

**THE HIGH COURT**  
**JUDGMENT JUDICIAL REVIEW**

[2015/275JR]

**BETWEEN****A. W. M.****APPLICANT****AND****REFUGEE APPEALS TRIBUNAL, MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, ATTORNEY GENERAL AND IRELAND****RESPONDENTS****JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 15th day of June 2015**

1. This is an *ex parte* application for leave to seek judicial review in respect of a decision of the Refugee Appeals Tribunal of the 30th March, 2015 which affirms the recommendation of the Refugee Applications Commissioner that the applicant not be declared a refugee. The applicant must establish substantial grounds to obtain leave.

2. The following is her account of events. She is a 51 year old woman from Kenya, of Christian faith, who commenced a relationship with one A.M., a Kenyan who is of Somali ethnicity and Muslim. As their relationship deepened he asked her to convert to Islam. When she refused they rowed. He destroyed her Bible and in anger, she burned his Koran. They then parted company. She says that A.M. and two men then came looking for her and she felt afraid. Subsequently A.M. was arrested. She did not know why but she believed it was because he was an extremist and possibly associated with a group known as Al-Shabaab. She observed Muslim men following her and observing her on the street. Someone broke into her house. She returned to her parent's home. In April, 2012 grenades were thrown into a church she used to attend. She believed she was the target of this attack though she was not in the church during the attack. In September 2012 "the same muslim men" came to her sister's house where she had been staying and they left a threatening leaflet in respect of the applicant. This event was reported to the police in Nairobi. Later another church she used to attend was attacked by grenades. Her mother reported that Somali Muslims had come looking for her (September 2012). At the end of May 2013 she was informed that two Muslim men were looking for her. She felt her life was in danger. She therefore sought assistance from a person to whom she paid money to help her to flee Kenya. She travelled from Kenya via Amsterdam to Dublin.

3. The R.A.T., in respect of the attacks on the churches, concluded that:-

*"5.2 ... Other than the appellant's own speculation, there is nothing to suggest that she was the target and on the contrary there is objective evidence to show that such attacks were an unfortunate reality in Nairobi and indeed other parts of Kenya in 2012. It is also noted that the appellant, herself, submitted newspaper articles which she states were sent to her by her sister, which outlined killings which occurred in Garissa, North Eastern Province, in April 2013 and also refers to the ongoing violence there. Given this country of origin information and the fact that she was not in attendance at either church when it was attacked, when no reasonable explanation was given for why they would not have ensured that she was present, leads the tribunal to the conclusion that her evidence of being the target of these attacks is not credible."*

4. Further negative credibility findings are made in the following terms:-

*"5.3 The appellant gave evidence of been followed by four men on the street in Eastleigh, however, no attempt was made to harm her in any way. When questioned in relation to this she stated it was daylight, she was known in the area and they were probably looking for her the following day when they broke into her house. Given the appellant's evidence that these men had already called to her house and to her place of business on two occasions and subsequently went to her mother's house, went to her sister's house, threw grenades into two churches and went to her new place of work, it appears that they were seriously intent on harming her. It is not then credible that when these men, capable of such atrocities as grenade attacks, did have her in their sights in Eastleigh they made no attempt to take her with them or harm her and this finding is made notwithstanding her assertion that it was daytime and she was known in the area."*

5. Further negative credibility findings in respect of the leaflet incident are expressed in the following terms:-

*" 5.4 ...It is not considered credible that these men, who the appellant claims are Muslim extremists, would go to the trouble of creating a threatening leaflet, seeking out the location of her sister's house, travelling to that house and not attempt to establish if she was there at the time. In addition, the appellant gave evidence that men went to her place of work in Meru, however, again there was no evidence that they sought to search the premises to establish if she was there. Further, the appellant's claim that they would seek to kill her if she was returned to Kenya does not appear to be borne out in this evidence where they did not even attempt to establish her presence in these locations after going to such trouble. The appellant's evidence in this regard is not found to be credible, for the reasons above."*

6. The tribunal made a negative credibility of the findings arising from the discrepancies between contents of an alleged police report making complaint about attacks and her description of the same attacks in evidence to the tribunal. The tribunal member, having set out the various discrepancies stated:-

*"5.5 ...The number of inconsistencies as between the police report and the appellant's evidence calls into the question the authenticity of this report. It is considered that the appellant's explanation for these discrepancies that her sister was writing the report and that she was dictating it in her mother tongue and her sister was writing in English are not considered reasonable in circumstances where she states that she read the report after it was written and also where*

*even locations of events were inconsistent. The tribunal is of the view therefore, on the balance of probabilities, that this report is not authentic and the submission of same casts doubts as to the appellant's overall credibility."*

7. Additional negative credibility findings were made in respect of the newspaper articles submitted by the appellant. Significant discrepancies between what was reported in the copy newspaper articles and her own version of events were put to the applicant. In addition typographical errors in the articles were discussed with the applicant. It was also put to the applicant that she is not named or described personally in the articles. Importantly, the articles did not mention the central fact of the burning of the Koran in the accounts reported. The tribunal member found as follows:-

*"5.6 ... Given the fact that these newspaper articles contain spelling errors, inconsistency in details and refer to the appellant as the provider of the information ('News 7'), the tribunal considers, on the balance of probabilities, that they are not authentic. The submission of same therefore affects the overall credibility of the appellant."*

8. The tribunal found that the applicant's alleged fears were based largely on speculation by the appellant as follows:

*" 5.7 Much of the appellant's claim is based on speculation as she stated that she had no direct knowledge if Abdi was an extremist and drew that conclusion merely based on fact that he was rumoured to be arrested at a time when Al-Shabaab extremists were causing a lot of trouble in Kenya. She further was never told that they had declared a jihad on her and based this belief on the word of her friend who upon telling her story told her that she was in trouble and they would have declared a jihad on her. Furthermore, she speculated that the churches were targeted because of her with no evidence to suggest so and despite the fact that many places in Nairobi and elsewhere in Kenya suffered grenade attacks at that time. Given the conclusions based at paragraphs 5.1 – 5.6, the tribunal is of the view that the appellant's claim of being targeted by Islamist extremists is not credible."*

The tribunal concludes in the following terms:-

*"5.8 When looked at holistically, the appellant's stated fear is simply not believed by the Tribunal. Her claim of a fear of persecution based on Muslim extremists is not considered credible, on the balance of probabilities, for the reasons given."*

...

*"6.1 Having determined that the story which the appellant recounted is simply not credible, the Tribunal finds that there is no well-founded fear and therefore the appellant's claim fails at this juncture."*

9. The applicant seeks to condemn the decision of the R.A.T. on the following grounds:-

*"9. The finding contained in paras. 5.1 and 5.2 was made without any reasonable regard to the evidence giving by the Applicant that two churches which she personally attended were among the churches destroyed by militant fundamentalists..."*

10. My view is that this complaint is not made out. The tribunal carefully considered the applicant's evidence with respect to the destruction of the churches. The core of her evidence is that these churches were destroyed because they were associated with her. This was the element of the narrative which was discounted. There was no controversy or debate as to whether or not the churches had actually been destroyed. The tribunal referred to objective evidence indicating that churches were destroyed by militant persons. Rationally, in my view, the tribunal noted that the applicant described the ease with which numerous persons followed and located the applicant in various parts of the country and it was not consistent with such narrative that the extremists would launch grenade attacks on churches in order to harm her without first ensuring that she was physically present. In my view, contrary to the complaint made, the tribunal member had reasonable regard to all of the evidence given by the applicant with respect to the claim that when these churches were attacked she was the intended target. I reject this ground of complaint.

11. The next ground of complaint is that:-

*"10. The findings contained in paras. 5.3 and 5.4 are based on conjecture, while no reasons are giving for the summary rejection of the evidence and explanations tended by the Applicant..."*

12. The finding at paragraph 5.3 is that which is set out at para. 4 above. I can find no evidence that the finding in 5.3 is based on any form of conjecture. My view is that when the tribunal rejected the applicant's evidence that she was followed by four men in Eastleigh who made no attempt to harm her, the reasons giving were detailed and based on logic and reason. There were no summary rejection of the evidence and the rejection of the explanation offered by the applicant as to why these men did not harm her (because it was daytime according to her), was not irrational. No attempt was made to demonstrate why the rejection of this explanation was unlawful. I can find no legal flaw with the conclusion reached by the tribunal on this matter.

13. The same complaint is made in respect of the findings set out at paragraph 5 above. Again my view is that the rejection of the credibility of the account of persons arriving at her sister's house and leaving a threatening leaflet is based on logic and reason. No attempt has been made to suggest to the Court why the finding is based on conjecture. The prohibition on the use of conjecture does not preclude a decision maker rejecting a narrative based on an assessment of the likelihood that the described events actually happened. In other words a finding of implausibility should not be confused with a finding based on conjecture. A finding that it is implausible that men who track down a person in a reasonably distant place, break into that place and then instead of looking for the person they seek only leave a threatening leaflet about her offends no legal principle..

14. Contrary to the complaint made comprehensive reasons are given for the rejection of the evidence and explanations of the applicant.

#### **Authenticity of Documents.**

15. Particular complaints were made about the rejection of the authenticity of documents made by the R.A.T.. Counsel for the applicant relies on a decision of Barr J.

16. It is pleaded that the findings contained in paras. 5.5 and 5.6:-

*"11... were made without any effort by the Tribunal to discharge the burden of proof placed on it when making positive*

*findings in respect of the authenticity of documents..., which failures were further exacerbated by the further findings that the submission of the police report and two newspapers undermined the credibility of the Applicant's claim..."*

The finding of the tribunal in respect of the police report was as follows:-

*"5.5 ... The number of inconsistencies as between the police report and the appellant's evidence calls into question the authenticity of this report. It is considered that the appellant's explanation for these discrepancies that her sister was writing the report and that she was dictating it in her mother tongue and that her sister was writing in English are not considered reasonable in circumstances where she states that she read the report after it was written and also where even location of events were inconsistent. The tribunal is of the view therefore, on the balance of probabilities, that this report is not authentic and the submission of same casts doubts as to the appellant's overall credibility"*

17. The authenticity of the newspaper articles was rejected by the tribunal on terms quoted above.

18. Counsel for the applicant has referred to the decision of A.O. and the Refugee Application Commission, Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform (Barr J., unreported, 17th April, 2015) which follows the decision of Clarke J. in *Nya v. Refugee Appeals Tribunal* (Unreported, Clark J., 5th February, 2009) Clarke J., having referred to the various decisions from England and Wales said:-

*"I am satisfied that although these cases relate in part to the procedures under s. 108 of the UK legislation, of which there is no Irish equivalent, the general principles set out in relation to the evidentiary obligation of the decision-makers in cases where documents are alleged by the decision makers to be forged are equally of application in this jurisdiction. I accept that in the vast majority of cases where documents of dubious authenticity and provenance are produced, the cases are invariably determined on a multifaceted credibility assessment and rarely rely on the acceptance or rejection of a single document ....it may well be that documents are forged. This Court cannot tell whether they are genuine or fake but fair procedures require that if the Tribunal Member makes findings pertinent to the authenticity of key documents, that finding should be based on something more than the Tribunal Member's own opinion. If the falsity of the documents was patently obvious, he ought at least to have explained in his decision how and where the documents were found to be falsified, fake or contrived"*

19. Barr J. (supra) found that there was a duty on the decision maker to take steps to investigate the authenticity of the documents. He said at para. 29:-

*"...They could have telephoned the numbers given in the letters [found to have been forged] itself, or as found on the website, and tried to ascertain whether the letter was genuine. Neither of these steps were taken."*

20. Barr J. also referred to an Australian decision called *Sun Zhan Qui v. Minister for Immigration and Ethnic Affairs* [1997] F.C.A. 1488 in relation to a duty of a decision maker to carry out investigations as to documents as follows:

*"In my opinion these omissions [referring to investigations which could have been carried out] rendered her decision manifestly unreasonable, within the principle explained by Lord Greene MR in *Associated Provincial Picture Houses v. Wednesbury Corporation* [1948] 1KB 223. It is now well established that a failure by a decision maker to obtain important information, on a central issue for determination, that the decision maker knows to be readily available may result in the decision being branded an exercise of power so unreasonable that no reasonable person could so exercise the power..."*

21. Rationally, in my view the decision maker noted that there were significant discrepancies between what was allegedly reported to the police in the handwritten report and the account of events given to O.R.A.C. and to the R.A.T.. These discrepancies were put to the applicant and no adequate explanation was forthcoming.

22. In my view the law does not require a decision maker to verify authenticity of documents by making inquiries as to provenance. Such an approach may be appropriate where, for example, a document is thought to be a fake because of its appearance or because of physical features.

23. No rule of law prevents a decision maker from deciding that a document is a fake because of its contents. The decision maker in this case made adequate enquiry as to how the content of that document came to be written and was not satisfied with the explanation given which failed to account for the discrepancies between the content of the document and the account of persecution given to the tribunal. Therefore, I reject the claim that the tribunal was not entitled to form a view that the police report lacked authenticity.

24. As to the newspaper report, in my view the basis on which the two newspaper reports are rejected as fakes is inadequate. The tribunal member refers to two typos in one of the articles. It is irrational to conclude that the existence of typographical errors in printed articles from a newspaper is an indication that they are fake. Typographical errors in printed material, especially newspapers, are commonplace.

25. Inconsistency in detail in the account of the suffering of the women described in the articles is not necessarily an indicator that the articles are fake. Here it must be recalled that, unlike the police report, the applicant claimed not to have had direct contact with the journalists who wrote the articles. The information for the articles was said to have been given by a third party (though one of the articles contradicts this statement). In other words the applicant is not responsible for the content of the article. Contrarily, on her own account, she was responsible for the content of the handwritten police report because she had dictated it to her sister and had checked it personally afterwards.

26. Neither of these factors (typographical errors and content) establish that the articles are fake. Misreporting of events by journalists is as commonplace as typographical errors. In my opinion there is a good arguable case that the tribunal member was not entitled to reject the newspaper articles as fake based upon these considerations.

27. Therefore I am satisfied that substantial grounds have been established to permit the applicant to challenge the decision on one ground only, namely that the R.A.T. unlawfully decided that two newspaper articles submitted in support of the applicant's claim were not authentic.

28. I invite counsel for the applicant to reformulate the ground based on an edited version of the original pleading.

