

**THE HIGH COURT
JUDICIAL REVIEW**

2007 835 JR

BETWEEN/

T. M. A.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY & LAW REFORM

AND THE REFUGEE APPEALS TRIBUNAL

RESPONDENTS

JUDGMENT of Mr. Justice Cooke delivered on the 9th day of December, 2009.

1. In this case the decision of the Refugee Appeals Tribunal of 18th May, 2007 which is sought to be quashed pursuant to the order for leave made on 3rd April, 2009 turned entirely upon a finding that the basis for the applicant's claim to fear persecution upon return to his country of origin (Sudan) was not credible. That claim was based on his alleged activities as a member of the Republican Party in that country and his activities in protesting against the building of the Kajbar dam. In the latter regard he had apparently been involved in the delivery of a letter to the then U.N. Secretary General, Kofi Annan. He was later arrested and detained for three weeks during which he was tortured and beaten. The Republican Party of which he had been a member had been the subject of suppression by the then governing regime and five of its leading officials had been executed. He expressed the fear that on his return to Sudan he would suffer the same fate.

2. He further said that he was again arrested for his activities in 2005 and held for two months. He came under pressure to leave the Republican Party. On 4th March, 2006, he claims he was summoned to a meeting with some people who wanted him to join the ruling Islamic party (or so he feared) and thus to abandon the religious and political affiliations of the Republican Party. This summons so frightened him as to cause him to flee Sudan. He did so and applied for asylum in Ireland on 3rd April, 2006.

3. The claim to refugee status was the subject of a negative report and recommendation by the Refugee Applications Commissioner based upon its lack of credibility combined with the fact that the applicant had not provided any documentation to establish his identity either with the asylum questionnaire or during the section 11 interview.

4. That report and recommendation were appealed to the Tribunal and on 23rd August, 2006, the Refugee Legal Service on the applicant's behalf submitted a series of documents (together with translations) described as follows:

- "- original I.D. card and translation,
- copy of birth certificate and translation,
- letter from the committee against the effect of the Kajbar bridge and translation,
- an open letter from the organisation's leader to Koffi Annan,
- notes from the organisation and translation."

5. At the appeal hearing the applicant was asked a series of questions about his activities in protesting against the dam and his membership of the group organising those protests. He was also asked questions about his arrest as a member of the Republican Party and mistreatment.

6. In the Contested Decision the Tribunal member rejects the appeal and the asylum claim with the following conclusion:

"Overall, I am satisfied the applicant lacks credibility. I am also satisfied that section 11(B) of the Refugee Act 1996 (as amended) applies."

7. This finding of lack of credibility is based upon a series of specific discrepancies identified in paras. 1 – 4 of section 6 of the Contested Decision under the heading "Analysis of the Applicant's Claim". The specific discrepancies thus identified can be summarised as follows:

(1) The applicant said at the section 11 interview that the Kajbar dam was funded by the Sudanese government but country of origin information showed that the Chinese government were providing most of the funding. If he had been involved in protests in the way he described he should have known about funding and that the Sudanese government was not involved in funding the project as such. The Tribunal member emphasised that when asked about this he gave the same interview to the Tribunal as he did in the section 11 interview but when examined in greater detail he blamed the interpreter.

(2) He was unable to name the company which had been contracted to build the dam.

(3) He gave different names for the group or organisation he was involved in when organising protests against the dam.

(4) There were discrepancies in his description of when he joined the group and whether it was in 1998 or 2004 and when the contradiction was put to him "he reconstructed his evidence and said that he joined in 2004".

(5) So far as concerns his claim to have been a member of the Republican Party the Tribunal member considered that he had a distinct lack of knowledge of events following the execution of its leader in 1985 and was unaware that the leader had been pardoned and the whole process declared by a court to be null and void.

(6) The Tribunal member identified as incredible the discrepancies in his account of being arrested in connection with the delivery of the letter to the U.N. Secretary General in Khartoum. The letter he produced was dated April, 2004 when the delivery had taken place. He was arrested in October, 2004 but had stated that he was arrested when returning from Khartoum on a bus after having delivered the letter.

8. The Tribunal member makes two particular and very definitive findings in the course of identifying the above discrepancies. In para. 2 of the section 6 analysis, when dealing with the receipt of the summons to the meeting and his subsequent flight from Sudan he says:

"Given his lack of knowledge of the organisation, which became very apparent under cross-examination, I am satisfied that any information he has on this movement was not gleaned from being involved with it."

Again, in dealing with the letter delivery in April and the arrest in October, the Tribunal member says:

"The date on the letter submitted was April, 2004. I am satisfied that he is (*recte* has) fabricated this part of his claim."

9. In the face of that somewhat forthright and detailed finding of lack of credibility in the applicant's claim, leave has been granted by the order of 3rd April, 2009 to challenge the findings upon the basis of a series of detailed grounds which effectively allege that the Tribunal member has made a series of fundamental errors in assessing and understanding the evidence given by the applicant; in asking the applicant misleading questions in breach of fair procedures; by making irrational and unsubstantiated findings based upon misconstruing the evidence actually given; in treating as wrong or mistaken answers given by the applicant which the applicant had in fact corrected; in distorting answers by reference to the obvious purpose for which the question had been put and by failing to make any assessment of the probative effect or value of the documents produced by the applicant which, on their face, tended to support his claim.

10. The legal hurdle which faces any such challenge to an administrative decision which turns entirely upon credibility does not need any elaboration. As the written legal submissions lodged on behalf of the applicant in this case acknowledge, the principles are well known and this Court endeavoured to summarise them as they emerge from much of the recent case law in this area, its judgment of 24th July, 2009 in *I.R. v. M.J.E.L.R. & Anor*. Credibility is a matter for the assessment of the administrative decision maker. The court must not substitute its own view of credibility. The function of the High Court in exercising judicial review is that of ensuring that the process by which that determination has been made is legally sound and is free of any error of law, infringement of any applicable statutory principle or of any principle of natural or constitutional justice. The court also pointed out that:

"A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts".

Also,

"When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in this regard of the cumulative impression made upon the decision maker especially where the conclusion takes particular account of the demeanour and reaction of the applicant when testifying in person".

Each of these principles is particularly pertinent in the context of the challenge raised to this Contested Decision.

11. One of the striking features of this case, in the court's view, is that it was one in which the Tribunal member appears to have been faced with the almost classic dilemma of deciding whether the person giving evidence before him was giving a true account of facts and events in which he had been personally involved or caught up or whether, on the other hand, he was making a use of publicly verifiable facts with which he was not necessarily connected in order to lend a semblance of credibility to the claim being made. In such cases the court must be particularly wary not to over-analyse discrepancies which are retrospectively identified thereby diminishing the importance and expertise of the administrative decision maker when making the face to face assessment of the credibility of the testimony as it is given.

12. This is a case in which the challenge to the decision involves its deconstruction and then the separate analysis of the individual findings by comparing them with what was said in the questionnaire; what was said in two section 11 interviews; and then comparing them with what was said at the appeal hearing so as to contrast the various statements with the conclusions drawn in the decision. The danger in acquiescing in that approach is that sight can be lost of the cumulative effect of the Tribunal member's assessment of the overall credibility of the person before him. The assessment of an asylum application is not like the completion of a jigsaw puzzle taken out of a box. One cannot expect that when the task is complete all the pieces will have been accounted for or that all will have fitted precisely with no pieces left over and no gaps remaining. When the assessment is made there may well be questions that remain unanswered or some answers that do not reconcile and there may be obvious gaps in the story. The best that can be expected is that the overall judgment that is made on the application is coherent, objective and sound.

13. In this case, as the order granting leave clearly suggests, there may well have been reasons when looking at the Contested Decision to harbour doubts as to the reconciliation of the credibility findings with the details of the interviews and the transcript of the appeal hearing.

14. Although in this case the arguments raised by way of challenge to the validity of the decision involve numerous alleged discrepancies about names, dates and particular aspects of the applicant's involvement in his political and protest activities, it appears to the court that there is one predominant aspect of the case upon which the issue of credibility might well be said to be primarily dependent namely, the precise circumstances in which and reasons for his leaving Sudan which are the subject of the

explicit finding in para. 2 of the section 6 analysis referred to above. This is, in effect, the event that triggered the most dramatic change in the applicant's life by bringing him to this jurisdiction as an asylum seeker. It is therefore reasonable to suppose that it is an event which is clearly uppermost in his mind and about which he could be expected to give a coherent and unchanging explanation. In the decision the Tribunal member says this by way of conclusion on the point:

"The applicant claims he received a letter/summons calling him for interview on 6th March. In his section 11 interview he claims he thought that they may have wanted him to give up his ideas and thoughts on religion. He reconstructed his fears when giving evidence to the Tribunal and stated that he feared that he was going to be executed for belonging to the Republican Party."

15. It is therefore necessary to look at the exact nature of the material which was before the Tribunal member as the basis for this assertion.

16. In the section 11 interview (question 17) the applicant had said:

"I had a letter saying that there was a delegation from the government coming to me about my activities in the party and about me joining their party. They were a religious group who were investigating apostasy and the punishment for apostasy is execution."

17. At question 47 he had said: "I received a letter from national security agents on 1st March to attend a meeting on 6th March. Prior to this date, on 4th March I fled to Port Sudan".

18. At question 94 he was asked who the letter was from and replied "the letter was sent from Religious Affairs, but the letter was sent from Security Office to Religious Affairs because we don't have a post office in the area. It was like an order you have to attend for interview....". He was then asked "Did the letter mention what the purpose of the meeting was?" He answered "They don't specify anything in the letter, they only told me you have an interview. I thought that maybe they wanted me to give up my ideas and thoughts on religion. If I was wrong, I would be punished. Certainly, I'd be punished because the Republican ideas are banned in Sudan". At question 96 he was asked "In the first interview, you said that they were coming to talk to you about joining their party?" He answered "It's not like joining a party, it means giving up my positions and ideas. It's like a proposal to give up my ideas. I think it was to join the Muslim Brotherhood Movement. If I did this I would be released".

19. It thus appears reasonably clear that in the account given at the two section 11 interviews, the applicant testified that he got a letter or summons to this meeting which told him nothing about its purpose although he had his own fears and suspicions as to what might be involved.

20. It is to be noted that this aspect of the story given by the applicant was not the subject of any comment or finding of incredibility in the section 13 report of the Commissioner.

21. The present case is slightly unusual in that there is available a detailed hand-written note taken of the hearing on appeal and while it is in places incomplete it appears to be a reasonably full account of the exchanges between the Tribunal member, the applicant and the presenting officer. Not surprisingly, the circumstances of the summons to the meeting and subsequent flight formed the subject matter of questioning at the hearing.

22. When the summons to the meeting in March, 2006 was discussed at the Tribunal hearing, the applicant referred to the letter and claimed that he had handed it in at an earlier hearing. (There had been a first tribunal appeal hearing on an earlier date but the tribunal member in question had been appointed a district judge prior to any decision being taken). While it is not entirely clear what happened from the handwritten note, it appears that the letter was not listed amongst those on the appeal file but it seems to have been found eventually but was not translated. The interpreter appears to have offered at least a partial translation. The applicant then said "The document says that if I did not leave the Party I would be arrested". It is to this exchange that the Tribunal member appears to be referring in the decision where he says: "He reconstructed his fears when giving evidence to the Tribunal and stated that he feared that he was going to be executed for belonging to the Republican Party".

23. In the court's judgment this is a clear finding with which it would be extremely difficult for the court to interfere. It is important to bear in mind the situation that faced the Tribunal member on this occasion. The applicant arrived in the State without any documentation and produced none either when completing the asylum questionnaire or when interviewed by the Commissioner. The section 13 report then explicitly draws attention to the fact that the applicant had provided no documentation. At the section 11 interview he gives a description of the incident of 6th March, 2006 which provoked his flight but stated clearly that the letter told him nothing about the purpose of the meeting to which he was summoned. The fears he described were based upon his assumption as to what the purpose might be.

24. When the section 13 report is appealed and a hearing takes place the applicant produces a series of documents for the purpose of corroborating his story. There appears to have been no explanation, however, as to how he managed to obtain the crucial letter of summons. He then claims that, far from not indicating what the purpose of the meeting was to be, the letter made the explicit threat that if he did not leave the Republican Party he would be arrested. In that situation the Tribunal member was clearly entitled to take the view that this applicant had reconstructed his evidence in the sense of significantly improving it in order to enhance the credibility of his story. The court cannot ignore either the clear impression that emanates from the decision when taken as a whole that the Tribunal member was obviously influenced by the way in which the applicant gave his evidence and dealt with various contradictions and discrepancies that were put to him because he says, as quoted already above, "given his lack of knowledge of the organisation, which became very apparent under cross-examination, I am satisfied that any information he has on this movement was not gleaned from being involved in it".

25. It may well be possible as counsel for the applicant has demonstrated to point to other issues and exchanges where mistakes may have been made or misunderstandings arisen. It may be possible to say that too much significance was possibly given to discrepancies in the various names used for the group organising the protests against the dam. It is also conceivable that the Tribunal member and the applicant may have been at cross purposes as to the reason why questions were put about the court proceedings which apparently pardoned the executed leader and annulled his condemnation. Nevertheless, it was clearly open to the Tribunal member to come to the conclusion that the applicant's admitted lack of knowledge of those events was inconsistent with the degree to which he claimed to have been involved in the activities of that party. This is so even though, for someone of the applicant's age, the events were matters of party history. This was an applicant with education to a university level who, as he claimed himself, gave lectures on the principles of the party.

26. For all of these reasons the court is satisfied that, notwithstanding possible discrepancies of detail as raised in some of the grounds, the central thrust of the Tribunal members finding as to lack of credibility is sufficiently well grounded in the material before him and in the testimony of the applicant as to be incapable of being quashed by judicial review.

27. The application will therefore be dismissed.