

**THE HIGH COURT****BETWEEN****E. R. (A MINOR SUING BY HER SISTER AND NEXT FRIEND T.R.)****[2009 No. 450 J.R.]****AND****APPLICANT****THE REFUGEE APPEALS TRIBUNAL (MICHELLE O'GORMAN) AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM****RESPONDENT****AND****[2009 No. 358 J.R.]****BETWEEN****T.R.****APPLICANT****AND****THE REFUGEE APPEALS TRIBUNAL (MICHELLE O'GORMAN) AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM****RESPONDENT****JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 19th day of April 2013**

1. These proceedings comprise applications for leave to seek judicial review in related cases, heard together.
2. The applicants in these cases are sisters who left the Democratic Republic of Congo in 1999. At first instance, they claimed to have suffered persecution arising from their father's support for rebel forces. In particular, the girls claimed they suffered beatings and rape when State forces came in search of their father. They fled their home country, spending some time in Tanzania and Kenya before eventually making their way to Ireland in April 2006.
3. The first instance decision maker recommended rejection of their asylum applications and on appeal the Refugee Appeals Tribunal (the "RAT") found that there had been such significant political changes in the Democratic Republic of Congo that the applicants could not be said to have a well founded fear of persecution and that the political activity of their father no longer represented a threat to their safety. No complaint is made in these proceedings about this finding. Instead, these proceedings relate to a second basis for fear of persecution advanced, for the first time, at the Refugee Appeals Tribunal hearing, by their lawyer.
4. As is evidenced by a handwritten attendance sheet recording the oral submissions made on behalf of the girls to the RAT, the case was made that the position of women in the Democratic Republic of Congo is precarious. Reference was made to country of origin information which described an endemic problem of rape and a failure by State authorities to adequately address this horror. The essential point made in these proceedings on behalf of the applicants is that this claim was either not dealt with at all or not dealt with adequately.

**The Tribunal Member's Decision**

5. The Tribunal Member's conclusion is set out in one lengthy paragraph. Reference is made to country of origin information which described the improving political situation in the Democratic Republic of Congo. The final two sentences of the paragraph in question are as follows:

"It does not appear from the country of origin information that the Applicant would be at risk of persecution due to her father's military position during the Mobutu regime. While a difficult security situation pertains in the DRC east of the country, and the Applicant may fear generalised violence were she to return to the DRC [sic], there is nothing to suggest that the Applicant would be specifically targeted for a Convention reason were she to return to the DRC and her fear of return is therefore not well founded."

6. The respondent submits that these sentences contain the Tribunal Member's decision on the claim advanced on behalf of these girls that they fear gender based violence if they return. It is well established law (see *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3 & *Rawson v. Minister for Defence* [2012] IESC 26) that decisions and the reasons for them must be clearly stated. I find it difficult to discover in the passage quoted a clear and reasoned response to the claim made on behalf of the girls that they would suffer gender based violence on their return to the DRC. Bearing in mind that this is merely the leave application and that it is not appropriate to state firm conclusions, it seems to me that a substantial argument has been advanced that the passage quoted represents the decision of the Tribunal Member on the core claim advanced on behalf of the girls *i.e.* that they would suffer violence on their return because of the activities of their father and his connection to the rebels.

7. It may be entirely understandable that the Tribunal Member did not focus upon the gender based persecution as this was not advanced at first instance and is not mentioned in the notice of appeal which brought the matter to the Refugee Appeals Tribunal. In addition, the evidence given by these girls at the RAT appears to have related solely to the issue of the suffering they endured in the past by virtue of their familial relationship. There is no evidence that the girls gave evidence about fears of returning to the DRC because of what they knew about the general risk of rape which is said to pertain. Though there is some evidence that fear of rape

was expressed, it seems to have been expressed as arising because of the activities of their father and not because of the way in which women are treated generally or the failure of the State to protect women from the horror of rape.

8. Whatever reason might explain the absence of a decision on the second claim advanced, it seems to me that the absence of a clear and reasoned decision on this point by the Tribunal Member, if made out, would vitiate the decision. There can be no doubt that it is incumbent upon a Tribunal Member to give a clear and reasoned decision on each claim advanced by an applicant for refugee status and where two grounds of entitlement to refugee status are advanced, two clear and reasoned decisions are required. This did not appear to happen in this case.

9. Therefore, I have decided that substantial grounds have been made out to support a grant of leave to seek judicial review and I therefore grant leave in both cases to seek the reliefs at paragraph 4(i) and on the grounds set out at paragraph 5(d)(f)(iv) and (vi), (g)(ii), (iii) and (iv) and (h) (in the pleadings filed on behalf of E.R.)

The quotation is from one of the decisions but the separate RAT decisions for these sisters are in the same terms