

**THE HIGH COURT
JUDICIAL REVIEW**

[2010 No. 192 J.R.]

BETWEEN

D.O. (AN INFANT SUING BY HIS MOTHER AND NEXT FRIEND E.T.) (NIGERIA)

APPLICANT

AND

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

RESPONDENTS

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JUDGMENT of Mr. Justice Eagar delivered on the 27th day of March 2015

1. This is a telescoped application for an order of *certiorari* quashing the decision of the second named Respondent to affirm the recommendation of the Refugee Applications Commissioner.

The Applicant's claim

2. The Applicant, E.T., and her son, F.T., left Nigeria on the 19th July 2009 and transiting France (Paris) arrived in Ireland and made an application for refugee status on the 20th July 2009. The Applicant was pregnant. She completed an ASY1 form on the 20th July 2009 and completed a questionnaire on the 24th July 2009. She had a son on the 30th July 2009, D.O. who was born in Ireland. I propose to deal with the issues of the three Applicants together.

3. She was interviewed on the 1st September 2009 and the Refugee Applications Commissioner and the second named Respondent heard the appeal on the 1st December 2009. Her decision was given on the 8th December 2009 affirming the recommendation of the Refugee Applications Commissioner.

The facts as outlined to the second named Respondent

4. The Applicant confirmed to the second named Respondent that her claim and both her sons' claims were all based on the same grounds. She said she had a secondary school education and she holds a diploma in computing and a further diploma in secretarial studies. From 1994 to 2004 she worked for a construction company and she married in 2002. She said her husband had a child from another relationship during their marriage and she had taken in this child. The Applicant said she was the half sister of Wale Alausa. Wale Alausa is a member of the Peoples Democratic Party (PDP) and was active politically in Ogun State. She stated that she and Wale shared the same mother. The Applicant said that she had no political opinion and she was not politically active. Her problems started in January 2009 when her husband left her after a misunderstanding. The Applicant then went to live with Wale. Wale was part of the G15 who oppose the Governor of Ogun State. He had taken an illegal oath as an expression of solidarity with the G15. On the 30th June newspaper reports described him as an embattled member of Ogun State House of Assembly whose nude picture appeared in the newspaper in which he admitted swearing an oath. On the 5th July the Applicant said that she had gone out with Wale while the children were in school. People came to Wale's home looking for Wale and his relations. The cleaner and security guard were assaulted. The Applicant said that a neighbour told them what happened and Wale called his friend to help the Applicant. The Applicant hid on the 17th July and then she went to Lagos where she spent two nights. Her escape was arranged by Wale who was concerned for her. In July she left Lagos and flew to Ireland via Paris. She said she had travelled with her brother's friend and her son. She had left her stepdaughter with an aunt.

5. She was asked where Wale's wife was and the Applicant said they had left Wale's home on the 6th July. During her travels she said she did not hold the passport and she was not asked any questions. She said that she had not been in touch with Wale since her arrival in Ireland and she confirmed that he remains a member in the House of Assembly in Ogun State. The Applicant said that were she to return she feared that she and her children's lives would be in danger. She said Wale had not been harmed as he is a public

figure. She also said she could not live anywhere else in Nigeria as the Compass Newspaper is also published in Lagos and this newspaper is owned by the Governor against whom Wale and the G15 oppose.

6. In reply to the presenting officer, the Applicant said that she had three siblings and that they remained in Abeokuta. These siblings have a different mother to the Applicant and she said they were not in any danger from the Governor. The Applicant said she was in danger as Wale was in the G15 and the Governor was looking to harm Wale's relations. She said she did not know where Wale's wife and children were. When asked why she had not tried to contact Wale the Applicant said she did not bring her phone to Ireland. When asked if she tried to get his phone number from the Assembly the Applicant confirmed she had not. She also said she has not got the Assembly's phone number from the internet as she has not been able to access a computer since her arrival in Ireland. She indicated she had not gone to an internet café. She said that Wale had not given his number when he was leaving as she had left in haste. When asked if she knew if Wale's wife was harmed the Applicant said she had no knowledge of any such reports. The Applicant confirmed that if Wale's wife and children were harmed then this would be reported in the media. The Applicant explained she knew the assassins on the 5th July were associated with the Governor as her brother had no problems with anyone else. The assassins told the cleaners they were looking for Wale or his relations. The Applicant confirmed she had not gone to the police nor had she gone to the police after she left Ogun.

7. It was put to the Applicant that it was unlikely she would have been able to go through international airports without showing her passport and the Applicant said that Wale's friend had shown his passport. It was put to the Applicant that each traveller had to hand in their own passport and the Applicant indicated that he showed it. She said that she was not told what to say if questioned by officials and she had not known the name on the passport she had travelled with. It was put to the Applicant that she would be at risk if she was not familiar with the passport she was using and the Applicant said that was why Wale's friend was with her. When asked if there were any reports of a family member of the G15 coming to harm the Applicant said she had no reports. It was put to the Applicant that if she was harmed at the hand of the Governor it would be clear that the Governor's people were responsible. The Applicant did not reply to this. It was put to the Applicant that if the Governor harmed her Wale would know who the perpetrators were. The Applicant agreed and said that Wale would tell the Assembly and newspapers. The Applicant said that were she to return to Nigeria everyone would know she was back. She said that she could not live in Lagos as she had never lived there before. It was put to the Applicant that it was surprising she had not tried to contact Wale and the Applicant said she was not okay since she had arrived and she had not tried to get in touch with anyone. It was put to the Applicant that it was difficult to believe she was allowed travel when she was so heavily pregnant and the Applicant replied no.

8. In reply to the Tribunal Member the Applicant said that prior to going to live with Wale she had lived in Abeokuta. She said she did not remember Wale's house number but he lived in the House of Assembly quarters in GRA housing estate. When asked why she did not know Wale's house number despite living there for six months the Applicant said she was not right when she was living there. The Applicant confirmed that the attack on the 5th July was close to the House of Assembly and that the Governor had sent assassins to Wale's home. The Applicant said there were no media reports in relation to this attack and that Wale had not told the police, the House of Assembly or the media. It was put to the Applicant that it would be reasonable to expect that such an attack would be in the media and the Applicant said she did not know. When asked why the assassins would have come when Wale was away the Applicant said that the assassins came during the day when everyone was at work. The Applicant confirmed she had not been told where she was travelling to by Wale or his friends nor was she told as to her destination. When she asked where she was going she was told "Lagos". She said she did not seek help in Paris or at Dublin Airport as she was travelling with Wale's friend. She said she did not know why Wale's friend had not sought help for her in Paris. The Applicant said that she did not know whose name was on the passport she used and she did not know if the passport had contained a visa. When asked why Wale or his friends would have risked her travelling with such limited information, particularly as she was pregnant, the Applicant said that she wanted to be safe and was told that she would be okay.

The decision of the Refugee Applications Commissioner

9. The second named Respondent indicated that Wale Alausa was still living in Ogun State and was still a member of the House of Assembly. The Applicant had indicated that any harm that had come to Wale Alausa's wife and children would be reported in the media and she was not aware of any such report. The second named Respondent said it appeared that no harm had come to Wale Alausa, his wife or children in Nigeria. If the Applicant had been harmed by the Governor or his associates due to her association with Wale Alausa it is very likely that any such incident would be highlighted by the media. The Applicant is not politically active and while political candidates and their supporters can be targeted in Nigeria there was nothing on the file to suggest that the family members of the politicians were specifically targeted or that family members of the G15 have been targeted. He held that it was not plausible that the Applicant would have to leave Nigeria due to her stated association with Wale Alausa as he continues to live and work in Ogun State. This was the first finding of lack of credibility.

10. The Applicant also had identified the 5th July 2009 as the date when assassins came to Wale Alausa's home and beat up the security guard and the cleaner. They also left a note to state they were coming back. The Applicant confirmed there were no media reports about the assassination attempt and that Wale Alausa did not tell the police, House of Assembly or media about the assassination attempt. The report from the Guardian Newspaper on the 10th July 2009 makes no mention of an attack on Wale Alausa's home on the 5th July 2009 or that his family had to flee due to threats. He held that considering that two people were harmed by the assassins and the attack took place in daylight in close proximity it is difficult to believe there were no media reports of this incident. This was the second finding of lack of credibility.

11. The Applicant states that neither Wale nor Wale's friend told her where she was going to travel. She said she travelled on a green passport and did not know the nationality of the passport, the name on the passport and if the passport contained a visa. During the travel she stated she did not hold her passport and was not told what to say if she was asked questions by immigration officials. It is difficult that Wale or Wale's friend would have risked the Applicant travelling through three international airports with such limited knowledge. It was not credible that the Applicant would not have been told about her destination and what she was going to do there particularly as she was pregnant during her travel. She was also travelling with her son. The Applicant's account of travelling through international airports was implausible. This was the third finding of lack of credibility.

12. The Applicant travelled to Paris en route to Ireland. The Applicant was aware that she was leaving Nigeria to be safe. The second named Respondent said it would be reasonable to expect that the Applicant would have sought asylum as soon as practicable after leaving Nigeria rather than travelling onto Ireland with her son in an illegal manner. It appeared that the finding of the second named Respondent was that failure to seek asylum in France was a credibility issue.

13. The second named Respondent said that political violence occurs in Nigeria. The Applicant was not involved in politics and she stated that Wale Alausa continues to work in Ogun State and that had Wale, his wife and children been harmed that this would have been reported in the media. The Applicant had obtained newspapers from Nigeria in relation to Wale Alausa's oath taking. No mention is made in these reports of harm to Wale or his family. No report or reports of harm to Wale and his family are on file. The Applicant

also confirmed at the appeal that she had no reports of any of the family members or relations of the G15 being harmed or killed. Thus the Applicant may hold subjective fears for herself and her sons in relation to the Governor and these fears are not objectively well-founded.

Submissions on behalf of counsel for the Applicant

14. Counsel for the Applicant reviewed the assessment of credibility and the adequacy of the reasons given and quoted from *Mullholland v. An Bord Pleanála (No 2)* [2006] I.R. 453 where it was held that the statement must be such so as to enable the person affected by the decision to know whether the decision-maker had directed his mind adequately to the issues: It must give the person affected sufficient information to enable him to consider whether he has a reasonable chance of succeeding in appealing or judicial reviewing the decision. It must give sufficient information to enable the person affected to arm himself for the appeal and it must be sufficient to enable the High Court to review the decision and he submitted that the decisions in this case were unclear and lacking in reason. He also quoted from Cooke J. in *I.R. v. Minister for Justice Equality and Law Reform* (Unreported, 24th July 2009) where Cooke J. reiterated the law in the area of assessment of credibility and submitted that the second named Respondent in this instance failed to adhere to the standards.

15. In the instant case he submitted that the second named Respondent had based her decision on her own gut feeling stating that it would be very likely that any such incident would be highlighted by the media. She later stated *"It is difficult to believe there are no media reports of this incident"*. Counsel for the Applicant submitted that the second named Respondent had erred in her consideration of the application in insisting on Country of Origin Information or documentary evidence of each aspect of the claim. He also submitted that there was insufficient evidence before the second named Respondent to make a finding that the claim was incredible as such issue is not obliged to consider the question of State protection and/or internal relocation in Nigeria.

16. On the question of the findings on travel and their failure to make an application in Paris the Applicant submits that there are peripheral issues which do not go to the heart of the claim and quoted from this Court's judgment in *B.A (Nigeria) v. Refugee Appeals Tribunal* [2015] IEHC 76. In that case the court held:-

"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 seems 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."

Submissions on behalf of the Respondent

17. Counsel on behalf of the second named Respondent reviewed the findings of the second named Respondent and indicated that the following findings had been made:-

- 1) It was not plausible that the first named Applicant would have to leave Nigeria due to her stated associations with Wale Alausa, the politician at the centre of the first named Applicant's claim as he can continue to live and work in Ogun State.
- 2) She also submitted that the second named Respondent found it was difficult to believe that there were no media reports of the incident considering that the attack on Wale Alausa's house took place in daylight at an Assembly Member's house close to the House of Assembly and that two people were harmed by the assassins.

18. Counsel for the Respondent also pointed to the issues relating to travel in relation to where she was going, how she travelled, her failure to apply in France and travelling through international airports while pregnant. The Tribunal Member had also noted that the first named Applicant had obtained newspapers from Nigeria in relation to Wale Alausa's oath taking but there was no reference to reports of harm to Wale or his family. She also reviewed the Tribunal's decision with regard to her sons D.O. and F.T.

Discussion

19. The claims of the three Applicants are to be considered together. In relation to any findings with regard to travel in *"The Law of Refugee Status"* (2nd Edition, 2014) Hathaway & Foster state:-

"A more subtle strategy to avoid the engagement of responsibility that follows from arrival in a place under a State party's jurisdiction is to challenge the entitlement to protection of refugees who arrive unlawfully. The risks that follow from such a challenge are real since most developed countries impose a visa requirement enforced by carrier sanctions on the citizens of refugee producing States and do not grant reasons for the persons in making a claim of Convention refugee status. The use of false travel documents (alternatively lying about one's true intention in order to secure a technically valid travel document) must nearly always be a practical necessity to assess protection." (this Court's emphasis)

20. The authors continue quoting from *Suripal v. Canada (The Minister of Employment and Immigration)* 1985 in which MacGuigan J. in that case stated:-

"It does not stand to the Applicants' credit that after entering Canada as visitors, they illegally obtained Canadian social insurance cards, worked illegally for approximately a year before they were found and arrested and then claim refugee status. Nevertheless, since the law allows them to apply as refugees even in such circumstances, we must conclude that it does not intend that their refugee claims should be determined on the basis of these extraneous considerations."

Choice of Choice of Country of Asylum

21. Further the authors in dealing with the issue of choice of country of asylum:-

"Arriving in a State party does not in fact guarantee the refugee's rights to have her claim processed and protection tools met in that country."

22. The authors further states:-

"Despite the widespread belief that a refugee should seek protection in whatever safe country she first reaches, failure

to claim protection in one's region of origin or in the first safe country of arrival is not grounds for refusing to recognise refugee states. There are often good reasons why a refugee might travel beyond the first State she reaches including outside her own region."

23. In *R. v. Uxbridge Magistrates Court* (Ex parte Adimi) [2001] QB 666 Newman J. of the English High Court suggested that the decision of a refugee to seek protection beyond her region of origin should be welcomed as the logical consequence of opportunities for international movement that did not exist at the time of the Refugees Convention drafting. He said:-

"Another current reality and advance... is the development of a readily accessible and worldwide network of air travel. As a result there is a choice of refuge beyond the first safe territory by land or sea. There have been distinctive and differing state responses to requests for asylum. Thus there exists a rational basis for exercising choice where to seek asylum. I am unable to accept that to recognise it is to legitimise forum shopping."

24. Hathaway & Foster further state: -

"Despite the widespread belief that a refugee should seek protection in whatever safe country she first reaches, failure to claim protection in one's region of origin or the first safe country of arrival is not grounds for refusing to recognise refugee status."

25. Professor Hathaway is a most acknowledged jurist in the field of the operation of the UNHCR 1951 Refugee Convention and has an involvement in the field for more than 30 years. Having regard to this I have continued to indicate that I believe that the issue of travel to Ireland with an agent or in this case a friend of Wale Alausa is a peripheral issue and is not one which would justify the refusal of refugee status.

26. The decision of the second named Respondent to say that it was not plausible that the Applicant felt that she had to leave Nigeria while Wale Alausa continued to live and work in Nigeria appears to me to be a misunderstanding of the Applicant's claim. Wale Alausa is a well known and colourful politician as his unclothed oath taking scandal in June 2009 demonstrates. The fact that he has chosen to live and continue to work in Ogun State, albeit somewhat embattled, does not mean that the Applicant could not have a well-founded fear of persecution. My review of the Country of Origin Information demonstrates the following:-

- 1) Since 2006 several candidates running for political office in the April 2007 elections have been killed including two candidates who were standing for the State Governorship in the primary elections in Lagos and Ekiti State. Many other politicians or political candidates were subjected to violent attacks and attempted killings but managed to escape.
- 2) One the 27th July 2006 the Peoples Democratic Party (PDP) prospective candidate for Governor of Lagos State, Chief Funsho Williams was killed at his home. He was tied up, stabbed and strangled. Chief William was protected by four policemen who were reportedly standing at his gates...The police questioned over 250 suspects and a total of 42 suspects were arrested. Nobody has been charged with the killing.
- 3) On the 14th August Dr Aodaramala a PDP prospective candidate for Governor in Ekiti State was shot and stabbed by armed men who forced their way into his home.
- 4) Since October 2006 dozens of people are reported to have died as a direct result of the political violence. During the campaign for the primary elections much of violence was between supporters of competing prospective candidates within political parties and in particular within the ruling PDP.

27. It is quite clear from reviewing the Country of Origin Information that candidates running for political office have been killed. Many others have been subjected to violent attacks and attempted killings.

28. The finding of the second named Respondent that the Guardian newspaper on the 10th July 2009 made no mention of an attack on Wale Alausa's home on the 5th July 2009 (a few days after the oath taking) as a lack of credibility cannot be justifiable in the light of the Country of Origin Information. The second named Respondent appears to have required the Applicant to produce newspapers reporting on the attack on Wale Alausa's house in the climate of serious attacks on political figures is irrational and suggests that the second named Respondent did not take into account the Country of Origin Information which it is required to do so under Article 5 of the European Communities (Eligibility for Protection) Regulations 2006. Although the second named Respondent did say the political violence occurs in Nigeria.

Decision of the court

29. In those circumstances the finding by the second named Respondent that the Applicant's fears are not objectively well-founded cannot be justified.

30. For the reasons stated above I grant an order of *certiorari* quashing the decision of the second named Respondent to affirm the recommendation of the Refugee Appeals Tribunal and remit the appeal of the Applicant for a *de novo* consideration by a separate member of the Refugee Appeals Tribunal