

**THE HIGH COURT****2007 1280 JR****BETWEEN****S. B. E.****APPLICANT****AND****THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM****RESPONDENTS****JUDGMENT of Mr. Justice Cooke delivered on 28th day of October, 2009.**

1. I have considered all of the arguments that have been put forward very helpfully on either side of this case and as I indicated, I had read the papers yesterday with a view to this hearing.
2. There is, in the Court's view, a troubling and regrettable lack of coherence and clarity in this decision of the Refugee Appeals Tribunal and it forces the Court with some hesitation to conclude that it may well be necessary and appropriate for the Court to intervene by way of judicial review, and it seems to the Court that a limited number of substantial grounds have been raised to that end.
3. It is clear that the decision of the Tribunal member turns upon two particular conclusions, namely, the lack of credibility surrounding the claim made and the personal history given; and secondly, the conclusion that internal relocation would be available to the applicant if returned to Nigeria.
4. So far as the credibility issue is concerned, the lack of coherence lies in the ambiguity of the apparent acceptance of the personal history given as the reason for flight from Nigeria. The Tribunal member says:

"On the one hand there is no doubt about it but a crisis did arise and it is the opinion of the Tribunal that he, the applicant, was opportunistic in his efforts to travel, particularly to Ireland."

What is ambiguous is whether this refers to the facts relating to the MASSOB group or movement and the violence described in the country of origin information and looked at in detail in the Section 13 report; or does it refer to the personal history and events associated with that information, namely the kidnapping and ransom demands in respect of the applicant's wife, the loss of his shop and livelihood and so on? If "the crisis", which is apparently accepted by the Tribunal member as having happened, refers to the entirety of that history, it is difficult to understand how it can be reconciled with the conclusion reached at the end of Section 6 of the report where the Tribunal member says:

"The application of the applicant was less than credible and in his demeanour he presented as an educated individual who was simply not telling the truth."

5. There is also an unsatisfactory aspect to the introduction of a finding as to the availability of internal relocation, especially as this received no attention or investigation before the Commissioner and no mention in the Section 13 report. It also seems that only passing reference was made to the possibility at the hearing on the appeal. If the basic story about the reasons for flight from Nigeria was dismissed as simply not the truth, then the question of internal relocation on the face of it would be entirely irrelevant. If the claimed cause of the risk of persecution was discounted as simply being untrue, then the need to find a safe haven elsewhere in Nigeria did not arise. At the very least therefore, there is clearly a substantial ground raised on this aspect of the decision in that the possibility of internal relocation arises without its having been subject to any investigation either by the Commissioner or by the Tribunal member; and without any part of Nigeria being identified and checked as a prospective site for such relocation.
6. This is particularly relevant, in all likelihood, when the persecution was one of a more general nature arising from the activities and threats of a movement such as the MASSOB group rather than arising from some private, localised, personal feud or dispute. For that reason, it seems to the Court that a ground could at least be formulated in respect of the internal relocation aspect of the decision along the lines: "That the appeal decision of the appeal Tribunal is unlawful in that it purports to find that internal relocation in Nigeria was available to the applicant when no such finding had been made in the Section 13 report of the Commissioner and when no particular part of that country had been identified or investigated as a prospective site for relocation either by the Commissioner or by the Tribunal member contrary to the requirement with Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006."
7. The question of the legality of the conclusion on credibility is possibly more difficult in that the Tribunal member does make specific findings on particular aspects of the story given as the basis of the claim and these appear to coincide with some of the points made in the more extensive and detailed findings of the Commissioner in the Section 13 report. It may be arguable, therefore, that any defects in the Tribunal decision can, upon further consideration, be saved by reading that decision in conjunction with the Section 13 report which it affirms, so that the overall conclusion as to lack of credibility is sufficiently sound to form a basis for a decision to refuse the declaration of refugee status when presented to the Minister.
8. If that is so, then it may well be that this decision may not eventually be quashed at a substantive hearing of the application even if the internal relocation findings are found to be flawed and susceptible to being quashed.

9. Nevertheless, there is at least one aspect on which the credibility issues do raise a substantial question which may require further consideration by the Court at a substantive hearing. This goes to the basis upon which the central conclusion of the credibility is reached and, in particular, where the Tribunal member, as part of the assessment of credibility, expresses the opinion:

"It is the opinion of the Tribunal that the applicant travelled more for economic reasons than to avoid what was happening in Anambra."

This feature of the conclusion when combined with the ambiguity as to the treatment of credibility, which I have already mentioned, raises a question as to the soundness of the basis upon which the main conclusion is reached. It is clearly arguable, as Ms. Carroll has made out, that as a matter of law, an ambition on the part of an asylum seeker to better himself does not necessarily deprive a genuine refugee of refugee status if there is also a basis for a well-founded claim to fear of persecution.

10. Accordingly, and without wishing to give any indication as to the likelihood of actual success of the ground when subjected to substantive consideration on the hearing of the application, it does appear to the Court that it would be justifiable to grant leave in respect of a further ground along the following lines:-

In forming the opinion that the applicant may have had economic motives for leaving Nigeria, the Tribunal member erred in law and misapplied the definition of refugee in Section 2 of the 1996 Act by failing to consider, to decide, and to explain, whether the events accepted as having constituted a crisis gave rise to the applicant's flight from Nigeria and constituted, in fact, a basis for a well-founded fear of persecution.

11. Accordingly, the Court proposes to grant leave in this case to seek the reliefs at Section D of the statement of grounds confined to paragraphs 1, 5 and 6. If this decision is bad then *certiorari* is all that is needed. The other reliefs are, in the Court's view, largely superfluous. The Court takes the view that it is not necessary to seek mandamus to remit the matter to the Tribunal because if *certiorari* succeeds there is then no decision on an outstanding appeal and the matter can proceed no further under Section 17 until that is remedied. There is automatic obligation on the Tribunal to complete the procedure again.

12. So the reliefs for which leave will be allowed are D 1, 5 and 6. The grounds are the two grounds relating to internal relocation and credibility as I have outlined. I will grant the necessary three day extension of this as required. Costs will be reserved.