Neutral Citation Number [2006] IEHC 246

THE HIGH COURT
JUDICIAL REVIEW

[2004 No. 739 J.R.]

IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000 SECTION 5 AND IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED)

BETWEEN

MIKE ERO

APPLICANT

AND

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

RESPONDENTS

Judgment of Mr. Justice de Valera delivered the 4th day of July 2006.

1. By a decision dated the 15th July, 2004, Elizabeth O'Brien BL a member of the Refugee Appeals Tribunal affirmed the decision of the Refugee Appeals Commissioner dated the 18th May, 2004, recommending that the applicant should not be declared a refugee.

2. On the 17th August, 2004, the applicant sought leave to apply for judicial relief on a number of grounds fully set out in the notice of motion.

3. On the 12th April, 2005, the applicant was granted leave by the High Court on the grounds set forth in that order.

4. This matter came before me on the 13th December, 2005 and, in addition to the oral hearing written submissions have been submitted by both the respondents and the applicant – in the latter case a second set of written submissions declared to be in relation to s. 2 of the Refugee Act, 1996 ("The Convention Reason").

5. The applicant submits that he is entitled to the relief he seeks under four headings as follows:

> 1. That the second respondent refused the applicant as a refugee due to his failure to seek State protection and so erred in law.
>
> 2. The second named respondent has erred in fact and has taken into account an irrelevant and immaterial consideration namely that the applicant did not provide any evidence of a failure of State protection. The second named respondent has further acted contrary to the principles of natural and constitutional justice and fair procedures in failing to consider the evidence proffered by the applicant in his interview and in his form to notice of appeal. The aforesaid constitutes a failure to examine the subjective fears of the applicant in relation to his belief that State protection might not reasonably have been forthcoming.
>
> 3. The second named respondent has erred in law and acted contrary to fair procedures and natural and constitutional justice in failing to examine the applicant's subjective fears and reasons for not seeking State protection with particular reference to the situation on the ground in his country of origin, as evidenced by objective country of origin information.
>
> 4. The second named respondent has erred in law in using the adequacy or otherwise of the applicant's explanation for not seeking asylum in India or the fact that he did not claim asylum in India as a reason to reject or "bar" the applicant's legitimate claim to asylum in the manner in which she did.

6. The member of the Refugee Appeals Tribunal who heard and decided on the appeal on the 15th July, 2004, clearly and demonstrably gave the most serious consideration to the applicant's case. Her decision extends to 13 pages and contains a comprehensive overview of all relevant matters under the headings:

> Introduction
>
> Grounds of Appeal
>
> The Appellant's Evidence
>
> Well-founded Fear of Prosecution
>
> Burden and Standard of Proof
>
> Assessment of the Applicant's Evidence
>
> Decision

7. And under each of these headings discusses in a detailed and careful manner, and at considerable length, the applicant's situation.

8. The applicant's case centres in essence on two issues, these are:

> (a) The alleged inability of the local Nigerian police to protect the applicant and,
>
> (b) The Tribunal's finding that the applicant's failure to seek asylum in India (where he lived for nine months) indicated that he did not suffer a genuine and well founded fear of prosecution.

9. I have been directed by the respondent to the decision of Peart J. in *Rasheed Ali v. The Minister for Justice, Equality and Law Reform and the Refugee Appeals Tribunal* (Unreported, High Court, 26th May, 2004) where the learned judge held, inter alia, that where the Tribunal reached a decision reasonably on facts before it then the (High) Court could not reasonably overturn it even when the Court might not have reached the same conclusion on the same facts. Peart J. said:

> "I do not have to agree with the decision arrived at by the Tribunal, or decide that I might have arrived at a different

> conclusion. If there is material or information available to the Tribunal on which it could base its decision… then the decision is a valid one on that ground."

10. The learned judge also stated, and this is of particular relevance in the applicant's case:

> "… on the material before the Tribunal it could conclude that the applicant had not demonstrated that the protection of the State was not, or would not have been available to him… there was no evidence that he had been refused help."

11. I am satisfied that the applicant's rather vague and unsatisfactory contention that he would not have the appropriate protection from the police was a matter that the Tribunal member could reasonably take into account and decide upon in the manner in which she did. There is no failure or departure from principle or want of fair procedure and she was entitled to reach the decision as recorded on the 15th July, 2004.

12. I am also satisfied that the reasoning disclosed by the Tribunal member in relation to the applicant's stay in India before coming to Ireland is justified both on the facts and on the applicable law (as stated in her decision) and the conclusion thus reached is not one with which I should interfere.

13. I therefore refuse this application.