

**THE HIGH COURT
JUDICIAL REVIEW**

[2006 No. 86 J.R.]

**IN THE MATTER OF THE REFUGEE ACT, 1996 (AS AMENDED),
IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000 (AS AMENDED)
AND IN THE MATTER OF THE EUROPEAN CONVENTION ON
HUMAN RIGHTS ACT, 2003, SECTION 3(1)**

BETWEEN

**K.S. (A MINOR SUING BY HIS MOTHER AND
NEXT FRIEND, B.S.)**

APPLICANT

**AND
THE REFUGEE APPLICATIONS COMMISSIONER,
THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,
THE ATTORNEY GENERAL AND IRELAND**

RESPONDENTS

**AND
HUMAN RIGHTS COMMISSION**

NOTICE PARTY

Judgment of Mr. Justice Paul Butler delivered the 17th day of October, 2007.

1. The minor Applicant was born on 18th February, 2005 to Nigerian parents. He is not an Irish citizen and is entitled only to Nigerian citizenship. His mother, the Next Friend in these proceedings, sought asylum in the State and failed in her application. She was served with a Deportation Order on 29th September, 2005. On 2nd November, 2005 the then nine month old Applicant applied for asylum in his own right. The Next Friend completed the questionnaire on behalf of the Applicant and she had legal assistance in completing the same. The Applicant's interview under s. 11 of the Refugee Act, 1996 (as amended) took place on 15th November, 2005 and the Next Friend answered all questions on his behalf. The Applicant was informed by letter of 12th January, 2006 that he had been unsuccessful in his application. In these proceedings the Applicant seeks to have the recommendation of the first named Respondent quashed and an order directing the first named Respondent to hold a fresh interview before a separate officer of the first named Respondent. The Applicant seeks further ancillary reliefs. The report and recommendation of the first named Respondent is dated 6th January, 2006. The said recommendation was made on the basis of a conclusion that the Applicant had failed to establish a well-founded fear of persecution in Nigeria. The principal objection to the process is that the first named Respondent took into consideration material derived from the Next Friend's application and that those matters should have been put to the Next Friend. It was, however, the Next Friend herself who established the link between the two applications in her responses to the interviewer's questions.

2. Criticism has been levelled at the fact that relocation in another state in Nigeria was alluded to. I am satisfied, however, that the same formed no part of the consideration in this case as the finding was clearly based upon a consideration as to whether there was a well-founded fear of persecution which the interviewer was at pains to investigate.

3. The Applicant has further raised the issue of the standard of review and argues that what is described as an "anxious scrutiny" test should be applicable in matters such as this. I am satisfied on the facts of this case that there are no substantial grounds for arguing that the Applicant's Convention rights have been breached by the application of the *O'Keefe* principles.

4. By reason of the foregoing I refuse the application herein.