

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 78 J.R.]

BETWEEN

B.U. [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 judicial review seeking an order of *certiorari* quashing the decision of the first named respondent of 14th December, 2010, which affirms the recommendation of the Refugee Applications Commissioner that the applicant should not be declared a refugee. Further the applicant seeks an order remitting the appeal of the applicant for *de novo* reconsideration by a different tribunal member.

EXTENSION OF TIME

2. The within proceedings were issued on 28th January, 2011, slightly outside the statutory time limit. The applicant is seeking leave to challenge a decision of the second named respondent, which was made on 14th December, 2010, and notified to the applicant by letter dated 6th January, 2011. The necessary extension of time was not opposed by the respondents. In the circumstances, the extension of time was granted.

BACKGROUND

3. The applicant is a Nigerian national, born on 26th December, 1960. He has three children but stated that he hadn't been in contact with them since about 2002 when his partner left with them.

4. The following is an outline of the account given by the applicant of some of the events giving rise to the alleged persecution. The applicant was a member of both the National Democratic Coalition (NADECO) and the Campaign for Democracy, holding the position of national vice-chairperson for the north-eastern region in the latter organisation. Following the arrest of other regions' national vice-chairpersons, he began to have problems. A group of government soldiers entered his home in Lagos in 1994 and attempted to assassinate him. They came to his home in Lagos as he used to live between Lagos and Anambra state.

5. The applicant established a group known as the June 12th Movement in 1999, and on 12th June, 2007, in his position as chairperson of that group, the applicant gave a speech at an event. During his drive home from that event, there were gunshots and the driver of his taxi was injured. People surrounded the taxi and he thought it was a carjacking. He shouted for assistance and people came to help him. He went to the police station to report the incident and told the police that the perpetrators were the Niger Delta People's Volunteer Force (NDPVF), whom he recognised by the red headbands, the AK47s and their dialect, and told the police that the NDPVF leader, Asari Dokubo, had sent the gang to specifically target the applicant. The police were unable to assist in the matter and the applicant decided to leave the country, particularly when a Nigerian court ordered the release of Asari Dokubo on 14th June, 2007, on health grounds. The applicant claims that this group will continue to seek him if he is returned to Nigeria.

6. The applicant travelled by sea from Nigeria to Morocco, spending ten days there before travelling on to Ireland. The applicant did not apply for asylum in Morocco because his intended destination was the United Kingdom.

7. The applicant applied for asylum on 8th September, 2007, and presented at the Offices of the Refugee Applications Commissioner (ORAC) on 8th October, 2007, for a preliminary interview when his ASY1 form was completed. The applicant then completed the questionnaire dated 12th October, 2007, and attended at the ORAC on 23rd October, 2007, for the s.11 interview. The ORAC report pursuant to s.13(1) of the Refugee Act 1996 (as amended), dated 26th October, 2007, set out the persecution claimed by the applicant and under the heading 'well founded fear', at para.5.16 it stated:

"The applicant appeared to connect his own claim for asylum with his stated political and religious conviction that the new Nigerian government had an Islamist agenda. Indeed his statements at interview did not clearly indicate whether concern for his personal well-being, or a belief that Nigeria was being gradually Islamised, had been his primary motive for leaving Nigeria."

The aforementioned s.13 report, issued to the applicant with cover letter dated 6th November, 2007, recommended that the applicant should not be declared a refugee. The applicant appealed that decision to the RAT by notice of appeal, completed by the applicant's legal representatives on 22nd November, 2007. The applicant attended at the offices of the RAT on 17th June, 2010, and again on 15th November, 2010, for oral hearings.

IMPUGNED DECISION

8. By decision dated 14th December, 2010, the Refugee Appeals Tribunal issued a negative decision in respect of the applicant's claim. Under the heading 'analysis of the applicant's claim' to be found at p.24 of the booklet of pleadings before this Court, the tribunal member sets out his reasons for the refusal of the applicant's claim. At p.25 the tribunal member sets out the first reason for his rejection of the applicant's claim upon credibility grounds, as follows:

"On examination of the Applicant's claim a number of inconsistencies and credibility issues arise which are not properly explained by the Applicant and are such that I do not believe that he ever had the difficulties he alleges in his Country of Origin for the reasons he claims or has any fear of returning there as he alleges."

The Applicant claims to fear the NDPVF and its leader if he returns to his Country of Origin. He says he fears he will be killed by them. It was put to the Applicant that the statement made by him at the time of his Section 8 interview, as recorded in his ASY1 form, appeared to relate his fears to this individual leader of the Mujadeen and that he had failed to make any reference to the NDPVF at that stage of his claim.

When it was put to the Applicant he claimed that this individual was working for the Islamic Group. He says they don't want to hear or know anyone who is not on their side. This is not considered a reasonable or credible explanation and it is not considered to explain the inconsistency in the Applicant's account. The Applicant relates his fears to Mujahid Asari Dokubo as leader of the NDPVF and claimed in his evidence at Appeal to have recognised his alleged attempted abductors as members of the NDPVF by their red headbands, language and AK47 rifles. It is not credible in such circumstances that he would fail to make any reference to the NDPVF at his Section 8 interview or that he would relate his fears to this individual at that time as leader of the Mujahadeen in such circumstances. Country of Origin information on file refers to Mujahid Asari Dokubo as the leader of the NDPVF and there is nothing in this information to confirm that he had such a role with this other group as alleged by the Applicant at the time of his Section 8 interview."

9. The second reason for finding that the applicant lacked credibility, is set out by the tribunal member at pp.25-26 of the booklet, and it states, *inter alia*:

"The Applicant claims that after the attack on him in June, 2007 that he attended at the Police station. He initially referred in his evidence at Appeal to having attended at the Police station with the crowd that had assisted him from the scene. He later referred to Police attending at the scene. The Applicant was questioned as to why he had not initially referred to these Police attending at the scene in describing the aftermath of the alleged attack in his evidence at Appeal. In response the Applicant claimed that this was because it was not the Police that took him to the Police station. He says the Police did go to the Police station however. He says the mobile Police that came were not at the scene when it happened. He says that the crowd took him to the Police station. The Applicant was again asked to clarify as to who brought him to the Police station and he claimed that the people that came to his rescue accompanied him to the Police station. The Applicant was asked to clarify as to whether the Police who attended at the scene accompanied him to the Police station and the applicant stated 'in fact I noticed their car in the Police station but didn't know them'[...]

These are not considered reasonable or credible explanations and the explanations as offered by the Applicant in this regard appear contradictory in themselves [...]"

10. The tribunal member goes on to state that all documentation has been considered but that this does not assist him since the core of the applicant's claim was being rejected upon credibility grounds.

APPLICANT'S SUBMISSIONS

11. Counsel for the applicant, Mr. Colm O'Dwyer S.C. with Mr. Ian Whelan B.L., submitted that the credibility findings were arrived at without the tribunal member having regard to the appropriate standards contained in the decision of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform & ors.* [2009] IEHC 353, where at p.6, para.11 of the decision states, *inter alia*:

"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.

7) 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. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.

8) 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 disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person."

12. The applicant argued that the reasons given in respect of the rejection of the applicant's credibility were not adequate, as per *O. (an infant) v. Minister for Justice, Equality and Law Reform & anor.* [2012] IEHC 573, at para. 30, MacEochaidh J. states, in regard to the Court's role in assessing the adequacy of reasons:

"(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?"

13. The applicant submitted that the credibility finding in relation to evidence given in initial ASY1 form and interview was illogical, namely, in relation to the tribunal member's misunderstanding of the term 'mujahideen' being the plural form of the 'mujahid'. It would be useful at this juncture to provide a definition to the term. The Oxford English dictionary provides the definition for mujahedin (also mujahidin; mujahideen) as a plural noun for Islamic guerrilla fighters, with its origins in Persian and Arabic, and it being the colloquial plural of mujahid, denoting a person who fights in a jihad. The applicant argued that the negative credibility finding that arises as a result of the applicant not naming the NDPVF initially is not well-founded in fact. The applicant's counsel, at hearing, contended that the applicant was providing a generic name for the group at his initial interview and his testimony in this regard was consistent.

14. In respect of the credibility finding about the manner in which the applicant attended the police station, the applicant submitted that this was a peripheral matter and not something that should result in the refusal of the applicant's entire claim for refugee status. The applicant relied, *inter alia*, upon the decision of O'Leary J. in *Bisong v. Minister for Justice, Equality and Law Reform & anor.* [2005] IEHC 157, where, on the final page, it states:

"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 there 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."

The applicant asserted that because the credibility findings are cumulative, this Court should be satisfied that all negative credibility findings were lawfully arrived at, particularly since this decision is entirely based upon negative credibility findings.

RESPONDENTS' SUBMISSIONS

15. Counsel appearing on behalf of the respondents, Ms. Cindy Carroll B.L., submitted that the tribunal member reached his decision in accordance with the principles in the *I.R.* case (*supra*) and that there is no basis for the applicant's claim that the principles contained therein were not followed. The respondents further noted at hearing that tribunal hearing is a *de novo* hearing and therefore, it is open to the tribunal to make fresh findings.

16. The respondents argued that the decision should be read in the round, rather than analysing details contained therein in an attempt to find fault. The respondents relied upon the decision Peart J. *Imafu v. Minister for Justice, Equality and Law Reform & ors.* [2005] IEHC 416 in this regard.

17. The respondents submitted that the applicant failed to mention a central part of his claim at the initial application and this should go to the credibility of the applicant. The respondents submitted that the credibility findings centre on the applicant's failure to mention some details at the s.8 interview. However, the respondents argued that four days later, the applicant gave extremely detailed information in his questionnaire and therefore, the respondents submitted, he could have given that evidence when he arrived in the State. The respondents further submitted that the applicant is very well-educated man. He is very capable of expressing himself, as is clear from reading his interview notes and questionnaires.

FINDINGS

18. The applicant completed his questionnaire on the 12th October, 2007, and included several extra pages setting out the narrative of his story. He did not have any identity documents other than a 'faith Christian theology seminary' student card, a letter from a bishop/ director of Shied of Faith Fellowship of Churches INC; and a registration certificate for the 'International Institute of Pastoral Education and Diplomacy'. In the questionnaire, he said that he was Christian and that he had a B.A. in theology and had worked for eight years. The applicant said that he is separated and has three children, whose whereabouts are unknown to him. His father was deceased, his mother was living and he has two brothers and a sister. He stated that his sister and one brother are living in Nigeria and he also had a brother in the UK. He submitted a number of certificates and indicated that identity documents were being sent from Nigeria. He claimed that he was seeking asylum because of conflict in his country of origin and on the grounds of religion and membership of a particular social group. At q.21 of the questionnaire he set out his fears in a lengthy statement. He described political corruption and his own concerns at attempts to introduce sharia law in his area of the Niger Delta. The applicant himself is a Christian and the group lead by Asari Dokubo and his disciples were convinced that Christians and particularly activist Christians were the only obstacle to them having their way, not only in the Niger Delta, but in Nigeria as a whole. The applicant said that if he had stayed it would have been "obvious suicide". At q.23 the applicant sets out the groups of which he was a member (religious and human rights). He said his brother is also a member of the People's Democratic Party. The applicant stated that he reported his concerns to the police and moved elsewhere in Nigeria: "anywhere he felt safe at the moment". He said he had been arrested and/or detained several times as had his uncles and cousins and he fears that if he returned to Nigeria that (a) he may suddenly be declared missing and/or (b) that his health may deteriorate to a point of death and finally, (c) he feared he may be arrested and detained on trumped up charges.

19. The tribunal member found against the applicant on grounds of credibility. The tribunal member did not proceed to consider the issues of internal relocation and/or state protection given the nature of the credibility findings made against the applicant. The respondents contended, and I accept, that once he had found against the applicant on the basis of credibility that he did not have to consider the issues of internal relocation and/or state protection as per *G.O. v. Refugee Appeals Tribunal* [2013] IEHC 89.

20. The tribunal member's decision in respect of credibility are challenged by the applicant on the basis that they do not comply with the requirements of the seminal decision of Cooke J. in *I.R.* (*supra*) and the more recent decision of MacEochaidh J. in *R.O. v. Refugee Appeals Tribunal* [2012] IEHC 457. I find that proposition difficult to accept. It seems to me that the tribunal member gave reasons for the credibility findings made against the applicant; the reasons were intelligible, specific, cogent and substantial. Reading the decision as a whole, I find it was reasoned and rational. The tribunal member made findings against the applicant as a result of his failure to mention certain elements of his story at the s.8 interview. The tribunal member found it of relevance that a mere four days later the applicant gave extremely detailed information in his questionnaire and therefore he was of the view that the applicant could have given that evidence when he arrived in the State. Further, the tribunal member made credibility findings in relation to the applicant's evidence regarding what happened after the June, 2007 attack and further in relation to his attendance at the police station.

21. It seems to me that the principles set out in *Imafu* are applicable and I accept the statement of Peart J. where at p.10, he stated as follows:

"This Court must not fall into the trap of substituting its own view on credibility for that of the Tribunal Member. The latter, just as a trial judge is at trial rather than the appellate court, in the best position to assess credibility based on the observation and demeanour of the applicant when she gives her evidence. These are essential tools in the assessment of credibility, and it is always essential to remember that what appears as the spoken word in a transcript or in a summary of evidence contained in any written decision cannot possibly convey the necessary elements for the assessment of credibility. That is what a Court will be reluctant to interfere in a credibility finding by an inferior tribunal, other than for the reason that the process by which the assessment of credibility has been made is legally flawed."

22. I do not find any inconsistency between the application of those principles and the subsequent principles enunciated in the *I.R.*

and R.O. decisions (*supra*).

23. It seems to me that upon reading the tribunal member's decision and the document upon which he stated he had relied, his reasons for rejecting the applicant's credibility are reasoned and rational. I therefore refuse leave.