Neutral Citation: [2015] IEHC 89

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 933 JR]

BETWEEN

S. M.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered on the 23rd day of January, 2015

1. This is a 'telescoped' application for leave to apply for judicial review seeking certiorari to quash a decision of the Refugee Appeals Tribunal, dated 21st June 2010, to refuse the applicant a recommendation of refugee status.

Background

2. The applicant is a Zimbabwean national, born on the 21st June 1958 who arrived in the State on 17th January 2008 and claimed asylum the following day. The applicant states that she has two children and an ex-husband living in Zimbabwe. The applicant claims that she fears persecution owing to her involvement with the main opposition party in Zimbabwe, the MDC (Movement for Democratic Change). The applicant worked as a Revenue officer and claims to have joined the MDC at some time in 2000. The applicant claims that her problems began when she was visited by the authorities on three occasions between 2000 and 2001, and was beaten and interrogated by members of Zanu-PF. The applicant claims that on one particular occasion she was taken to the police station by the CIO (Zimbabwean Secret Police) where she was beaten and interrogated about her membership of the MDC.

3. The applicant states that she fled to the UK in February 2002 where she stayed with friends but returned to Zimbabwe in October 2005 when the political situation had changed. On her return to Zimbabwe the applicant began working as an accounts clerk at a haulage firm before eventually being promoted to the position of transport controller. She claims the authorities had come to her home seeking her passport in 2006 as they believed she had been raising funds for the MDC whilst in the UK. The applicant claims she encountered further problems when the haulage firm with which she was working was contracted by NGOs to transport food aid. The applicant claims the authorities came to the company and took everyone away to a farm. She was beaten unconscious with sticks by the authorities and woke up on 29th November 2007 in her own bed at home. The applicant claims that she believes she may have been raped during this time and states that she has been diagnosed with AIDS since she arrived in Ireland. She states the authorities also came to her house on 1st December 2007 and told her she had to denounce the MDC. When the authorities left her house the applicant claims she made arrangements to flee Zimbabwe.

4. The applicant decided to leave Zimbabwe and organised to travel out of the country with an agent. The applicant asked her aunt to sell her car to fund the travel. The applicant travelled to South Africa on 7th December, 2007, where she remained for 41 days while her aunt sold her car. The applicant told the Tribunal that she did not seek asylum in South Africa as she could not go out as it was unsafe, but in her s. 11 interview, she stated that she did not apply as she did not have a chance to go out. The applicant left South Africa on 16th January, 2007, and travelled to Ireland, via France. She claims to have been in France for half a day and did not apply for asylum there as she was following what the agent was telling her.

Tribunal Decision

5. The applicant was refused a declaration of refugee status by the Office of the Refugee Applications Commissioner at first instance and duly appealed that decision to the Refugee Appeals Tribunal. The applicant's testimony was overwhelmingly disbelieved on the grounds of a lack of credibility. In particular, the Tribunal Member found:

> (i) The applicant's failure to be able to name one of the NGOs which she claimed contracted the services of the haulage company she claimed to work for lacked credibility;
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> (ii) The applicant's account of finding herself back in her own house after her alleged abduction where she was taken to a farm lacked credibility;
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> (iii) The failure of the applicant to seek asylum during her time spent in the UK undermines her stated fear of the Zimbabwean authorities;
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> (iv) The applicant failed to provide medical evidence (aside from a letter from the Psychology Service stating that she was beaten and felt stressed) to corroborate her claims of being beaten and hospitalised;
>
> (v) The applicant's failure to claim asylum in either South Africa, where she spent 41 days, or France, where she spent half a day *en route* to Ireland, is not indicative of a person fleeing persecution and the Tribunal has regard to s. 11B(b) of the Refugee Act 1996 in this regard;
>
> (vi) The applicant's apparent lack of knowledge of the name on the passport she used to get to Ireland is doubted by the Tribunal Member who considers s. 11B(c) of the Refugee Act 1996 relevant in this regard;
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> (vii) That the passport presented by the applicant was genuine but that the bio-data page is counterfeit as found by the Garda Technical Bureau;

(viii) That limited weight can be attached to the applicant's MDC card as it was issued in Zengeza District in Chitungwiza province, while the applicant had lived all of her life in Marondera, Mashonaland East Province. Also Chitungwiza is said to be a district in Harare and not a province in Zimbabwe;

(ix) That a request for further information pursuant to s. 16(6) Refugee Act 1996 in relation to the qualifications of Detective Garda Aoife Touhy was not required as the applicant was aware of the issues with the passport from 2008 and no issues were raised in respect of the Detective Garda's report prior to the appeal. Further, no contra-analysis was sought to be conducted by the applicant and nor was Det. Garda Touhy called as a witness to appear at the oral hearing;

(x) That the passport, MDC card and all the education, employment and medical documentation presented by the applicant are not sufficiently compelling in light of the credibility issues arising;

(xi) There was nothing to suggest that the applicant would be specifically denied medical treatment (as a person who is HIV positive) for a Convention reason were she to return to Zimbabwe;

(xii) There is nothing to suggest that persons with AIDS/HIV positive are specifically targeted for persecution in Zimbabwe and that while the applicant might suffer some stigma due to her disease, it does not bring her claim within the Convention;

(xiii) That while the applicant may have a subjective fear of returning to Zimbabwe due to having fled the country, there is no objective country of origin information on file to suggest that persons returning to Zimbabwe are persecuted per se;

(xiv) That the Refugee Act 1996 does not oblige the Commissioner to have an authorised officer carry out both the s. 11 interview and complete the s. 13 report and further no specific prejudice has been shown by the applicant as to how she was disadvantaged in this case.

Submissions

6. Counsel for the applicant raised the following complaints in respect of the Tribunal decision: (i) the decision is not adequately reasoned; (ii) the Tribunal Member has failed to assess or engage with the basic premise of the applicant's claim; (iii) the Tribunal failed to engage with the supporting documentation submitted by the applicant; (iv) the Tribunal failed to assess the applicant's forward-looking fear; (v) the assessment of the applicant's credibility was unlawful; (vi) the consideration of the Garda report was unlawful; and (vii) there was a failure to adequately weigh the country of origin information with regard to the applicant's HIV positive status.

7. The applicant submitted that the requirement on the Tribunal to carry out the forward looking test is supported by the dicta of Cooke J. in *M.A.M.A. v. Refugee Appeals Tribunal* [2011] IEHC 147 who stated as follows:

> *"The sole fact that particular facts or events relied upon as evidence of past persecution have been disbelieved will not necessarily relieve the administrative decision maker of the obligation to consider whether, nevertheless, there is a risk of future persecution of the type alleged in the event of repatriation. In practical terms, however, the precise impact of the finding of lack of credibility in that regard upon the evaluation of the risk of future persecution must necessarily depend upon the nature and extent of the findings which reject the credibility of the first stage. This is because the obligation to consider the risk of future persecution must have a basis in some elements of the applicant's story which can be accepted as possibly being true. The obligation to consider the need for 'reasonable speculation' is not an invitation or pretext for gratuitous speculation: it must have some basis in, and connection to, the apparent circumstances of the applicant."*

8. The applicant referred to the decision in *Mulholland v. An Bord Pleanala* [2005] IEHC 306 with regard to the adequacy of a statement of reasons. It was submitted that the statement must be such as to enable the person affected by the decision to know whether the decision-maker had directed his mind adequately to the issues; it must give the person affected sufficient information to consider whether he has a reasonable chance in an appeal or judicial review; it must give sufficient information to enable him to 'arm himself' for an appeal or review; and it must be sufficient to enable the High Court to review the decision. In this case it was contended that the Tribunal decision is unlawful as the Member does not state what she believes and what she does not believe rather she simply states that she has regard to the documentation submitted by the applicant but does not find it sufficiently compelling in light of the credibility issues at play. Further, the Tribunal Member casts doubts on the applicant's passport but does not make an express finding on the applicant's nationality. Similarly it was stated that the Tribunal says that the weight to be attached to the MDC membership card is limited but does not make a finding on membership of the organisation.

9. The applicant referred to the decisions of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353 and Mac Eochaidh J. in *R.O. (An Infant) v. Minister for Justice and Equality* [2012] IEHC 573 with regard to the assessment of credibility in asylum claims. It was submitted that in this case the Tribunal Member breached those principles by: (a) putting considerable weight on the applicant's failure to apply for asylum in the U.K. when she was there and failing to assess her explanation as to why she didn't; (b) improperly applying the provisions of s. 11B of the Refugee Act 1996 and failing to make an assessment of the applicant's explanations in that regard; and (c) reaching findings in respect of the applicant's passport and MDC membership card based on 'gut feeling' with a lack of proper reasoning.

10. Counsel noted that the applicant objected to the use of the Garda report in her case on the basis of hearsay and as the experience and qualifications of the Garda who made the report were not disclosed. It was submitted that the failure of the Tribunal Member to make a request for further information pursuant to s. 16(6) of the Refugee Act 1996 was unlawful in the circumstances.

11. Finally, it was submitted on behalf of the applicant that where there is competing evidence before the Tribunal Member as to a particular issue, there is an obligation on the Member to indicate why one piece of evidence or report is preferred to another. In this regard it was asserted that some form of weighing of evidence between competing sources is required. It was submitted that the Tribunal Member failed to carry out such an exercise in this case in relation to the applicant's allegation that she would be persecuted in Zimbabwe on account of the fact that she was HIV positive and owing to her political views. Counsel referred to the decision of Edwards J. in *D.V.T.S. v. Minister for Justice, Equality and Law Reform* [2007] IEHC 305, where the learned judge stated :

> *"While this court accepts that it was entirely up to the Refugee Appeals Tribunal to determine the weight (if any) to be attached to any particular piece of country of origin information it was not up to the Tribunal to arbitrarily prefer one*

piece of country of origin information over another. In the case of conflicting information it was incumbent on the Tribunal to engage in a rational analysis of the conflict and to justify its preferment of one view over another on the basis of that analysis."

12. Counsel for the respondent referred the court to the various claims made by the applicant in her asylum application and the significant adverse credibility findings made by the Tribunal Member in this regard. The respondent noted that the applicant's grounds of challenge in these proceedings relate primarily to the manner in which the Tribunal assessed her credibility. In the first instance, the respondent claimed that, contrary to the applicant's submissions in respect of how her failure to apply for asylum in the UK was considered by the Tribunal, it was clear that the Tribunal was of the view that if circumstances were as bad as claimed by the applicant in Zimbabwe she would have claimed asylum in the UK when she had the opportunity.

13. The respondent relied on the dicta of Fennelly J. in *Mallak v. Minister for Justice* [2012] IESC 59 in respect of the claim that the Tribunal Decision is not adequately reasoned. Fennelly J. stated:

"66….If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision-maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded."

14. It was submitted that given there are fourteen grounds of challenge to the decision pleaded by the applicant that would suggest that there is no basis for arguing that the decision was inadequately reasoned and the applicant's legal advisors have clearly not been impeded in critiquing the decision. As such it was submitted that the decision does not contravene the standard set in the decision in *Mallak*. Counsel also makes reference to the dicta of Hedigan J. in *Sharma & Saharan v. Employment Appeals Tribunal* [2010] IEHC 178 who stated,

"1. The courts have held that the duty of administrative tribunals to give reasons in their decisions is not a particularly onerous one. Only broad reasons for the decision need be given. In Faulkner v. Minister for Industry and Commerce [1997] E.L.R. 107 O' Flaherty J. stated as follows at p.111:-

'I would reiterate, what has been said on a number of occasions, that when reasons are required from administrative tribunals they should be required only to give the broad gist of the basis for their decisions. We do no service to the public in general, or to particular individuals, if we subject every decision of every administrative tribunal to minute analysis.'"

15. In this regard the respondent submitted that the Tribunal Member has provided adequate reasons and that they are patent on the face of the decision.

16. The respondent criticised the approach taken by the applicant in raising a variety of complaints in respect of the decision and submits that counsel has 'parsed and analysed' the tribunal decision and has not given it a fair characterisation. In particular, the respondent stated that the Tribunal Member noted that a complaint was raised by counsel for the applicant that HIV positive Zanu-PF members received 'preferential treatment' but stated that there was nothing to suggest that the applicant would be specifically denied medical treatment for a Convention ground. Further, it was submitted that no country of origin information was identified by the applicant to the effect that treatment was actually withheld such that it would amount to a breach of Article 3 of the European Convention on Human Rights and amount to serious harm.

17. Counsel referred to *N. v. United Kingdom* (Application no. 26565/05, 27th May 2008), which is also referred to in the Tribunal decision, where it is stated at para 42:

"42. In summary, the Court observes that since D. v. the United Kingdom it has consistently applied the following principles.

Aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. The fact that the applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the Contracting State is not sufficient in itself to give rise to breach of Article 3. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling. In the D. v. the United Kingdom case the very exceptional circumstances were that the applicant was critically ill and appeared to be close to death, could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care for him or provide him with even a basic level of food, shelter or social support."

18. With regard to the complaints raised by the applicant in relation to the use of the Garda report, it was submitted that the applicant was represented by counsel at the hearing and raised complaint about the use of the report but that no effort was made to produce any contradictory evidence or assessment. It was noted that two years had elapsed since the section 13 report by ORAC which also relied on the Garda report and the applicants had had an opportunity to have an expert examine the passport but did not do so; nor had the applicants called the Garda as a witness to the appeal hearing. Indeed, it was submitted that there was nothing put before the Tribunal to support any challenge to the Garda's report.

19. The respondent referred to the decision of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353 and to the principles enunciated therein with regard to the assessment of credibility claims. Counsel also referred to the decision in *O. F. [Burma] v. Minister for Justice and Equality* [2012] IEHC 252 in which Cooke J. stressed the importance of reading a determination in full. It was submitted that throughout the Tribunal decision in this case, the Tribunal Member details all of the parts of the claim which were found not to be credible.

20. Finally, it was contended that the Tribunal decision in this case is carefully thought out and that all matters were put to the applicant by the Tribunal. It was noted that the applicant was represented by counsel and has been invited to withdraw the within proceedings in order to allow the applicant to proceed to make an application for leave to remain on humanitarian grounds or to apply to be readmitted to the asylum process based on a SPIRASI report which she did not previously rely on or provide to the Tribunal. It was submitted that the Tribunal made a lawful decision within jurisdiction, based on the case made by the applicant and on the known facts about her country of origin and that such decision was adequately reasoned.

Decision
21. In the analysis of the applicant's claim carried out by the RAT, the Tribunal found a number of credibility findings against the applicant. It found that it was not credible that the applicant in her position as Transport Controller with a haulage company, did not know the name of the NGOs for whom her company did haulage business. She had maintained that it was due to the fact that the Zanu-PF supporters thought that her company had engaged in transporting food aid to MDC areas or personnel that she had been persecuted and harassed prior to her departure in December 2007. The applicant had initially been employed as an accounts clerk by the haulage company. She had subsequently been promoted to the position of Transport Controller. The Tribunal was entitled to have regard to the fact that as a well educated woman, it was incredible that she could not name any of the NGOs for whom her company did work. Her statement that the invoices were simply made out to "*NGOs*" was not credible. The Tribunal acted reasonably in reaching this adverse credibility finding against the applicant.

22. The claim by the applicant that she was abducted with her work colleagues and taken to a farm where she was beaten until she was unconscious, was also disbelieved by the Tribunal. The applicant had said that the next thing she remembered after the assault, was that she awoke in her bed at home. She had no idea how she got there. She presumed that her mother must have gone out to the farm to bring her home. However, she said that she had not had time to ask her mother how she had been brought home. Again, having regard to the fact that the applicant was an educated and articulate woman, the Tribunal was entitled to find this assertion lacking in credibility.

23. After receiving severe beatings in January and June 2001, she decided to flee the country. In February 2002, she went to the UK. She resided there for three and a half years until she voluntarily returned to Zimbabwe in 2005. She stated that she did not apply for asylum in the UK because she wanted to return to her children. She lived with friends in the UK. She stated that she returned to Zimbabwe in October 2005 as she thought that the MDC would win the elections, that the political position had changed and that she wanted to see her children.

24. The Tribunal found it difficult to understand why the applicant did not seek asylum in the UK as she had ample opportunity to do so. In these circumstances, the Tribunal was entitled to come to the conclusion that her failure to seek asylum in the UK, undermined her stated fear of the Zimbabwean authorities at that time.

25. The applicant claimed that she had been severely beaten on a number of occasions in the years leading to her departure for Ireland. The Tribunal noted that it had not been presented with any evidence by the applicant demonstrating the beatings, save for a letter from the Psychology Services dated 3rd March, 2008, stating that the applicant was beaten and felt very stressed. The Tribunal noted that the report outlined that the applicant had high blood pressure, but it was not possible to conclude that this was caused by the incident at the farm in November 2007. There could be many causes for this condition. This was a finding which was open to the Tribunal on the evidence presented to it.

26. The applicant stated that she travelled to Ireland via South Africa and France. She spent approximately 41 days in South Africa, while her aunt was selling her car. She stated that she could not seek asylum there, as it was not safe for her to go out. During her interview, she had said something slightly different: she had stated that she did not have a chance to go out while she was in South Africa.

27. The applicant also stated that she spent half a day in France en route to Ireland. She stated that she did not seek asylum there as she was following the agent.

28. The Tribunal was of the view that, having regard to the persecution the applicant alleged she was fleeing, it would be reasonable to expect her to seek asylum as soon as practicable after leaving Zimbabwe. The Tribunal held that the applicant's actions in this regard were not indicative of a person fleeing persecution and s. 11B(b) of the Refugee Act 1996 (as amended), was relevant to the applicant's claim. I am satisfied that the Tribunal acted reasonably in reaching this finding.

29. The Tribunal then dealt with the issue of the applicant's passport. The applicant claimed that she travelled on a passport which had been supplied by the agent. She stated that this passport had been held at all times by the agent. She stated that she was not told the name on the passport. The Tribunal held that had the passport been questioned at any of the border crossings, her lack of knowledge of the name on the passport would have caused serious problems for the applicant and the agent. The Tribunal held that s. 11B(c) of the Refugee Act 1996 (as amended), was relevant to the applicant's claim.

30. The applicant had submitted to the Tribunal a Zimbabwean passport which issued in September 2006. She stated that she had destroyed the passport which she had used to travel to the UK. She destroyed it in December 2006. The Tribunal noted that it did not make sense that she would apply for a new passport in September 2006, whilst still retaining a valid passport which she allegedly destroyed in December 2006 so that the Zanu-PF personnel could not get hold of it.

31. The passport which had been submitted by the applicant was sent to the Garda Technical Bureau for examination. Detective Garda Touhy, found that the passport was genuine, save for the page with the bio-data on it which was counterfeit. This rendered the passport invalid. The report from Detective Garda Touhy had been available since 6th February, 2008. The applicant was aware of the issues arising with the passport since 2008. As pointed out by the Tribunal, the applicant did not seek to have a contra-analysis carried out on the passport nor did she seek to have Detective Garda Touhy called as a witness before the Tribunal. Detective Garda Touhy worked in the specialist document and handwriting section of the Technical Bureau of An Garda Síochána. It was reasonable for the Tribunal to assume that she was adequately qualified in the field. As noted by the Tribunal, the applicant did not provide any reason as to why the Detective Garda's findings should be doubted. In these circumstances, the Tribunal was entitled to refuse to raise a s. 16(6) request in relation to the Detective Garda's specific qualifications to examine the authenticity of the passport. The Tribunal was entitled to be sceptical in relation to the passport given the account put forward by the applicant as to the passport she used to travel to Ireland and the findings in relation to the bio-data page on the applicant's passport.

32. The Tribunal also dealt with the MDC card submitted by the applicant. As noted by the Tribunal, the card recounts that Chitungwiza is a province, whereas it is a district in Harare. The subscription section in the card is not filled in. The applicant confirmed at the Tribunal hearing that she had her MDC card issued in Zengeza District. The card claims that the applicant is a member of the MDC in Zengeza District in Chitungwiza province, despite the fact that the applicant appeared to have lived and worked in Marondera, Mashonaland East Province for most of her life. The Tribunal held that considering the issues that arose with the card, the weight that could be attributed to the MDC card was limited. The Tribunal continued further, that it had detailed regard to the passport and to the MDC card presented by the applicant and also the other documentation presented by the applicant and found that they are not sufficiently compelling in light of the credibility issues that arise with the applicant's claim.

33. The Tribunal found that having considered the applicant's testimony, the documentation on file and para. 204 of the Handbook,

credibility issues arose with the applicant's claim and that she could not be given the benefit of the doubt. As the court has held that the Tribunal was entitled to make the findings on credibility that it did, the Tribunal therefore had jurisdiction to make these findings in relation to the benefit of the doubt.

34. One of the points raised by the applicant was that she would be denied medical treatment for her condition of HIV/AIDS if she were sent back to Zimbabwe. The Tribunal reviewed extensive documentation in relation to the treatment of HIV/AIDS sufferers in Zimbabwe. It noted that the HIV crisis continued in Zimbabwe, but that the government was attempting to deal with the issue.

35. The Tribunal reviewed the Operational Guidance Note (March 2009) which stated that the availability of medical care provided by the government and NGOs for people living with HIV/AIDS had increased in the past few years due to efforts to scale up access to treatment. Voluntary counselling and testing programmes were also expanding and administered free of charge or for a very small nominal fee. The provision of Anti-Retroviral Drugs (ARVs) did not begin to meet the needs of the population, however, and the government's stated aim of providing ARVs to 300,000 people by 2010, had reportedly reached only 137,000 by December 2008. A number of NGOs continue to work towards improving treatment for HIV/AIDS in Zimbabwe including Medicins Sans Frontieres and the Catholic Mission in Harare.

36. The COI information report dated December 2009, stated that private pharmacies appeared to stock most drugs, even the most expensive combinations. The Tribunal noted that the report stated that HIV positive Zanu-PF officials were receiving preferential treatment at public clinics and were siphoning off drugs for their own purposes; this siphoning of drugs is a matter of corruption, and there was nothing to suggest that the applicant would be specifically denied medical treatment for a Convention ground were she to return to Zimbabwe. The Tribunal held that the applicant's claim in this regard did not come within the Convention.

37. The Tribunal also had regard to COI in relation to the question of the applicant being stigmatised in Zimbabwe on account of her suffering HIV/AIDS. The Tribunal noted that steps had been taken in Zimbabwe to lessen the stigma attaching to AIDS sufferers. The Tribunal noted that there was nothing in the documentation submitted to suggest that persons with AIDS were specifically targeted for persecution in Zimbabwe. While the applicant may suffer some stigma due to her disease, this did not bring her claim within the Convention.

38. The applicant claimed that the Tribunal failed to engage with or assess the basic premise of the applicant's claim, i.e. that as a member of the MDC, she would be persecuted in Zimbabwe were she to return there. The applicant claims that none of the documentation submitted by her which tended to show that MDC members were persecuted in Zimbabwe was properly engaged with by the Tribunal.

39. The applicant submitted that the Tribunal accepted that the applicant was a Zimbabwean national. The question of the applicant's membership of the MDC was not absolutely refuted by the Tribunal Member. The applicant complained that the Tribunal Member made certain findings in respect of the claim, but did not make findings that were clear and concise. It was unclear what the Tribunal accepted and what the Tribunal Member did not accept. It was submitted that the applicant's forward looking fear must be assessed and this had not been done and, therefore, the decision was invalid.

40. The Tribunal stated that it had regard to the documentation submitted by the applicant but found they were not sufficiently compelling in light of the credibility issues at play. The applicant submitted that the Tribunal decision was invalid because the Tribunal Member did not state what she believed and what she did not believe. The applicant pointed out that while the Tribunal Member doubted the passport submitted by the applicant, she made no express finding as to whether she doubted the applicant's nationality. She said that the weight to be attached to the MDC card was limited, but made no finding on MDC membership.

41. The applicant stated that her knowledge of the MDC was not called into question by the Tribunal Member. The Tribunal Member questioned the applicant in this regard and produced objective information upon which the applicant was questioned. The Tribunal Member was aware of the fact that the applicant had demonstrated a good knowledge of the MDC before the RAC. The applicant submitted that a primary element of the claim had not been dealt with by the Tribunal Member and the decision is thereby invalid.

42. The respondent submitted that the applicant had "parsed and analysed" the Tribunal decision and had not fairly characterised the decision. The Tribunal rejected the applicant's claim that treatment for her HIV positive condition would be withheld because of her holding particular political views. On p. 6 of the Tribunal decision, it was noted that the applicant's counsel complained at the hearing that HIV positive Zanu-PF members got "*preferential treatment*", which was not the same thing as that submitted on behalf of the applicant.

43. The Tribunal decision accepted that there was such preferential treatment for Zanu-PF officials, but pointed out that there was nothing to suggest that the applicant would be specifically denied medical treatment for a Convention ground were she to be returned to Zimbabwe.

44. The Tribunal noted that the applicant said "*that if a person was not a member of Zanu-PF they could not get treatment for HIV in Zimbabwe*". However, the applicant had not identified a reference in the COI to treatment actually being withheld from supporters of other political groups, such that it would amount to a breach of Article 3 of the Convention.

45. The applicant complained that the Tribunal failed to come to any finding on the core part of her claim, which was to the effect that she was a member of the MDC and that by virtue of that fact, she will be persecuted and in particular, she would be denied medical treatment on her return to Zimbabwe. The applicant states that the Tribunal failed to come to any conclusion on these core matters.

46. The Tribunal noted that COI supported the view that Zanu-PF officials were getting preferential medical treatment and were siphoning off medical supplies. The applicant claimed that she would be denied medication due to her membership of the MDC. The respondent submitted that this assertion was not supported by the COI. There was no evidence that the applicant as an MDC member would be denied medical treatment. It seems to me that this argument is correct. If there was COI which stated that MDC members were being denied medical treatment, then the question of the applicant's membership of the MDC would have been crucial. However, in this case, there is no compelling evidence that treatment would be withheld due to her membership of the MDC. In these circumstances, the fact that the Tribunal did not make a clear finding one way or the other as to her membership of the MDC, was not fatal to the validity of the decision.

47. The applicant complains that there was a lack of a clear finding on the question of her membership of the MDC and where the Tribunal Member had doubts about the authenticity of the membership card but did not go on to make a definitive finding as regards membership of that organisation; however, this was not fatal to the decision as there was no evidence that the applicant would be

denied medical treatment on account of any alleged membership of the MDC.

48. In a Country of Origin Information Report on Zimbabwe drawn up by the UK Border Authority in December 2009, it was noted that the BBC reported on 25th July, 2007 that Amnesty International claimed in a new report that "*women who oppose Robert Mugabe's regime in Zimbabwe are suffering increasing violence and repression…".* The report also noted that "*detained women human rights defenders have been subjected to sexist verbal attacks and denied access to food, medical care and access to lawyers…some have been severely beaten while in police custody, in some instances amounting to torture*". This extract refers to the conditions applying to detained human rights defenders; the applicant has never contended that she was one of these.

49. In order for the applicant to succeed, she would have to prove that medical treatment would have been denied on the basis of her political involvement with the MDC. There is no evidence that this was the case. The RAT accepted that Zanu-PF members were getting preferential treatment but there was no evidence that MDC members were not getting medication due to their political opinions.

50. Overall, I am satisfied that the findings of the Tribunal are rational and, where inferences are drawn, these were supported by the evidence before the Tribunal. The applicant was not required to "construct a hypothesis" as was criticised in *Daniel Damilola Adewoyin v. Minister for Justice, Equality and Law Reform & Anor* (Unreported, Cooke J., 18th July, 2012) in order to understand the findings reached by the Tribunal. In the circumstances, I refuse the applicant's application for certiorari of the RAT decision dated 21st June, 2010.