

THE HIGH COURT**JUDICIAL REVIEW****[2010 No. 1555 J.R.]****BETWEEN****M.H. [NIGERIA]****APPLICANT****AND****MINISTER FOR JUSTICE AND LAW REFORM,****REFUGEE APPEALS TRIBUNAL,****ATTORNEY GENERAL****RESPONDENTS****JUDGMENT of Ms. Justice Stewart delivered on the 8th day of July, 2015**

1. This is a telescoped application for leave to seek judicial review of the decision of the Refugee Appeals Tribunal dated 4th November, 2010, affirming the negative recommendation of the Offices of the Refugee Applications Commissioner, that the applicant not be declared a refugee.

2. A preliminary issue arose with regard to the necessary extension of time for the applicant to initiate these proceedings. The delay was minimal and explained by the applicant on affidavit. The respondents did not take any issue with the explanation provided and, in the circumstances I grant the necessary extension of time.

BACKGROUND

3. The applicant is a Nigerian national born on 11th August, 1973, in Kano state, Nigeria. He is a Christian of the Hausa ethnic group and has twelve years of formal education. He worked for twelve years as a clothes trader in the markets in Kano before he left Nigeria. The following is the applicant's account of that which gave rise to the alleged persecution. He states that as a Christian he suffered persecution at the hands of a hisbah militant group in northern Nigeria, a group of Muslim extremists. He claims that his family had been persecuted and harassed for many years by the militant group due to the fact that he and his family were Christians. His mother was killed in 1998 in a riot because she was a Christian, and in 2001 he was arrested on two different occasions by members of the group, detained for extended periods of time and badly beaten. He was a member of a Christian charismatic group and used to distribute literature at rallies.

4. In 2003, he states that his partner became pregnant and, because the couple were not married, she fled to Ireland for fear of persecution under Islamic law. The applicant's son was born in Ireland in 2003 and is an Irish citizen.

5. On the 3rd April, 2007, the Christian group, including the applicant, was attacked by the hisbah group. The applicant managed to flee; however, people were killed. The applicant further states that when he returned to his home, it had been burnt down. When he reported the matter to the police he was advised to leave the area. As a result, the applicant states, leaflets bearing his name, claiming he was against the imposition of Islamic law, meant that he could not relocate. The applicant travelled to Lagos with the intention of leaving the country. He states that while in Lagos he complained to police about the alleged persecution he had suffered in the north of the country. The police filed a report.

6. The applicant decided to travel to Ireland because his partner and son were in this State, and he states that he thought it would be a safe country. He states that he paid an agent 170,000 naira for travel to Ireland. He left Nigeria on 25th June, 2007, and travelled by air, transiting through London, then onwards to Belfast and by bus from Belfast to Dublin. The applicant has a history of colorectal cancer, having suffered, and being treated for, the first occurrence in 2001 in Nigeria and the second occurrence in December, 2008 in Ireland.

7. The applicant presented at the Office of the Refugee Applications Commissioner (ORAC) on 26th June, 2007, and completed an ASY1 form on that date. The applicant was interviewed by the ORAC pursuant to s.11 of the Refugee Act 1996 (as amended) on 20th July, 2007. By letter dated 26th July, 2007, and a report of that date, the commissioner recommended that the applicant not be declared a refugee. A notice of appeal was issued by the applicant's solicitors on 13th August, 2007, and the applicant was interviewed by the Refugee Appeals Tribunal (RAT) on 13th July, 2010.

IMPUGNED DECISION

8. The Refugee Appeals Tribunal issued a decision, affirming the negative recommendation of ORAC, dated 4th November, 2010. Herein, the tribunal member found that "internal relocation to live in a city away from Kano such as Lagos would be a viable option for the applicant to escape any alleged threats from Hisbah militants operating in northern Nigeria". (p.17 of decision)

9. Further, the tribunal member found that the applicant "failed to provide any reasonable explanation as to why he could not relocate to live in Lagos when this matter was put to him at the hearing".

APPLICANT'S SUBMISSIONS

10. Counsel for the applicant, Mr. Ian Whelan B.L., submitted that due to the fact that the applicant had had cancer, internal relocation would have been unduly harsh in the circumstance because medical treatment would not have been sufficiently available. The applicant argued that the country of origin information supports the proposition that the healthcare in Nigeria is substandard and the system in the applicant's country of origin is not adequate to deal with cancer treatment as the applicant might require in the future. The applicant relied on the decision of Clark J. in *K.D. (Nigeria) v. Refugee Appeals Tribunal & anor.* [2013] IEHC 481, which, the applicant submitted, supports the applicant's claim that when assessing the possibility of internal relocation, matters of substance should be considered when determining the reasonableness and harshness of internal relocation. This, counsel submitted, includes an assessment of the adequacy of treatment for the applicant's cancer.

11. The applicant submitted that this case is differentiable from other cases where the persecution claim is based on the applicant having a particular medical condition. This applicant is not claiming persecution as a result of him having cancer. The applicant's claim of persecution arises from a different set of circumstances, and, the applicant submitted, it is well established that he forms part of a social group. The element of the tribunal decision being challenged in these proceedings is the manner in which the tribunal member approached the question of internal relocation. On p.17 of the tribunal decision (p.29 of the booklet) it states as follows:

"I have considered the report provided on behalf of the Applicant which indicated that access to healthcare for cancer or other medical treatments may be restricted in Nigeria due to lack of facilities and funding. There is nothing to suggest that the Applicant would suffer discriminatory treatment of such a substantially prejudicial nature in relation to his access to check-ups for cancer as to amount to persecution if he were to relocate to live in a city such as Lagos. I find having considered the particular circumstances of the Applicant that it would not be unduly harsh for him to relocate to live in Lagos where he should be able to re-establish and provide [for] himself in such an urban location."

12. The applicant submitted that the erroneous finding in relation to internal relocation means that the decision cannot stand. The applicant never claimed persecution based on being a person that has cancer. The question that the tribunal member should have considered is whether internal relocation would be unduly harsh and unreasonable based on the applicant's particular set of circumstances. This, the applicant submitted, was never done by the tribunal. In this regard the applicant relies on *W.M.M. v. Refugee Appeals Tribunal & anor.* [2009] IEHC 492; *A.S.O. v. Refugee Appeals Tribunal & anor.* [2009] IEHC 607; *E.I. & A.I. v. Minister for Justice, Equality and Law Reform & anor.* [2014] IEHC 27.

RESPONDENTS' SUBMISSIONS

13. Counsel for the respondents, Ms. Kilda Mooney, B.L., submitted that throughout the decision the tribunal has not accepted that the applicant was credible. This is evidenced by the use of qualified phrases such as 'the alleged persecution' throughout the decision. The tribunal member does deal with the personal circumstances of the applicant: young, educated and experienced. Further, the respondents submitted, the applicant was given the opportunity to explain why he could not relocate to Lagos and he failed to provide the tribunal member with any reason for not being able to do so.

14. The respondents pointed to the fact that the applicant had already received treatment in Nigeria for cancer. The applicant provided medical documents that showed he had been treated for cancer and country of origin information shows that treatment facilities are available in Lagos. The respondents relied on the principles set out by Feeney J. in *Agbonlahor & ors. v. Minister for Justice, Equality and Law Reform & anor.* [2007] IEHC 166, where it held that an applicant cannot claim a right to remain in the host state because of a lower standard of medical treatment in the home state. Counsel further submitted that if the Convention were to have included such a requirement, state parties would not have been willing to commit.

15. The respondents argued that when the feasibility of internal relocation was put to the applicant, he failed to provide a reasonable excuse for not being able to relocate to Lagos. Country of origin information does state that clinical services are poor but this is not a sufficient reason for the applicant to be declared a refugee. The respondents submitted that the internal relocation finding complies with regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006), and the requirements of *K.D. (Nigeria) (supra)*, in that it is an 'even if' finding. The tribunal member does not find that the applicant has suffered persecution but even if he had, he could safely relocate; the area is identified and it is put to the applicant at interview, as per the legal requirements.

16. The respondents submitted that the applicant does not satisfy the 'exceptional circumstances' as identified in the case law opened by counsel for the applicant. Although the applicant has had serious medical issues, relocation would neither be unreasonable nor unduly harsh, according to the respondents. Treatment is available in Nigeria; the applicant has received such treatment in the past; and country of origin information proves that such treatment is available, particularly in Lagos, although not to the same standards as here in Ireland.

DECISION

17. The applicant in this telescoped application for leave to apply for judicial review attempts to challenge the decision of the Refugee Appeals Tribunal on the basis that the tribunal failed to properly consider internal relocation; that the tribunal failed to properly consider the medical evidence proffered on behalf of the applicant; and finally, that the tribunal failed to properly consider the country of origin information. It is clear from reading the tribunal decision, the tribunal member considered the question of internal relocation and the applicant was unable to offer any meaningful reason as to why he could not resort to state protection and locate to another safer part of Nigeria. The decision-maker embarked upon an enquiry with the applicant concerning the suggested relocation to Lagos and into whether, having regard to his personal circumstances and the conditions on the ground, he could reasonably be expected to stay in Lagos. The tribunal member found that the applicant "failed to provide any reasonable explanation as to why he could not relocate to live in Lagos when this matter was put to him at the hearing". (p.17)

18. Counsel for the applicant mounts the challenge in relation to the application of the wrong test in respect of internal relocation, by suggesting that the tribunal member was seeking to be satisfied that the absence of medical treatment of a suitable nature in Nigeria would amount to persecution if he were to relocate to live in a city such as Lagos. However, I am satisfied that the tribunal member looked at the matter in accordance with the test laid down on *K.D. (Nigeria)* and, in particular, stated at p.29 of the booklet:

"I find having considered the particular circumstances of the Applicant that it would not be unduly harsh for him to relocate to Lagos where he should be able to re-establish and provide [for] himself in such an urban location."

19. With regard to any alleged failure on behalf of the tribunal member to consider the medical evidence proffered on behalf of the applicant, I find that there is no basis to this ground of challenge. It is clear from reading the tribunal member's decision that she was fully *au fait* with the medical evidence and history of the applicant. Indeed, having determined that, the second last paragraph on p.17 (internal) of the report, the tribunal member went on in the final paragraph to state:

"I feel sympathy towards the Applicant, in that he has suffered from colorectal cancer which required two bowel surgeries, one in Nigeria and the other in Galway. The most recent report confirms that although he is currently free of this disease he will need regular follow up treatment. I find that the Applicant does not come within the definition of a refugee within the meaning of the Act for the above reasons and it is outside the ambit of this Tribunal to consider any options which may be available to him in respect of ongoing check ups for his health problems."

20. Therefore, not alone did the tribunal member have sight of, and was aware of, the medical evidence submitted on behalf of the applicant, she was also sympathetic to the plight of the applicant. It may well be that the applicant will be assisted in another forum with regard to this medical evidence but in my opinion the tribunal member was correct in approaching the matter in the manner in

which she did.

21. The last ground of challenge to the tribunal member's decision is the allegation that the tribunal member failed to properly consider country of origin information. Again, I can find no substance to bear out that assertion. It is clear from reading the decision that the tribunal member gave extensive consideration to the oral evidence given by the applicant, the country of origin reports, the medical reports and considered the written submissions dated 9th July, 2010, submitted on behalf of the applicant in support of his claim of sectarian violence between Christians and Muslims in northern Nigeria. Having considered all of this information, the tribunal member determined that the applicant, although demonstrating subjective fears of persecution, had not objectively demonstrated a fear of persecution for a Convention reason.

22. I am satisfied that decision of the tribunal member was reasoned and rational for the reasons set out above and I would accordingly refuse leave.