

**THE HIGH COURT**  
**JUDICIAL REVIEW**

**[Record No. 2009/658/J.R.]**

**BETWEEN**

**C. W.**

**APPLICANT**

**AND**

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

**RESPONDENTS**

**JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 28th day of March 2014**

1. This is a 'telescoped' application for leave to seek judicial review of a decision of the Refugee Appeals Tribunal dated 20th May 2009, refusing the applicant a declaration of refugee status.

**Background:**

2. The applicant is a Liberian national who claims his date of birth is the 10th June 1992. He states that he arrived in the State on the 26th May 2008 and applied for asylum on the 10th June 2008. As the applicant presented as an unaccompanied minor, an age assessment was carried out by the Office of the Refugee Applications Commissioner pursuant to s. 8 of the Refugee Act 1996. The applicant was not accepted as an unaccompanied minor as he had not provided a genuine passport or any verifiable documentation to prove his identity and appeared to be older in appearance and to have the maturity of an adult.

3. The applicant claims that his father worked for Charles Taylor, the former leader of Liberia and that he had been involved in the killing and torture of rebels. He states that his father was killed in 2003 when the rebels came to Monrovia. The applicant claims that he was forced to fight for Charles Taylor but was captured by the rebels, tortured and imprisoned for two or three months. He states that he managed to escape confinement with the aid of his father's friend and that he fled to a children's camp where he remained until 2008. He claims that his sister, who lives in Europe, sent her friend to find him and that she organised his travel to Ireland via an unknown African country and another European country. The applicant claims he escaped Monrovia by ship, came by air to Europe and then arrived in Ireland by ferry. The applicant claims that if he were to return to Liberia he would have no one to take care of him and fears he would be killed by rebels seeking revenge for the activities of his father.

**Submissions:**

4. The applicant raises four main challenges to the decision of the Tribunal in these proceedings. It is claimed that the Tribunal Member: (a) failed to consider the evidence of actual persecution inflicted on the applicant; (b) failed to consider medical evidence in support of the applicant's claim to have been persecuted; (c) failed to decide the case on the basis of the evidence submitted; and (d) failed to consider the forward looking aspect of the applicant's claim in accordance with the evidence.

5. Counsel for the applicant contends that the Tribunal failed to assess the applicant's evidence that he had been captured by rebels and subjected to persecution which resulted in serious injury. He notes that in his s. 11 interview and at his oral hearing the applicant claimed, "They stabbed me in the leg and they hit me on the eye with the gun a couple of times and now I cant see with one eye. They burnt my stomach with hot metal. They stabbed me in the back." In light of these assertions, it is submitted that the Tribunal failed to consider the medical evidence in support of the applicant's claims. Further, the applicant claims that the Tribunal, by failing to consider the relevant medical evidence, consequently failed to consider evidence which corroborated part of his claim. In arriving at a decision that the applicant lacked credibility counsel also submits that the Tribunal failed to consider documentary evidence which demonstrated that the applicant's version of events was credible.

6. In particular, counsel draws attention to the four medical reports submitted on behalf of the applicant. In this regard, he notes that Dr. Quill, a Senior House Officer in Ophthalmology at University Hospital Galway, referring to an eye injury suffered by the applicant, states: "these injuries are in keeping with possible traumatic injury and would fit with the explanation he has given." The explanation given by the applicant was that he had been struck several times in the eye with a gun whilst held captive. Counsel states that the Tribunal Member made no reference at all to the medical reports submitted and that while it is stated that she has "considered all relevant documentation" in the concluding paragraph of the decision, greater scrutiny of the evidence is required. In this regard, counsel refers to the decision of McGovern J. in *N.M. v. Minister for Justice, Equality and Law Reform* [2008] IEHC 130 who stated, "the Tribunal Member is entitled to weigh up the account of the applicant and his credibility in deciding whether to accept medical reports. But where the medical reports appear to support the Applicant's claim, I think it is incumbent on the Tribunal Member to specifically deal with the medical reports and state why he does not accept them."

7. Counsel for the applicant also submits that in order to dismiss an application on the grounds that the applicant lacked credibility on peripheral issues, the weight afforded to such a finding would have to be greater than the weight of evidence contained in a medical report supporting a claim of persecution. In this regard, counsel cites the dicta of Clark J. in *R.M.K. v. Minister for Justice, Equality and Law Reform* [2010] IEHC 367 to the effect that: "a report of such weight could only be disregarded if the primary credibility findings were of such force as to out-weigh the medico-legal report." In this case, counsel contends that the respondent did not even consider the medical reports and consequently could not balance the importance of the medical report with the other findings.

8. The applicant claims that the Tribunal Member erred in finding that the applicant's evidence that he evaded the rebels for four years at the children's camp "is difficult to believe". Counsel notes that the applicant gave evidence that he evaded his captors and escaped to the camp in Juah in 2008. Further, the applicant stated that the camp was raided daily by the rebels but that he would run and hide from them. It is also submitted that the country of origin information submitted on the applicant's behalf confirmed the existence of such a camp and the account of regular invasion by the rebels. As such, counsel is of the view that the Tribunal

Member's decision that the applicant lacks credibility in this regard is speculative, unsupported by the evidence and lacking in reasons.

9. Finally, it is claimed on behalf of the applicant that the Tribunal has failed to consider the forward looking aspect of the applicant's claim in accordance with the evidence but rather by reference to the country of origin information. In this regard, counsel notes that the Tribunal stated:

"According to the US Department of State Report for 2008 the UN Mission in Liberia (UNMIL) peacekeepers and UN International police (UNPOL) have had primary responsibility for maintaining security and efforts to select and train personnel for the Liberia National Police (LNP) and the armed forces continue. Considering the considerable changes that have occurred in Liberia since the Applicant fled the rebels in 2003 and therefore any fear the Applicant may have in relation to be sought out by rebels on his return is not well founded."

It is submitted that the Tribunal Member failed to adequately consider the facts of the case in light of the country of origin information. Counsel refers directly to the abovementioned US State Department report which commences with the passage:

"...While civilian authorities generally maintained effective control of the security forces, there were instances in which elements of the security forces acted independently of government authority.

The government generally respected the human rights of its citizens; however, problems continued. Mob violence and land disputes resulted in deaths and ritualistic killings occurred. Police abused, harassed and intimidated detainees and citizens. Prison conditions remained harsh, and arbitrary arrest and detention occurred. Lengthy pre-trial detention and denial of due process and fair public trial were problems. Some instances of trial by ordeal were reported. Corruption and impunity continued at most levels of government."

10. It is the applicant's view that this opening passage from the 2008 US State Department report flies in the face of the Tribunal Member's finding that the UN led police forces ensure civil harmony within Liberia and that such finding is irrational and not based on a full consideration of the country of origin information submitted.

11. Counsel for the respondent submits that while the Tribunal Member considered that there were credibility issues with certain aspects of the applicant's testimony, she ultimately determined that having regard to the considerable changes which have occurred in Liberia since 2003, the fear that the applicant has about being sought out by rebels on his return was not well founded. As such, it is submitted that no issue was taken by the Tribunal Member with the applicant's testimony in relation to his capture, imprisonment and torture and no adverse credibility findings were made in this regard. Instead, counsel asserts that the appeal was rejected on the basis that applying the forward looking test, the applicant had not satisfied the "well-founded" / objective element of the definition of a refugee contained in s. 2 of the Refugee Act 1996.

12. While it is accepted that past persecution can be an indicator of future persecution, counsel submits that in the instant case, up to date country of origin information which was relied upon by the Tribunal supported the view that the fear of persecution which the applicant claimed he would be subjected to if he returned to Liberia, some six years following the past persecution claimed, was not well founded.

13. Counsel submits that the Tribunal correctly found that there was nothing in the country of origin information submitted by the applicant or sourced by the Tribunal to support the applicant's claim that as a child of a former associate of Charles Taylor he would be killed on his return to Liberia. It is contended that while the Tribunal Member took no issue with the applicant's claim to have escaped to the Juah children's camp, she found it reasonable to suggest that if the rebels were seeking to find him and exact revenge, he would have been found in the camp over the period of four years he was there. In this regard, counsel notes that the Tribunal Member assessed this claim by reference to the description of the size and extent of the children's camp which was sourced in the country of origin information available. The country of origin information was to the effect that the children's camp consisted of approximately six houses accommodating sixty children. Counsel submits that the Tribunal was correct in finding that the applicant's claim to have evaded capture by the rebels over a period of four years was not plausible given the size of the camp, its proximity to Monrovia and the regularity with which the applicant stated the rebels carried out raids. Counsel is of the view that this finding is not a peripheral matter but directly relevant to the applicant's claim that he would be sought out and killed if returned to Liberia.

14. It is noted that the Tribunal Member also had regard to the applicant's explanation of his travel to and arrival in the State as required by s. 11B of the Refugee Act 1996. In this regard counsel notes that the Tribunal Member fairly took into account the applicant's limited education in assessing his explanation of travel. The Tribunal Member found it difficult to accept that even with such limited education that the applicant would have such a scant knowledge of his itinerary. Further, counsel refutes the applicant's submission that the Tribunal Member's findings were based on speculation or conjecture and refers to the dicta of Clark J. in *Adekunle v. Refugee Appeals Tribunal* (Unreported, High Court, 8th October 2009) to the effect that, "An expression of opinion or the rejection of certain parts of a person's evidence does not amount to conjecture. It would only be conjecture if a Tribunal Member guessed or hazarded reasons or formed an opinion on the basis of no or very slim evidence." It is also asserted that absent some manifest and glaring flaw in the assessment of the country of origin information by the Tribunal Member in this case that this court should not and, indeed, cannot intervene in the assessment of the fact involved without stepping into the shoes of the decision maker contrary to its jurisdiction.

15. With regard to the forward looking aspect of the applicant's claim, counsel submits that the Tribunal Member not only considered the country of origin information submitted by the applicant and relied upon by the Commissioner at first instance, but also sourced her own up to date country of origin information which she supplied to the applicant at the oral hearing. It is submitted that in its entirety the country of origin information supports the Tribunal's conclusion that considerable changes have occurred in Liberia since 2003 when the applicant claims to have fled from the rebels and that any fears the applicant may have in relation to being sought out by them on his return are not well founded. It is asserted that the Tribunal Member manifestly considered the facts in light of the country of origin information in this regard.

#### **Findings:**

16. The decision of the Tribunal Member in this case cannot be categorised as one based on a classic rejection of the applicant's personal credibility in respect of his account given. In those types of decisions it is normal course that the Tribunal Member sets out the various strands of an applicant's testimony and proceeds to identify particular flaws owing to inconsistencies or contradictions contained therein before proceeding to give clear reasons for the rejection of the applicant's credibility. However it is important to note the dicta of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353 to the effect that: "3) There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a

genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded."

17. In this case, it appears that the Tribunal Member did not take any issue with the applicant's claims in relation to his arrest and imprisonment, albeit there was some disbelief with regard to certain aspects of the applicant's testimony in respect of his travel to the State etc. It is clear, however, that the Tribunal ultimately determined that having regard to the considerable changes which have occurred in Liberia since 2003, the applicant's fear of being sought out by rebels on his return there was not objectively well founded. As such, the medical evidence relevant to the applicant's claim that he was imprisoned and beaten by the authorities is not expressly referred to by the Tribunal Member in reaching her decision. It was not incumbent on the Tribunal Member to make express reference to the medical evidence in a situation where that subjective aspect of the applicant's claim was not questioned by the Tribunal. I reject the applicant's complaints in respect of the assessment of the medical evidence.

18. Another complaint raised on behalf of the applicant is that the Tribunal Member erred in finding that the applicant's evidence that he evaded the rebels for four years at the children's camp "is difficult to believe". Counsel submitted that the country of origin information confirmed the existence of the camp and the applicant's account of regular incursions by the rebels. It was submitted that the Tribunal Member's decision that the applicant lacks credibility in this regard is speculative, unsupported by the evidence and lacking in reasons.

19. The Tribunal Member records the applicant's claim in respect of this aspect in the following terms:

"The Applicant confirmed to the Presenting Officer that while he was in the SOS camp he had no contact with the rebels. The Applicant stated that the rebels raided the camp every day and that he would have to run and hide from them. When asked if the rebels were specifically looking for him the Applicant said that they were not but that if they found him they would kill him."

The Tribunal Member goes on to find in her analysis that:

"According to country of origin information on file the SOS children's village Juah Town was comprehensively looted by MODEL rebels (SOS – barnebyer) and the Applicant stated at the appeal hearing that the rebels looted the camp everyday. The Applicant was an orphan and a children's camp would be an obvious place to look for the child of a well known henchman. The Children's village was quite small consisting of six family houses, a village director's house, a guest house, a service area and a clinic (SOS Kinderdorf International Appendix A). Considering that the Applicant states he was an orphan the children's camp was in relative proximity to Monrovia the size of the camp and the regularity with which the rebels raised the camp it is difficult to believe that the Applicant could have lived in this camp for four years without being found by the rebels."

20. It would appear that the assessment by the Tribunal Member of the objective credibility of the applicant's narrative is far from speculative. On the contrary, the assessment is cogent, supported by reference to country of origin information and is adequately reasoned. I am not of the view that the findings made constitute mere conjecture on the part of the Tribunal Member of the sort described by Clark J. in *Adekunle v. Refugee Appeals Tribunal* (Unreported, High Court, 8th October 2009) as "An expression of opinion or the rejection of certain parts of a person's evidence does not amount to conjecture. It would only be conjecture if a Tribunal Member guessed or hazarded reasons or formed an opinion on the basis of no or very slim evidence." There is no evidence that the Tribunal Member guessed or hazarded reasons in this instance, instead she referred directly to two pieces of country of origin information to support her finding. I find no illegality in the approach of the Tribunal Member in reaching this conclusion.

21. Finally, the applicant claims that Tribunal Member attempts to deal with the forward looking aspect of the case by reference to the country of origin information. In this regard, counsel submits that content of the 2008 US State Department report quoted by the Tribunal Member flies in the face of the finding that the UN led police forces ensure civil harmony within Liberia and that her finding in this regard is irrational and not based on a full consideration of the country of origin information submitted. It is clear from the dicta of Cooke J. in *E.E. v. Refugee Appeals Tribunal* [2010] IEHC 35 that:

"It is for the Tribunal Member to weigh and assess relevant information drawn from country of origin documentation and to decide what value or weight should be accorded to various parts of it, having regard to its relevance, the authoritative quality of its source, its apparent reliability and so forth. As with issues of credibility, the court cannot substitute its own assessment of that information. It is concerned only with the legality and rational character of the process by which the conclusions or findings have been reached in the analysis which the Tribunal member has employed. As illustrated by the cases which have been cited to the court in argument, (the *Simo* case, the *H.O.* case, the *M.I.A.* case,) the Court should intervene to disturb a decision based upon an assessment of country of origin information only where it is shown that some fundamental mistake has occurred in the use or interpretation of the available information or where the conclusion reached is manifestly at variance with the content and obvious effect of the documentation."

22. I am not of the view that the Tribunal Member's findings drawn from the passages quoted out of the country of origin information are irrational or that the conclusion reached flies in the face of common sense contrary to the standard set by Henchy J. in *State (Keegan) v. Stardust Victims' Compensation Fund* [1986] I.R. 642. In any event, it is for the Tribunal Member to weigh and assess the country of origin information and not for the court to substitute its own assessment of such information. In my view the Tribunal Member did not stray into illegality in reaching her findings that changes have occurred within Liberia such that any fear the applicant may have were not well founded by reference to the country of origin information quoted.

23. This being a 'telescoped' application, I formally refuse the applicant leave to seek judicial review in this matter.