

**THE HIGH COURT**  
**JUDICIAL REVIEW**

**[2013 No. 7 J.R.]**

**BETWEEN**

**S.O. (Nigeria)**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE AND EQUALITY, THE REFUGEE APPEALS TRIBUNAL, IRELAND AND THE ATTORNEY GENERAL**

**RESPONDENTS**

**JUDGMENT of Mr. Justice Eagar delivered on the 17th day of September, 2015**

**Introduction**

1. This is an application seeking of an order of *certiorari* in respect of the decision of the Refugee Appeals Tribunal (hereinafter referred to as "the RAT") to affirm the decision of the Office of the Refugee Applications Commissioner (hereinafter referred to as "the ORAC") that the applicant not be declared a refugee in accordance with section 2 of the Refugee Act 1996 (as amended) (hereinafter referred to as 'the Act of 1996')

2. The relief sought are as follows:

a. An order of *certiorari* quashing the decision of the second named respondent pursuant to s.16(2) of the Act of 1996, dated 6th November 2012 affirming the decision of the Refugee Applications Commission (hereinafter referred to as "the Commissioner") that the applicant should not be declared a refugee.

b. A declaration that s.5(2) of the Illegal Immigrants (Trafficking) Act 2000 (hereinafter referred to as "the Act of 2000") is not in compliance with the principles of equivalence and effectiveness under EU law.

c. Such further or other order as this Court may deem meet, including an extension of time if necessary.

3. The grounds on which relief are sought are as follows:

a. The refusal of the applicant's appeal appears to have been based upon the finding that there was no evidence of a lack of state protection in Nigeria in relation to the matter complained of and that the failure to satisfy one of the criteria resulted in the failure to establish a successful claim of refugee status. However this decision is alleged to have been reached in disregard of extensive evidence of a lack of effective state protection put forward in the applicant's appeal. The treatment of the question of state protection by the Tribunal was allegedly, irrational and internally contradictory.

b. The Tribunal is alleged to have failed to have due regard to the applicant's notice of appeal and country of origin information submitted therewith. The notice of appeal was not given due attention and matters raised therein relating to the applicant's credibility and the availability were not addressed. Furthermore, it is advanced that the decision was based upon a clear mistake of fact of such seriousness as to amount to a mistake of law.

c. Insofar as the refusal of the applicant's appeal has been argued to have been based upon findings of lack of credibility, such findings are allegedly insufficient to ground a refusal of the applicant's claim where some core elements of the applicant's claim have not been deemed either credible or incredible by the Tribunal.

d. Credibility findings were not based on the applicant's core claim. Matters such as the precise date of the applicant's marriage or dates of birth of his children were irrelevant, unless it was suggested that the applicant, for example, was not married or had no children, but this was not stated. In this regard irrationality was alleged and / or a failure to provide reasons.

e. It is further irrational, in light of the stated knowledge of the decision maker of Boko Haram, for the Tribunal member to speculate, as was done, that the attack on the church as described by the applicant in northern Nigeria and attributed by him to Boko Haram was perpetrated by persons other than members of that organisation. This speculation on the part of the decision maker, without some level of objective evidence that car bombings on Christian churches in northern Nigeria are habitually or sometimes carried out by criminals or other organisations unconnected to Boko Haram is disingenuous and constitutes a failure to have regard to objective evidence as presented by the applicant in his appeal and is also argued to breach the obligations placed upon decision makers by the European Communities (Eligibility for Protection) Regulations 2006.

f. The contested decision is further irrational in that it appears to have been assumed by the decision maker that the persons who murdered his wife searched the apartment looking for him, thinking he was there. No such evidence was proposed by the applicant. It is further irrational to have concluded that "the Applicant's claimed persecution is undermined by virtue of the fact that he was able to evade his alleged persecutors during his time in the Delta". This was irrelevant in the context of the applicant's claim of suffering persecution. Similar comments apply in relation to the applicant's time in Lagos.

g. The applicant is entitled to a decision which is coherent and form the terms of which he (and others, including the first respondent) can discern the reason and rationale behind the refusal. In breach of this entitlement it is entirely unclear

what aspects of the applicant's claim were believed and what aspects were not. There is an obligation on the decision maker to consider Article 5 (2) of Communities (Eligibility for Protection) Regulations 2006 which appears to have been ignored.

h. The Tribunal failed to objectively assess the applicant's appeal in light of independent and up to date country of origin information. Article 4 of Council Directive 2004/83/EC (the Qualification Directive) mandates that the Refugee Appeals Tribunal must taking into account all relevant facts as they relate to the country or origin at the time of making a decision on the application. It is argued that there was no compliance with Council Directive 2005/85/EC (the Procedures Directive) and / or the Qualifications Directive in this regard. There was allegedly no proper objective analysis of the applicant's claim. The failure to comply with the required minimum standards arguably renders the decision invalid.

i. S. 5 of the Act of 2000' is not in compliance with the principles of equivalence and effectiveness. In accordance with this EU Law principle, time, for the purposes of the limitation period produced for under s. 5 of the Act of 2000 and Order 84 Rule 21 (1), Superior Courts Rules time cannot begin to run against the applicant until such time as Council Directive 2005/85/EC has been implemented by the State.

4. The statement of grounds was grounded in the affidavit of the applicant, S.O., sworn on 7th January 2012. The applicant avers that he applied for asylum in the State. He stated that the findings of the Refugee Applications Commissioner ("hereinafter referred to as "the Commissioner") were appealed to the Tribunal. On or about the 20th November, 2012 the applicant swears that he received a letter enclosing copy of the negative decision of the Tribunal dated 6th November 2012, that the applicant not be declared a refugee in accordance with s. 13 of the Act of 1996.

#### **Applicant's claim - Refugee Appeals Tribunal**

5. The hearing of the Tribunal took place on 25th October, 2012. The report notes that the applicant's claim was founded on having a well-founded fear of persecution on the grounds of race, religion and political opinion as contained in the form 1 notice of appeal and the submissions therein, the country of origin supporting documentation, supporting documentary evidence and the submission outlined at the oral appeal.

6. In respect of the applicant's claim the report noted that the applicant presented as a 42 year old Nigerian national who had to leave his home country.

7. The applicant was born on 1st June, 1970 in Delta State. He is Christian. He finished secondary school in 1998 at the age of 17 or 18 and has worked in the mobile phone industry. The applicant had two children outside of marriage. He had a traditional marriage which took place in 2008. He had his two children with his wife. His daughter was born on 10th May 2001 and he cannot remember when he son was born but he stated that his daughter is three years older than his son. Thus he was born in or around September 2004.

8. He stated that when he went for training he stayed in Lagos, in or around 2005-2007. In 2008 the Applicant and his wife came together again. They were living in Delta state. He was supplying mobile phone parts. The Applicant relocated to Jos in mid-November 2011.

9. Boko Haram viewed the applicant and other Christians as enemies. In conjunction with some others, the applicant decided to form a movement to protect Christians, this took the form of a 'security group'. The applicant said that the Boko are young men, who, if they are unarmed do not pose a threat.

10. In relation to the 'security group' the applicant said that he and the members sought the consent of the church elders and pastors. The applicant stated that the membership wanted to register the group so as not to take the law into their own hands. He said that they were equipped with glass and machetes. According to the applicant the group was comprised of different people from different churches.

11. On 26th February, 2012, Boko Haram attacked the applicant's church. They parked the car close to the church, they "drove it into the church" and it exploded. There was a Sunday morning service taking place at the time. The following night the applicant was at home with his wife and two children. He noticed light and looked out the window but the people whom he saw were not familiar. They were knocking at the door. His wife asked, "who was there?" The Applicant's instincts told him that these people were enemies. The applicant hid behind a shelf. The applicant's wife refused to divulge repeated demands for information as to his whereabouts. His wife was then stabbed on the thigh and arm; at this point the applicant heard screaming.

12. The applicant stated that he never heard her voice again, saying that the intruders slit his wife's throat before they "came again and shot her twice". He stated this he never thought that the intruders would kill her.

13. The applicant said that that it appeared that the intruders had a spy on him. Despite the fact that he and his family lived in a two roomed apartment he was not found by the intruders, stating that "God was on his side". He called for help but to no avail. The applicant stated that his children were present in the apartment but, although crying, were unaware of their mother's death.

14. The applicant said that he could not see the identity of the intruders as there was no light and as "they were not transparent", despite he stated that the knew they were Boko Haram due to the manner in which they dressed.

15. The following day the applicant went to the Delta, remaining there for two months, the applicant had his children with him. It was there that he buried his wife. At this time he received two threatening text messages. The applicant next went to Lagos for a number of weeks before proceeding to Jos.

16. In relation to the threatening texts which the applicant received, he asserted that the senders were aware of his whereabouts, namely his mother's home, he accordingly went to his grandmother's home, saying that "he was safe there but it still easy for them to find him".

17. The applicant said that when he was in Lagos he received a text to effect that the sender knew of his whereabouts. The applicant next moved to Jos, as he was going to leave and pack up the belongings he had there. He stated that a lot of people were leaving, even some people who owed him money. He remained there for a number of weeks.

18. On 10th July, the applicant stated that the same people attacked the church again. The following day he visited some of the hospitals where the injured victims were being treated. He returned home to find that they had attacked his apartment, burning his

possessions. Considering the nature of the attack on his apartment, the applicant was clear that it was carried out by the same people.

19. The applicant did not have a death certificate for his wife. The applicant stated that when he left Jos, he proceeded to Delta, where he remained for over a week. At this juncture he had no problems from Boko Haram.

20. The applicant met a good friend called B. He told B. his problems. He said he would introduce him to B.K. The Applicant said that his father was a minister and that he had inherited some money after his death.

21. The applicant paid 600,000 Naira (approximately €3000) for his trip and obtained a visa. He went to Turkey, where in Istanbul an agent provided him with a British passport and ticket. The agent sent the applicant to the airport counter demanding a boarding pass.

22. Upon arrival in Dublin, the applicant sought asylum. The agent told the applicant to destroy his Nigerian passport, but the applicant did not want to do this. At Dublin Airport the applicant was intercepted with the British passport.

23. The applicant stated that Boko Haram will kill him.

#### **Analysis of the applicant's claim – Refugee Appeals Tribunal**

24. The second-named respondent noted that on an objective basis he was well-aware of the existence of Boko Haram in Nigeria and of the many attacks which they have carried out on Christians. It is clear that a Christian, particularly in northern Nigeria, might become a victim to a random Boko Haram attack. The second-named respondent stated that, however, he must assess if the story which was relayed at the hearing actually happened to this particular applicant.

25. In the analysis of the applicant's claim the respondent noted that a number of matters arose during the course of the hearing which were extremely detrimental to the applicant's claim.

26. The applicant claimed that he was married, however when the respondent posed a question to him relating to the date of marriage he was unable to answer. The scant knowledge of such a significant life event did not assist the applicant in terms of credibility, according to the respondent.

27. Similarly, in relation to the two children of the applicant, namely a son and daughter, he was able to proffer the date of birth of his daughter but was scant as to that of his son saying "it was in September" and that "the boy was three years younger than the girl". Again to the respondent, the lack of knowledge surrounding his son's date of birth was curious. It was expected that the applicant would be able to assist the Tribunal with a matter as pertinent as the date of birth of one's child.

28. In relation to the alleged incident which occurred on 26th February, 2012 whereby he claims the Boko Haram attacked him and a number of others. It was this incident which forms the bedrock of the applicant's claim. However, the applicant's account of this incident is extremely scant and it lacks the kind of detail which the Tribunal would expect in circumstances where the incident forms the bedrock of the applicant's claim. He made assertions such as, "they attacked us," "they parked the car close to the church" and that "he drove it into the church and it exploded". There was no information provided as to who these people were, nor did he describe the alleged attackers, their car or what happened in the aftermath. Further, he did not give one scintilla of evidence suggestive of how he, himself was adversely affected. There was no clear evidence whatsoever to suggest that this was indeed a Boko Haram attack. The applicant's claim was undermined in this respect.

29. The applicant went on to describe the "bizarre alleged incident" (detailed above) in which his wife was murdered, while he was hiding behind a shelf. The respondent found the applicant's version of events to be "bizarre and utterly incredible". The claim that the applicant successfully hid from dangerous assailants in a two roomed apartment and failed to come to the assistance of his wife while she was being stabbed and ultimately shot, in addition to not coming to the aid of his two children was "a stretch too far" for the respondent.

30. When asked to describe the perpetrators the applicant's evidence was contradictory. He said that "they were not transparent as there was no light". However, earlier he had noted light outside the window. He then went on to state that he knew they were Boko Haram because of the manner in which they were dressed. On the one hand the applicant claimed he was not able to see the perpetrators, yet on the other he claimed that he saw how they were dressed.

31. The applicant was unable to supply any information regarding his wife's alleged murder. There was no death certificate, no newspaper or information from the internet in relation to said murder. This lack of objective information in this respect did not assist the applicant's claim.

32. The day after his wife's alleged murder the applicant claimed to have gone to Delta, in order to bury her. He remained there for two months, during which time he received two threatening text messages, as outlined above. However he did not have any personal encounters with any alleged persecutors. The applicant said that he left his mother's place, which was referenced in the text messages, and went to his grandmother's place, where although he was safe it would still be easy for "them" to find him. The applicant's claim of persecution is undermined by virtue of the fact that he was able to evade his alleged persecutors during his time in Delta.

33. The applicant and his children then went to Lagos where he remained for a number of weeks. Similarly he did not have any encounters with his alleged persecutors there either. Although he claims to have received a message stating that "they knew he was in Lagos". Again, to the respondent, the applicant's ability to move to Lagos without encountering his persecutors, further undermines his claim of persecution.

34. The applicant next moved to Jos, again remaining there for a number of weeks. During this time there was another attack on the church on the 10th July. The next day his apartment was ransacked while he was away visiting the victims in hospital. The applicant was asked how he knew the identities of the perpetrators to which he responded "considering the nature of my apartment, it was clear that it was the same people". The respondent found that the applicant's evidence, in this respect, was based on conjecture and speculation. There was no objective basis for the claim, while may have been caused by Boko Haram, it may well have been the case that the said attack was a random criminal act. The applicant did not give evidence of reporting this matter to the police or of seeking help from the authorities. The applicant's claim was further diluted in this respect.

35. Next, the applicant went to Delta for another week again and did not appear to suffer any adverse consequences while there.

36. The s. 13 report placed emphasis on an old text message from a woman in the UK which the applicant had on his mobile phone. The contents of the message detailed her ring size. When asked whether the applicant had any threatening texts allegedly received from Boko Haram in 2012 he responded that "he only had the text from the girl as he saved it". It was put to him that it was strange that he had a text from a girl since 2008, yet he had no texts which his alleged persecutors sent him in 2012, texts which would be of huge importance to the Tribunal. The applicant responded by saying that "she is not a girlfriend and he had only met her on the internet". He failed to explain why he failed to save the alleged messages from Boko Haram. The applicant was further pressed on this issue to which he responded "it was when immigration saw this message that [he] realised that it was only on the Sim and not on the phone". The respondent stated that it was beyond incredulity that the applicant arrived in Ireland seeking asylum yet failed to save the evidence which formed the lynchpin of his claim.

37. The issue of three separate visa applications made by the applicant to travel to the UK was raised with him. He responded that he applied for the first one in order to attend school in Scotland and the second to attend a conference for a charitable organisation. When pressed further as to why he was attending this conference he responded "maybe they thought I should go". He did not develop this further by stating what the conference was for or why he was trying to attend it. The decision noted that the applicant's evidence in relation to this is utterly scant and lacking in the level of detail one would expect from a person who had applied for a visa to travel from Africa to the UK for a conference.

38. According to the second-named respondent the explanation offered by the applicant as to why he failed to change his number in the wake of the threatening messages "beggars belief". The applicant stated it would not be easy to change numbers as he would lose his contacts. The proposition that the applicant would not change his number when the individuals who allegedly murdered his wife were sending him threatening messages was illogical to the respondent.

39. When it was proposed to the applicant that he could have simply sent a message to his database of contacts confirming his new contact details, he responded that "everything could not come to my senses". Taking into account that this was a man who worked in the area of mobile phone accessories, the Tribunal found it difficult to believe that he would be unable to manage the contacts on his mobile phone.

40. Given the applicant's experience with mobile phones the Tribunal found it not credible that he would simply not be able to block the numbers of the individuals threatening him. To this proposition the applicant responded that "mobile do not all function in the same way. Some messages go straight to the Sim". The Tribunal found this assertion to be incredible.

41. The applicant was asked if he had any physical injuries to which he replied "they have not laid a hand on me". This evidence, in and of itself, suggested to the respondent that these people, whoever they were, were not as powerful as the applicant believes them to be.

42. The respondent noted that the applicant had not assisted himself in his claim by failing to give objectively reasonable explanations for a number of issues raised. Furthermore, there were a series of implausible and incredible events, which were exposed by way of questioning the applicant, which served to ultimately undermine his credibility and by extension, his claim. The applicant's claim that he did not know the date of his marriage or his son's birthday, his lack of detail regarding the first attack, his claim that he was able to hide behind a self in the wake of such a vicious attack without being found, his claim that he could not block his persecutors number of change his phone, in conjunction with being able to move around from place to place without any personal encounters from the Boko Haram, all served to undermine the foundations of what the applicant purported to be his story. Even if it were the case that these attacks did occur, the respondent noted that it was highly significant that the applicant never sought help from the police or authorities in his country of origin, particularly after the death of his wife.

43. The second-named respondent referred to country of origin information (COI) which referred to a Nigerian suicide bomber who killed two in an attack on a church in Northern Nigeria, and that attacks against churches by Boko Haram have waned in recent weeks. He also cited COI that suggested that "Nigerian police had killed a Boko Haram spokesman" and that the US had stepped up the counter-insurgency training it provides to Nigeria.

44. In a Special Report on Boko Haram in June 2012, Reuters said that soldiers control the streets of Maiduguri in large numbers these days. Maiduguri is in the north-west of Nigeria.

45. The second-named respondent stated that Boko Haram are a strong force in Nigeria, but that it was abundantly clear from the COI that it was not the case that the government or police were sitting back and ignoring the problem. The COI discloses that the police and authorities were trying to control and monitor these attacks and that people are arrested and charged. The second-named respondent said it must be remembered that Nigeria is a democratic country with mechanisms in place to detect and punish criminal acts. The military are active in endeavours to crack down on Boko Haram activities, and he stated, "ultimately, it is clear at this juncture that there is no evidence of a lack of state protection in Nigeria, in relation to the matters complained of. As a lack of state protection is a fundamental cornerstone of the refugee definition and it is clear that state protection exists in this case, the applicant's claim must fail at this juncture. It is well-established that an applicant's failure to satisfy one of the criteria results in the failure to establish a claim for refugee status and the second-named respondent affirmed the recommendation of the Refugee Applications Commissioner made in accordance with s.13 of the Act of 1996.

#### **Submissions by counsel for the applicant**

46. Counsel on behalf of the applicant, Mr. Paul O'Shea, B.L., submitted that the findings as to the availability of state protection are irrational and did not flow from the premise upon which they were purportedly based, and he cited article 2 (c) of Council Directive 2004/83/EC (the Qualification Directive). In relation to the second ground in the statement of grounds, counsel referred to a short affidavit of Brian Byrne solicitor of Burns Kelly Corrigan exhibiting country of origin information enclosed with the appeal to the Tribunal. The grounds dealing with credibility findings were also relied upon and the judgment of the High Court in the case of *IR v. Minister for Justice Equality & Anor.* [2009] IEHC 353 was quoted.

47. In relation to the requirement that the applicant is entitled to a decision which is coherent and forms the terms of which you can discern the reason and rationale behind the decision, he quoted from Faherty J. in the case of *NB and anor. v. The Minister for Justice Equality and Law Reform and others* [2015] IEHC 267 quoting from the decision of MacEochaidh J. in *KB v. the Minister for Justice Equality and Law Reform* [2013] IEHC 169 in relation to the ground that the Tribunal had failed to objectively assess the applicant's Appeal in the light of independent and up-to-date country information, counsel cited European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006) para. 5 and the Procedures Directive, article 8 and submitted that the claim was not assessed objectively and the failure of the second-named respondent to address the substantial issues raised in the applicant's notice of appeal gives the appearance of a lack of impartiality. He quoted from Kelly J. in *Kamara v. The Minister for Justice Equality and Law Reform* [unreported, the High Court; 26th of June 2000].

48. Counsel submitted that the applicant's claim was not objectively assessed, as mandated by s. 5(1) S.I. 518/2006 and article 8(2) (a) of the Procedures Directive. An objective analysis necessitates, inter alia, consultation of up to date and relevant country of origin information. It is argued that there was no such objective assessment of whether the applicant's fears, in whole or in part, could come to pass.

49. The failure of the second respondent to address the substantial issues raised in the applicant's notice of appeal lends itself to an appearance of a lack of impartiality.

#### **Submissions by counsel for the respondent**

50. Counsel for the respondent, Ms. Catherine Duggan B.L., submitted that it was clear that the Tribunal member in this case had based his decision on fundamental findings of lack of credibility. In so far as it is claimed that the credibility findings were not based upon the applicant's core claim and matters such as the precise date of the applicant's marriage or date of birth of his children were irrelevant, counsel submitted that it was clear that the credibility findings were based on the applicant's core claim and the Tribunal member stated "there were a series of implausible events which were exposed by way of questioning the applicant, which serve to undermine his credibility, and therefore his claim. The Tribunal member noted that *inter alia*, the fact that the applicant did not know his date of marriage, was lacking in detail regarding the first attack and the claim that he was able to hide behind a shelf in the wake of such a vicious attack without being found, were all relevant to the assessment of the applicant's credibility, and as the Tribunal member stated in their decision, these matters "all rock the very foundations of what the applicant purports to be his story".

51. The Tribunal member sets out in detail the issues that arise which undermine the applicant's credibility.

52. The Tribunal member then proceeded to consider if State protection would be available to the applicant in Nigeria. Firstly, it is submitted by counsel for the respondent that the Tribunal is entitled to reach a subsidiary finding based on an "even if this did occur" approach and it is not the case that the refusal of the applicant's appeal was based upon this finding alone, that there was no evidence of a lack of State protection. Without prejudice to this, counsel submitted that the finding made in relation to state protection is correct and rational in the circumstances where the onus rested on the applicant to prove that state protection is inadequate for him.

53. The respondents submitted that the finding of the Tribunal in relation to state protection was entirely reasonable and was made *inter vires*. They maintained that the applicant had not proffered sufficient evidence to rebut the presumption in *Canada (A.G.) v Ward* [1993] 2 SCR 689, as affirmed in this jurisdiction by Birmingham J in *GOB v Minister for Justice, Equality and Law Reform* [2008] IEHC 229, that:

"Absent some evidence, that the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state apparatus... it should be assumed that the state is capable of protecting a claimant"

54. Counsel submitted that if necessary, the finding in relation to state protection could be severed from the decision in line with the decision in *S.I.A (Sudan) v Refugee Appeals Tribunal* (2012) IEHC 488 and the judgment of MacEaochaidh J in *M.S.O (an infant)* (2014) IEHC 488.

55. Counsel submitted that the Tribunal member adopted the correct approach regarding the assessment of the applicant's claim. Firstly the Tribunal member accepted that Christian, particularly those in northern Nigeria might fall victim to a random Boko Haram attack, and this is the objective part of the analysis. Secondly the Tribunal member must then, as the Tribunal member has done in this case, "assess if the story which was relayed at the hearing actually happened to the particular applicant". Counsel submitted that the function of the tribunal member is to assess the applicant's claim as relayed by him, and not to apply a 'hypothetical' analysis as claimed by the applicant.

56. Counsel claimed that it was irrational in light of the decision maker's stated knowledge of the Boko Haram for the decision maker to speculate that the attack on the church was perpetrated by persons other than members of that organisation. It is submitted on behalf of the respondents, that it is clear it cannot be assumed that the attack was perpetrated by Boko Haram, and the tribunal member must consider whether there were alternative explanations for the alleged attack. This is important in circumstances where the applicant could not describe the alleged attack, nor did he describe the car involved in said attack and the Tribunal member was thusly entitled to conclude that "there is no clear evidence whatsoever which would suggested that this was a Boko Haram". It is submitted that the tribunal member's comment, that this could have been a random once off criminal rampage was made in context.

57. Counsel for the respondent submits that all country of origin information was considered by the Tribunal member. It is submitted that it is not necessary that reference be made by the Tribunal member to each document submitted and there is no evidence to suggest that all country of origin information was not considered (decision of Faherty J in *JV and DV v RAT* (2015) IEHC 56). Furthermore, counsel submits that the issue of state protection was given a fair and reasoned assessment by the Tribunal member.

#### **Discussion**

58. The role of a High Court judge in judicial review has been set out clearly in the decision of *IR v. Minister for Justice, Equality and Law Reform and The Refugee Appeals Tribunal* [2009] IEHC 353 where Cooke J. set out the role clearly, in which Cooke J. stated:

"[1.] In most forms of adversarial dispute the assessment of the credibility of oral testimony is one of the most difficult challenges faced by the decision-maker. The difficulty is particularly acute in asylum cases because, almost by definition, a genuine refugee will be someone who has fled home in circumstances of stress, urgency and even terror and will have arrived in a place which is wholly strange to them; whose language they do not speak and whose culture may be incomprehensible. Inevitably, many will have fled without belongings or documentation from areas in a state of anarchy or from the regimes responsible for their persecution so that obtaining any administrative evidence of their status and even identity may be impractical, if not impossible.

[2.] In such cases the decision-makers at first instance have the unenviable task of deciding if an applicant can be believed by recourse to little more than an appraisal of the account given, the way in which it was given and the reaction of the applicant to sceptical questions, to the highlighting of possible discrepancies or to contradictory evidence from other sources. Recourse will also be had in appropriate cases to what is called "country of origin information" but in most cases this will be of use only in ascertaining whether the social, political and other conditions in the country of origin are such that the events recounted or the mistreatment claimed to have been suffered, may or may not have taken place.

*[3.] It is because in such cases the judgment of the primary decision-maker must frequently depend on the personal appraisal of an applicant, that it is not the function of the High Court in judicial review to reassess credibility and to substitute its own view for that of the decision-maker. Its role is confined when a finding of lack of credibility is attacked, to ensuring that the process by which that conclusion has been reached is legally sound and not vitiated by any material error of law."*

59. Cooke J., in that case, reviewed the authorities and set out four principles as a guide to the manner in which evidence going to credibility ought to be treated.

60. In this case the Tribunal member, the second-named respondent, found, following credibility issues:

- i. The applicant claimed that he was married. He was asked what date he got married and he was unable to tell the Tribunal.
- ii. The applicant said he had two children, however he could not remember the date of birth of his son. His lack of knowledge surrounding the son's date of birth is curious.
- iii. The applicant's account of the incident that occurred on 26th February, 2012 in relation to the attack on the church is extremely scant and lacks the kind of detail which the Tribunal would expect in circumstances where the incident forms the bedrock of the Applicant's claim. There is no information in relation to who these people were and he did not give one iota of evidence which would suggest that he, himself, was adversely effected.
- iv. The Applicant goes on to describe the attack on the home on the 27th February, 2012. The Applicant's version of events was bizarre and utterly incredible. He claims that these people entered his house and stabbed and shot his wife and that the Applicant failed to come her assistance or to the aid of his children.
- v. The applicant's assertions that these very dangerous people were unable to find him in such a small space is simply stretched too far. The applicant was asked to describe the perpetrators but his evidence was totally contradictory.
- vi. The applicant was unable to supply any information with regards to his wife's alleged murder.
- vii. The applicant's ability to move to Lagos without encountering these people undermines his claim of persecution. The applicant was asked again why he had not saved the text messages from Boko Haram. He said it was when immigration sought this message that he realised it was only on the sim and not on the phone. It goes beyond incredulity that the Applicant arrived in Ireland seeking asylum yet failed to save the evidence which formed the lynchpin of his claim.
- viii. The applicant's evidence in relation to applying for visas to the UK is scant and lacks the kind of detail one would expect from a person who had applied for a visa to travel from Africa to the UK for a conference.
- ix. Issues to the Applicant not changing his phone or transferring the contacts onto a new mobile phone was lacking in credibility.

61. Cooke J. says in para. 11 (3):

*"There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded."*

62. This point is made by the second-named respondent in that she accepts the existence of Boko Haram and the many attacks which they have carried out on Christians. The question is, what of the subject nature of the Applicant's claim? At para.11 (4), Cooke J. states:

*"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."*

63. It is quite clear that the second-named respondent details each of her findings of lack of credibility clearly and it is also clear that none of the findings of lack of credibility were based on a perceived correct instinct or gut feeling.

64. Paragraph 11 (5) of the judgment states:

*"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."*

65. This Court is satisfied that in each case of finding of lack of credibility, the reasons drawn from the facts are cogent and bear a legitimate connection to the adverse finding.

66. Counsel for the applicant complained that the findings as to the availability of state protection are irrational. However the second-named respondent quotes from the country of origin information. It has clearly understood the implications of the country of origin information.

67. This Court is conscious of the use of country of origin information in ascertaining whether the social, political and other conditions in the country of origin are such that the events accounted and the mistreatment claimed to have been suffered may or may not have taken place. No specific country of origin information was pressed on this Court to suggest that the decision of the second-named respondent was incorrect. The arguments in relation to requiring an objective analysis which necessitates consultation of up-to-date and relevant country of origin information is met by the second-named respondent. It is quite clear that the assessment of the applicant's claim has constituted the main aspect of the decision of the Tribunal and this Court has no role in overturning findings in relation to credibility.

## **Decision**

68. In all the circumstances, this Court is satisfied that the decision of the second-named respondent complies with the jurisprudence

which has arisen from credibility in refugee cases and in those circumstances the Court will dismiss the application for certiorari.

69. As this is a telescoped hearing this Court will refuse leave to apply for certiorari and will dismiss the application.

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*Counsel for the Respondent: Catherine Duggan B.L. instructed by the Chief State Solicitor*