

## THE HIGH COURT

[2011 No. 379 J.R.]

BETWEEN

O. A.

APPLICANT

AND

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

RESPONDENTS

**JUDGMENT of Mr. Justice MacEochaidh delivered on the 28th day of July, 2015**

1. The applicant is a national of Nigeria born on the 31st May, 1974. He says that he is Roman Catholic. The applicant says he arrived in Ireland on the 7th December, 2009. He completed an A.S.Y. 1 form on that date. The authorised officer who took his details during the s. 8 interview noted as follows:-

"Applicant states that his girlfriend was from a muslim background and was the only daughter of her parents.

Applicant states that he had known her for 6 months and she got pregnant with his child.

Applicant states that the girl told her parents that the applicant was the father. Applicant states that he is christian and that because the girl was muslim it was not possible for her parents to allow them to be together.

Applicant states that the girl's parents put pressure on the girl and as a result she took drugs and both mother and the baby died 2 months ago.

Applicant states that the girl's parents blame the applicant.

Applicant states that the girl's parents destroyed the applicant's uncle's property immediately after the death of their girl while looking for the applicant.

Applicant states that the girl's parents threatened the applicant and his uncle. (sic)

Applicant states that he ran away and did not report the threats or the destruction of the uncle's property to the police."

2. At the end of the s. 8 interview the applicant, as is normal, was given a questionnaire in connection with his application for refugee status.

3. Q. 21 asks "Why did you leave your country of origin?"

In handwriting and in English the applicant replied as follows:-

"I left my country, because I lost two persons that was very closed to me, now my life was in danger. (sic) I needed a protection from the fear of persecution. I was assisting my uncle in his building material store in X, when I met my girlfriend by name Z., the daughter of B.. We knew each other for six months. I was shocke (sic) when she told me that she was pregnant. I thought she was joking.

After two months, she told me that her parent notes some changes in her body system and take her for medical check up and the doctor confirmation shows that she was three months pregnant. She told his parent that I was responsible for the pregnancy, which her parent feel its was a taboo, against his religion belief and faith as a muslin person, the only daughter to be pregnant for me from Christian religion background...." (sic)

4. Q. 22 asks "On what grounds do you claim to have a fear of persecution? (More than one may apply)".

The applicant replied to this question by ticking the box marked "Religion".

5. At Q. 25(c) the applicant was asked "If you did not report [your fears to the authorities] state clearly why you did not?"

The applicant answered:-

"I was afraid because of the death of my girlfriend, my life was in danger, I was afraid of persecution and I needed a protection. I feel that the girl father is highly connected and powerful, he could track me down with his position. Also if I wait to report it, could lead to crisis between Christian and Muslim."

6. Then at Q. 29 the questioner asks "What do you fear may happen to you ... if you return to your country of origin?"

The applicant answered:-

"My fear is that I might be abducted and killed by unknown groups. My presant in Nigeria may result to crisis between Christian and Muslim. (sic) My return to Nigeria will expose my life to danger..."

7. An interview in accordance with s. 11 of the Refugee Act 1996 (as amended) was conducted on the 18th December, 2009. At Q. 62 the applicant was asked "Why do you not want to return to Nigeria?"

He answered "Because I was scared and afraid if I go back to Nigeria, I will lack protection and will not be safe [from persecution]."

The questioner asked "What do you mean persecution?"

The applicant answered "From her dad".

The questioner asked again "What do mean by persecution?"

The applicant answered "I mean from what happens to me, her dad will not be happy to see me. He will try to use all his influence and power to track me down. I am scared because of his influence".

The applicant was asked "What would he do if he tracked you down?"

The applicant answered "He would kill me. He threatened me before. I also believe from my and his background, if I return because of the accusation, he may use it to cause trouble between christians and muslims. It would be revenge. I would not be protected aswell." (sic)

8. At Q. 63 the applicant was asked "Who exactly do you fear?"

He answered "The family of Z. And its religion".

At Q. 64 the applicant was asked "Why do you believe this would happen to you?"

He answered:-

"...Because of the affair I had with their daughter. Having an affair with a muslim background was a taboo and against his belief. He did not want me and his daughter to be together. My uncle aswell, he destroyed his property. (sic) I am scared if I return back to Nigeria, he may find it difficult to forgive me".

9. A report pursuant to s. 13(1) of the Refugee Act 1996 (as amended) was prepared by the Refugee Applications Commissioner. In its opening section the authorised official said:-

"The applicant presented as a 35 year old Nigerian national who alleges that he fears for his life in Nigeria as he, a Roman Catholic, dated a Muslim woman. The applicant claims that he got the Muslim woman pregnant and her father forced her to terminate the pregnancy and that she died too."

10. At para. 3.1 of the s. 13 report, the authorised officer said:-

"The applicant states that he fears for his life in Nigeria as he, a Roman Catholic, dated a Muslim woman."

11. The Refugee Applications Commissioner made a negative recommendation. Grounds of appeal were submitted to the Refugee Appeals Tribunal by solicitors for the applicant. The notice of appeal invites an applicant to indicate the grounds for persecution and in this case "religion" and "membership of a particular social group" were ticked. Written submissions accompanied the notice of appeal and at para. 3 thereof it was stated on his behalf:-

"For the Appellant....a Catholic, to have a relationship with a Muslim woman was considered a taboo."

12. At para. 8 of the same document it was submitted on his behalf:-

"In the instant case, the Appellant fears that that he may be killed by Z.'s family because of the taboo of a Christian having a relationship with a Muslim."

### **The decision of the Refugee Appeals Tribunal:**

13. For the purposes of this judgment it is necessary to set out the relevant part of the decision in full:-

"Analysis of Applicants claim

The Applicant gives an account that his relationship with a Muslim girl in 2009, which ended with her pregnancy and subsequent death, so enraged her family that his life would be endangered were he to return to Nigeria. The Applicant claims he would not be safe in Nigeria.

The Applicant has two children in Nigeria from a previous, discrete, relationship. No negative or adverse consequences resulted from this relationship. The Applicant gives no account that his relationship with the mother of his two children or impinged on his freedom of movement in Nigeria or resulted in a persecutory fear.

The Applicant is a Christian and states he is a Catholic. The girl, or young woman, Z. who became pregnant with the Applicant's child, was of Muslim origin. His essential account is that she became pregnant three months after the relationship with the Applicant began. The applicant met the girl in May 2009 and she told him she was pregnant in July 2009.

It is the Applicant's account that she died in October 2009. No death certificate or documentation has been lodged which verifies this account or which might assist the Tribunal in making inferences based on the Applicant's oral evidence. The Applicant has lodged documentation purporting to be a Nigerian driver's license and an international driving permit. The Commissioner in his Section 13 report raises queries, put to the Applicant at Interview, as to the authenticity of these documents. The Applicant has not satisfactorily answered the concerns.

The Applicant states in his evidence to the Tribunal that his girlfriend Z. having told her parents she was pregnant and having named Applicant as the father of the child, was subjected to severe censure, rebuke and pressure from her parents. In her ASY 1 form the Applicant identifies religious differences as the reason for her parents' hostility to the Applicant. The relevant extract of the ASY is 'Applicant states he is a Christian and that because the girl was a Muslim it was not possible for her parents to allow them to be together'. This is essentially restated in the Applicant's Questionnaire Q 21, where the girl's becoming pregnant by the Applicant – a person from 'the Christian religion background' – is

described by the Applicant as a violation of a taboo surrounding the girl's parents' religious belief and faith.

The Applicant's account is that a termination of pregnancy then occurred when the girl took traditional medicines to abort the child. The girl, Z., died on 22nd October, 2009. The Applicant in his oral evidence to the Tribunal stated or appeared to state that while he is opposed to abortion on religious grounds that the girl Z. was forced to take traditional medicine.

The findings in the Section 13 Report, Section 3.1, that the girl Z. was forced by her father to terminate the pregnancy are not clearly backed by statements in the interview or in the Questionnaire. Her pregnancy was disclosed when her parents resorted to orthodox medicine and brought her to a doctor and to a hospital. (Questionnaire Q 21). The Applicant in his interview does not state that the girl took traditional medicines to abort the child nor does he advert to such a measure. The interview evidence of the Applicant (Q 61 clarification) in this respect is that 'the father noticed she was pregnant in September. That is when the problem started'. The Applicant's evidence to the Tribunal confirms that she was brought to hospital by her parents. The Applicant's evidence, corroborated by the written Submissions of the Applicant's solicitor is that the girl of her own initiative took traditional medicines in the hope that they would act as an abortifacient.

The precision with which the Applicant recounts the date of death is attenuated somewhat by the Applicant's account that he was told of the girl's death by a friend. The Applicant was apparently not present when Z. was brought to hospital by her parents. He was not witness to her death.

The Applicant's account of hostility and threatened persecution from the girl's family is qualified by the attempts made by his family that of the girl Z. to affect some form of settlement or reconciliation which would involve the Applicant or his family becoming responsible for the girl and taking care of the child. According to the Applicant's account to the Tribunal the father of the girl was not interested in such a settlement or reconciliation. A second visit to the girl's parents resulted in the girl's parents refusing to agree to reconciliation and insisting that the proposed union would not work. The Applicant was again threatened.

The Applicant fled to Port Harcourt where he remained for a week unharmed where he stayed with a cousin. The Applicant states he did not see anyone in Port Harcourt nor was he menaced by anybody. The Applicant states he stayed indoors. The Applicant then went to Lagos where he spent a month with a friend unharmed. The friend suggested to the Applicant that he leave Nigeria and introduced the Applicant to an agent who arranged for the Applicant to leave Nigeria on a flight.

The Applicant states that his family's shop, where he had been working was destroyed. The Applicant did not report this matter to the police nor did he report any of the threats he received to any authority.

The Applicant states he fears the police in Nigeria. He was not however harmed by the police or threatened by the police. Conversely, he refused to resort to the police for protection even when his family's shop was burned down. The reason the Applicant gives is that he believes that the girl's father has or would have influence with the police. The statement is or appears in the context of the Applicant's narrative to be speculative. It appears the Applicant never met the girl's father, though his family did. The threats to the Applicant appeared to be relayed through his family in the course of the negotiations on settlement or reconciliation. It is to be reiterated that the Applicant gives no reason for not availing of the protection of the police. It may well be the case that the statement attributed to the girl's father that the Applicant had violated a taboo and inflamed the sensibilities of the girl's father by being responsible for her pregnancy. However this does not absolve the Applicant of his primary duty to seek national police protection if he had been threatened. Paragraph 100 of the UNHCR handbook states:

*100. The term unwilling refers to refugees who refuse to accept the protection of the Government of the country of their nationality. 12 It is qualified by the phrase "owing to such fear". Where a person is willing to avail himself of the protection of his home country, such willingness would normally be incompatible with a claim that he is outside that country "owing to well-founded fear of persecution". Whenever the protection of the country of nationality is available, and there is no ground based on well-founded fear for refusing it, the person concerned is not in need of international protection and is not a refugee.*

Although a relatively minor issue in the Applicant's overall narrative, the Applicant was not directly threatened by the girl's father but rather his threats concerning the Applicant were relayed indirectly. The Applicant gives no evidence that the police would not take his complaints seriously or that the girl's father could thwart the process of police protection. The Applicant had effectively immunised himself from harm or at least escaped the efforts of the girl's father and her family to find and harm him by a process of internal relocation. It is salutary to highlight the relevant excerpts of the refugee definition contained in Section 2 of the Act as being a person unable or owing to such fear, is unwilling to avail himself of the protection of that country.

Country of origin information submitted by the Commissioner (UK Border Agency report dated 1st March 2007) refers to a statement attributed to a police official and obtained by the British High Commission in Abuja the Federal Capital

*'In terms of protection the Nigerian police force is the same all over the country. It is on unified service and there is no variation in treatment. There is no discriminatory policy in the way people are attended to whether they are rich or poor or from a particular area or not. There is no state policy to treat people unequally. The only problem that may happen is in the execution, where you may find variation in the individual'.*

Country of origin information, from the same source, refers to the occasional inability of the police to meet the security needs of local communities and are often overpowered by well armed and violent criminals. The Applicant's account, if accepted, is one of individual not communal harassment and threats, resulting from the Applicant's private behaviour, presumably consensual, with a Muslim girl where the Applicant experienced no ill treatment other than indirect threats. There is no 'element of loss of public confidence in the effectiveness of the police resulting in the emergence of private security outfits and local vigilante groups'. (Paragraph 8.04 of Commissioner's UK Border Agency report.) or no element of inter communal or inter religious persecution as seen in recent disturbances in Jos in Plateau State. The Applicant if he was persecuted was not persecuted for a Convention reason.

The Applicant's solicitor in her submission and in her Form 1 has not referred to Country of origin information.

The Applicant was not in the view of the Tribunal pursued by the girl's family because he was identifiably a Catholic or a Christian. The Applicant as per his Questionnaire Q 21 violated a social taboo, often religiously defined, by getting a young girl pregnant outside of marriage.

It is difficult to accept that in a country with a population of 135 million and a land area of 356,000 square miles the Applicant would credibly fear persecution one man and his family. The Applicant has not demonstrated that he has a credible subjectively well founded and objectively well founded fear of persecution defined in Article 9(1) of the European Communities (Eligibility for Protection) Regulations 2006 as

*(c) be sufficiently serious by their nature or repetition so as to constitute a sever violation of basic hum rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention of Human Rights and Fundamental Freedoms; or*

The Applicant has not established that he is a refugee"

#### **Submissions:**

14. Numerous complaints were made in respect of the decision of the Refugee Appeals Tribunal. It is, according to the applicant, impossible to detect whether the applicant's credibility is accepted or rejected or accepted in part or rejected in part.

15. More particularly, it is said that confusing and/or contradictory statements are made in the decision. For example, the fifth paragraph, as quoted above, appears to acknowledge the role played by religious differences in the fear of persecution expressed by the applicant. Yet in the sixteenth paragraph the Tribunal finds that the applicant was pursued by the girlfriend's family because of the pre-marital pregnancy and not because of the religious differences between Muslims and Christians.

16. This finding appears to be fundamental to the decision of the Refugee Appeals Tribunal. (It may be the basis on which the Tribunal found (at the end of the fourteenth paragraph) that "*The Applicant if he was persecuted was not persecuted for a Convention reason*" though no reason is stated for this important finding. In addition, this finding is set out at the end of a discussion about adequacy of police protection, which is not related to whether the alleged persecution has a Convention nexus.) At no stage during the s. 8 interview, the completion of the questionnaire, the s. 11 interview, the notice of appeal, or at the Refugee Appeals Tribunal did the applicant ever say that the fact of pre-marital pregnancy was the sole or main basis of his problems. Contrarily, as can be seen from paras. 2-12 above, the applicant repeatedly explained that his fear of persecution was connected to difficulties encountered when Muslims and Christians have romantic/sexual relationships. In my opinion, the Tribunal Member fundamentally misunderstood the case made by the applicant. There was no basis whatsoever to conclude that the girlfriend's family were only disturbed by the fact that she had become pregnant outside of marriage. This may or may not be true but this was not the claim advanced by the applicant. Had this been his case there would, or should, have been consideration, by reference to country of origin information, for example, of the nature of societal taboo associated with pre-marital pregnancies in Nigeria. In my view, the finding is irrational because it is a conclusion without an evidential basis. It ignores the case made by the applicant repeatedly, without reason. It is based on speculation by the decision maker as to the cause of the girlfriend's family's upset. It was never put to the applicant that the real source of his problems was a taboo connected with pre-marital pregnancies and that his fears had nothing to do with relations between Muslims and Christians. This finding about the cause of the applicant's problems goes to the heart of the decision of the Refugee Appeals Tribunal. On this basis alone I would quash this decision and remit it for re-hearing.

17. There are other problems in the decision. For ease of reference I set out again the sixth and seventh paragraphs as follows:-

"The Applicant's account is that a termination of pregnancy then occurred when the girl took traditional medicines to abort the child. The girl, Z., died on 22nd October, 2009. The Applicant in his oral evidence to the Tribunal stated or appeared to state that while he is opposed to abortion on religious grounds that the girl Z. was forced to take traditional medicine.

The findings in the Section 13 Report, Section 3.1, that the girl Z. was forced by her father to terminate the pregnancy are not clearly backed by statements in the interview or in the Questionnaire. Her pregnancy was disclosed when her parents resorted to orthodox medicine and brought her to a doctor and to a hospital. (Questionnaire Q 21). The Applicant in his interview does not state that the girl took traditional medicines to abort the child nor does he advert to such a measure. The interview evidence of the Applicant (Q 61 clarification) in this respect is that "the father noticed she was pregnant in September. That is when the problem started". The Applicant's evidence to the Tribunal confirms that she was brought to hospital by her parents. The Applicant's evidence, corroborated by the written Submissions of the Applicant's solicitor is that the girl of her own initiative took traditional medicines in the hope that they would act as an abortifacient."

18. The Tribunal records that the applicant's oral evidence was that the girlfriend was forced to take traditional medicine to induce an abortion. The decision notes that the s. 13 report records the same circumstance. Oddly, the Tribunal Member then says that the finding in the s. 13 report that this is what happened was not "clearly backed by statements in the interview or in the questionnaire". The statement that the girlfriend was forced by her family to take the medicine was clearly made during the s. 8 interview, which, in my opinion, is generally a very important expression of the basis for claiming persecution because it is the first such expression of the fear communicated by the applicant to officials on arrival in Ireland. No proper account was taken of this early statement of this important circumstance by the Tribunal Member.

19. At the end of the seventh paragraph the decision maker appears to decide that the applicant's evidence was that his girlfriend took the medicine of her own volition. This contradicts the earlier statement by the Tribunal Member that the applicant's oral evidence was that she had been forced to take the medicine. In my view, the Tribunal Member has erred in finding that that the applicant said that his girlfriend took the medicines voluntarily. All the evidence was that he said the very opposite. His case was that her family forced her to take the medicines to abort the baby and this killed the baby and mother. The Tribunal accepts that this is what he said at the oral hearing. The applicant had made the same complaint in his A.S.Y. 1 form. Contrary to what the Tribunal says, nothing in the written submissions to the R.A.T. (submitted by the applicant's solicitor) corroborates the suggestion that the girlfriend took the medicine of her own volition. That submission is silent as to whether she took the medicine on her own initiative or whether she took it because she was forced to do so by her family.

20. It is unclear what is being said in the sixth and seventh paragraphs quoted above. It is possible that the Tribunal Member believed that the woman took the medicines on her own initiative. In other words the Tribunal disbelieves the applicant that she was forced to take the medicine. If this is the decision some reason for this would be required. None is given. Alternatively it is possible that the Tribunal Member believes that the applicant gave contradictory evidence, saying both that it was her idea alone to take the medicine, and also that she was forced by her family. If such contradictory evidence was given, it would indeed go to credibility but the contradictory statements would need to be identified. I have no doubt but that the Tribunal Member viewed the applicant's account of the circumstances of the girlfriend's death as important. In my view, it was incumbent upon the decision maker to make a clear finding on this aspect of the case once he embarked on handling the issue. He might well have said nothing about what the applicant's version of events was. I am not saying that decision makers must decide on every aspect of a claim made. That is not what the law says. But it was not lawful to raise the issue and then make unclear findings on a central element of the narrative

21. The Tribunal Member also records the applicant as saying that he fears the police in Nigeria. In my view the applicant never said that he feared the police in Nigeria. His position was that he did not have confidence in them because of the alleged power and influence of the girlfriend's father.

22. The Tribunal Member says that the applicant "gives no reason for not availing of the protection of the police". This, in my view, is an unfair description of the applicant's evidence. He gives detailed reasons as to why he does not feel that the police could be of assistance. The reasons may not be acceptable to the Tribunal Member but it is unfair to say that he gave no reasons.

23. In my opinion, it is appropriate to quash this decision because the Tribunal Member fundamentally misunderstood the nature of the claim being presented and because there would appear to be unfair or inaccurate findings about what was contained in the applicant's evidence. In addition, the decision is too vague. I cannot tell whether the Tribunal Member rejected the claim because he rejected the credibility of the applicant. I cannot tell whether it is accepted that the applicant genuinely fears his girlfriend's family but that such fears are not well founded or whether the claim is rejected because the fears relate to matters not covered by the 1951 Convention. Suggestions of all of these possibilities are to be found in the decision. Neither can I detect whether it is a case where credibility is accepted but it is found that adequate state protection and/or internal relocation are appropriate responses to the stated fears of persecution.

24. For all these reasons I have decided to remit the matter to the Tribunal.