

**THE HIGH COURT****JUDICIAL REVIEW****Record No. 2007 / 1256 J.R.****Between:****N. T. M. O. [SUDAN]****APPLICANT****-AND-****THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND OLIVE BRENNAN, SITTING AS THE REFUGEE APPEALS  
TRIBUNAL****RESPONDENTS****JUDGMENT OF MS JUSTICE M. H. CLARK, delivered on the 10th day of December 2013.**

1. The applicant seeks leave to apply for an order of certiorari quashing the decision of the respondent Tribunal dated the 26th July, 2007, affirming the recommendation made by the Refugee Applications Commissioner that the applicant should not be granted refugee status. The leave application was heard on the 8th May, 2009. At the close of the hearing, the Court indicated *ex tempore* that the applicant had not established substantial grounds and that leave would be refused. The matter was mentioned before the Court again in July, 2013 as it appears that no order was ever made up. For the purpose of clarity, the Court now formally delivers its reasons for the *ex tempore* decision handed down in May, 2009.

**Background**

2. When an applicant's core claim is rejected for sound credibility reasons, it is highly unlikely that judicial review will succeed. This was such a case where neither the arguments made nor the documents provided could sustain a challenge to the validity of the decision of the Tribunal.

3. The applicant claimed to be a national of Sudan. He and his wife applied for asylum on the 2nd May, 2006. The wife's claim was not before the Court. He told the Commissioner that he was born in 1975 and belonged to the Zaghawa tribe and lived in the village of Marla in the province of Southern Darfur. The nearest city was Nyala, 47km away. After completing secondary education in 1996, he worked as a livestock and crop dealer. He and his wife married in 2003. Their difficulties began on the morning of the 8th December, 2004, when their village was targeted by the Janjaweed and government forces who attacked from the air and with ground troops. A lot of people were killed including his uncles, and the applicant and his parents and siblings were dispersed. The applicant collected his herd of cattle and fled to the forests south of Marla, where he spent about fifteen months living with his herd and with shepherds moving from one forest to another, ending in Ladoob forest. They lived under the trees and were unable to leave the forest to go to Nyala because the military had surrounded the area. The forest was regularly attacked to steal livestock and to kill people. Meanwhile, his wife was living with her family in Nyala (almost 50 kilometres away) and was unaware of his whereabouts. It was not stated whether she went to Nyala after the attack on Marla, whether she lived there after their marriage or whether she simply happened to be there at her parents's home at the time of the attack nor was it stated whether she knew of her husband's fate after the aerial bombardment of Marla. The claim was that they met by chance when the applicant brought his cattle to a waterhole in the forest and found his wife there. Three days later they decided to leave Sudan as it was unsafe to relocate anywhere in Sudan. The Arabs in the area informed the Janjaweed of the presence of the villagers who had escaped to the forest. They then sold all the livestock and used the money to pay a smuggler to travel first to Libya and then by ship to Ireland. The applicant had no ID of any kind as his birth certificate and identity card were burned and he said that he never had a passport. He submitted a letter from *Darfur Solidarity Ireland* (DSI) which states that he is a member of that organisation and is well known and is from Darfur and a member of the Zaghawa tribe. That was the extent of his very general claim.

4. The Commissioner appeared to accept that the applicant was Sudanese and Zaghawa but rejected the credibility of his claim to have been exempted from military service or to have survived with his herd in the forests around Marla, because COI showed that the area was under the control of the Sudanese Liberation Army (SLA) and was regularly attacked. His account of how his wife travelled from Nyala to Ladoob forest or how he sold his herd and travelled to Ireland was found not credible and although the letter from DSI was noted it was observed that he had never provided any proof of his identity. COI indicating the strict requirement for all males aged between 18 and 32 to serve in the military was attached to the Section 13 report.

5. The applicant challenged each of the Commissioner's findings in his appeal submissions and submitted reports and photographs of victims of clashes between the rival rebel groups which were of doubtful relevance to his claim of a fear of persecution from government troops. He did not call any rebuttal or supportive COI on any of the credibility findings and reiterated his story to the Tribunal at his oral hearing on the 24th May, 2007, when he called a witness from Marla who said he knew him from Sudan.

**The Decision**

6. Again it appears to have been accepted that the applicant is from Sudan and is of the Zaghawa tribe. Beyond that, the core claim that as a result of the attack on Marla he and his family were dispersed and he had to flee with his cattle to the forests in and around Marla for a year was found to be "*seriously lacking in credibility*" and was rejected on that basis. Again it was found that that given the circumstances of constant Janjaweed attacks, the applicant would have had great difficulty in transporting and keeping the animals in the forest. It was further held that COI did not accord with his claim that he was permitted an exemption from compulsory military service because he was the oldest son. There was also a strong hint that the Tribunal Member did not accept that the applicant lived in Darfur, as she noted that he had '*a good knowledge and understanding of English*' and that '*while English is the common language of Southern Sudan that is not the case in Darfur where the common language is Arabic*'. While that was noted she did not actually make the finding. The Tribunal Member also noted the lack of any documents or information on when he came to Ireland or how he travelled here.

## The Challenge

7. The applicant's primary complaints in respect of the impugned decision were firstly that the Tribunal engaged in a flawed assessment of credibility as the decision lacked valid reasons for rejecting the claim and further that the Tribunal Member relied on gut instinct and speculation in finding that he would have great difficulty transporting and maintaining his herd of cattle in the forest for a year when there was military activity in the area. The same criticism applied specifically to the findings about his exemption from compulsory military service. Secondly she failed to apply a forward looking test as it was accepted that he was from Sudan and finally she failed to refer to the letter from *Darfur Solidarity Ireland*.

## THE COURT'S ASSESSMENT

8. As is very well established, the threshold of 'substantial grounds' requires the identification of an issue of some weight that is at least arguable before leave will be granted to challenge a tribunal decision. Here, the applicant argues that the credibility findings were based on gut instinct and speculation and were therefore invalid. While the Court readily accepts that the Tribunal decision would not pass the normal tests for a reasoned judgment with flying colours, it does address the claim made and then sets it against objective COI. In the view of the Court the applicant's challenge ignores the realities of the claim, which in the context of the Darfur conflict was so unlikely and so lacking in detail as to be considered impossible. While the assessment of credibility is always multi-faceted and frequently difficult, at its most basic level, it always involves first considering the facts asserted with an open mind and then measuring those facts against objective information. If as was found in this case, the claim is objectively implausible, even after it has been probed for more detail or explanation, the claim still must be tested against what is known of the applicant's country of origin. It is well recognised that what may sound incredible in the Tribunal Member's experience may possibly be true in the applicant's own country. However, the claim here failed at both steps as the core claim of flight to the forest with his herd of cows for fifteen months while the area was alive with rebel forces, Janjaweed and Sudanese National Army was found simply not possible. This finding came from common sense, the applicant's own recital and from COI on events in late 2004 and 2005 in South Darfur. Equally the claim that his wife travelled from Nyala to the forest and found him there was so unlikely as to be impossible.

9. It is not speculation when a tribunal member relies on common knowledge that cattle are not foraging pigs or goats. They are herbivores and do not normally find fodder in forests. It is not speculation to find that moving a herd of cows in a war torn zone is difficult. It is not speculation to find that maintaining a herd of cattle intact in a forest in the midst of a conflict where humanitarian aid and refugee camps were attacked and raided was unlikely. Quite apart from that obvious objective fact, the Tribunal Member relied on COI on the humanitarian crisis in Darfur which indicated that the area between Marla and Nyala was unsafe for travel because of heavy insurgent activity in the area. Her findings of serious deficits in the facts claimed were well founded on both a common sense assessment and from known objective information.

10. An applicant has a duty to cooperate with the Tribunal member in presenting his appeal claim for an assessment of facts and circumstances. This particular applicant with a full secondary school education - which unusually extended until age 21 despite his claim to have had an exemption from military service because his father was ill - had three opportunities to provide a full and frank account of his past experiences when he applied for asylum. On every occasion he presented a very incomplete picture of past experiences which would place him in the area of conflict as a member of a targeted tribe. He provided no particulars of the attack on Marla which would actually place him there as opposed to being someone who had acquired readily available information of the attack. For instance, no mention was made of later attacks that same month or of the fact that the rebel forces were installed in the town of Marla and the surrounding villages and that the government attacks were an effort to displace them from the area. Instead, what was provided was a narrative of events which would not seem out of place in a children's story book. When this claim failed before the Commissioner it was simply repeated before the Tribunal, with no attempt made to fill the gaps or explain the deficiencies identified in the Section 13 report.

11. The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* makes clear at paragraph 195, "*The relevant facts of the individual case will have to be furnished in the first place by the applicant himself. It will then be up to the person charged with determining his status (the examiner) to assess the validity of any evidence and the credibility of the applicant's statements.*"

12. The Court reminds itself that the applicant was represented by a solicitor and counsel. It can safely be assumed that this also applied to his wife. Counsel at the appeal hearing must have been aware that every factual finding had been challenged in the notice of appeal. The unlikely claim and the minimal description of the well reported attack could, if true, have been qualified, explained or expanded. While the report of what was said lacks detail, the lack of any complaint that she failed to record or to consider his evidence leads the Court to conclude that nothing was put before the Tribunal which could transform the original and highly implausible claim into a claim which might possibly be true.

13. The core finding that the account was "*seriously lacking in credibility*" is difficult to criticise in circumstances where the applicant had not one single shred of personal documentation, where he was unable or unwilling to describe his travel arrangements and travel route, where his date of arrival could not be established, where his reasons for not serving in the Sudanese army ran counter to COI and where his personal narrative of where he lived since the attack on his town was devoid of objective credibility and further did not accord with known conditions on the ground or with his own evidence of constant Janjaweed attacks and raids and of the army presence in the area.

14. The obligation to take documentation into account under Regulation 5(1) (b) of the *EC (Eligibility for Protection) Regulations 2006* (S.I. No. 518 of 2006) extends only to "*all relevant statements and documentation presented by the protection applicant*" (emphasis added). It does mean that documents which have no corroborative or probative value, such as the requested letter from *Darfur Solidarity Ireland* have to be accepted for their content. Being a member of an Irish branch of a Darfuri group does not establish the truth of a claim. If the letter had been accepted for what it states, that the applicant was well known to the group and came from Darfur, it was still incapable of advancing the claim that he was in Marla at the date of the attack, that he lived there when the black African tribes were being attacked and displaced, that he and his family were actually attacked or that his narrative of the fifteen months in Ladoob Forest could be true. The Court therefore has no substantial criticism of the decision for not providing reasons for disregarding the bald statement in the letter provided at the applicant's request. In the circumstances, the applicant's complaint regarding the Tribunal Member's omission to express her reasons for disregarding the letter does not constitute a substantial ground.

15. There is undoubtedly an absence of a forward looking test in the Tribunal decision, although the issue was not addressed in the applicant's grounds or in his written submissions. The applicant did not express any fear of returning to Sudan apart from his claim of a fear of persecution as a Zaghawa tribesman from Western Darfur which was rejected on a two stage credibility test. This must therefore be one of the very few cases where a forward-looking test was not possible to conduct as there is nothing on which to base the assessment. As Peart J. held in the case of *Imafu v. Minister for Justice, Equality and Law Reform and the Refugee Appeals Tribunal* (2005) IEHC 416, if the applicant's core claim is disbelieved there is no need to carry out an artificial assessment of COI to see whether the applicant would be at risk if his claim had been believed. The situation which prevailed here is that the applicant's

essential claim to have been persecuted was rejected in total but no other fear was expressed. It has to follow that he can safely return to Sudan.

**Conclusion**

16. As the Court indicated in its judgment delivered *ex tempore* on the 8th May, 2009, substantial grounds have not been established and leave is refused. It is therefore unnecessary to consider whether an extension of time is warranted.