

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2010 No.566 J.R.]**

**BETWEEN**

**B. A. O.**

**APPLICANT**

**AND**

**THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM,**

**THE REFUGEE APPEALS TRIBUNAL,**

**IRELAND AND**

**THE ATTORNEY GENERAL**

**RESPONDENTS**

**JUDGMENT of Ms. Justice Faherty delivered on the 17th day of June 2015**

1. This is a telescoped hearing wherein the applicant seeks an order of certiorari quashing the decision of the second named respondent affirming the recommendation of the Refugee Applications Commissioner not to declare him a refugee.

**Background**

2. The applicant is a Nigerian national and claimed to have been born in Lagos State on the 4th December 1976. He had 16 years of education culminating in a Degree in Guidance and Counselling in 1999. From 1999 to 2003 he was employed as a personnel officer and from 2003 to April 2006 as a personnel manager in Delta State. The circumstances in which the applicant claimed refugee status were as follows:

The applicant claimed to have lived in Delta State from 1999 to 2006. In 1998, he joined the Niger Delta Youth Forum which the applicant claimed was a voluntary, non-profit and non-political organisation established to provide peace and assist embattled youth in the Niger Delta. He was a guidance counsellor and vice president of the organisation. The applicant claimed his difficulties began in March 2006 when his friend (hereinafter referred to as V) who was general secretary of the Niger Delta Youth Forum and a computer programmer was hired by a named politician to clean his computer system of viruses. In the course of this work, V had stumbled accidentally upon information which linked the politician in question to a named notorious warlord involved with the Movement for the Emancipation of Niger Delta (MEND). V discussed the matter with the applicant who advised him to be careful. Later the applicant learned that V had been detained by the police and that was the last he heard of V. The police had then come and arrested the applicant. He did not know what V had said about him to the police but believed V to be the "*architect of [the applicant's] misfortune*". The applicant stated that he was detained, assaulted and tortured. He was accused of misleading the youth against the government. The police had asked him about V and whether he knew about information V had. He was also asked about the named politician. The applicant declined to tell the police anything. The information V had conveyed to the applicant was that V had come upon emails which showed that the named politician was financing MEND in purchasing arms. The applicant claimed that he was held by the police for 15 days after which he was bailed by his uncle on the 30th April 2006. A week later, on 8th May 2006, the applicant was in his house when he observed a group of youths outside with weapons and who were singing his name. He believed them to be associated with MEND. The applicant escaped by the backdoor, dislocating his knee in the process. According to the applicant, his uncle was killed and the applicant's house burnt down. With the assistance of a neighbour, the applicant made his way to Lagos where a friend there assisted him in renting a house in a remote area of the city. The applicant was resident there from the 8th May 2006 until the 31st July 2007.

3. The circumstances which led him to flee Lagos were as follows:

On 21st July 2007 as he was returning from a friend's shop, where he had gone to investigate some business possibilities, he was attacked by two men who attempted to drag him into a car. In the course of the struggle the applicant was beaten and had his jaw broken. His attackers had not identified themselves to him but threatened to return. The applicant's friend in Lagos arranged for him to travel on a false Nigerian passport to Dubai. While in Dubai, the applicant was told that applying for asylum was not possible. While there he met some Nigerian people who introduced him to a man named Jimbo. Jimbo helped to arrange a false Dutch passport for him and both he and Jimbo flew to Ireland, arriving in the State on the 20th August 2007. The applicant applied for asylum on the same date.

**Procedural history**

4. The applicant completed an ASY1 form on the 20th August 2007 and filled out the questionnaire on the 31st August 2007. He underwent a section 11 interview on the 31st August 2007. The report of the Refugee Applications Commissioner issued on the 11th September 2007 denying his application. The applicant's hearing before the Refugee Appeals Tribunal took place on the 23rd February 2010 and the decision of the Tribunal issued to the applicant on the 28th April 2010.

5. The appeal was rejected on credibility grounds. The Tribunal Member found that the applicant's claim had a number of inconsistencies and credibility issues which were not properly explained and were such that it was not believed that he ever had any difficulties in his country of origin or any fear of returning there as he claimed. In summary, the factors which lead to the rejection of the appeal were:

- a) The applicant's failure to mention at his section 8 interview that he was in possession of information concerning his

alleged persecutor in Nigeria and that he had experienced difficulties with the police in Nigeria.

- b) The applicant lacked credibility on account of his failure to disclose, until questioned by the Tribunal, that the information he had made aware of by his friend V implicated government ministers apart from the politician named by the applicant in the initial stages of the asylum process.
- c) The applicant's lack of knowledge of specific local government areas in Delta State.
- d) The applicant's inability to provide any evidence of his travel to Ireland, together with his failure to apply for asylum at the Airport i.e. when first arriving at the frontiers of the State.
- e) The applicant's manner of answering questions.

### **The grounds of challenge**

6. Six grounds of challenge were set out in the statement of grounds, two of which were pursued on behalf of the applicant, namely:-

*" (ii) The RAT erred in law and breached the principles of fair procedures and natural and constitutional justice in the manner in which it assessed the applicant's claim and in particular his credibility. The decision is a pro forma document within which credibility is assessed with reference to matters of minute detail bearing no reference to the well-foundedness of the Applicant's fears in keeping with a primary objective to refuse the Applicant's claim...*

*(iv) The RAT erred in law and breached the principles of fair procedures and natural and constitutional justice in failing to give reasons /adequate reasons for the Decision and in engaging in conjecture in the evaluation of the Applicant's claim. There is no rational basis for the conclusion that the Applicant's fear in respect of giving certain evidence to the Tribunal calls the veracity of the entirety of his evidence into question."*

### **Submissions to the court**

7. Overall, it was submitted on behalf of the applicant that there had to be a question as to whether the reasons given by the Tribunal Member permitted him to reject the applicant's credibility in full. Counsel emphasized that the Tribunal Member had not found that there was no named politician or no MEND and the Tribunal Member had not found that the applicant was not a member of the Niger Delta Youth Forum. The reasons given for rejecting credibility did not go to the core claim. The core claim was rejected by the Tribunal Member but no reasons were given for the rejection. Furthermore, the Tribunal Member erred in failing to acknowledge that the applicant had set out his core claim in accordance with the requirements of the Refugee Act, 1996 (as amended). In all of the circumstances, the approach of the Tribunal Member fell foul of the principles enunciated by Cooke J. in *I.R. v. Minister for Justice & Ors* [2009] IEHC 353. Counsel relied, in particular, on principles, 4, 5 and 6 as follows:-

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

*5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.*

*6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given."*

8. The Tribunal Member had relied on gut instinct, contrary to principle 4 in *I.R.* in finding the applicant's account untrue and failing to articulate valid reasons therefore. The Tribunal Member breached principle 5 in that the reasons for rejecting credibility did not bear a legitimate connection to the overall rejection of the applicant's credibility. Furthermore, the reasons advanced related to minor issues contrary to what was enunciated by Cooke J. in principle 6 of *I.R.*

9. Finally, counsel submitted that the adequacy of the Tribunal Member's reasoning did not meet the test set by MacEochaidh J. in *R.O. v. Minister for Justice & Ors* [2012] IEHC 573:-

*"30. .... 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?"*

10. Counsel for the respondents reminded the court that, as set out in *I.R.*:-,

*"..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."*

11. Counsel referred the court to the dictum of Dunne J. in *A.W.S v. Minister for Justice* [2007] IEHC 276 where the learned Judge stated:-

*"I accept that the principle stated by Peart J. in his judgment in Imafu correctly sets out the basis upon which this court can interfere with a finding on credibility by an inferior Tribunal. Unless the process by which the assessment of*

credibility has been made is legally flawed or there is a lack of jurisdiction the court will be very slow to interfere. In this case the basis upon which it is stated that the decision of the Tribunal is legally flawed is that there has been a failure to consider all of the evidence and to weigh the evidence appropriately and to have regard to all relevant material submitted to the Tribunal. As I have set out at length above, reference has been made to specific items which have not been referred to in the course of the decision by the respondent and further reference has been made to some parts of the evidence of the applicant which were outlined in the summary of evidence by the respondent but not referred to in the decisive part of the decision. It must be noted that in the course of the decision at p. 7 the respondent noted as follows:

"I have carefully considered all the papers submitted to me for the purposes of this appeal and all the matters required to be considered under s. 16(16) of the 1996 Act.

At p. 9 of the decision, he went on to say:

"I have had regard to all of the relevant facts outlined and considered in detail all of the applicant's answers in his questionnaire and all his replies at interview and taken into consideration all the submissions made on his behalf and perused through all the documents submitted to include country reports submitted on the 25th May, 2005 post hearing."

In the light of that very clear statement it is very difficult to reach a conclusion that the respondent has failed to consider and evaluate all material evidence, papers, documents and submissions. The function of this court is not to engage in an exercise which involves a minute analysis of the Tribunal decision to ascertain if each and every part of evidence given has been expressly referred to and dealt with. It is not necessary for the Tribunal to refer to all of the evidence in the course of its written decision."

12. The respondents argued that all of the information provided by the applicant was properly considered by the Tribunal Member and same had been lawfully adjudged as wanting.

### Consideration

13. Each of the credibility findings will be considered in turn from the perspective of the grounds of challenge and having regard to the specific submissions of the parties as they pertained to each of the findings, and to the relevant legal principles and case law.

### The first credibility finding

14. The Tribunal Member articulated the first credibility finding in the following terms:-

"It was put to the Applicant that in his ASY1 form despite referring to attempts being made on his life by [the named politician] and MEND because they believed he was undermining them in the Niger Delta he had not mentioned being aware of any such information in relation to them. When this was put to the Applicant he claimed not to have mentioned it at the time because he was asked to give a brief account of his claim. He says that is why he didn't mention it and didn't mention anything about the Police. He says he gave a brief summary of what happened and believed he would have an opportunity to give other details later. Whilst all that is required of an Applicant at that stage of the process is that they provide a brief account or summary of their claim, it is considered that any summary or brief account of this Applicant's claim would make some reference to the information the Applicant claimed to have become aware of which is the alleged cause of the difficulties he claims to have experienced and would not refer to a belief, without reference to the basis for that belief, considering the nature of the information which the applicant claims to have been aware of. It is considered that the applicant would have made some reference at that stage to having difficulties with the police and it is considered that if he had any such fear of them as he alleges that he would have made some reference to this fear at that stage of his claim. It is considered that any brief summary or account of his claim would refer to these matters which are central to the applicant's claim."

15. On behalf of the applicant, it was submitted that said finding was irrational and unlawful in that while the applicant had not mentioned during his section 8 interview his arrest by the police or that he was in possession of certain information regarding the named politician, he had nevertheless set out the gist of his claim, which was duly recorded in the section 8 interview. Counsel submitted that the section 8 interview was only the briefest of summaries and moreover was a summary compiled by the officials to whom the applicant had told his story. It was argued that the fundamental flaw in the approach adopted by the Tribunal Member was his failure to recognise that the gist of the applicant's claim had been set out in the section 8 interview and that the applicant had gone on clearly set out his claim in his questionnaire (in particular in the manuscript attached to the questionnaire) and also in the course of his section 11 interview. In the questionnaire, the applicant clearly mentioned the named politician in the context of the claim that was being made by him and his fears: he had specifically mentioned the named politician and MEND as his persecutors and had given the underlying reason for the persecution. In those circumstances, the Tribunal Member should at least have had regard to the detail set out in the questionnaire before finding the applicant had not set out his story in full. Yet the Tribunal Member had ignored the fact that the applicant's comprehensive claim was set out in the questionnaire and section 11 interview and the Tribunal Member had reverted back to perceived failings in the section 8 interview. Thus, it was neither fair nor rational to reject the applicant's claim on that basis. Unlike the Refugee Applications Commissioner, the Tribunal Member had not acknowledged that the applicant had made a claim in full in his questionnaire and section 11 interview.

16. The respondents argued that it was completely rational for the Tribunal Member to draw an adverse credibility finding from the applicant's failure to disclose details which were core to his claim for asylum.

17. The court will first consider the manner in which the applicant's claim was made known to the asylum authorities. The record of the applicant's section 8 interview disclosed the following information:-

"Applicant states that he entered the country on a false passport (Dutch).

Applicant states that he is a member of the Niger Delta Youth Forum. Applicant states that the leader of this group is [ ]. Applicant states that he is a guidance counsellor for the Niger Delta Youth Forum.

Subsidiary protection notice issued to applicant. Applicant states he has never applied for asylum in this country or any other country.

Applicant states that his life is in danger. Applicant states that attempts were made on his life by [a named politician] and MEND. Applicant states that they believed he was undermining them in the Niger Delta. Applicant states he was

*attacked in Warri State on 08/05/2006 and on 21/07/07 and he suffered from a broken jaw on (sic). Applicant states that after the last attack he fled the country."*

18. In the course of his questionnaire, when responding to the question as to why he had not reported his fears to the authorities the applicant stated:-

*"I didn't report to the police because of my experience with them in the past. They detained me wrongfully and tried to rope me in issues that never was, so I pass a vote of no confidence on the Nigeria police, Warri".*

19. In response to the question as to whether he had ever been arrested, detained or imprisoned in his country of origin, the applicant replied in the affirmative as follows:-*"By the police in Warri, I was detained for 15 days".* With regard to his claim to have been in possession (via his friend V) of information concerning the named politician and MEND, the manuscript addendum to the applicant's questionnaire records, inter alia, as follows:-

*"But all the problems started when one of our member [V], a coordinator and computer specialist...was asked to clean some virus on the computers of [the named politician] but I don't know how he managed to stumble accidentally on some correspondence, mails between [the named politician] and the notorious warlord.*

*When V discussed his experience with me, I advised him that he should be careful...I later heard that he was detained to Warri Divisional headquarters, that was the last I ever heard of him, if he is dead now, I don't know.*

*He caused all these problems, he was the architect of my own misfortune because I don't know what he did tell the police about me.*

*The police came, arrested me for misleading the youth, felony was taken to the station, detained for 15 days .. series of tortures, I was released on bail by my uncle the 30th April 2006".*

20. The record of the section 11 interview contains, inter alia, the following:-

*"Q. Why do [the named politician] and MEND want to harm or kill you: what is their motivation for doing this?*

*A. They feel that their activities have been undermined by our involvement in the peace process. That is the number one reason. The second reason is that one of our coordinators who is a computer specialist was working for [The named politician]. [That individual] asked him to clean his computer of viruses. Somewhere our co-ordinator [V] came across email correspondence between [the named politician] and a notorious warlord, [V] said that he found this correspondence and he discovered from this that [the named politician] is the main financier for MEND (that he bought their weapons etc). When [V] told me about this I advised him to be careful because he was dealing with a strong person. [V] was shocked and disappointed with [the named politician's] involvement in these things. Somewhere along the line I heard that he went to the police station and he was imprisoned and tortured and maybe he is dead. Later the police came to me and said that I was under arrest for misleading the youth against the government. I was detained for 15 days during which I was tortured. I was rescued by my uncle Mike.*

*Q. How does [V's] discovery of correspondence.....have any connection with the desire of [the named politician] and MEND to harm you?*

*A. Maybe they were threatened and that if this information was leaked to the media that [the named politician's] name would be soiled and his image tarnished.*

*Q. Why does [V's] discovery have anything to do with you?*

*A. We were in the same organisation Niger Delta Youth Forum. I don't know what he told the police about me because the police came to me straight away."*

21. Later in the interview, the applicant was questioned as follows:-

*"Q. Did you ever go the police in Lagos to tell them about your fears about being harmed by Mend (sic) or the [the named politician]?*

*A. No. I didn't.*

*Q. Why not?*

*A. Because, first and foremost, I passed a vote of no confidence in the police because of my experience of being arrested and tortured and also I was afraid that my whereabouts could be communicated by the police to [the named politician] or MEND.*

*Q. Did you ever go to the police to report the murder of your uncle?*

*A. No, I didn't.*

*Q. Why not?*

*A. Because, I was tortured by the police and at this time these people were stronger than what the police can handle. One time they burnt down the police station in Warri and the police did not do anything about it. Even the police were afraid of these people. Having escaped this attempt to kill me I thought there was no other option but to leave that vicinity and I was thinking about what had happened to [V] and I thought that this could happen to me so I was not thinking of going to the police.*

*Q. If the police were acting on behalf of [the named politician] or MEND, why didn't they kill you at the time they arrested you when they had the opportunity to do so?*

A. Yes, I was also surprised too but my uncle came calling for bail. I was also surprised because I thought I would die in jail

Q. How do you explain why they released you?

A. I do not know the reason why but maybe they thought I was innocent and there was nothing they could hold against me and they came to my house and I knew they meant business that time. It could be that the police were communicating with [the named politician] that I didn't know anything and there was no reason for them to keep me, I don't know."

22. In the course of the oral submissions, counsel for the applicant referred the court to the decision of MacEochaidh J. in *P.D. v. Minister for Justice* (20th February 2015) [2015] IEHC 111. In that case, my learned colleague considered, inter alia, the purpose of the various statutory procedures set out in the 1996 Act in connection with the processing of asylum claims. He stated:-

"3. In accordance with s.8 of the Refugee Act, 1996 (as amended) an immigration officer interviewed the applicant who sought asylum in the state on the 31st August, 2010. An interview of an asylum seeker conducted in accordance with s.8 seeks to establish "the general grounds upon which the application is based" (see s.8(2)(a)), "the reason why the person came to the State" (see s.8(2)(e)) and the "legal basis for the entry into or presence in the State of the person" (see s.8(2)(f)).

4. The result of the s.8 interview was recorded in writing by the authorised officer and signed by the applicant. The applicant indicated that he was born in Malawi and that he had a passport from that country. He said that he had lived in Zimbabwe, that he was gay and that this was discovered by his family in 2009. He states that he was attacked by his relatives and suffered injury to his head requiring hospitalisation. .... The signed record of the interview acknowledges receipt by the applicant of a questionnaire which must be completed by a person applying for refugee status. This questionnaire is the prescribed form referred to in s.8(4) of the 1996 Act which provides "An application [for refugee status] shall be made in writing in the prescribed form or in a form to the like effect and shall be addressed to the Commissioner."

Questionnaire:

5. The questionnaire was given to the applicant and it was required to be returned by 9th September, 2010. Guidelines for the completion of the questionnaire are provided to applicants for refugee status. Guideline 2 says "this Questionnaire seeks relevant information from you as an applicant for a declaration as a refugee in Ireland. This information will form the basis of the investigation at your interview." This questionnaire must be completed fully and returned within 10 working days. The guidelines also informed the applicant that:

"You should seriously consider obtaining the assistance of a professional legal advisor. You may contact a member of the staff of the Refugee Legal Services...or a solicitor in private practice..."

6. The applicant did not obtain legal advice prior to completing the questionnaire or at any stage during his dealings with the Refugee Applications Commissioner.

7. Part Three of the questionnaire is entitled 'Basis of Your Application for Refugee Status' and sets out the following recommendations:

- "When answering the questions below you should tell us everything about why you think you should be considered for refugee status.
- You should tell us if you think any of the events you referred to occurred because of your race, religion, nationality, membership of a particular social group, political opinion or any other reason.
- You should also tell us if you have ever been imprisoned, interrogated, tortured or mistreated in your country of origin and give full details."

Section 11 Investigation:

10. Once the prescribed questionnaire is completed, the claim for asylum is investigated in accordance with s.11 of the 1996 Act. That section is entitled "Investigation of Applications by Commissioner". Section 11(1) provides that where an application is received by the Commissioner under s.8, "it shall be the function of the Commissioner to investigate the application for the purposes of ascertaining whether the applicant is a person in respect of whom a declaration [of refugee status] should be given." Section 11(2) says that the Commissioner shall direct an authorised officer to interview the applicant. Reading s. 11(1) and 11(2) together, it is apparent that the statutory purpose of the interview is to investigate the asylum application which has been made in writing in the prescribed form, that being the questionnaire which has been completed. Thus before the investigation under s.11 commences the applicant for refugee status has set out the basis of the claim for refugee status in a form prescribed for that purpose as required by statute.

Section 13 Report:

11. Once the s.11 investigation is complete, a report is prepared pursuant to Section 13 which provides that:-

"Where the Commissioner carries out an investigation under s.11 he or she shall...prepare a report in writing of the results of the investigation and such report shall refer to the matters raised by the applicant in the interview under s.11 and to such other matters as the Commissioner considers appropriate and shall set out the findings of the Commissioner together with his or her recommendation whether the applicant considered should, or as the case may be, should not be declared a refugee....."

15. The interview was conducted on the 1st October, 2010 by an authorised officer who, on 27th October, 2010 produced a report pursuant to s.13 of the 1996 Act. Before proceeding to describe the s.13 report I observe that the s.11 interview did not invite the applicant to state the basis of his claim for asylum. In accordance with the provisions of s.11, the interview constituted part of the investigation of the asylum claim which had been set out in writing on the

prescribed form - that being the questionnaire to which I have alluded. The questionnaire, unlike the s.11 interview, expressly asked the applicant why he was seeking asylum.

*The Applicant's s. 13 Report:*

16. The s.13 report states that "Details of the applicant's asylum application are set out in the ASY1 form, Questionnaire and section 11 interview record." Though this phrase appears in most if not all s.13 Reports it is not strictly accurate. The questionnaire may be described as the asylum application. The section 11 interview is not, strictly speaking, part of the asylum application. It forms part of the investigation of the application. The authorised officer directs the investigation and the interview under section 11. The reason I refer to this otherwise irrelevant inaccuracy is that the respondent places some emphasis on the difference between what the applicant said on the questionnaire and what was said at interview. The respondent seeks to argue that the applicant's true asylum claim was based on a fear of his family and the interview, it is said, reflects this fact. The applicant argues that the asylum claim was based on a fear of being prosecuted and jailed by state authorities as well as fear of his family as indicated in writing on the questionnaire. My view is that the claim for asylum is that which is expressed in the questionnaire. Elements of the claim may also come to light from the s.8 interview and from the s.11 interview and from any other investigation carried out. The fact that part of a claim expressed in the questionnaire (which, it is recalled, is the prescribed form for the purposes of s.8(4) of the Act) finds no expression in the s.11 interview does not mean that it is not pursued by the applicant."

23. With regard to the instant case, I note that some 11 days after completing his ASY1 form and the section 8 interview, the applicant completed a questionnaire in which he relayed what effectively appeared to be the central basis of his claim for asylum, namely that he was perceived to be in possession of information (which he claimed in fact he was in possession of via his friend V) which linked a named politician to MEND and that because of this perception he was arrested and tortured by the police.

24. It is noteworthy that his section 11 interviewer commenced the interview, which took place on the date the applicant completed the questionnaire with reference to the questionnaire. Indeed it was entirely appropriate that he did so, having regard to the primacy of the questionnaire (pursuant to the legislation) as the basis of the investigation into the applicant's claim for asylum, as articulated by MacEochaidh J. in *P.D. v. Minister for Justice*.

25. At page 6 of the section 11 interview, the applicant was specifically questioned as to why he believed that the named politician and MEND wanted to harm or kill him. The applicant's answers to these questions largely accord with what had been set out in his questionnaire.

26. It seems to me, with regard to the first credibility finding as set out above, that there was unfairness in the emphasis which the Tribunal Member placed on the contents of the record of the section 8 interview, particularly so when the legislation provides that the questionnaire constitutes the basis for the investigation of an asylum claim. Whether the information contained in the questionnaire or indeed in the s.8 interview or further information provided by the protection applicant is found to be credible or otherwise is of course a matter entirely for the decision-maker but it cannot be the case that a protection applicant's claimed basis for asylum, set out, as requested of him, in the questionnaire provided to him for that reason, is effectively overlooked in favour of what is contained in the record of the section 8 interview, particularly in circumstances where the latter record is not considered to be the statutory starting point for the investigation of asylum claims. In these circumstances, the Tribunal Member's rejection of the applicant's claim on the basis that a central claim was not set out in the section 8 interview was unfair and irrational and, accordingly, it cannot stand.

#### **The second credibility finding**

27. The Tribunal Member's second credibility finding was recorded in the following terms:-

*"The Applicant was questioned by the Tribunal as to the information he claimed he had been made aware of by his friend and as to the detail of this information related by him at other stages of his claim. The Applicant then claimed when being questioned in this regard that his friend also told him that there were other Government Ministers involved in the matter. It was put to the Applicant that he hadn't previously provided this detail. The Applicant acknowledged this and stated that this was vital information that he couldn't disclose because he was afraid for his life. He says he can't disclose this information because he would be killed. In circumstances where this Applicant admits to deliberately withholding information from the Tribunal the value of any evidence he gives is considered dubious. His credibility is seriously affected in his refusal to provide this Tribunal with the full circumstances of his claim."*

28. On behalf of the applicant, it was submitted that this was an irrational and unreasonable credibility finding based simply on the "gut feeling" of the Tribunal Member. It was difficult to conceive how as a result of the fact that a person was afraid to disclose information that the person was consequently being untruthful. Moreover there was no rationality in the Tribunal Member's finding that the applicant admitted to "deliberately withholding information from the Tribunal" when in fact the applicant was giving the information to the Tribunal. It was argued that if the applicant's story were true it would hardly be surprising that he would not reveal the names of other Ministers, the very fact that he was worried about revealing information about other Ministers should not have been used to his detriment vis-à-vis the core of his claim of persecution.

29. With regard to this issue, the respondents submitted that it was completely rational to draw an adverse credibility finding arising out of a failure to disclose details which were core to the applicant's claim. The appeal to the Refugee Appeals Tribunal was a *de novo* appeal, therefore the Tribunal was entitled to consider any and all evidence in respect of the applicant's claim. It was further argued that the Tribunal Member correctly found a lack of credibility in the applicant's failure to mention until questioned by the Tribunal that information that he had been made aware of by his friend implicated government ministers. That he was afraid to give answers in the course of his evidence called into account his personal credibility on grounds of implausibility. Detailed reasons were given by the Tribunal Member for rejecting the applicant's personal credibility. It was submitted there was no element of conjecture and that the Tribunal's reasoning about the applicant's alleged fear of giving evidence was valid and lawful. What the applicant gave at the Tribunal hearing was fresh evidence some three years post the commencement of his asylum process, thus the applicant's story was therefore "growing legs". It was submitted that there could be no basis upon which the applicant claimed he was fearful about giving information about government ministers when in fact the politician whose name he had given in the earlier stages of the asylum process was also a government minister.

30. With regard to this particular finding, I do not find merit in the arguments advanced on behalf of the applicant. The finding withstands scrutiny in terms of its rationality and cogency and, to my mind, conforms to the requirements set out in *I.R. v. Minister for Justice and R.O. v. Minister for Justice*. The Tribunal Member was entitled to take the view that the applicant's failure, until the Tribunal hearing, to make the claim that his friend V told him that other government ministers were also involved "seriously affected" his credibility. In circumstances where the applicant's claim already involved a named politician, the Tribunal Member was in my view

entitled to take the position that the applicant's failure at the Tribunal stage to give details of this new claim went to his credibility.

### **The third credibility finding**

31. The Tribunal Member expressed this finding in the following terms:-

*"It was put to the Applicant that at his interview he was asked to name the local Government areas he knew in Delta State and that based on Country of Origin information on file he had only named one correctly despite giving ten names. When this was put to the Applicant the Applicant claimed that the local Government issue has always been a bone of contention in the area. He says everyone wants their local town or village to be recognised. The Applicant was asked as to why he didn't state this at his interview when asked in relation to the local Government areas and he claimed that this could have been out of fear. He says that at his interview he was still in pain. He says it could have been through tension and fear. He says he thought those areas were recognised by the Government because they are in Delta State and important towns and villages there. He says he still lived in fear at the time of his interview. This is not considered credible and it is not considered credible that the Applicant would reply to the question as asked at interview simply name out ten places which he claimed were local Government areas in circumstances where he claimed that this was a bone of contention in his Country of Origin without making reference to this at the time. It is not considered credible that the Applicant could have been in such fear at the time of his interview as to prevent him from properly answering the question asked. While it was submitted that the Applicant had nevertheless demonstrated a good geographical knowledge of the area, it is considered that this is information that would be available to anyone upon enquiry. The corroborative value of the driving licence as submitted by the Applicant in support of his claim and the address given herein must be considered in the context of this licence being issued in Lagos. Even if it is accepted that this Applicant is from the region he claims he is not considered to have established that he experienced the difficulties he alleges for the reasons he claims. This is so by reason of the inconsistencies and credibility issues arising in his account."*

32. Counsel for the applicant argued that in respect of this credibility finding too much weight was attached to the matter in circumstances where the applicant had demonstrated a very good knowledge of the geography of the area. It was unclear as to what was the effect of the Tribunal Member's conclusion in that the Tribunal Member made no clear finding as to whether or not he accepted that the applicant was from Delta State, which seemed to be the objective of the exercise. Furthermore, the Tribunal Member's statement that the information given by the applicant on the subject of the geography of the Delta State constituted "information that would be available to anyone on enquiry" was a form of circular reasoning and was itself irrational in that the other information which was sought (the local government areas) could itself have been acquired in the same fashion. Counsel queried the relevance of the finding to the applicant's core claim. In any event, the areas which the applicant had named were all towns and villages in the Delta State, albeit it was acknowledged they were not local government areas. Even if the applicant did not know local government areas, he displayed knowledge of towns and villages in the area, which should have gone to his credit.

33. On behalf of the respondents, it was argued that having claimed to have lived in Delta State for most of his life, the applicant was asked at interview to name the local government areas in that state. The applicant had given ten names including Warri. In the section 13 report, it was noted that the names of the local government areas in Delta State were entirely different than those named by the applicant. 25 local government areas were identified by the authorised officer including three named Warri North, Warri South and Warri South-West. It was therefore concluded that with the exception of Warri which was similar to some of the true names of the local government areas, the applicant had been entirely unfamiliar with those areas. It was thus clear that the applicant did not have the knowledge of Delta State that would be expected of someone who claimed to have lived most of their life there. The clear effect of the Tribunal's conclusion was that the applicant's credibility had been undermined by his lack of knowledge of an area that he claimed to have lived in and an area wherein he claimed that he was in fear of persecution. The Tribunal's reasoning was rational and the Tribunal was correct to find as implausible the applicant's explanation for failing to name the areas correctly, namely that he still lived in fear at the time of his interview. The applicant's driving licence issued in Lagos in 2006 at a time he claimed to be resident in Delta State, a factor which had led the Refugee Applications Commissioner to query whether the applicant was habitually resident in Delta State as he claimed.

34. Counsel for the applicant argued that the Tribunal Member had not made a finding that the applicant was resident in Lagos at the relevant time and contended that, in any event, the fact that the applicant had been born in Lagos and was educated there and had a driving licence from there did not mean that he did not have a connection to Delta State.

35. Counsel for the respondent urged the court to adopt the approach set out by Cooke J. in *I.R. v. Minister for Justice*, as follows:-

*"20. Thus, it is on the Tribunal member's appraisal of the applicant's lack of basic knowledge of the history, leadership, and activities of the party in which he claims to have been a member and for which he went to jail, that the negative finding on credibility is reached."*

*21. If, as in other cases, the applicant's claim turned entirely on his personal testimony, it would be difficult to persuade the Court to interfere with that assessment. The applicant has been interviewed by the Commissioner and had an oral hearing before the Tribunal member. Both decision-makers have seen and heard him and concluded that he lacks credibility. The observations made by the Tribunal member are based on questions put to him which arise directly and logically out of the applicant's own account. On that basis, it could not be said that it was perverse or irrational for the Tribunal member to consider that a better knowledge of the BPF could be expected from someone with the applicant's level of education who claims to have had the involvement in that party which he described."*

*22. So far as credibility is concerned, counsel for the respondent also points out that there was a change in the applicant's evidence as to his level of involvement when confronted with this lack of knowledge. He then said he was only active in it at weekends. But even if it could be argued that the Tribunal member was demanding too much in that regard from somebody with the applicant's level of involvement, that is a matter of judgment for the Tribunal member and to say the decision should be quashed for that reason is not to point to any necessary error of law but to invite the Court to substitute a different view."*

36. In the *I.R.* case, Cooke J. went on to quash the decision because:-

*"23. However, the Court considers that there is a significant and material problem with the Contested Decision because this is not a case in which the applicant relied entirely upon his own personal testimony and on its credibility. This case is somewhat unusual in that, as already mentioned, the applicant was, from the outset, in a position to produce and submit to the decision-makers for examination, a number of documents which, at least on their face, appear to be directly related to specific facts and events recounted by the applicant and which form the basis of his claim to have*

suffered particular mistreatment on specific dates in given places.

37. Counsel for the respondent maintained that the applicant's circumstances were clearly distinguishable from the position in *I.R.* because the applicant was relying entirely upon his own personal testimony, therefore the present case was one which, in the words of Cooke J. was:-

*".... a matter of judgment for the Tribunal member and to say the decision should be quashed for that reason is not to point to any necessary error of law but to invite the Court to substitute a different view."*

38. I agree with the respondents' submissions on this issue. I do not find merit in the applicant's challenge to this finding. The Tribunal Member rejected the applicant's explanation for his failure to correctly name any of the local government areas for stated reasons.

39. The reasons given by the Tribunal Member met the requirements of rationality and cogency. While I note the case made on behalf of the applicant that the Tribunal Member's finding regarding the applicant's knowledge of local government areas, as imparted to the section 11 interviewer, could just have easily applied had the applicant correctly identified the local government areas, it remains the case that the Tribunal Member was entitled, in assessing the applicant's credibility, to factor in the applicant's lack of knowledge of Delta State and his stated reasons for that lack of knowledge. The applicant's evidence in respect of the area wherein he alleged that he lived and wherein he claimed to have the fear of persecution was found to be incorrect as a matter of fact and the Tribunal Member found that to have undermined his credibility. There was no conflicting evidence and for this court to come to any other conclusion is to invite the court to substitute its assessment of the factual position for that of the Tribunal Member, which is not the purpose of this court's function on judicial review.

#### **The fourth credibility finding**

40. The Tribunal Member found as follows:-

*"The Applicant claims to have arrived in Ireland on the 20th of August 2007. He says he applied for asylum the same day. The Applicant was asked as to whether he applied for asylum at Dublin Airport when he arrived here and he says that he didn't because the man who travelled with him said he would take him into Ireland. He says he thinks that this man was afraid that he would not get the balance of his money. He says that this man didn't tell him he could seek asylum at the airport. The Applicant was asked as to whether he had any travel documentation to confirm when he arrived here he claimed he hadn't because he handed everything over to the agent after he arrived here. He says this even included the ticket stubs from his travel. This is not considered credible. There is nothing only the Applicant's own evidence to suggest that anyone travelled with him or to confirm when he arrived here. It is considered that if the applicant had any fears as he claims that he would have made enquiries and attempted to apply for asylum when first arriving at the frontiers of this State."*

41. Counsel for the applicant submitted that the credibility finding reached in respect of travel was one which was peripheral to the claim made, and was one based on "gut feeling" and which did not properly apply s. 11 B(d) of the Refugee Act 1996 (as amended). That provision states that a credibility issue may arise:-

*"where the application was made other than at the frontiers of the State, whether the applicant has provided a reasonable explanation to show why he or she did not claim asylum immediately on arriving at the frontiers of the State unless the application is grounded on events which have taken place since his or her arrival in the State."*

42. It was argued that the applicant provided an explanation which he proposed as reasonable but the reasonableness of the explanation was not dealt with by the Tribunal Member and there was no reason given to justify why it was not in fact considered reasonable. In this regard, counsel relied on the judgment of Eager J. in *B.A. v. Refugee Appeals Tribunal & Ors* (11th February 2015) [2015] IEHC 76.

43. Counsel argued that the applicant had used an agent who had provided a Dutch passport for the applicant; therefore it would not have been difficult for the applicant to gain entry to Ireland with such a passport ostensibly as an EU citizen. It was also the case that the vast majority of asylum seekers sought asylum at the offices of ORAC and not at the Airport. Therefore, it was not incredible that the applicant would have failed to do so at the airport. Furthermore, it was not beyond the realm of credibility that the applicant would have given his ticket stubs to the agent, as he alleged. The finding that the applicant's story of persecution was not credible because he did not have travel stubs was not a valid finding. Thus, while the Tribunal Member's finding on the travel issue was something that could go to the applicant's credibility, it was not fundamental to his core claim. In this regard counsel relied on the above quoted dictum of Eager J. in *B.A. v. Refugee Appeals Tribunal*.

44. On behalf of the respondents, it was submitted that the credibility finding reached in respect of the applicant's lack of evidence as to his travel was rational. The Tribunal Member found a lack of credibility in the claim that the applicant had no travel documentation because he handed everything over to the agent, to include ticket stubs, after he arrived in the State. The credibility issue, counsel submitted, rested with the lack of travel stubs. In particular, the applicant had no travel stubs in respect of his travel from Nigeria to Dubai in circumstances where he had no agent with this portion of his travel. Therefore, the Tribunal Member was entitled to factor this into his credibility assessment. With regard to this finding, I am of the view that the applicant's explanation that he arrived in the State on a false Dutch passport and accompanied by an agent was not so beyond the bounds of credibility as should have led the Tribunal Member to conclude that this was a ground to reject his core claim. The applicant gave an explanation for not claiming asylum at the airport, namely that he relied on the agent to "take him into Ireland". I do not accept the respondents' counsel's contention that this credibility issue rested solely with the issue of travel stubs, especially the Nigeria to Dubai travel stubs. I note that the Tribunal Member did not specifically isolate the lack of these particular stubs; rather the finding pertained to the lack of travel receipts generally. Aside from the travel stubs issue, the Tribunal Member cited an equal basis for rejecting the applicant under the "travel" umbrella, namely his failure to apply for asylum at the frontiers of the State. However, as already stated, the applicant provided an explanation for not so doing which to my mind did not seem incredible. In this regard, I adopt a similar approach to that of Eager J. in *BA v. RAT*, as follows:-

*"The finding of an expectation that the Applicant being an adult should apply whilst in transit in Turkey are in my view not a core issue but a peripheral one. It appears to me that it is natural to assume that the person would in these circumstances rely on the agent who accompanied the Applicant to find that the decisions on credibility in these circumstances appear to avoid the perfectly simple explanation that if a person pays an agent they will rely on the agent who accompanies them to the country which the agent has decided as the country of destination. This seems to me to be a principled approach to the issue."*



### **The fifth credibility finding**

45. The Tribunal Member stated:-

*"I have considered all of the Documentation, Country of Origin information, Grounds of appeal, Submissions and Case law relied on in support of this Applicant's claim. This information does not assist the applicant in circumstances where his credibility is found wanting to such a degree that the very basis of his claim is not believed. I do not believe this Applicant. His manner of answering questions raised by the Tribunal appeared to be a deliberate attempt by him to confuse the evidence and I do not accept that he ever had any difficulties in his Country of Origin as he alleges or has any fear of returning there as he claims."*

46. Counsel for the applicant submitted that there were no examples given by the Tribunal Member as to what was being referred to when the applicant's manner was mentioned, nor was there anything in the summary of the applicant's claim (as set out in the decision) from which one could glean what the Tribunal Member was referring to. With regard to this finding, I am inclined to agree with the submissions advanced on behalf of the applicant. Clearly, the Tribunal Member's disbelief of the applicant was connected to some degree to the *"manner of answering questions raised by the Tribunal"* and indeed the Tribunal Member found *"a deliberate attempt"* by the applicant *"to confuse the evidence"*. Other than stating as much, the Tribunal Member did not give examples. Neither the section 6 analysis nor the section 3 summary of the applicant's claim yield a discernable reason as to why this particular conclusion was reached. It seems to me that the dictates of fairness required that the Tribunal Member should have set out (even in summary form) those parts of the applicant's evidence or answers which were found to constitute a deliberate attempt to confuse the evidence. Insofar as the applicant's credibility was impugned on the basis of this finding, the finding cannot stand.

### **Summary**

47. This court has found three of the five credibility findings made by the Tribunal Member to be unsound. The question is whether the Tribunal's overall conclusion on the applicant's credibility must be set aside because of the infirmity which attaches to three specific findings. As I have set out in *T. v. Minister for Justice* (High Court, 14th April 2015), 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. It is not possible to discern what weight the Tribunal Member attached to the three impugned credibility findings in reaching his overall conclusion on credibility. The credibility findings were cumulative in nature. As a consequence this court must be satisfied that all of the credibility findings were lawfully arrived at given their cumulative nature and given in particular the fact that the decision relied entirely on credibility and did not engage the internal relocation alternative or the possibility of state protection. Therefore, I am satisfied that the entire decision on credibility cannot stand. In so finding I adopt the approach of O'Leary J. in *Bisong 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:-

*48. "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."*

49. This approach was also adopted by Herbert J. in *Keagnene v. Minister for Justice Equality and Law Reform* [2007] IEHC 17 where it was stated as follows:-

*"As the Court cannot be aware of what weight the Member of the Refugee Appeals Tribunal attached to each of the six reasons given by him for finding that the Applicant was not credible or trustworthy and his unsupported testimony was unreliable, the Court must conclude that as reasons four, five, and six cannot be permitted to stand as reached by the application of unfair procedures, the entire decision must of necessity be therefore set aside."*

### **Conclusion**

50. 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 second named respondent for a de novo hearing before a different Tribunal Member.