

THE HIGH COURT
JUDICIAL REVIEW

[2008 No. 1325 J.R.]

BETWEEN

B. A.O.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice McDermott delivered on the 3rd day of August, 2012

1. Introduction

1.1 The applicant is a citizen of Nigeria and was born on 3rd March, 1974. For 33 years he lived in the family home at Ibadan in Oyo State, Nigeria. He is single and has three dependent children. His mother and three siblings reside in Nigeria. His three children reside with his mother. The applicant was educated for a period of sixteen years until 2002/3. He was employed as a cashier and an accountant and states that he was an economics lecturer.

1.2 The applicant arrived in Ireland on 10th June, 2008, having flown to Dublin via Paris using a false passport. He claimed to be in fear for his life if he returned to Nigeria arising out of circumstances which he described in the course of his application for asylum. He claimed to be a victim of persecution on the basis of political opinion.

1.3 The applicant claims that his father was a member of a political movement or party called Alliance for Democracy and was a prominent member of that party in Oyo State. His father was planning to contest the chairmanship of a local government council in "South West" Ibadan and some five to ten other people from the same party also intended to contest the election. The applicant did not know who they were. He did not know when the contest was to be run. His father did not hold a particular office in the Alliance for Democracy.

1.4 The applicant stated that his father was murdered on the 3rd December, 2007. He described how five armed men in plain clothes came to the family home in Ibadan and asked the security guard where his father was. The security guard was tied up. The house was broken into and the applicant was forced to lead the raiders to his father's bedroom. One of the raiders was a former school mate. His father began to shout for help but the killers gained entry to the room and shot him twice. The applicant claimed that he was shot at but escaped from the house over a wall and jumped into the backyard. He was followed and physically attacked and threatened with death, but he managed to escape and went straight to the police station nearby to lodge a complaint.

1.5 He claimed that following the murder of his father his life had been threatened and he had to relocate three times in Nigeria to secure his safety. His mother relocated with his children to Kwara State to stay with his father's friend.

1.6 He said that the police took a statement from him about his father's killing and placed it on file. They attended at the family home, advised him to be vigilant and to be "sensitive for my life". No arrest was made or murder charge laid. He complained that no protection had been given to him and he was just told to watch his movements. He gave the police the name of his school mate who was one of the murderers. He did not know why anybody wanted to kill his father. Apart from a death certificate stating that his father died from a gunshot wound on the 3rd December, 2007, there was very little documentation such as media reports of his death or statements made by the applicant or the neighbours who attended at the scene, or police reports of the incident.

1.7 The applicant claimed that on the 4th December, 2007, he went to live with a friend with whom he remained for two months. On the 30th January, 2008, the same people who had assassinated his father came to his friend's house. He was not there. They destroyed the building and beat up the people in the house. This also was reported to the same police station as his father's killing. The police advised him to be careful about his movements and to leave the local state. He went to Lagos. He stayed with a friend between February and March, 2008. He was asked to leave by his friend who had learned about the earlier incidents and was scared. He did not want problems. He then moved to Bauchi State where he remained from April to the end of May, 2008. He reported that some people came to that address and asked for him and from the description that he obtained, he deduced that the callers were part of the same gang that killed his father. He reported this incident to the local police station.

1.8 As a result of this, his mother contacted his father's friend who retained an agent for him who, for payment, planned his departure from Lagos. The agent was apparently given his passport photograph for this purpose. His passage was arranged and he arrived in Ireland on the 10th June, 2008.

1.9 In the course of his application for asylum, a report was prepared pursuant to s. 13(1) of the Refugee Act 1996, following his completion of a questionnaire and an interview conducted in accordance with s. 11 of the Refugee Act 1996. The Refugee Applications Commissioner on the 27th June, 2008, recommended that the applicant should not be declared a refugee. The applicant appealed against this decision to the Refugee Appeals Tribunal and a hearing was held on the 22nd September, 2008. The Tribunal's decision was made on the 6th October, 2008. The Tribunal affirmed the original recommendation of the Refugee Applications Commissioner.

2. Judicial Review

2.1 Leave to apply for judicial review of the Tribunal's decision was granted by order of the High Court (Cooke J.) on the 28th October, 2011, on the following grounds:-

"The Tribunal decision is erroneous in law, inadequate in its assessment of the grounds of appeal, lacking in clarity in the statement of its findings and deficient in giving a definitive reason for its conclusions as follows:

(a) The tribunal member expresses doubt as to the credibility of certain aspects of the applicant's evidence, but fails to make any clear and definitive finding as to whether the claim as a whole is rejected as untrue;

(b) The tribunal member expresses disbelief in the applicant's account of his escape from the incident in which his father was shot, but fails to state any findings as to whether the father was shot for political motives (as the applicant claimed) or not shot at all (as the presenting officer submitted);

(c) The tribunal member considered that in part of his evidence the applicant was "making same up as he went along" but fails to identify the evidence in question or explain its materiality to the issue of credibility;

(d) The Tribunal expressed the belief that the applicant's objective was to bring his children and partner to this country in disregard of the applicant's evidence that the mother of his children had left him and is remarried;

(e) Although impliedly concluding that the applicant's fear of persecution was unfounded for a lack of credibility, the tribunal member proceeded inconsistently to find that the applicant had no need for international protection because he could have relocated with considerable ease to another part of Nigeria;

(f) The purported examination of the relocation alternative failed to comply with the requirements of Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006 and, in particular, by failing to identify any alternative locations in the light of the source and nature of the harm against which it was considered protection would be necessary including the question as to whether the risk of harm was attributable to state or non-state actors."

2.2 It is clear that most of the grounds upon which leave was granted referred to matters of the applicant's credibility. The Tribunal concluded that the applicant appeared to be a very educated man. It found it difficult to believe that he escaped and on a number of occasions was discovered and again escaped the clutches of his pursuers. It is clear that the Tribunal did not accept his description of the shooting and its aftermath as true. The Tribunal found it very difficult to believe that he escaped being shot in circumstances where he was present when his father was shot. It was also clearly sceptical of the evidence given by the applicant in respect of the other occasions upon which he was allegedly pursued and discovered but avoided any harm. The Tribunal also stated:-

"It seems improbable to the Tribunal that the applicant's mother and the applicant's siblings could live in safety in Nigeria while he was the one to be pursued. His knowledge of the Alliance for Democracy is minimal and it is highly doubtful he had anything whatever to do with that particular organisation. The applicant in his demeanour did not appear credible and on one occasion there is no doubt at the end of his evidence the applicant was making up same as he went along, and more particularly in response to the presenting officer.

Further, the applicant could not name one of the five to ten individuals who were to contest the chair of the State Alliance for Democracy Organisation along with the applicant's father. This was also improbable even though the candidates had been declared for the election. Surely the applicant would know one name out of the names proposed as a minimum."

2.3 Further, the Tribunal determined that the applicant's account of his passing through the immigration authorities in Paris and in Dublin with ease using the false passport described was not credible.

2.4 It is clear that the tribunal member's conclusion that the applicant's story lacked credibility extended to numerous key aspects of the applicant's claim.

2.5 The Tribunal carefully considered the evidence in assessing the credibility of the applicant's story and considered all of the appropriate documentation and evidence in relation to the issues raised on the appeal in accordance with the Act. In addition, the Tribunal had regard to the requirements of s. 11B of the Act in assessing the credibility of the applicant, together with Regulation 5.3 of the European Communities (Eligibility for Protection) Regulations 2006. I am fully satisfied that appropriate legal principles and procedures were applied by the Tribunal in reaching its determination.

2.6 In that context I also have regard to the decision of Cooke J. in *I.R v. the Minister for Justice, Equality and Law Reform* (Unreported, High Court, Cooke J., 24th July, 2009) [2009] IEHC 353, in which a number of principles were stated as a guide to the manner in which evidence going to credibility ought to be treated and how any review of conclusions as to credibility ought to be carried out in cases such as this.

2.7 I turn to these principles having concluded that the decision made by the Tribunal in this case is legally sound and is not vitiated by any other material error of law. It is not made in breach of any statutory provision or any principles of natural or constitutional justice.

2.8 In approaching this issue it must also be recalled that the onus is on the applicant on appeal to the Tribunal to demonstrate that he has a genuine fear of persecution for a Convention reason and secondly, to establish that fear is objectively justified or reasonable and, therefore, well-founded. It is in that context that the relevant principles to be found in para. 11 of the judgment of Cooke J. fall to be applied. They are:-

"(4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.

(5) 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) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which

are merely incidental to the account given.

7) A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.

8) When subjected to judicial review a decision on credibility must be read as a whole and the court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision – maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person.”

2.9 Cooke J. also noted that there is no general obligation for a decision on credibility to refer to every item of evidence and every argument advanced provided the reasons stated enable the applicant as the addressee of the decision and the court in exercising its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached.

2.10 I am satisfied that the Tribunal’s decision stands the test of the principles quoted. The substantive basis for the conclusion reached by the Tribunal on credibility is clearly set out in its decision. It was reached following a consideration of all of the documents as submitted in the course of the appeal and the oral evidence of the applicant. The reasons given relate to the substantive basis of the claim and not to minor or incidental matters of fact. The court is satisfied that the applicant has failed to establish that the determination of the Tribunal was in any way unreasonable, irrational or disproportionate having regard to the nature and extent of the documentary and oral evidence furnished to the Tribunal.

2.11 In particular, I am not satisfied that the grounds set out at 1(a), (b) and (c) are sustainable. As noted, the Tribunal’s decision expressing doubt as to the credibility of certain aspects of the applicant’s evidence is clear and focused. It clearly expresses disbelief in the applicant’s account of the raid on his home, his escape, and his other escapes.

2.12 In respect of Ground 1(c) I am satisfied that the tribunal member’s consideration that part of the evidence given by the applicant appeared to be made up “as he went along” is unobjectionable. The decision maker was entitled to consider the oral testimony given by the applicant and the manner in which he narrated his story. It is clear that the tribunal member was dissatisfied with the manner and demeanour of the applicant when he gave his evidence. This contributed, as sometimes happens, to a determination that the witness was lacking in credibility. The Tribunal is entitled to form an overall impression of the witnesses’ demeanour and candour in the course of an oral hearing and in this case the Tribunal’s conclusion must be viewed as an expression of an overall assessment of that evidence as it emerged in the oral hearing.

2.13 I am satisfied that the applicant’s credibility was determined by reference to the full picture that emerged from the available evidence and the information taken as a whole and that it was rationally analysed and fairly weighed.

2.14 In respect of Ground 1(e), I regard the Tribunal’s expression of belief that the applicant’s objective was to bring his children and partner to this country and its error in relation to the fact that the mother of the children had left him and had remarried, as matters which were not essential to the Tribunal’s determination. In particular, I note that the Tribunal qualified its observation in relation to the applicant’s presence in Ireland by saying:-

“The Tribunal whilst it cannot base its judgments on suspicions, nevertheless believes the applicant is in Ireland with a view to bringing his children and his partner to this country in due course.”

2.15 I am satisfied that the Tribunal was specifically indicating that it was not basing its decision on that suspicion and clearly indicated that it would not form the basis of its judgment. The fact that “his partner” was referred to in this sentence, may be viewed as a simple error because elsewhere in the decision the correct position in relation to the applicant’s marital status is stated and it is noted that he is a single man with three children who are living with his mother in Nigeria.

2.16 The applicant complains in Ground 1(e) that the tribunal member’s decision to consider relocation was inconsistent with his finding that the applicant had no need for international protection. I am satisfied that the observations made by the Tribunal in relation to the potential for the applicant to live and relocate in Nigeria were unobjectionable. This ground has no substance whatsoever.

2.17 The Tribunal at para. 6.1 of the decision correctly states the law in relation to internal relocation and recites the basis upon which it can be considered. In fact, relocation did not form part of the substantive decision of the Tribunal. The Tribunal analysed the applicant’s claim that he was the subject of persecution in Nigeria by reference to important features of his case which included the fact that the applicant himself had lived in a number of other locations in Nigeria while the applicant’s mother and children were able to live in safety in Nigeria. His brothers were at university in Nigeria. He was well educated and had a history of employment in Nigeria. On that basis the Tribunal was satisfied that the applicant could easily have integrated into society and obtained a job suitable to his qualifications in another part of Nigeria.

2.18 I am satisfied that the Tribunal was entitled to take into account the evidence available in respect of these features of the case as part of the overall consideration of the applicant’s claim that he was the subject of persecution in Nigeria. I am entirely satisfied in this case that these factors were considered appropriately by the Tribunal and were not given any exaggerated, inappropriate or unreasonable importance by the Tribunal in reaching its decision.

2.19 The applicant claims at Ground 1(f) that the “purported examination” of the relocation alternative failed to comply with the Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006, by failing to identify any alternative location in the light of the source and nature of the harm against which it was considered protection would be necessary. There was no finding that there was any persecution in this case by the Tribunal. I am satisfied that the Tribunal properly adverted to the fact that the applicant resided in Nigeria following the alleged shooting of his father in a number of locations and that his family remained safely in Nigeria at another location. The issue of relocation insofar as it was referred to was not central to the substantive decision in this case. I am satisfied that the Tribunal properly considered the applicant’s case in light of the documents and oral evidence received and whether he could establish that he was refugee having a well-founded fear of being persecuted for reasons of political opinion pursuant to s. 2 of the Refugee Act, 1996.

2.20 In conclusion, I am not satisfied having considered all of the evidence and submissions in this case that the applicant is entitled to the relief claimed on any of the grounds advanced. I, therefore, refuse the relief sought on behalf of the applicant.

