with the principle expressed by Clark J. in para. 28 (7) where she stated:

> "If the persecution feared emanates from private or domestic actors, such as a threat from a particular family member, *and* a Convention nexus has been established, the protection decision maker must make an objective, common sense appraisal of the reality of whether the risk faced by the applicant could be avoided by moving elsewhere, having regard to the applicant's own evidence."

27. Notwithstanding the fact that a Convention nexus has not been established, in my view, the assessment of internal relocation accords with the principles set out in the passage just quoted. I am also of the view that the assessment accords with the principle of reasonableness set out at para. 28 (8) by Clark J. in *K.D.* which requires the decision maker to ask whether it would be reasonable to expect the applicant to "stay in that place, having regard to his/her personal circumstances and the general conditions prevailing on the ground, in accordance with Regulation 7(2) of the Protection Regulations".

28. In short, I can find no error in the manner in which the internal relocation assessment was made in this case. However, even if I am wrong in this respect, and if there is a legal error in the assessment, the Tribunal decision in this case must be seen as one where the applicant's mother's credibility was rejected and that this is what was fatal to the applicant's claim for asylum. In circumstances where I have found no flaw with the credibility aspect the Tribunal's decision, and where those findings are unrelated to the internal relocation assessment, the Tribunal decision would not be susceptible to an order of *certiorari* even if an error of some sort infects the internal relocation assessment. (On severability of reasons for decisions, see the *ex tempore* decision of this court in *A.A. [Pakistan] v Refugee Appeals Tribunal* (Unreported, 13th September, 2013))

29. Finally I accept that insofar as the applicant seeks to complain about difficulties encountered due to language skills and the absemce of interpretation services during the oral hearing, this matter is not pleaded and is raised for the first time in written submissions. No application to amend the pleadings was moved. In any event, the papers reveal that the mother had good English and raised no real complaint as to language difficulties during the process. The complaint is not borne out and additionally, the applicant is not entitled to make the complaint in the absence of pleadings made timeously.

30. For these reasons I refuse leave to seek judicial review.