

**THE HIGH COURT**

**JUDICIAL REVIEW**

**Record Number: 2008 / 1451 J.R.**

**BETWEEN:**

**E. J. [NIGERIA]**

**APPLICANT**

**- AND -**

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND PATRICK HEALY HURLEY, SITTING AS THE REFUGEE APPEALS TRIBUNAL**

**RESPONDENTS**

**JUDGMENT OF MS. JUSTICE M. H. CLARK, delivered on the 30th day of September 2013.**

1. The applicant in this case is a male Nigerian national now in his early 30s. He seeks a number of declarations and an order of certiorari quashing a decision of the Refugee Appeals Tribunal dated the 10th November, 2008 which recommends that he should not be granted refugee status.

**Background**

2. The applicant's claim for asylum is based on an alleged fear of persecution in Nigeria by reason of his membership of a particular social group. He applied for refugee status in Ireland on the 18th June, 2008. He claims that he was a member of the National Union of Road Transport Workers (NURTW) in Nigeria and to have been present during a dispute between the NURTW and the Road Transport Employers Association of Nigeria (RTEAN) during which two people were killed. He says that although his only role was to try and break up the row, he was arrested with others because they were leaders of the unions and held responsible for the riot. He was detained by police for four months during which period he was beaten and tortured before his uncle arranged his escape. He claims that as a result his life is in danger if he returns to Nigeria. He maintains that he is uneducated and unable to read or write in English and that his questionnaire was completed on his behalf.

3. The Commissioner found there were numerous credibility issues and recommended that he should not be declared a refugee.

4. The applicant appealed to the Refugee Appeals Tribunal and an oral hearing was conducted on the 7th October, 2008. The Tribunal Member made a number of significant negative credibility assessments finding the very foundations of the applicant's claim to be incredible. Prior to his actual analysis of the claim, he noted that no identity documents or documents which would corroborate his identity were submitted by the applicant. One of the first findings made was that although the applicant said that he had been tortured, no medical evidence had been submitted to support such a contention. It was further noted that his account of his ill treatment in police custody was characterised by imprecision and inconsistency. Credibility issues arose from discrepancies between the claim made and newspaper reports of the incident between the two unions. The fact that the applicant was unable to identify the chairman of his union in the State where he lived was considered remarkable considering the senior post he claimed to occupy in the union. Aside from these credibility findings, the Tribunal Member found that the applicant had not demonstrated a fear of persecution on account of his political opinion - imputed or actual - and that he had not established a coherent or credible subjectively or objectively well founded fear.

**The Applicant's Submissions**

5. The applicant's central submission was that several of the credibility findings made were unsound and that the process by which other credibility findings were arrived at was wrong and in some circumstances contained factual errors. The applicant relied on *I.R. v. The Minister* [2009] IEHC 353 and in particular on the fifth of the ten points Cooke J. identified in relation to the assessment of credibility, namely that "*A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding*".

6. It was then submitted that the Tribunal failed to have regard to his evidence and / or misinterpreted that evidence on a number of occasions. The applicant then parsed the findings made by the Tribunal Member, in particular the finding that he had / had not been charged while in custody and the finding that his credibility was impugned because he failed to make contact with his Union or with legal advisers while he was detained. The applicant submits that the Tribunal Member failed to consider whether he was capable of such contact and that there was no basis for the weight which the Tribunal Member placed on the fact that he had not made contact with his Union after his escape from prison, as he was on the run from the authorities and stayed in hiding while concluding his plans to leave the country for safety.

7. The applicant found fault with several more of the findings and then scrutinised each such finding and declared each to be in error or irrational. An article from the Daily Sun newspaper sourced by ORAC, which described the arrest of suspects following the fight between union members, was compared with the Nigerian Tribune newspaper article submitted by the applicant, which stated that a larger number was arrested. It was submitted that the Tribunal Member should have considered this conflicting information and given the applicant the benefit of any doubt. It was further submitted that the Tribunal erred in law in finding that the applicant's "actions" could not sustain a claim of persecution on account of political opinion or imputed political opinion. Persecution may arise from the perception of the persecutors as from the applicant's actions.

**The Respondents' Submissions**

8. The respondents' position is that a multiplicity of very clear adverse credibility findings were made against the applicant in the Section 13 report and then by the Tribunal. Taking the decision in the round rather than analysing each minute detail, it is clear that the issue to be addressed by the applicant on appeal was why he was targeted by the police when he had nothing to do with the deaths which occurred during the violent riot between the opposing unions. He simply failed to address that issue.

9. The respondents engaged in a counter minute examination of the discrepancies in the applicant's evidence, the changes between his evidence at first instance and before the Tribunal and the question of whether, on the applicant's evidence, the findings were reasonable. The respondents submit that it was open to the Tribunal Member to conclude as he did that the applicant's actions could not sustain a finding of persecution based on political opinion or imputed political opinion. The applicant appears to accept that he was fleeing *prosecution*. There was no evidence before the Tribunal that membership of the union was a matter which would lead to targeting by the government. The COI states that trades unions are lawfully permitted and that union members are not oppressed. The applicant never made the case that he was targeted because of his union membership. His case was that he was arrested and detained because the police believed that he was implicated in the deaths of the two men who belonged to another union. There was no claim made or evidence adduced of individual persecution because of his union activities.

10. The reasons why the applicant's appeal failed are clear. If the applicant was arrested and suffered as asserted, his failure to seek redress especially through his own union was odd. Further, his lack of awareness of the fact that the police have taken steps to prosecute those suspected of the murder of Mr Saula, a very prominent union leader including the leader of the applicant's own union in his State, was not explained. These and other factors seriously detracted from the credibility of his claim.

11. Further, the applicant claimed to speak Yoruba and Igbo and held a senior position in the NURTW for which he worked in a number of locations in Nigeria. He produced no identity documents despite his prominent position in the union yet told the Tribunal that he had given his false passports (plural) back to the agent who accompanied him to Dublin. No other conclusion could have been open to the Tribunal Member in the circumstances.

### THE COURT'S ANALYSIS

12. The applicant's primary complaint in this case is that the Tribunal Member assessed credibility in breach of one of the principles restated by Cooke J. in *I.R. v. The Minister* [2009] IEHC 353, namely that "*A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding*".

13. The Court is not prepared to enter into an analysis of nuanced meanings of the evidence presented by the applicant and then to set that analysis against the Tribunal findings. This is a case which was found objectively not credible and subjectively unsustainable. The row between two unions over control of parking areas was well reported in Nigerian media. The rivalry was reported to have escalated and spilled over into the applicant's State following the murder of the national leader of the NURTW. It is clear from the two contemporaneous newspaper reports (both based almost exclusively on hearsay) that some sort of a turf war was going on and that the shooting of Mr. Saula may have provided the background to the hostilities between the NURTW and the RTEAN. If the applicant played the role in the NURTW, as he asserted, of a full time representative and employee for nine years sitting on the provisional committee and head of union security in his State, then the absence of any personal documents capable of supporting his identity or his membership of and work for the union is indeed remarkable. This is especially so as this is not a case of persecution by state agents where documents were seized or monitored by the Nigerian authorities and therefore could not be obtained. It is not the case that the applicant fled Nigeria on the day of his escape from police detention as he claimed that he spent two months in Lagos before coming to Ireland. The absence of any documentary evidence of identity was appropriately deemed to be remarkable. There was absolutely nothing before the Tribunal apart from the applicant's assertions and newspaper reports of a violent incident between two rival unions to support his claim.

14. The reality is that not only were there no documents of identity but nothing whatever to associate the applicant with newspaper reports of the battle between the unions. In addition, there was also the applicant's inability to name the union leader in Ogun State and his failure to, by any standard, take the normal action of contacting colleagues in his union to report his detention and seek legal representation or to report his maltreatment once he had been freed by release or escape. There was no attempt of any kind to seek redress through the legal system, his union, the police or newspapers to vindicate his name. His explanation in his affidavit after the decision issued is not in any way convincing nor was any case made on his behalf to the Tribunal that he was "*on the run*" from the police. It appears to the Court that even if he was hiding in the vast metropolis of Lagos, mobile phones, faxes and email operate there to enable contact with either his union colleagues or the union's lawyers.

15. It is clear that the Tribunal Member simply did not believe the applicant or the claim before him and he provided his many reasons for that finding in accordance with the requirements of *Meadows v. The Minister* [2010] 2 I.R. 701. Those reasons include major and minor findings of fact but the core finding was lack of credibility based on the total absence of any supporting identity documents, his lack of knowledge of union matters including the surprising fact that he was unaware that the Ogun State union chairman had been arrested for the murder of the national President of his union the NURTW and, finally his lack of contact with his union before paying a vast sum involving the sale of a plot of land by his uncle to a trafficker to arrange an illegal entry into this State.

16. The most important finding made by the Tribunal, in the view of the Court, relates to the applicant's core claim that he fears persecution as a member of a particular social group. The Court found no assistance in the papers or at the hearing as to what particular social group the applicant claimed to be identified with. While there is no closed list as to what constitutes a particular social group, it is very doubtful that membership of a lawful trade union could meet the criteria for a particular social group for refugee law purposes. The UNHCR *Guidelines on International Protection: "Membership of a particular social group"* (2002) at para. 11 define a particular social group as "*a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.*" The applicant's claim is that he was employed on a full time basis as a union official. There was no claim and no evidence that any union is persecuted in Nigeria or that his union was anything but a lawful entity. The police involvement claimed and confirmed in the newspaper reports arose from the investigation into the murder of the president of the NURTW and from the investigations and prosecution of persons alleged to have been involved in the violent inter-union row which led to two deaths. There is nothing to suggest or even hint at the persecutory or even discriminatory targeting of NURTW members by the police or other state entities. There was nothing to suggest that the members of that union or Nigerian unions in general were identifiable as such or that they were prevented from conducting their union membership or upholding their union beliefs.

17. In the circumstances, as no substantial error of fact or law has been identified, the challenge must fail.