

HIGH COURT
JUDICIAL REVIEW

2008 753 JR

BETWEEN**P. K.****APPLICANT****AND**

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM AND
THE REFUGEE APPEALS TRIBUNAL

RESPONDENTS**JUDGMENT of Mr. Justice Cooke delivered the 13th day of July, 2010.**

1. This application for leave to seek judicial review of the appeal decision of the Tribunal dated 28th May, 2008 ("the Contested Decision") might be considered to present one unusual feature. The decision turns primarily on a finding of lack of credibility in the account given by the applicant of the events that caused her to flee her country of origin and it is agreed by the parties that the decision is notable for the obvious care, research and thought which the Tribunal member has clearly invested in her assessment of the claim and in its exposition in that decision. It is nevertheless proposed, if leave is granted, to take on the onus of demonstrating that the credibility finding is wrong, and to do so by reference to country of origin information which was before the Tribunal including information gathered by the Tribunal member herself and in respect of which she gave the applicant an opportunity of making submissions after the hearing and before finalising the decision. The proposed challenge arises in the following way.

2. The applicant arrived in the State on 16th January, 2007 from Douala in the Cameroon Republic and claimed asylum. She is a young unmarried woman who was 23 years of age on arrival. She claimed to be a member of the Bamileke tribe. She had done well in secondary school and went on to do computer studies, obtaining a job as a secretary at which she worked for a number of years.

3. The events which she said drove her to flee occurred between the end of September and December, 2006. She says she had returned to her home village to visit her mother who was ill at the time. She has a brother who is seven years junior to her. Her father was dead. On 30th September, 2006, when she returned home from the market to her mother's house, she found her mother and brother in tears and in the company of four members of the council of the local village chief or "Fon". She was told that the chief had decided to make her his eighteenth wife and that she was to pack her bags and come with them to the chief's palace. She tried to resist but was, in effect, overpowered, abducted and taken away.

4. The Chief told her that she was now his wife. She was in tears and told him that she did not want this. As a Catholic she could not accept polygamy. The Chief, aided by three men overpowered her, tied her up and attacked her marking her with a razor blade. The Chief attempted to inflict genital mutilation on her but she resisted. Later that night he returned to try to sleep with her but she resisted him successfully. She was kept there in confinement, she says until 2nd December, 2006, when she woke up to find herself at a health centre. The doctor told her she had fainted. That night she managed to escape from the centre and walked to a village where she reported her plight to the gendarmerie. A sympathetic gendarme told her however, that she should go as far away as possible as he could do nothing for her. The Chief was very powerful and if she stayed the police would have to return her to him. The gendarme gave her 3,000 Cameroon francs and told her to leave the western region of Cameroon. She spent a week in hiding in a friend's house in Yaounde - but on 12th January, 2007, her friend told her the police were looking for her and that the chief was offering a reward of 2 million Cameroon francs for her capture and had distributed photographs of her. With the help of a priest and her aunt it was arranged for a man called "Mr. John" to take her out of the country.

5. The applicant was interviewed under s. 11 of the Refugee Act 1996 on 13th March, 2007 and by a report dated 3rd August, 2007, the authorised officer of the Commissioner recommended that she not be declared to be a refugee. In essence the primary conclusion of the officer was that the account she gave of the attacks and detention were not substantiated. Doubt appears to have been expressed as to whether she had in fact sought State protection although it was noted that she did appear to have received some assistance from local police. The officer also noted that the applicant claimed to have travelled from Cameroon to France but had not claimed asylum there when it was clearly the first safe country through which she had passed.

6. That report and negative recommendation were appealed to the Tribunal and an oral hearing took place on 4th March, 2008, at which the applicant was represented by counsel. As mentioned, following the hearing the Tribunal member conducted research into some of the tribal arrangements, customs and practices in Cameroon relevant to the story which the applicant had told. This produced a body of country of origin documentation which was forwarded to the applicant's representatives (the RLS in Cork,) by letter of 11th March, 2008, with an invitation to make submissions. This invitation was accepted and a number of submissions upon particular passages in the documentation were submitted by letter of 28th March, 2008.

7. Much of the information thus gathered was concerned with the role, status and authority of the village chief or "fon" in the Bamileke tribal society and institutions and with the nature and prevalence of the custom of forced marriages of young women. This information is clearly to the effect that such traditional chiefs occupy positions of considerable authority and respect particularly in rural tribal communities. They are involved in decision-making in many aspects of daily life including land disputes and family problems. They command considerable respect and many of them have a large number of wives. For the most part their status and authority is derived from their position within the community over which they preside but at least some prominent chiefs also obtain or are elected to political positions at local or national level which can involve them competing with their own subjects.

8. The information also confirmed the existence of the practice of forced marriages of young girls particularly in rural areas. A girl can

be given away in marriage by her parents without her own consent and the bride's parents are paid a "bride price" by the husband who is sometimes very much older. When a bride price has been paid the girl is considered the property of the husband with the result that when the husband dies the widow may be unable to inherit because she herself is considered part of his property. The widow may be forced to marry one of the brothers of the deceased. If she refuses she may be forced to repay the bride price.

9. In their submissions, the applicant's representatives emphasised the aspects of the documentation which confirmed, they said, her account namely the authority and respect commanded by the traditional chiefs, their taking of many wives and the confirmation of the continuing practice of forced marriages. It was submitted that the documentation confirmed the proposition that the chief in the applicant's village was in a position to exercise a strong degree of influence (whether by lawful means or otherwise) to attain his objectives such that it was clear the appellant would have no recourse to justice because, within the sphere of his authority, a chief would not normally be subjected to the ordinary processes of the law.

10. As already indicated, in the Contested Decision the Tribunal member first sets out what is agreed to be a careful and accurate summary of the description given by the applicant of the events and mistreatment which gave rise to her flight. There is then in section 6 of the Contested Decision stretching over ten pages, an analysis of the claim based on those events from which the Tribunal member reaches, in effect, two conclusions. First, having analysed the claim and compared it with the social circumstances relating to the role of the chief and the prevalence of the forced marriage custom as given in the collected information, the Tribunal member concludes that the account given cannot be believed. In particular she points out that the description given by the applicant of having been abducted and detained by the chief does not reflect the forced marriage tradition as described in the documentation. She says: "... this applicant is from western Cameroon where forced marriage is not widely practised and certainly not in the manner outlined by this applicant. I do not accept this as credible and it goes to the core of the applicant's claim and runs counter to generally known facts about the Cameroon."

11. Secondly, the Tribunal member concludes that State protection would be available to the applicant and, again, largely on the basis that the assertion that the village chief is above or outside the law as she described is not borne out by the information available and particularly by specific information of the police investigating and successfully prosecuting such chiefs for criminal acts. She says: "Thus even if it was the case that the chief had abducted this applicant and destroyed her house it appears that such individuals are clearly not above the law and the information bears this out."

12. The challenge proposed to be made to the Contested Decision in these circumstances is that, however careful the Tribunal member has been in researching and analysing the claim, she has simply got it wrong. She had, in effect, analysed the wrong claim and not the one actually made by the applicant. The true claim has been misconstrued or misunderstood. The Tribunal member has consulted and relied upon information about the custom of young girls being sold in marriage by their parents in return for a "bride price". This is a "forced marriage" in that it is arranged and has no consent on the part of the girl. The claim, it is argued, made here was not that the chief in question was exercising his authority to take an eighteenth wife by means of such a traditional custom. The applicant's claim was that a young unmarried woman with no father she had been forcibly kidnapped, brutally assaulted and unlawfully kept captive in order to force her to accept that she was the eighteenth wife and property of the chief. The information on traditional "forced marriages" was irrelevant and there had been no arrangement by the parents or payment of any bride price. If returned to the Cameroon, she would be subjected to the same treatment because the law afforded no protection in those circumstances and regarded her as the property of the chief. Thus, the applicant's real claim to asylum had not been properly considered for what it was.

13. It is appropriate to deal first with this main argument that the Tribunal member has addressed the wrong claim. There is no doubt but that the Tribunal member fully understood the factual basis of the claim namely the events described by the applicant from her abduction until her flight from Cameroon in December, 2006. The Tribunal member fully recognised that the applicant was claiming to have been forcibly abducted, attacked and imprisoned with a view to being forced to accept what the chief had told her namely that she had already, as it were, become his eighteenth wife. It is true, of course, that the Tribunal member looks carefully at the country of origin documentation on the tradition of arranged or forced marriages where a young girl is sold by parents in return for a bride price. At page 18 of the decision the Tribunal member says: "This applicant is purporting to place her claim in a light category as a forced marriage." The Tribunal member also says, however, that what the applicant describes is not a "forced marriage" as it is described in that information precisely because of the abduction, violence and the absence of any approach to or agreement with the applicant's mother for the payment of a bride price. At the same page she says: "What she is describing is an abduction, maybe for marriage or maybe not but it is not the forced marriage as described in all the country of origin information which always involves young girls being given without their consent by their own parents for a bride price".

14. It is not claimed that any country of origin information was either put to the tribunal member or consulted by her in her researches to the effect that there existed any customary right on the part of such a chief to take a girl by force without parental consent or payment of a bride price and that he has an entitlement to do so with impunity because of the accepted authority accorded to a chief by his subjects. It seems to the Court that, correctly read, the Tribunal member is effectively expressing disbelief in the account given by the applicant not because what she describes differs from what the country of origin information describes by way of arranged marriage but because, given the existence of that tradition or custom as described, it is considered improbable that the events relied upon by the applicant did in fact happen as she described.

15. In effect, the Tribunal member has treated the applicant as claiming that she was abducted by the chief to force her into marriage and as seeking to underpin her credibility by pointing to information to the effect that it is customary and common in western Cameroon for girls to be forced into marriage. She is disbelieved because the Tribunal member considered it improbable that this chief, without any prior contact whatsoever with her or her family would send men to abduct her. In that sense there is a contradiction in the applicant's argument in that, on the one hand, the information is relied upon to the effect that such chiefs enjoy great respect from and authority over their community and have an entitlement to take a large number of wives which can include girls bought by arrangement from parents without consent and without payment of the bride price. On the other hand, the applicant says she should be believed when she describes quite a different event namely the forcible abduction, assault and prolonged detention which departs from and is inconsistent with the basis for the traditional respect and authority of the chief. She claims to have been told she had become the property of the chief by this abduction and yet the concept of wife as property in that custom is clearly based on the payment of the bride price according to the country of origin information. In other words, the Tribunal member effectively asks herself whether it is credible that such a chief would risk undermining his respect and authority in the community by such an immediate and violent abduction without any apparent prior approach to or contact with her or her mother and any attempt to acquire the applicant in an arranged marriage with payment of a bride price? The Tribunal member has clearly come to the conclusion that the factual events and acts described are improbable. The Court is accordingly satisfied that the Tribunal member has not, as it was put, "got it wrong" and addressed the wrong claim. The substantive factual basis of the claim was clearly fully understood and addressed. The claim was disbelieved not because the Tribunal member misunderstood the applicant as claiming that what she had been subjected to was a traditional "forced marriage" but because, given the existence of such a custom for arranged

marriages, it was considered improbable that the violent abduction and detention described by the applicant had actually occurred.

16. Even if there was some room for considering that an issue might be raised as to the basis of the Tribunal member's first conclusion (which the Court considers has not been done) the second conclusion would also have to be invalidated if the Tribunal decision was to be quashed upon review. The conclusion as to the availability of state protection in the country of origin was not dependent upon the reliance placed in the country of origin information when assessing credibility. This conclusion was expressly predicated on the conditional assumption: "Even if it was the case that the chief had abducted this applicant and destroyed her house, it appears that such individuals are clearly not above the law and the information bears this out."

17. The claim made here was that the violent abduction described by the applicant would not be pursued or treated as criminal by the relevant police because of the status and authority of the chief who allegedly perpetrated it. The Tribunal member has assessed that claim by, in effect, accepting the information consulted on the traditional role and status of the chief as indicating that the chief does in fact exercise extensive authority within and over his community. The Tribunal member consulted country of origin information and concluded that: "traditional chiefs have no legal powers of arrest and are not considered to be above the law". Elsewhere she comments: "... it is quite clear that chiefs are not above the law in Cameroon and the country of origin information illustrates that." The decision also records the detail of one particular case in which the parliamentary immunity of a chief was lifted to allow a prosecution of the chief in respect of a murder allegation. The Tribunal member also points to country of origin information to the effect that steps have successfully been taken to improve the effectiveness of the police forces, the elimination of corruption and criminality. It must also be borne in mind that the Tribunal member effectively expressed disbelief that the applicant had in fact attempted to obtain police protection. She found it difficult to accept that a policeman would give the applicant 3,000 francs to help her leave the area "out of the goodness of his heart".

18. The Court is accordingly satisfied, therefore, that the material available to the Tribunal member in relation to the availability of state protection provided a basis for the conclusion reached. It clearly established that the traditional chiefs have considerable authority but within a particular sphere circumscribed by custom and tradition. In the absence of any country of origin information or other evidence to the effect that custom accepted an entitlement on the part of the chief to take a wife by violent abduction in a manner incompatible with the tradition of arranged marriages of young girls on payment of a bride price, there was no material before the Tribunal which would render unreasonable or irrational the conclusion that a chief was not above or beyond the law in respect of such acts.

19. For these reasons the Court is satisfied that a case for leave has not been made out. It is unnecessary therefore to consider the issue as to the extension of time that would otherwise be required.