Neutral Citation: [2015] IEHC 585

THE HIGH COURT

JUDICIAL REVEIW

[2011 No. 997 J.R.]

BETWEEN

O. N.,

E. N. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND O. N.),

C. N. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND O. N.),

C. N. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND O. N.),

O. N. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND O. N.)

APPLICANTS

AND

REFUGEE APPEALS TRIBUNAL,

THE MINISTER FOR JUSTICE AND LAW REFORM,

ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 22nd day of September, 2015

1. This is a telescoped hearing wherein the first-named applicant seeks an order of *certioriari* quashing the decision of the Refugee Appeals Tribunal which affirmed the recommendation of the Refugee Applications Commissioner not to declare her a refugee.

Extension of Time
2. A short extension of time is required in this case. Having regard to the contents of the first-named applicant's affidavit, and being satisfied that no prejudice accrued to the respondents, the extension is granted.

The applications of the second, third, fourth and fifth-named applicants
3. The applications of the second, third, fourth and fifth-named applicants are conceded by the respondents and accordingly, leave is granted and the court makes an order of *certiorari* in respect of the decisions rendered by the first-named respondent in respect of the second, third, fourth, and fifth-named applicants. Each of these matters is hereby remitted to the first-named respondent for *de novo* consideration by a different Tribunal Member.

Background to the first-named applicant's asylum history
4. The first named applicant is referred to hereafter in the judgment as "the applicant". The applicant is a Nigerian national of the Ijaw tribe. She is a married woman with four children, three of whom were born in Greece and one in Ireland. The applicant claims that she is at risk of persecution in Nigeria on grounds of imputed political opinion arising out of her husband's activities as a community youth leader and activist in Port Harcourt, Rivers State, Nigeria and by virtue of her own activities in tandem with those of her husband.

5. The applicant's account of what led her to seek asylum is as follows. Her community in Port Harcourt suffered greatly as a result of environmental damage caused by an oil company whose activities, the applicant claimed, had succeeded in destroying the environment. The damaged environment had caused the local river to become polluted and some of the fish stock upon which the community relied died as a result. Moreover, the environmental damage to the river led to flooding resulting in peoples' living conditions becoming precarious. The local people had suffered greatly as a result. Promises which had been made to local people had come to naught. The applicant's husband, who was the local youth leader, sought redress from the local government chairman on behalf of the poorer local residents of Port Harcourt. However, he was told to cease his complaints. Her husband then engineered a mass protest which involved local people and boys from the village who protested outside the home of the local government chairman. The applicant herself had called on women in the village to take part in organised protests. The applicant claimed that as a result of the protests, a number of the villagers, including some of the young boys who had protested, were taken away. Some nine people had been kidnapped by local security forces. The applicant attributed their disappearance to the Joint Task Force (JTF), which is a combined force of police, military and state security service personnel which operated in the Niger Delta. While some of the people were released, the applicant did not know what happened to some of the others and she feared for their lives. Some time after this, on12th March 2009, when the applicant returned home after purchasing items in the market, she discovered that her house, together with a number of other houses, had been burned down. She was advised that she and her husband were being sought by the JFT. All of the contents within the house were destroyed. People told the applicant that the JTF were responsible. The applicant went immediately to collect her children who were being looked after by a family friend. She then sought help from a priest, Godwin, who was a family friend, only to discover that he had gone to the Cameroon to preach the gospel. Nonetheless, she stayed in the local Catholic church for some days until local people put her and her children on a fishing boat that brought her to Cameroon. She was then taken to the parish in Cameroon where Godwin was working as a priest. Through Godwin she was introduced to an agent, Matthew, who said he would take her to safety. The applicant understood that Godwin had secured the finance for the journey. The applicant stated that she was taken to an airport in Cameroon and after a journey which took six hours she landed in another country which may have been France. She was accompanied by Matthew through Immigration Control and showed the Immigration officials in France a red document which she believed was a passport. She then returned the document to Matthew. On arrival in Dublin, she

experienced no problems at immigration and applied there and then for asylum. Again, she returned the documents to Matthew and did not see him subsequently.

6. It is not in contention that, prior to her claim of fleeing Nigeria in April 2009, the applicant had a prior migration and asylum history. Her account of this history is as follows: In 2002, the applicant went to Greece for a holiday. As she was pregnant when she embarked on this journey, she did not wish to make a return journey to Nigeria. Her first child was born in Greece on 15th November 2002. She remained in Greece until 2003 but could not recall the date of her return to Nigeria. That return journey was facilitated by a friend of the applicant's family who worked on a ship who allowed the applicant and her child to travel as passengers. She did not have to pay and her friend helped her with the finances. She recalled that the journey lasted two weeks. The ship arrived at the port of Mpa, in Lagos. The applicant disembarked with a *"Sailor's Passport".*

7. The applicant claimed that she returned to Greece in 2004 in the following circumstances: She had been living in Jos, Northern Nigeria, and became terrified by the communal violence that occurred between Christians and Muslims. As it was impossible to travel overland to Port Harcourt in southern Nigeria because the roads were blocked, the applicant took an overland route back to Greece. She and her young child walked from Ibadan through the bush to Chad. Arriving in Chad she then travelled by van which brought her further north; she was not sure what other countries she visited. She then took a ship that brought her to Turkey although she could not recall the port at which the ship docked. From Turkey she took another ship that brought her to Greece. On entry into Greece she had no passport. She made an application for refugee status in Greece but this was rejected. She was told to leave Greece but did not immediately comply with this request, remaining there for three years. During this time her husband made a visit to Greece and he remained for some months but then decided to return to Nigeria. The applicant departed Greece for Nigeria in 2007. She again made a return journey by ship. She had been working in a market in Greece and was able to afford a fare of €500 that brought her from Greece to Nigeria. The vessel that carried her to Greece was a container vessel.

Procedural History
8. The applicant's asylum application commenced on 1st April 2009. She completed a questionnaire on 8th April 2009; the questionnaire documented her failed asylum application in Greece. On 8th October 2009, the applicant was issued with a "Notice of determination to transfer application to another Council Regulation country" pursuant to Council Regulation (EC) 343/2003. She did not make herself available to the authorities for that transfer. Following communication from her solicitor on 28 March 2011, the applicant was interviewed by ORAC on 25 May 2011 and on the 21 June 2011, the Commissioner issued the s. 13 report which rejected the asylum application. The s. 13 report made credibility findings with respect to the applicant's previous travel to Greece, stating, inter alia, that "it appears more likely that the applicant remained in Greece and travelled from Greece to Ireland in 2009". Additionally, the applicant's perceived dearth of detailed knowledge of her local area in Port Harcourt led "to the conclusion that she has not resided there as she claims". Moreover, it found that she "failed to provide a true and accurate account of how she travelled to this State" . The report concluded: "when the numerous issues outlined above are considered cumulatively, it is considered reasonable to conclude that this applicant does not present as a credible witness".

9. A Notice of Appeal was lodged on the 11th of July 2011 and it was submitted on behalf of the applicant that, inter alia, the RAC erred in fact and/or in law in deciding that the applicant did not meet the criteria set out in the 1951 UN Convention; that the RAC erred in fact and in law in failing to apply the said criteria in a spirit of justice; that it erred in fact and law in applying the burden and standard of proof; and that it erred in fact and in law by not giving the applicant the benefit of the doubt. The attached written submissions made arguments on the nexus to the Convention, the meaning of political opinion, the definition of persecution and arguments as to how the applicant's credibility should be assessed.

10. An oral hearing took place on 22nd August 2011. The Tribunal's decision issued on 7th September 2011.

11. The s. 6 analysis commenced by reference to country of origin information reports which had been submitted on behalf of the applicant and which the Tribunal Member noted *"indicate that there has been considerable violence in Port Harcourt relating to elections and gang violence as well as demonstrations carried out by people in the Bundu community, Port Harcourt"*. Reference was made to an Amnesty International report of October 2010 which documented that the JTF opened fire on people who were protesting against the proposed demolition of their homes in the Bundu waterfront community. The decision referred to and quoted from a Human Rights Watch report dated March 2008 which documented, *inter alia*, that JTF personnel had shot civilians dead with no justification and had subjected others to arbitrary detention and beatings and that the homes of people who had looked to them for security had been looted. The Tribunal Member stated:

> *"[c]learly the JTF has apparently lived up to the reputation ascribed to it by the Applicant during the course of her evidence. Whether the JTF operates outside of River State and in other parts of Nigeria cannot be objectively ascertained.*
>
> *While it would seem that the JTF is capable of incinerating the homes of civilians, there is no report in the COI submitted to me of JTF interference with the Applicant's home or indeed with other people it (sic) that part of Port Harcourt where she resided."*

12. After noting the requirement to assess the facts and circumstances as outlined in Regulation 5 (1) and (3) of the European Communities (Eligibility for Protection) Regulations 2006 ("the 2006 Regulations"), the Tribunal Member went on to state:

> *"In evaluating the general credibility of the Applicant, the following issues have arisen:*
>
> *1. The Applicant demonstrated a marked inability to answer certain questions which, if isolated from other questions relevant to the claim, might not be detrimental to the application. However, in reviewing the evidence, it becomes clear that essential information which could reasonably be expected of the Applicant to answer, was not forthcoming. Examples are as follows:-*
>
> *a. There is an absence of documents of identification, and in particular there was no passport. Nor did she possess airline tickets, boarding cards or other documentation that could assist her application.*
>
> *b. The Applicant also claimed that she had made two return journeys to Greece but there is no documentation to support this claim either. The account she has given for two return journeys by sea to Nigeria are totally implausible. Equally lacking in credibility is the description of how she walked and was bussed, with a one year old child, all the way from Southern Nigeria to an unknown port, presumably in North Africa, which took her to Turkey and onwards to Greece. Here again there is no documentation to support the contention that the Applicant returned to Nigeria from Greece, or that she then took a second trip to Greece.*

It is for an applicant to prove her case. In the absence of any form of objective supporting evidence, the Tribunal is satisfied that this Applicant remained at all times in Greece, and did not return to Nigeria at any time since her departure from (sic) Greece in 2002.

The burden of proof is on an applicant to sustain the claim made to the Tribunal. This Applicant on arrival in the State was subjected to a Section 8 interview. According to the Section 8 interview notes, the Applicant stated that she had never sought asylum in any other country before her arrival in Ireland. This is blatantly untrue as she subsequently admitted.

The Tribunal is required, in assessing the credibility of an applicant, to consider the matter set out in Section 11 (B) of the Act. This Applicant does not possess documents of identification, nor has she provided a reasonable explanation for the absence of such documents.

Equally applicable is Section 5 (3) of SI 518 of 2006.

The Tribunal is satisfied that the Applicant has not made a genuine effort to substantiate her application. Consequently Section 5 (3) (a) is applicable.

The Applicant's statements are not coherent or plausible. They do run counter to available specific and general information relevant to the Applicant's case. While violence has been a factor in Rivers State there is no objective documentation to support the Applicant's contention that she was forced to flee Nigeria for the reasons outlined in her oral evidence. Section 5 (3) (c) applies.

Finally, the applicant's general credibility has been referred to previously in this assessment."

13. Under the heading *"Internal Protection",* the Tribunal Member went on to find that the applicant could relocate to an area outside of the Niger Delta. Under the heading *"Imputed political belief",* the Tribunal Member opined:

"Finally the Applicant claims that she would be persecuted because she immobilised (sic) some women in her village to support her husband's work as their spokesman. The case brought by the Applicant would appear to be that she could be victimised because of the imputed belief that she was closely associated with her husband's activities. The Applicant has not produced any corroborative evidence to support this contention."

The applicant's submissions

14. In the first instance, counsel for the applicant predicated his criticism of the manner in which the Tribunal Member assessed the applicant's credibility by stating that he did not take issue with the Tribunal Member's entitlement to rely on the absence of identification or travel documentation or on his reliance on the fact that there was no documentation to support the two return journeys to Greece or the applicant's contention that she returned to Nigeria from Greece. Equally, counsel conceded that it was open to the Tribunal Member to regard as implausible the account given of the two return journeys by sea from Greece to Nigeria and to find a lack of credibility in the applicant's account of having walked or being bussed from southern Nigeria with a one-year old child to an unknown port in North Africa and from there to travel to Turkey and onwards to Greece.

15. However, it was argued that the first infirmity in the credibility assessment lay in what preceded the findings set out at 1 (a) and 1(b), namely the Tribunal Member's reference to the applicant having demonstrated *"a marked inability"* to answer certain questions. This, counsel submitted, was a serious criticism of the applicant, but other than citing the absence of identification and travel documentation and the implausibility of her two return journeys by sea to Nigeria and the lack of credibility in her account of how she made her way across Nigeria to a port in North Africa and onwards to Greece, the Tribunal Member did not identify the other questions in respect of which he found the applicant demonstrated a marked inability to answer. Had the marked inability to answer certain questions related only to the issue of documentation or the other specific findings made by the Tribunal Member, counsel could have no issue with that, but here, a specific finding was couched in terms that led to the conclusion that there were other questions that the applicant should have answered. Thus, the Tribunal Member made a finding in generic or boiler plate terms, which constituted a flaw in the decision-making process, in the absence of an intelligible reason for the said finding. In this regard, counsel relied on the dictum of Mac Eochaidh J. in *R.O. v. Minister for Justice* [2012] IEHC 573:

"30. In view of the foregoing, I approach the review of the adequacy of reasons in this case by asking the following questions:

(i) Were reasons given or discernible for the credibility findings?

(ii) If so, were the reasons intelligible in the sense that the reader/addressee could understand why the finding was made?

(iii) Were the reasons specific, cogent and substantial?

(iv) Were they based on correct facts?

(v) Were they rational?

16. In particular, the approach of the Tribunal Member could not be said to have satisfied the intelligibility requirement as set out in question (ii) of R.O. in circumstances where the applicant, as the addressee of the criticism, and the reader of the decision, were left not knowing what questions were relied on by the Tribunal Member which the applicant should have answered.

17. The applicant gave an account of being in Greece from 2002 to 2003, and again from 2004 until 2007, and stated that she was in Nigeria from 2007 to 2009. However, the decision-maker had gone on to find that she had remained in Greece from 2002-2009. This, counsel argued, was the lynchpin of the decision. It was submitted that such a finding would be open to the Tribunal Member if there was any evidence before him that the applicant had in fact remained uninterrupted in Greece from 2002 to 2009; there was however no such evidence. As such, the finding was pure conjecture or speculation on the part of the decision- maker. As a result of this conjecture and/or speculation, the Tribunal Member failed to engage with the applicant's claim of persecution.

18. Having made the finding that the applicant remained in Greece until 2009, the Tribunal Member thus obviated the need to examine

her account of events in Nigeria between 2007 and 2009, in particular, her account of her and her husband's activities and the ensuing violence and kidnappings which she claimed culminated in the burning of her home in Port Harcourt in 2009.

19. Counsel also took issue with the finding that *"the Tribunal is satisfied that the Applicant has not made a genuine effort to substantiate her application. Consequently Section 5 (3) (a) is applicable."* This, counsel contended, was another example of a generic, boiler plate finding on the part of the decision-maker. Apart from his reliance on the absence of documentation, which he had earlier dealt with, the Tribunal Member did not give any explanation or underlying basis as to why or how he arrived at this finding. This was a serious flaw and again was in breach of the requirements set out in *R.O. v. Minister for Justice*, in particular the requirement for intelligible reasons to be given in order to understand why the finding was made.

20. Equally, the findings that the applicant's statements were not coherent or plausible and that they ran counter to available specific and general information relevant to her case were arrived at in error in that, again, they were generic or boiler plate criticisms of the applicant's statements, without the Tribunal Member identifying what it was in the applicant's account of events that led to these conclusions. Again, such findings breached the standard required, as set out in *R.O. v. Minister for Justice*. The same criticism was levelled at the Tribunal Member's finding that *"the Applicant's general credibility has been referred to previously in this assessment."*

21. Counsel submitted that what was required to be determined was the applicant's account of the events which triggered her departure from Nigeria in 2009, and which formed the basis of her asylum application in Ireland. In the Notice of Appeal submissions which had been made to the Tribunal on her behalf, the Tribunal was reminded that *"the law imposes no requirement on the [first-named applicant] to provide corroborative or documentary evidence in relation to the matters raised in her claim."* In this regard, the applicant's legal representative had relied on the following extract from Mark Symes' *Case law on the Refugee Convention*:

> *"An asylum seeker who can provide corroboration will doubtless be in a better position than one who cannot do so; but there is no law or presumption that corroboration is a prerequisite for the establishment of any fact."*

22. Moreover, the UNHCR Guidelines provide:

> *"196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.*
>
> *197. The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself. Allowance for such possible lack of evidence does not, however, mean that unsupported statements must necessarily be accepted as true if they are inconsistent with the general account put forward by the applicant…*
>
> *203. After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. As explained above (paragraph 196), it is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt."*

23. With regard to the present case, save for repeated reliance on the absence of documentation and the implausibility of the first-named applicant walking from Nigeria to the northern part of Africa and travelling onwards to Greece, the remainder of the Tribunal Member's decision was made up merely of bald statements which, counsel reiterated, did not meet the test set down in *R.O. v. Minister for Justice*.

24. It was further submitted that the finding that internal relocation was an option for the applicant did not accord with the principles set out by Clark J. in *K.D. (Nigeria) v. Refugee Appeals Tribunal* [2013] IEHC 481. If the Tribunal Member considered relocation within Nigeria an answer to her claim, it behoved him to identify a safe place of refuge and to consider whether the proposed part of Nigeria was reasonable, in practical term, for the applicant to relocate to. In the present case, the Tribunal Member failed to carry out the requisite assessment. In the course of the s. 11 interview, the only part of Nigeria that was canvassed with the applicant was Lagos and she had explained that she did not speak Yoruba and did not know anyone there. It was submitted that the decision- maker made no attempt to consider the applicant's particular circumstances being a married woman with children. While the country of origin information indicated that there was freedom of movement within Nigeria and while the information led to the conclusion that there was no evidence to suggest that the security forces would maintain an interest in the applicant were she to reside elsewhere in the country, the Tribunal Member failed to alert himself to the practicalities of the applicant and her children relocating within Nigeria. The particular difficulties that she might face were documented in the country of origin information which had been furnished to the Tribunal Member, in particular the UK Home Office Report of 15th January 2010 which referred, *inter alia*, to the following:

> *"BAOBAB stated that from a legal point of view, internal relocation is an option for any woman in Nigeria because there is full freedom of movement in the country. However, this first step - even to take a bus - can be difficult as women are dependent on their relatives, family or husbands, and may not have the money to allow them to relocate. As a consequence of this, a woman will need relatives in her new location who are ready to accommodate her…*
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> *…It was emphasized by BAOBAB that a woman can obtain physical protection by relocating to another area in Nigeria. Women who are economically independent, in particular, would stand a much better chance of sustaining themselves than women who are not."*

The Respondents' Submissions

25. Counsel for the respondents disputed the challenge made by the applicant's counsel to the credibility assessment. Counsel contended that despite the decision-maker having found the applicant to be incredible in many respects, he had nevertheless fully, adequately and carefully analysed the country of origin information which had been furnished on her behalf. This has not been

disputed by the applicant's counsel. The Tribunal Member fairly and reasonably found that the JTF *"apparently lived up to the reputation ascribed to it by the applicant during the course of her evidence."* In finding as he did, he took cognisance of the country of origin information which was before him, in particular the 2010 Amnesty International Report and the Human Rights Watch Report of March 2008. What the Tribunal member was required to do, he did. He looked at the country information in order to ascertain whether there was an objective basis for the first-named applicant's claim and he agreed that there was such a basis. He then looked at her subjective account but found nothing in the country of origin information which referred to an attack on the applicant's home or on people in that part of Port Harcourt where she resided.

26. There was no merit in the arguments canvassed by the applicant's counsel with regard to the various findings made by the decision-maker. There was no requirement on a decision-maker to spell out in the decision all the questions and answers pursued in an appeal hearing as long as the basis for a finding of lack of credibility can be found or is ascertainable from the reasons given. In this regard, counsel referred to the *dictum* of Cooke J. in *I.R. v. Minister for Justice* [2009] IEHC 353 that *"a decision-maker is not obliged to mention every argument or deal with every piece of evidence in an appeal decision so long as the basis upon which a lack of credibility has been found can be ascertained from the reasons given."* Thus, the arguments advanced by counsel for the applicant were misconceived.

27. In the present case, the reasons given by the Tribunal Member were clear. Specifically, he found that essential information which could be reasonably expected of the applicant was not forthcoming. In evaluating her general credibility, the Tribunal Member cited specific examples, namely those referred to under 1(a) and 1 (b) in the s. 6 analysis.

28. Counsel submitted that it was important to look at the full structure of the Tribunal Member's remarks before he cited the examples set out in 1 (a) and 1 (b). It was submitted that the applicant's counsel placed too much weight on the reference to the applicant's *"marked inability to answer certain questions"*, as the decision was not based on that finding; rather such finding was made in conjunction with specific findings regarding her credibility. Albeit that it was dealing with country of origin information, counsel referred the court to the dictum of MacMenamin J. in *A.A. v. R.A.T.* [2010] IEHC 435 in support of her argument that there was no necessity for a decision- maker to set out in the decision every aspect of the evidence:

> *"31. The obligation of a Tribunal member when faced with the selection of country of origin information is to make an assessment overall of the content of that information (see M.E. v. Refugee Appeals Tribunal (Unreported, Birmingham J., High Court, June, 2008)). Furthermore, the nature of the duty to give reasons should be recalled. In Pamba v. Refugee Appeals Tribunal (Unreported, Cooke J., High Court, 19th May, 2009), confirmed that the duty to give reasons contained in s. 16(16) of the Refugee Act 1996, as amended, is one to give reasons for the affirmation of the recommendation of the Commissioner. It did not involve a duty to analyse each and every piece of evidence or information before the Tribunal member. Once the applicant was aware of the reason why his case was being rejected, the duty to give reasons was satisfied. I am not persuaded that the applicant established reasonable grounds that there was a failure to consider the UNHCR paper or a failure to provide reasons for not applying its contents. I will refuse leave on this ground also."*

29. Counsel refuted the argument that the Tribunal Member's finding that the first-named applicant remained at all times in Greece and did not return to Nigeria amounted to conjecture or speculation on his part. There was evidence of the applicant's existence in Greece; she had made an application for asylum there and later was subject to a transfer order by this state which she did not comply with. While she based her Irish application for asylum on the basis of events in Nigeria between 2007 and 2009, there was no documentary evidence of her having returned to Nigeria from Greece in 2007. Insofar as the applicant gave evidence of this journey, the Tribunal Member found it incredible that she could have travelled in the manner she claimed. The Tribunal Member was not obliged to accept that evidence where there was no documentary evidence of her return to Nigeria. Thus, it was known to the Tribunal Member that the first-named applicant was in Greece, but there was no evidence that she was in Nigeria from 2007 to 2009.

30. There was no merit in the argument that the finding that the applicant had not made a genuine effort to substantiate her application constituted a generic or bland statement. The reference was made in the context of the decision-maker already having considered both the applicant's evidence and country of origin information. It was thus open to him to find that the provisions of Regulation 5 (3) (a) of the 2006 Regulations were not met by the applicant.

31. Equally, there was no merit in the argument advanced with regard to the findings that the applicant's statements were not coherent or plausible and that they ran counter to available specific and general information relevant to her case. In advancing the arguments he did, the applicant's counsel attempted to isolate the Tribunal Member's statements from the context in which they were made, namely his finding that while violence was a factor in Rivers State, there was no objective documentation to support the applicant's contention that she was forced to flee Nigeria for the reasons outlined by her.

32. In arguing as he did with respect to the various findings made by the Tribunal Member, counsel was attempting to parse the decision, in circumstances where the established jurisprudence required the decision to be read as a whole.

33. Contrary to the arguments advanced, the applicant's core claim was considered. This was clear from the consideration given to country of origin information in the context of the applicant's claim that because of her husband's activities, her house was burnt down. The Tribunal Member had clearly recorded the applicant's evidence in his summary, and in the course of the s. 6 analysis, he went on to address that evidence in the context of available country of origin information but could not fit her claim into the objective scenario outlined in the country information. Furthermore, it was part and parcel of the decision that the applicant was not credible in that the Tribunal Member found that she did not return to Nigeria from Greece in 2007.

34. With regard to the issue of internal relocation, counsel argued that the requirements of Regulation 7 of the 2006 Regulations to identify a part of the country of origin suitable for relocation was satisfied by the finding that the applicant could relocate to an area *"outside the Niger Delta."* The Tribunal Member, on consideration of the country of origin information, was satisfied that there was no evidence to suggest that the security forces would pursue the applicant outside of the Niger Delta and thus her moving to another area would be an effective way of avoiding any risk. He had also found that it would not be unduly harsh for her to relocate. While the applicant's counsel relied on country of origin information which referenced difficulties women faced in relocating because of lack of resources, the applicant had not made the case that she had money problems.

35. In any event, counsel argued that if the internal relocation assessment was found to be inadequate, that part of the Tribunal decision was capable of being severed from the separate assessment on credibility. In this regard, counsel relied on the *dicta* of Clark J. in *S.I.A. v. R.A.T.* [2012] IEHC 488:

> *"17. While the Court is satisfied that the decision on credibility cannot be impugned, the Court is critical of the*

inconsistency in the later finding that the applicant could internally relocate in the Port Sudan area. Why would a person who was not accepted to have a well-founded fear of persecution by reason of her ethnicity need to relocate elsewhere in Sudan, such as to Port Sudan?...

…21. Nonetheless, in view of the extensive negative credibility findings made by the Tribunal Member in this case and in the light of the applicant's failure to comply with the rules which pertain to illiterate deponents under Order 40, rule 14 RSC, and further bearing in mind the extension of time required, the Court deems it appropriate to sever the reference to internal relocation in Port Sudan which was an ill-considered afterthought. The Court will therefore refuse the application for leave. However, the Court deems it appropriate to allow the applicant some costs in view of the legitimate ground for complaint that the Tribunal Member's reference to internal relocation clouded the reasons for rejection of the applicant's asylum claim."

36. Counsel also relied on the dictum of Mac Eochaidh J. in M.S.O. v. R.A.T. [2014] IEHC 171:

"28. In short, I can find no error in the manner in which the internal relocation assessment was made in this case. However, even if I am wrong in this respect, and if there is a legal error in the assessment, the Tribunal decision in this case must be seen as one where the applicant's mother's credibility was rejected and that this is what was fatal to the applicant's claim for asylum. In circumstances where I have found no flaw with the credibility aspect the Tribunal's decision, and where those findings are unrelated to the internal relocation assessment, the Tribunal decision would not be susceptible to an order of certiorari even if an error of some sort infects the internal relocation assessment. (On severability of reasons for decisions, see the ex tempore decision of this court in A.A.[Pakistan] v Refugee Appeals Tribunal (Unreported, 13th September, 2013))"

The applicant's submissions in response

37. Counsel reiterated, that contrary to the argument advanced by the respondents' counsel, the case was not being made that the Tribunal Member was required to recite every piece of evidence in the decision; rather the argument was that the reasons given to reject credibility, bar two, were generic, bland reasons which did not satisfy the test set out in R.O. v. Minister for Justice. Furthermore, counsel refuted the assertion that the core claim was dealt with. The kernel of the applicant's claim was not addressed. If the respondents' counsel's argument was correct, then the decision was incomprehensible and a nonsense as the decision-maker found the applicant was in Greece between 2002 and 2009. Therefore, how could it be asserted by the respondents' counsel that the core claim was dealt with.

Considerations

The credibility assessment

37. The issue to be determined is whether it can be said that the reasons set out in the decision accord with the test set out in *R.O. v. Minister for Justice*. There was no challenge to findings 1 (a) and 1(b), as set out in the s. 6 analysis, or that the basis for same was not clearly or intelligibly identifiable. In looking at what preceded those findings, namely that the applicant *"demonstrated a marked inability to answer certain questions"*, is it the case that the basis for that introductory finding is equally clearly intelligible? I find that it is not. This finding, on the face of the decision, appears to be a factor which influenced the assessment of the applicant's general credibility. The Tribunal Member's phraseology, to my mind, does not instil confidence that the *"certain questions"* in respect of which the applicant demonstrated a marked inability to answer were not factors in the overall decision- making process. The very fact that the applicant's perceived deficiencies in this particular respect were alluded to in the analysis leads inexorably to the conclusion that the unanswered questions, while they appeared not to be determinative of her claim, played a part in the credibility assessment. As such, the applicant, as the addressee of the decision, was entitled to know, by way of example, the underlying basis for the finding.

38. I am also satisfied that the Tribunal Member's finding that the applicant remained in Greece at all relevant times and that she did not return to Nigeria is flawed. While the findings at 1(a) and 1(b) were within jurisdiction, as acknowledged by the applicant's counsel, I agree with his argument that absent some factual indicator from which the Tribunal Member could lawfully infer that the applicant remained in Greece, it was not open to him to declare himself satisfied that she remained at all times in Greece. In my view, the conclusions set out in 1(a) and 1(b), of themselves, could not logically or rationally lead to the conclusion that the applicant was at all relevant times in Greece, since those particular findings are confined to the absence of identification and travel documentation and the implausibility or incredibility of the applicant's account of her mode of travel relating to two return journeys to Nigeria and the manner of her travel from Nigeria to Greece. While the respondents' counsel pointed out that it was an undisputed fact that the applicant sought asylum in Greece in 2004 as evidence of her presence in that state which, it was argued, was sufficient to underpin the Tribunal Member's finding, it seems to me that the difficulty with that argument is that that reasoning was not expressly set out in the s. 6 analysis; nor can it be said to be patent from the decision. Even if the reasoning was in the decision the conclusion does not logically follow from his conclusion at 1(a) and 1(b). Insofar as the decision-maker alluded to the applicant's prior application for asylum in Greece, it was in the context of her failure at the s. 8 interview stage to mention that she sought asylum in any other country before her arrival in Ireland. Thus, I am persuaded by counsel for the applicant's argument that in the absence of any reasonable basis for the finding that the applicant remained in Greece, the Tribunal Member entered into the realm of conjecture and speculation.

39. However, I reject the applicant's counsel's arguments that the Tribunal Member breached the test set out in R.O .in finding that the applicant had not made a genuine effort to substantiate her claim and that her statements were not coherent or plausible and ran counter to specific and general information relevant to her claim.

40. Regulation 5(3) of the 2006 Regulations provides:

"Where aspects of the protection applicant's statements are not supported by documentary

or other evidence, those aspects shall not need confirmation when the following conditions are met—

(a) the applicant has made a genuine effort to substantiate his or her application;

(b) all relevant elements at the applicant's disposal have been submitted and a

satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for protection at the earliest possible time, (except where an applicant demonstrates good reason for not having done so); and

(e) the general credibility of the applicant has been established."

41. The import of the cumulative conditions set out at (a) to (e) is that when those conditions are met, a protection applicant is relieved of the requirement to confirm aspects of his or her statements not supported by documentary or other evidence. I am satisfied that the Tribunal Member's finding that conditions (a) and (c) of Regulation 5(3) were not met can withstand scrutiny in circumstances where he expressly referenced the applicant's lack of a reasonable explanation for the absence of identification documents and where he outlined, as reason for finding that the applicant's statements were not coherent or plausible and ran counter to relevant specific and general information, that the applicant provided no objective documentation to support the claims she made in oral evidence. Accordingly, I do not find any failure on the part of the decision maker to adhere to the principles set out at para.30 in *R.O. v. Minister for Justice*, in particular question (ii) thereof.

42. It was argued on behalf of the applicant that as a consequence of the Tribunal Member's finding that she was at all relevant times in Greece, her core claim as to the events in Nigeria which triggered her protection application in Ireland was not addressed. It is the case that the decision maker, in the s. 6 analysis, did not engage with the details testified to by the applicant at the oral hearing, as recorded in the summary of her evidence. The Tribunal Member did however allude to her testimony when he refers to there being *"no report in the COI submitted… of JTF interference with the Applicant's home or indeed with other people it (sic) that part of Port Harcourt where she resided."* This latter finding was restricted to an assessment of whether the applicant's claimed account of events in Port Harcourt fitted in with the objective situation on the ground, as documented by the country of origin information referred to in the decision. It seems to me that in making the observation he did, the Tribunal Member was within jurisdiction and there was no argument made on behalf of the applicant that the decision maker misrepresented the country information which was before him.

43. Notwithstanding the foregoing, there remained the possibility that, had the applicant's subjective account of events in Nigeria been found generally credible, the abundance of that information could outweigh the persuasive value of the country of origin information, namely that there was no reference in the various reports relied on by the decision-maker to that part of Port Harcourt where the applicant claimed she resided. I hasten to add that the weight to be attached to any evidence, subjective or objective, is a matter entirely for the decision maker.

44. It appears to me that the extent to which the applicant's core claim was dealt with in the decision was influenced, over and above the consideration afforded to it in the assessment of the objective situation on the ground in Nigeria, by the various credibility findings set out in the decision, not least the finding that the applicant remained at all relevant times in Greece. Had this particular finding been arrived at lawfully, there could be no challenge to the manner in which the applicant's account of events in Nigeria was assessed, since in effect any substantive assessment of this claim would be rendered futile by a lawful finding that she was not in Nigeria. However, the position in this case is that the court has found two factors (including the finding that the applicant remained in Greece at all times since 2002) incapable of withstanding scrutiny in this judicial review, as they were legally unsound.

45. This court has found two of the credibility findings made by the Tribunal Member to be unsound. As I have outlined in other cases, this court is mindful that the legality of a decision could nonetheless be sustained notwithstanding errors in one or more findings as to credibility. This will always be a question of fact and degree in each case and assuming one can discern from the decision the respective weight attributed by the decision maker to various factors in assessing credibility. However, I find that it is not possible to discern what weight the Tribunal Member attached to the two impugned credibility findings in reaching his overall conclusion on credibility. The credibility findings were cumulative in nature. Furthermore, the impugned finding that the applicant resided in Greece impacted on her core claim. Therefore, I am satisfied that the decision on credibility cannot stand. In so finding I adopt the approach of O'Leary J. in *A.C.B. v. Minister for Justice Equality and Law Reform* [2005] IEHC 157 where the cumulative impact of a number of errors in the assessment of credibility was considered in the following terms:-

"Each of the three matters played a part (probably a minor part) in the assessment of the applicant's credibility. The crucial and in the view of the court the deciding matter is that each of these three errors relate to a single issue i.e. credibility of the applicant rather than, for example, some relating to credibility and some to some other issue such as the assessment of the internal conditions in the country of origin. If the errors each related to separate areas of assessment they would not necessarily have a cumulative effect. However, in this case, each of the errors was part of the one process i.e. assessment of credibility. In the judgement of the court, when taken together, they could have cumulative effect on the assessment of credibility. The effect of that accumulation could be to convert what is in each case a simple and unsubstantial ground of complaint into the substantial ground needed to succeed in this application."

This approach was also adopted by Herbert J. in *Keagnene v. Minister for Justice Equality and Law Reform* [2007] IEHC 17.

Internal relocation

46. I now turn to the Tribunal Member's assessment of an internal relocation option for the applicant. The decision-maker set out his finding that the applicant could relocate internally in Nigeria in the following terms:

"In assessing a claim, the Tribunal may determine that a protection applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of a country of origin where there is no well-founded fear of persecution or real risk of suffering serious harm (7 (1) S.I. 518 of 2006).

The Applicant's contention is that the Joint Task Force is a highly oppressive organisation to be found throughout Nigeria. The Country of Origin Reports would suggest that its activities were deployed in Rivers State to combat gang and cult warfare. Of course, some Reports would suggest that it abused its position when confronting demonstrators who were unarmed. Nonetheless, Country of Origin Reports do not give credence to the Applicant's claim that she could not relocate in safety to other parts of Nigeria. The UK Operational Guidance Note on Nigeria (2009) has a paragraph on the issue of internal relocation for those in fear of ill-treatment/persecution by the security forces in the Niger Delta. What it states is that applicants from the Niger Delta region could relocate to other parts of Nigeria in safety and there is no evidence to suggest the security forces would maintain an interest in them were they to reside elsewhere in the country. The conclusion reached is that relocation to an area of Nigeria outside the Niger Delta would be an effective way of avoiding any risk of ill-treatment and would not be unduly harsh."

47. The internal relocation finding was made notwithstanding the rejection of the applicant's claim on credibility grounds. Yet, there is no suggestion other than that the Tribunal Member purported to embark on an enquiry as to whether internal relocation was an answer to the application for refugee status, since he invoked the provisions of Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006.

It provides:

> *"(1) As part of the assessment of protection needs, a protection decision maker may determine that a protection applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of his or her country of origin where there is no wellfounded fear of being persecuted or real risk of suffering serious harm.*
>
> *(2) In examining whether a part of the country of origin accords with paragraph (1), the protection decision-maker shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."*

48. No particular area outside of area of Nigeria was specified by the Tribunal Member. One cannot discern which of the areas outside of the Niger Delta constituted *"another part of Nigeria"* to which the applicant could have relocated. This is a flaw in the decision making process as in my view it does not comply with the provisions of Regulation 7.

49. It seems to me that the phraseology of Regulation 7(1) requires that whatever *"part"* of the country of origin has been earmarked by a decision maker as a viable internal relocation option, it should be identified with some degree of specificity in the decision, be that by reference to a town, city, state or other geographical area, *as the circumstances of the case may dictate*. This is so because Regulation 7 (2) mandates the decision-maker to have regard to *"the general circumstances prevailing in that part of the country"* (emphasis added) and *"the personal circumstances of the applicant".* The mere recording of the applicant's evidence that *she "doesn't think she would be safe in Lagos and that the Joint Task Force is active in that city"* does not satisfy the obligation on the decision- maker to set out the part of the country earmarked as the relocation alternative, particularly when the s. 6 analysis is silent as to the place of relocation. However, I take account of the fact that the Tribunal Member relied on country of origin information which suggested that the JTF were deployed to Rivers state and that the country reports stated that protection applicants from the Niger Delta could safely relocate to other parts of Nigeria since there was no evidence to suggest that security forces would retain an interest in them were they to reside elsewhere in the country. The applicant's counsel has not sought to impugn the Tribunal Member's reliance on this information. Thus, on the basis of the information before him, the Tribunal Member's risk assessment, as required by Regulation 7 (1), withstands scrutiny in these proceedings, notwithstanding that no particular part of the country outside of the Niger Delta was specified by him.

50. However, counsel for the applicant took issue with the internal relocation assessment on the grounds that it did not satisfy the *"reasonableness"* principle outlined in K.D. (Nigeria) v. RAT.

51. That test is articulated by Clark J. as follows:

> *"(8) Reasonableness: It is not enough for the protection decision-maker to determine that the risk of persecution is absent from the proposed area of relocation. He or she must go on to consider whether it would be reasonable to expect the applicant to stay in that place, having regard to his / her personal circumstances and the general conditions prevailing on the ground, in accordance with Regulation 7(2) of the Protection Regulations. The reasonableness assessment is not concerned with assertions such as 'I won't know any one', but rather with matters of substance such as whether the applicant is old, infirm, ill, has many small children or is without family support and other real issues.*
>
> *(9) The UNHCR Guidelines on International Protection: Internal Flight or Relocation Alternative (2003) indicate that consideration should be accorded to whether the applicant could lead a relatively normal life in the selected place of relocation without undue hardship, in the context of the country concerned. Unless there is objective evidence that the general circumstances prevailing in the proposed area are harsh – for example if the proposed area is the site of a conflict or a humanitarian crisis – there is in general no obligation to seek out a specific town or detailed information on economic and social conditions in the proposed location. However, if a specific objection is taken by the applicant to the location this objection must be examined."*

52. In the first instance, the obligation to ensure that the circumstances in the proposed area are not *"harsh"* presupposes that a particular part of the country (by reference to some geographical area, as the circumstances may require) should be specified, which was not done by the Tribunal Member. Insofar as Lagos appears to have been canvassed as a place of relocation at the hearing and even assuming that the Tribunal Member's reference in the s. 6 analysis to an area outside the Niger Delta was intended to refer to Lagos, other than recording the applicant's claim that she would not be safe from the JFT there, neither the summary of the evidence nor the s. 6 analysis give an indication as to what was canvassed with the applicant in terms of the reasonableness of her relocating there. There is no indication on the face of the decision that the applicant's concern that she did not speak Yoruba or that *"they don't speak English [in Lagos]"*, as expressed in the s. 11 interview, was factored into the equation by the decision maker, as it ought to have been, in the context of the reasonableness of a relocation to Lagos. Of course, the weight to be given to the applicant's concerns is a matter entirely for the decision maker but there is no indication of that weighing exercise on the face of the decision. Furthermore, there was no reference to the applicant's personal circumstances as a woman with children. As articulated by Clark J. in *K.D. Nigeria*, there is *"a shared burden of proof. The protection decision-maker who accepts a well-founded fear of persecution but determines that refugee status is not appropriate because internal relocation is available must conduct a careful enquiry to identify a safe relocation area, having regard to up-to-date objective evidence about that area and also to the applicant's own evidence in that regard."*

53. As stated, there is not, on the face of the decision, any indication of the Tribunal Member's analysis of the applicant's alleged reasons for not wanting to relocate to Lagos. To my mind, this is not evidence of the *"careful enquiry"* mandated by Clark J. Thus, because the court cannot discern with any degree of certainty which part of Nigeria has been selected as the internal relocation option having regard to the personal circumstances of the applicant, and, more particularly, cannot discern the basis on which the Tribunal Member concluded that it would not be *"unduly harsh"* for the applicant to relocate *"to an area outside the Niger Delta"*, the finding on relocation cannot be said to have satisfied the reasonableness test set out in *K.D. (Nigeria)*. This failing renders the decision on internal relocation unlawful.

54. As this court has found failings in credibility findings and the internal relocation finding, no question of severability arises.

Summary

55. For the reasons set out above, I am satisfied therefore to grant leave in this case. This being a telescoped hearing, I will grant an order of *certiorari* quashing the decision and make an order remitting the matter to the first named respondent for a de novo hearing before a different Tribunal Member.