Neutral Citation: [2014] IEHC 26

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 670 J.R.]

BETWEEN

J. C. O.

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 30th day of January 2014

1. This is a telescoped application for judicial review. The background facts and the basis of the applicant's claim for asylum is well summarised by the Refugee Appeals Tribunal, as follows:

> "The Applicant's claim is based on the grounds of the Applicant's fear of persecution in Nigeria on the grounds of his religious beliefs together with all relevant documentation in connection with this Appeal including the Notice of Appeal, Country of Origin Information, the Applicant's Asylum Questionnaire and the replies given in response to questions by or on behalf of the Commissioner on the report made pursuant to s. 13 of the Act.
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> The applicant was born on 14th February 1974 and his father was from Cape Verde. He went to the University of Nigeria, Ebony State. He is now living in Bauchi State and was working there from 2007. He is a pharmacist and remained working in the pharmacy for two years.
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> He met a young woman called Jacinta who was a Muslim. They were together for about one year when she told him that she was pregnant. He proposed marriage and she refused. Suddenly and without warning she told him that at 11 years of age she was '*married*' to an individual who was 40 years of age. She stayed with him for two years then ran away because he was abusive. She was married to him but the applicant was a Catholic and again he was shocked at the news of her having been associated with this individual. The applicant stated he told Jacinta to tell his parents but she said she would not.
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> On 13 November 2009, Aiesha called to say there was a problem. At the same time, a van was pulling up outside the applicant's shop and a petrol bomb was thrown. Jacinta was taken to a Sharia court for being pregnant by a Christian man, namely the applicant.
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> The applicant ran to the bus stop and returned to his village. He told his Mum. Three days after that, he went to an uncle and then returned to his house where his Mum had been abducted by armed men.
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> He took the evening bus to Port Harcourt to a younger brother and his wife but they would not let him in. His brother told him to go, presumably because it was too dangerous. That night he took a bus to Lagos and that was 19 November.
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> He called his ex-girlfriend and she called her boyfriend to arrange for him to leave the country. The applicant went to Ikeja in Lagos. The applicant stated he had been travelling on an English passport and it cost him some 200,000 Naira [Nigerian currency]. At 10.30pm on the evening of his travel, he went to Immigration and travelled on 19 November from Lagos to France to Ireland arriving in Dublin on 20 November 2009.
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> His companion took the passport from him and he took a taxi to justice. His fear is that the Muslims will kill him. It further emerged his brother ran away from Port Harcourt with his wife.
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> The applicant never relocated his mother. He did not go to the police and Jacinta told him she was pregnant on 24 September 2010. She had taken a pregnancy test but did not give the date of that test. This was around the time he had been told about the older man and she had run away. She had lived with him for two years and he abused her. She ran away at 13 years and she had no relationship with her parents.
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> His girlfriend was an Assistant Manager in the Bank and in Bauchi State Sharia law prevailed and people, including men, were stoned to death for adultery."

2. The Tribunal Member did not expressly state whether he believed or disbelieved the applicant's narrative. He refused the application for refugee status on the basis that the applicant had failed to seek State protection, and, more particularly, that internal relocation in Nigeria was a viable option. The relocation finding is in the following terms:

> "The applicant is a practicing pharmacist and can '*apply*' his trade anywhere in Nigeria and really there should be little difficulty in relocating in a southern State of Nigeria where there is little or no tension as between Muslims and Christians and where the Christian belief is in the ascendant and by definition the majority."

3. The grounding statement sets out a number of complaints with respect to this decision. The first complaint is that the respondent Tribunal failed to consider the grounds of appeal contained in the Notice of appeal. This is an unsubstantiated allegation and is therefore dismissed.

4. The second complaint is that the respondent misstated the basis of the applicant's claim. It is said that the respondent Tribunal said that the claim was based on religious belief whereas the applicant set out in his Notice of Appeal that the fear was based upon grounds of religion, membership of a particular social group and political opinion. Insofar as the Tribunal misstated the basis of the asylum claim as advanced in the Notice of Appeal, I regard such misstatement as *de minimis*. The applicant's narrative, in writing, at interview and at oral appeal, is fairly reproduced by the Tribunal Member. In my view, the Tribunal Member accepted the credibility of the applicant and fairly adjudicated upon his claim. If there was a misstatement of the basis on which asylum is claimed, this did not result in any error in the result achieved. This ground fails.

5. The third ground is that the respondent Tribunal failed to consider the s. 13 report of the Refugee Applications Commissioner. This is an unsubstantiated claim. The consequences of the alleged failure have not been described to the court. I note that the s. 13 report rejected the applicant's credibility and that the Refugee Appeals Tribunal came to a different conclusion on this aspect of the applicant's claim. I cannot imagine what advantage is sought to be gained for the applicant by advancing this point and I dismiss it also.

6. The fourth complaint is that the respondent "fails and omits to state what evidence of the applicant he accepts and what he does not". As indicated earlier, the respondent accepted the credibility of the applicant and therefore this complaint is misconceived and I dismiss it.

7. The fifth complaint advanced is that the respondent failed to consider certain country of origin information. This complaint appears to centre on the date of a report of the US Bureau of Democracy, Human Rights and Labor. Apparently, two versions of the report exist. The allegation appears to be backed up by an averment in an affidavit of Anna Maria Varu who attended the oral hearing. Ms. Varu says:

> "I say and I am informed that there is discrepancy between the parties as to an extract from a United States Bureau of Democracy, Human Rights and Labor report submitted at the said hearing and specifically as to what year's report the extract was from.
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> I say that I have read the two report extracts. I say that a significant difference between the documents is that the 2007 report . . . refers to the imposition of a sentence by a Sharia court on an Abo Dabo in Bauchi State, of death by stoning, and it also states that one other sentence of death by stoning has already been carried out in Nigeria. I say that the United States Bureau of Democracy, Human Rights and Labor report extract exhibited in the first named respondent's affidavit does not include this information."

8. The suggestion that the report referred to by the Tribunal Member does not contain some information appears to be contradicted by the written submissions of the applicant where it is contended that:

> "In fact, the report which the first named respondent says was submitted (the 2009 report) in any case confirms the applicant's submission that Sharia law was adopted in 12 Northern Nigerian states and that death by stoning sentences were imposed in numerous cases and does not contradict the applicant's contention that the Nigerian State did not strike down such laws."

9. Therefore, if there was an error or a mix-up in relation to what report was submitted, it seems that the content the applicant sought to rely on was in any event available in the 2009 report. Therefore, no mischief occurred. It is important to recall that the Tribunal Member did not dismiss the applicant's claim disbelieving that Sharia law was exercised in the northern States of Nigeria, nor that persons were sentenced to death by stoning in that part of Nigeria. It seems to me that all of this is accepted by the Tribunal Member. This complaint is associated with the next complaint advanced by the applicant which is that the Tribunal failed to have regard to the laws and regulations of Nigeria with respect to sentences of stoning and amputation. For the reasons stated, I reject both of these complaints.

10. It is then said that "the first named respondent failed and omitted to have regard to the fact that the applicant had twice sought to relocate within Nigeria and that it is unreasonable to expect him to do so again". This issue was squarely addressed by the Tribunal Member who characterised the applicant's visit to Port Harcourt as an attempt to seek his brother's help rather than to relocate. This finding, having regard to the detailed evidence of the applicant as to the circumstances in which he went to Port Harcourt, is rational and evidence-based and I dismiss the complaint that the relocation finding is unlawful because there had been previous unsuccessful attempts to relocate. I accept that on the evidence there were no such attempts to relocate.

11. The final complaint in the grounding statement is that "the first respondent breached *audi alteram partem* in making the finding that the applicant had not sought asylum in the first safe country". The applicant correctly points out that the Tribunal found that "the applicant did not seek asylum in the first safe country, namely, France". The complaint here is that the Tribunal Member did not address this issue with the applicant at the oral hearing. Section 11B(b) of the Refugee Act 1996, obliges the decision maker, when assessing credibility, to have regard to whether the applicant has provided a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing his or her country of origin or habitual residence. The applicant admits that his journey to Ireland took him to France where he appears to have been present briefly (to change planes) before continuing his journey to Ireland. The respondent notes that the same issue was raised in para. 3.3.6 of the s. 13 report at first instance, that accordingly, the applicant was on notice that this matter would be considered by the Tribunal because the Tribunal is required by law to consider the contents of the s. 13 report.

12. Strictly speaking, the provisions of s. 11B(b) are only applicable when an asylum seeker actually claims that Ireland was the first safe country encountered when in flight. In any event, this issue did not determine the outcome of the asylum application. Section 11 merely requires this "first safe country" principle to be weighed in the balance when assessing credibility. As I have previously stated, credibility was positively assessed in this case, thus whatever negative connotations may have come from the Tribunal's finding on 'first safe country' was of neutral effect. No complaint can therefore be maintained in respect of this matter.

13. I refuse the applicant's request for leave to seek judicial review and am not therefore required to make any orders in respect of the substantive reliefs (this being a telescoped hearing).