

THE HIGH COURT

[2010 No. 945 J.R.]

BETWEEN

M.M. (ZIMBABWE)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND LAW REFORM AND

THE REFUGEE APPEALS TRIBUNAL AND

THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Robert Eagar delivered on the 21st day of May, 2015

1. This is a judgment in a telescoped hearing seeking *certiorari* of the decision of the second named respondent to affirm the decision of the Refugee Applications Commissioner that the applicant not be declared to be a refugee.

Background

2. The applicant is a Zimbabwean national born on the 5th October, 1979. She claimed that she was a supporter for the Movement for Democratic Change (MDC) although she was not a member of the party. In or around April 2008 she attended a church meeting. ZANU-PF, the government party, wrongly believed that this was an MDC meeting and attacked it. The applicant and a number of other women were abducted and taken to a ZANU-PF camp where she was raped by four soldiers. She later contracted HIV which she attributes to this incident. She did not tell her husband about the rape and she could not support herself in Zimbabwe. She applied for asylum in the State in February 2008 and was interviewed by way of a section 11 interview on the 4th August, 2009. The Refugee Applications Commissioner made a recommendation that the applicant's testimony falls short of what would be required in terms of credibility for her to be given the benefit of the doubt and therefore the applicant had failed to establish a well-founded fear of persecution in Zimbabwe based on a Convention ground. She appealed against this recommendation. Solicitors on behalf of the applicant submitted substantial grounds of appeal and in particular substantial country of origin information. The second named respondent heard the appeal on the 22nd February, 2010 and gave her decision on the 31st May, 2010 affirming the recommendation of the Refugee Applications Commissioner.

3. Subsequently proceedings were taken to challenge the decision of the second named respondent. The reliefs were in effect an order of *certiorari* of the decision of the second named respondent and an order remitting the applicant's appeal for hearing by a different member of the second named respondent. These were in effect the main reliefs sought. The grounds upon which the reliefs were sought were as follows:-

1) Given the gravity of the allegation made by the applicant about how she was treated by ZANU-PF members and the ample country of origin information verifying that such incidents have regularly occurred in Zimbabwe, the tribunal member's decision was inadequately reasoned. It was incumbent on the tribunal member in making findings regarding the applicant's credibility to state clearly whether she believed the particular attack on and rape of the applicant had occurred, since a favourable finding in this regard ought to have led to a finding that the applicant was a refugee or might have well have done so even if other aspects of her claim were not accepted.

2) The tribunal member's conclusion that the applicant's fear was purely subjective was unreasonable in law in the face of the country of origin information and reached in disregard of Regulation 5(2) of the European Communities (Eligibility for Protection) Regulations 2006. In particular the attack on the applicant was only "random" to the extent that not everyone in the meeting was abducted and she had not been specifically targeted, but it was not random in the sense of being conducted purely for the sexual gratification of the soldiers but was motivated by their beliefs that the persons at the meeting were opposition supporters.

4. Prior to dealing with the decision of the second named respondent counsel for the applicant pointed to the section 11 interview which was conducted by an authorised officer of the Refugee Applications Commissioner. In the first place the applicant had provided her passport, her national identity card and her birth and marriage certificates.

5. Unfortunately in my copy of the book the questions and answers are not numbered but I will refer to the page where I quote from the section 11 interview.

6. At p. 68 the applicant said that she filled out the questionnaire stating that she arrived in Ireland in February 2009 while she actually arrived in February 2008. She was told that this was quite a fundamental inaccuracy and she was asked why she did not proffer the correct date. She answered:-

"Because I did not know. I was told by people to say I came in February. I was in hospital from December 2008. When I went to seek asylum I was transferred to Beaumont Hospital. I thought I was supposed to state the date that I came to this office to apply for asylum not the date I actually arrived in Ireland."

7. In p. 69 the applicant was asked why did she leave Zimbabwe and she answered:-

"Fearing for my life because of politics I went to a church meeting. The soldiers came in and started beating up people. I could not run for my life because I was taken to where the soldiers were staying. They were thinking it was a political meeting and not a church meeting. I was questioned about this. I was raped."

8. At p. 70 she was asked:

"Why did you go there for the church meeting?"

She answered:-

"Because I am a Roman Catholic from birth. We were going there to be taught before getting holy communion. It was a woman's meeting for putting me from a girl to a woman."

9. She was further asked if she could say the Hail Mary prayer and she answered that could not do so in English but could in her mother tongue.

10. At p. 71 she was asked how many sacraments are there in the Catholic faith and she did not know. At p. 72 the authorised officer said:

"I would have expected you to know the sacraments and the Hail Mary prayer as a Roman Catholic from birth. Can you comment on this please?"

The applicant stated:-

"I am not happy about it myself" but she did then write down the Hail Mary prayer in Shona.

11. At p. 7 she was also asked how many others were captured with her and she replied approximatel 15. At p. 73 she was asked:-

"Are you an MDC member?"

And she answered:-

"No I am not a member. I am a supporter of the MDC."

12. She was then asked on the same page:-

"What is the MDC symbol?"

She then displayed her hand as a symbol of the MDC. The MDC symbol is the flag of Zimbabwe together with a further black line and a hand stretched out.

13. On p. 75 she was asked:-

"What does that open hand signify or represent?"

She answered:-

"Change"

14. The authorised officer said that the country of origin information indicates that it represents transparency.

"We have nothing to hide. We carry no weapons. We promote the ideas of a peaceful democracy.

In addition it illustrates that each one of us has the power to change the current political status quo in Zimbabwe. We have that power in our hand and we can exercise it when we vote in this year's elections."

The authorised officer said: *"Can you comment on this please?"* (this court's emphasis).

The applicant answered *"No"*.

15. At p. 75 the authorised officer asked a leading question:-

"Were you the victim of a random attack at the church meeting or were you singled out and targeted for any reason?"

The Applicant said it was random.

16. The authorised officer asked:-

"It would appear unlikely that you might be the victim of another random attack after this" and she replied:-

"My husband is Indian. It might be because of this."

17. At p. 79 she was asked by the authorised officer:-

"What is the MDC slogan in English and Shona?"

The applicant replied:-

"In English I cannot remember and in Shona it is chinja maitiro chinja"

The authorised officer said:-

"In Shona it is chinja maitiro maitiro chinja which is not exactly what you said."

The applicant said:-

"Maybe. But this is what I know."

The authorised officer:-

"As an MDC supporter, it might be expected that you would know the basic facts about the organisation"

The applicant answered:-

"I used to say it all the time as chinja maitiro chinja. I did not bother to see I was calling it the wrong way."

She was then asked by the authorised officer:-

"What is it in English?"

The applicant answered:-

"I do not know. In my own words I would say it means make a change. We never had meetings in English. I would not know it in English."

The authorised officer said:-

"It is – Now is the time. Fight, fight for change (this court's emphasis), support for movement"

The applicant said:-

"OK. This is the first time to hear it in English."

The decision of the Refugee Appeals Tribunal hearing

18. The second named respondent outlined the applicant's claim. She said that she was attacked and raped while attending a church meeting in April 2008. She said she was a Roman Catholic and attended this gathering annually at Easter. She said that the ZANU-PF thought that the gathering related to the MDC and the soldiers came to the church and beat people. Some managed to flee but the applicant and others were taken to the soldiers' camp. The Applicant said she was a supporter of the MDC. When asked if the soldiers' had made a mistake the applicant said they had not as meetings were not allowed in Zimbabwe. The applicant said she was released and she returned to the church where the meeting was held. She had then returned to her village. The applicant said that after her release her brother was detained and accused of beating up a ZANU-PF youth. The applicant said she regularly travelled to Botswana and travelled via South Africa before coming to Ireland. The applicant said she used someone else's passport when travelling to Ireland and she paid someone 15,000 Rand (about €1,100). The Applicant said that (as she had suffered from HIV as a result of the attack) that only those that could afford healthcare would receive it in Zimbabwe and people who supported the ZANU-PF obtained medical supplies.

Cross examination by the presenting officer.

19. She was asked by the presenting officer why she had given false information about her arrival date to the country. The applicant said she did not know what to do. She said she arrived in early December and she had to be hospitalised on the 25th December. The applicant agreed that the replies she had given to Q. 41A and Q. 44 in the questionnaire were false. When asked why she had not applied for asylum in Ireland when she arrived in December the applicant responded that she was sick. She said she had not gone to hospital in Zimbabwe and she had gone to Botswana for healthcare.

20. It was put to the applicant that the money she used to travel to Ireland could have provided her with medical assistance and the applicant said it would not help her for the rest of her life as 15,000 Rand was not a huge amount.

21. The applicant said she was among the ten girls who were taken from the camp and that she had been raped. She was asked why she had not sought asylum in South Africa or Germany and the applicant said that South Africa was close to Zimbabwe and she did not know her flight was going through Germany. She was asked what passport was used for her travel to Ireland and she said she did not know as she did not hold it.

22. The applicant confirmed she was a supporter of the MDC and that she said she could remember when she started supporting this party. She was asked who was the deputy mayor of Gweru and she said it *was in her mind but she did not know*. It was put to the applicant that the MDC had a mayor in Gweru and that they had been in office since 2007. The applicant said she should have known this information but did not. Again the presenting officer suggested to her that the attack had been random and she agreed with this. She said she could stay in her village as people were being attacked by ZANU-PF. In answer to the second named respondent she said she thought she would find a job in Ireland was unaware that she would have needed legal status.

23. She was asked then if she could explain what happened on Holy Thursday and she said that in Zimbabwe they did not know such a day as Holy Thursday. She said Jesus Christ died on Good Friday around 3.00pm.

Submissions to the second named respondent

24. Counsel at the Tribunal on behalf of the applicant said that the applicant was persecuted in Zimbabwe due to her imputed political opinion. She was not a member of the MDC which explained her lack of knowledge of political figures in her area. It was submitted that the applicant was a member of particular social group namely a person with HIV and due to the discriminatory provision of medicine in Zimbabwe she would receive more treatment if she was a member of ZANU-PF.

25. The presenting officer re-submitted the section 13 report and said credibility issues arose. It was submitted that the attack in 2008 was random and the Applicant had no problems prior to leaving Zimbabwe and had been able to work.

The analysis by the second named Respondent of the Applicant's claim

26. The first line of the analysis of the applicant's claim was that the applicant confirmed at the appeal hearing and during the interview that she was a victim of a random attack. While the applicant may have had a subjective fear of returning to Zimbabwe due to an imputed political opinion, having considered the applicant's testimony and the information on file this fear was not objectively well-founded.

27. The second named respondent said that the applicants stated that she had attended MDC rallies and meetings and supported the MDC but was unable to state who the mayor or deputy mayor was for Gweru. It was difficult to understand why she could not at least be aware who the MDC mayor of Gweru was prior to her departure from Zimbabwe.

28. The second named respondent said the applicant had also incorrectly stated the MDC slogan at the interview and was unable to correctly explain what the MDC symbol, the open hand, signified. The Applicant had not demonstrated an adequate degree of knowledge regarding the MDC which would support her claim to have been an active supporter since August 2007.

29. The second named respondent identified that the applicant travelled via South Africa and Germany en route to Ireland and did not seek asylum in South Africa as this was close to Zimbabwe. She stated that she was unaware that her flight was going through Germany. The second named respondent stated that considering the nature of the persecution the applicant stated she was fleeing from it would be reasonable to expect that the applicant would have sought asylum as soon as practicable after leaving Zimbabwe rather than risk travelling onwards in an illegal manner. Section 11B (b) of the Refugee Act 1996 (as amended) was relevant to the applicant's claim in this regard.

30. In relation to her travel the second named respondent said that considering the tightening security controls that exist at all international airports in the last decade it was not credible that an agent would have risked the applicant, an adult, travelling through three international airports with no information about her travel documentation or the identity she was adopting for the travel. Had the applicant been questioned at any immigration point the lack of knowledge of such details would have created serious difficulties for the Applicant and the agent and the second named respondent said that a section 11B(c) of the Refugee Act 1996 (as amended) is relevant to the applicant's account.

31. The second named respondent then dealt with the diagnosis of HIV which is not in the statement of grounds of the applicant and therefore I do not believe there is any necessity to deal with it.

32. At the end of dealing with this issue the second named respondent said that the applicant states she is a supporter of the MDC but her claim in this regard has not been deemed credible. The only country of origin Information relied upon by the second named respondent related to the issue of her health.

33. In conclusion the second named respondent said that she had considered all the relevant documentation in connection with the appeal including the notice of appeal, the facts from the applicant's solicitors dated the 18th February including medical documents from the Mater Hospital, country of origin information, marriage certificate, Zimbabwean passport, the applicant's birth certificate, national registration card, newspaper articles submitted by the applicant at the appeal hearing, documents from the MDC dated 22nd November 2009 entitled "in community" submitted by the presenting officer at the appeal hearing, the applicant's questionnaire and the replies given in response to questions by or on behalf of the Commissioner and the report made pursuant to s. 13 of the Act of 1996 and that pursuant to s. 16 of the aforementioned Act, she affirmed the recommendation of the Refugee Applications Commissioner.

Submissions by counsel

34. Counsel on behalf of the applicant said that the core of the applicant's claim was that she was raped in Zimbabwe by ZANU-PF, who abducted her from a church meeting which they wrongly thought was an MDC political meeting. He submitted that the victims were therefore targeted on account of their political opinion or imputed political opinion.

35. Counsel for the applicant also said the tribunal member failed to make any clear or definitive finding on whether this attack on the applicant occurred. This was the core aspect of the refugee claim. It was not clear from the decision of the second named Respondent whether or not she accepted the truth of the core of the applicant's claim.

36. He also quoted from a decision of *E.P.A v. Refugee Appeals Tribunal* [2013] IEHC 85 where MacEochaidh J. stated in respect of the core claim:-

"A clear and reasoned finding on this central issue was required of the Tribunal and a failure by the Tribunal Member to decide this critical part of the Applicant's claim in express terms establishes a substantial ground that the decision is unlawful and leave to pursue this complaint is granted."

37. He also quoted from a decision of *B.O.B v. Refugee Appeals Tribunal* [2013] IEHC 187 where MacEochaidh J. located the basis of this duty in the decision of the Supreme Court in *Meadows v. Minister for Justice* [2010] IESC 3 stating:-

"In Meadows v. The Minister for Justice, Equality and Law Reform, Murray J. said as follows:

'An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context.

Unless that is so then the constitutional right of access to the Courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective. In my view the decision of the Minister in the terms couched is so vague and indeed opaque that its underlying rationale cannot be properly or reasonably deduced."

38. MacEochaidh J. further said:-

"In view of that statement, it seems to me that a Tribunal Member should express conclusions on an Applicant's claim clearly."

39. Counsel on behalf of the applicant said that the tribunal member's characterisation of the attack on the Applicant was random and referred to the applicant's ability to travel to and from Zimbabwe in the months after the attack indicated: *"The authorities were not interested in the Applicant and this undermines the well-foundedness of her stated claim."*

40. These findings might be taken as inferring doubt about the credibility of the applicant's account of her abduction and rape nevertheless the tribunal member concluded that while the applicant may have a subjective fear of returning to Zimbabwe due to an imputed political opinion, having considered the applicant's testimony and the information on file this fear is not objectively well-founded.

41. Counsel further submitted that the requirements of the second named respondent to make a clear and unambiguous finding in respect of the applicant's account of her abduction and rape is highlighted in Regulation 5(2) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) (hereinafter the "Regulations of 2006"). This states:-

"The fact that a protection Applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall be regarded as a serious indication of the Applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated, but compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the Applicant is eligible for protection."

42. Counsel submitted that the tribunal member's failure to make an express finding on whether the applicant had been abducted and raped is compounded by the failure to consider whether there were compelling reasons for a granting of refugee status based on this experience of past persecution and that this constituted a fundamental breach of the requirement of the 2006 Regulations.

43. He also submitted that the Tribunal erred in law in applying s. 11B(b) of the Refugee Act 1996 (as amended) to the applicant's case. Section 11B(b) refers to whether the applicant had provided a reasonable explanation to substantiate his or her claim that this State is the first safe country in which he or she has arrived since departing from his or her country of origin or habitual residence and submitted that this claim was not made by the applicant.

44. Finally, and more particularly, counsel for the applicant said that the tribunal member had failed to have any regard to the country of origin information with respect to the state of affairs in Zimbabwe.

45. Counsel on behalf of the respondents, and in particular the second named respondent, went through the relevant documents on which the second named respondent based her decision. She referred to the questionnaire, and in particular she stated that the applicant failed to report her concerns to the police. She had gone to Botswana and South Africa.

46. Counsel on behalf of the respondent highlighted the section 11 interview and detailed the following, that the applicant had come to Ireland in December 2008 and had not applied for asylum until February 2009. She stated that the applicant had left Zimbabwe fearing for her life because of politics and was attacked and raped at a church meeting with the soldiers thinking it was a political meeting and not a church meeting. She could not say the Hail Mary in English and she did not know the sacraments or how many there were. She was able to give the sign for the MDC but not its meaning. She referred to the section 13 report and noted that the authorised officer noted the applicant had confirmed she was the victim of a random attack at the church meeting and she was not singled out or targeted for any reason and that the authorised officer said the applicant failed to convince her that she was systematically or specifically targeted because of her political opinions. The authorised officer made a number of credibility findings and that the authorised officer found that the Applicant had not demonstrated that internal relocation/location to Botswana and state protection were not viable options. She referred to the notice of appeal and suggested that the notice of appeal had submissions which were detailed but merely espoused general principles and did not address the actual credibility findings and other conclusions of the Refugee Applications Commissioner. She said that the applicant's legal representatives had submitted substantial many pages of country of origin information and that the tribunal member had also sourced some country of origin information.

47. She then dealt with the impugned decision. She referred to the arguments of the presenting officer in relation to the use of the 15,000 Rand for medical expenses. She indicated that the decision of the second named Respondent had noted that the applicant had agreed that the attack was random. She highlighted the second named respondent's decision that if the applicant was in fear of persecution in Zimbabwe it was incredible she would return to Zimbabwe on numerous occasions since April 2008. She also highlighted that the tribunal member found the applicant had not demonstrated an adequate degree of knowledge regarding the MDC which would support her claim to have been an active supporter of the MDC since August 2007.

48. Counsel on behalf of the respondent indicated that the tribunal member essentially found against the applicant on four main grounds:-

- a) The attack on the applicant was random.
- b) The applicant's fear on returning to Zimbabwe based on imputed political opinion is subjective and does not have an objective basis.
- c) The applicant was unable to answer a number of questions about the MDC
- d) The applicant would be denied medical treatment for a Convention reason.

49. She distinguished the case from the judgment of Stewart J. in *M.P.A (Cameroon) v. Refugee Appeals Tribunal* [2015] IEHC 31 where the applicant alleged that the Tribunal had not assessed her core claim of being raped by her father leading to a pregnancy. In that case the second named respondent said that the attack was random and found no Convention nexus in the applicant's case.

50. In relation to the failure to take country of origin information into account counsel submitted that the tribunal member did not have regard to the country of origin information and that any weight to be accorded to country of origin information is a matter for a decision-maker. She cited a number of judgments in this regard.

Discussion

51. A number of key points in relation to the decision of the second named respondent need to be highlighted:-

1) The attack on and the rape of the applicant by ZANU-PF soldiers was random. Rape by four or five soldiers is an extraordinarily brutal event and one which undoubtedly would scar the applicant for many years. The word "random" suggests having no definite aim or purpose. The attack on the applicant in this case had a purpose. It had the purpose of the harassment and intimidation of MDC supporters following elections on the 29th March, 2008. It is in my view clear that whether or not the applicant agreed with questions as to whether or not the rape was a random one it is clear that that does not mean the matter is at an end. The decision of the second named respondent did not deal with this issue in a fair manner.

2) The tribunal member in her decision, stated "the Applicant also incorrectly stated the MDC slogan at the interview and was unable to correctly explain what the MDC symbol (the open hand) signified". In fact this is not correct. Looking at the section 11 interview, the applicant displays the hand as the symbol of the MDC and said that it symbolises change. The country of origin information quoted by the Refugee Applications Commissioner says that "We have nothing to hide. We carry no weapons. We promise to promote the idea of a peaceful democracy. In addition it illustrates that each of us has the power to change the current political status in Zimbabwe". That is quite clear change is the cornerstone of the meaning of the MDC symbol and the finding of the second named respondent is absolutely incorrect in this regard.

3) The finding that s. 11B(b) of the Refugee Act 1996 (as amended) was relevant to her claim is also incorrect. The Applicant did not make a claim that Ireland was the first safe country in which she had arrived since departing from her country of habitual residence and in those circumstances s. 11B(b) does not apply.

4) Whilst not openly stating that the applicant's claim about her rape was true or not it is implied that something of that nature happened in the decision of second named respondent. However it is quite clear to this Court that she failed to apply the provisions of s. 5(2) of the European Communities (Eligibility for Protection) Regulations 2006 by her failure to identify the core claim of rape and the fact that the protection applicant had already been subjected to serious harm and that as such was a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm. The second named respondent did not identify any good reasons to consider that such persecution or serious harm would be repeated apart from saying that she had not been the subject of persecution since the serious rape. Furthermore, she did not deal with the issues arising out of "compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the Applicant is eligible for protection". In *K.B. v. the Refugee Appeals Tribunal* [2013] IEHC 169 MacEochaidh J held:-

"I accept the submissions on behalf of the Applicant that the inquiry required to be made under the counter exception in Regulation 5(2) of the E.C. (Eligibility for Protection) Regulations was not carried out and consequently the decision of the Tribunal Member was ultra vires. The Respondent has urged that there is no evidence that the past persecution suffered by the Applicant would trigger the counter exception and that in the M.S.T. case (and to a lesser extent in the N v. MJELR case) such evidence was available and the failure to carry out the third task provided by Regulation 5(2) was therefore inexcusable."

Country of origin information

52. Country of origin information in relation to Zimbabwe is extremely troubling. The second named respondent is statutorily obliged to consider the reports for the purpose of making a decision. Under Regulation 5 of the Protection Regulations of the European Communities (Eligibility for Protection) Regulations 2006 a protection decision-maker must take into account "all relevant facts as they relate to the country of origin at the time of making a decision on the application for protection, including laws and regulations of the country of origin and the manner in which they are applied", and "the relevant statements and documentations presented by the protection applicant". The second named respondent, in my view, failed in its statutory duty.

53. The documentation by the Refugee Documentation Centre deals with the ZANU-PF militias and the state security forces punishing and intimidating MDC members and their suspected supporters (the court's emphasis). Violence forced the leader of the MDC Morgan Tsvangiri to withdraw from the run off of the election between himself and Robert Mugabe in June 2008. Human Rights Watch documented numerous incidents of intimidation, violence and manipulation before, during and after the 27th June, 2008 run off vote and in the days before the vote ZANU-PF supporters rounded up and beat up scores of people in the suburbs of Harare. In the IRN news, in a section titled "Rape as a weapon" P.M., the MDC spokesperson for the country's eastern province of Manicaland and the newly elected parliamentarian for Makoni South told IRN "the violence intensified after Mugabe was sworn in as President, two days after the vote on the eve of the African Union Summit in Egypt. In many instances the victims cannot remember the number of people who raped them but it is usually more than 20 and that increases the chances of infecting the victims with HIV/AIDS...several women including a 70 year old grandmother and a 15 year old girl have been gang raped while beatings and displacements continued." In a documentation prepared under the auspices of the Zimbabwe East Project in the midlands area of Zimbabwe where the applicant resided states "the provinces human rights profile is poised to worsen against the background of reported military and war veteran activism in some parts of Gokwe, Mberengwa, Zhombe, Gweru and Chundura. 184 breaches were recorded in July with high tolls in categories of all intimidation and assault making it the third hot zone of human rights violations." In a world news article submitted by the applicant "Zimbabwe's 2008 elections were marred by the widespread use of rape squads by President Robert Mugabe's supporters to intimidate political opponents...the report prepared by AIDS-Free World said that Mr Mugabe's supporters including youth militia and some veterans of Zimbabwe's 1970 independence war committed widespread rape in 2008."

54. In those circumstances:-

- 1) Having regard to the description by the second named respondent of the appalling gang rape by members of ZANU-PF soldiers on the applicant as random acts of sexual desire rather than any politically motivated actions which is clearly documented in the country of origin information.
- 2) The failure on the part of the second named respondent to consider the country of origin reports pursuant to Regulation 5 of the Eligibility for Protection Regulations 2006.
- 3) The second named respondent's description of the applicant's knowledge of the MDC slogan which is at best an error on her part.
- 4) The decision of the second named respondent to apply s. 11B(b) of the Refugee Act 1996 (as amended) which was not relevant to the case.
- 5) The failure of the second named respondent to make a clear statement of the finding of the rape and its nature in her decision.
- 6) The failure of the second named respondent to apply Regulation 5(2) of the Regulations of 2006.

Decision of the Court

The applicant in this case has not been afforded fair procedures and the second named Respondent has acted unreasonably in this decision which plainly and unambiguously flies in the face of fundamental reason and common sense and I will grant an order of certiorari in accordance with the notice of motion and statement of grounds and remit the applicant's appeal for a hearing by a different member of the second named respondent in accordance with law and would expect that this Court's decision in this regard will be part of the documentation which is put before that member in due course.

