Neutral Citation Number: [2005] IEHC 469

THE HIGH COURT
JUDICIAL REVIEW

[2004 No. 326 JR]

BETWEEN

EVELYNE AKO ASHU

APPLICANT

AND

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

RESPONDENTS

Judgment of Mr. Justice John MacMenamin dated the 3rd day of June, 2005

1. On 14th January, 2005 the applicant herein was granted leave to bring judicial review proceedings seeking as primary relief an order of *certiorari* by way of judicial review quashing the decision of the first named respondent dated 1st December, 2003 recommending that the applicant should not be declared to be a refugee. The said order also granted the applicant an extension of time for the issue of the application for leave.

2. The narrow grounds upon which leave was ultimately granted are set out in the amended statement of grounds dated 20th January 2005. They are as follows:-

> (a) That the Refugee Appeals Tribunal failed to properly evaluate the credibility of the applicant's story in the context of the available country of origin information in relation to forced marriages in Cameroon,
>
> (b) That the decision of the Refugee Appeals Tribunal was irrational and unreasonable in that there was no evidence to support his conclusions regarding the country of origin information.

Background

3. The applicant in these proceedings is a native of the Republic of Cameroon. She contends that she fled that country after the chief of her village, a member of the ruling political party in Cameroon, tried to force her to marry him. She further contends that her uncle, who is her deceased father's brother, aided and abetted the village chief in trying to force the marriage. She states that when the applicant refused to comply with their wishes that her uncle beat and raped her on two occasions. As the threats of violence allegedly worsened the applicant contends that she was forced to flee the country and upon arrival she applied for asylum.

4. She was interviewed by the office of the Refugee Applications Commissioner on 14th October, 2002 and on 18th February, 2003 was refused asylum.

5. She appealed that recommendation of the Refugee Appeals Commissioner to the Refugee Appeals Tribunal, and was granted an oral hearing on 28th July, 2003. The application was part heard on that date and thereafter adjourned to the 18th September, 2003. The hearing did not proceed on that date and was adjourned to the 4th November, 2003 when the hearing was completed.

6. The Refugee Legal Service received the decision of the Refugee Appeals Tribunal on 26th January, 2004. This decision was to the effect that the applicant should not be declared a refugee. The conclusion of the Tribunal member was set out under the heading "decision".

7. The first conclusion of the Tribunal states "I regret that this applicant's account lacks credibility" as the "country of origin information would indicate that the chief's alleged behaviour towards the applicant regarding his marriage proposal would be in breach of the law if he forced her to marry him".

8. A considerable amount of the material before the court relates to specific factual matters. These arise in the context of credit. I will deal with these as they arise in the course of this judgment.

The Applicant's Case

9. Essentially the applicant contends that the primary conclusion of the Tribunal member regarding the credibility of the applicant flew in the face of country of origin information which was submitted by the applicant. This information indicated that forced marriage is common, accepted and usual in Cameroon. The Tribunal member was in error, it is contended, in finding that the applicant's account was not credible because the alleged behaviour in forcing a woman into marriage "would be in breach of the law". It is further contended that the Tribunal member did not indicate to what law he was referring, or the country of origin information upon which he was basing his conclusion.

10. The applicant's case is that the Tribunal member failed properly to evaluate her credibility, and particularly so, in the context of the available country of origin information in relation to the prevalence of forced marriages in Cameroon.

11. It is also contended that the Tribunal member did not have evidence or any basis for his conclusion that the applicant's narrative was not credible on those grounds since the country of origin information indicates that forced marriage is common and accepted in the Republic of Cameroon and that a bride may marry from the age of 15.

The Respondents' Case

12. By notice of grounds of opposition dated 14th February, 2005 the respondents indicated their intention to oppose the application on the following grounds:-

> 1. That the first named respondent properly evaluated the credibility of the applicant's story in the context of the available country of origin information in relation to forced marriages in Cameroon;
>
> 2. Further or in the alternative the evaluation of the credibility of the applicant in the context of the available country of origin information is a matter within the jurisdiction of the first named respondent;
>
> 3. The decision of the first named respondent is rational and reasonable. Further or in the alternative there was sufficient evidence before the first named respondent to support his conclusions regarding the country of origin information.

Documentation before the Tribunal

The applicant's family circumstances
13. In documentation furnished to the Tribunal, the applicant indicated that her father's name was Benedict Ashu. He is deceased. The applicant's mother is Susanna Mpeha. She is also deceased. The applicant also states that she has a stepbrother Paul Penow Ebai whose father was also the father of the applicant. In a form submitted on 5th March, 2002 she also stated that as part of her family there was living her grandmother Lucy Ebot. The applicant also states that she had a boyfriend Enoh Esim. Of that union there are two twin children namely Emile Beju Esim-Enoh and Hawah Wamb Esim-Enoh who were born on 18th September, 2001 in the applicant's home village of Ayukaba, Manyu Division, in the South West Province of Cameroon.

14. The applicant was also delivered of a child named Elvira Mpeh Esim-Enoh since her arrival in Ireland in March 2002. This child was born on 21st November, 2002 and is residing with the applicant in Ireland.

15. The applicant contends that her two elder twin children have been placed in an orphanage in Cameroon although she does not know the name of the institution in question or its location.

The Approach of the Tribunal Member
16. It is essential at the outset to identify the true basis on which the Tribunal reached its decision. It is clear that the Tribunal decided the application essentially on the issue of credibility. However, at p. 7 of the Tribunal decision it is stated rather confusingly:-

> "The question is as to whether there is a reasonable risk that the applicant may suffer serious harm if she were to return to Cameroon, and if so, whether there is an absence of State protection such as would warrant the surrogate protection to this State being afforded to her. The burden of proof lies on the applicant as the asylum seeker to provide a truthful account to enable the relevant facts to be assessed such as to reach a proper decision … I regret the applicant's account lacks credibility."

17. As was pointed out in the judgment given at the leave stage there appears to be some intermingling of principles in the Tribunal decision between non- State protection with those issues which relate to credit.

18. At the conclusion of the decision however the Tribunal member states, having expressed reservations about a number of matters-

> "It is my view that this applicant has failed to establish her credibility and as such has not made out a case for refugee status."

18. The applicant contends that this conclusion is without justification.

19. This of course is in addition to the first contention advanced by the applicant that the Refugee Appeals Tribunal failed properly to evaluate the credibility of the applicant's story in the context of the available country of origin information in relation to forced marriages in Cameroon.

Material before the Refugee Appeal Tribunal
20. In order to place the impugned decision in context it is important to have regard to the material which was before the Tribunal. *Inter alia* this included information exhibited in the affidavit of Ms. Deirdre Bodkin (on behalf of the respondent) which includes a document entitled "*Women's Reproductive Rights in Cameroon: a Shadow Report*".

21. At p. 10 of this document there are certain statements as to the position in relation to forced marriage in Cameroon. It is stated that "a marriage contracted without the free consent of both spouses is deemed null and void". It is further stated that "unions formed according to customary law are not considered legally enforceable marriages…their legal status is undefined".

22. In the same document reference is made to the fact that early marriage is a regional phenomenon.

23. At p. 12 of the document, the laws and policies in relation to sexual violence in the Cameroon are set out. It is stated that:-

> "With regard to rape, the Penal Code punishes any person who by physical or moral violence forces a woman, including an adolescent to have sexual relations with them. The punishment is imprisonment of five to ten years. On the issue of marital rape, legal opinion in Cameroon appears to be divided and case law reflects a cautious attitude."

24. There is further reference to the penalties for "indecent acts committed upon a minor of 16 years or younger".

25. Was there any material before the Tribunal which would disclose that forced marriage was a breach of the law in Cameroon? I conclude on the basis of the documentation referred to above that there was such material.

26. The applicant through her legal representatives criticises the Tribunal member's finding that the applicant's account was not credible because the alleged behaviour in forcing a woman into marriage "would be in breach of the law". It is contended that the Tribunal member did not indicate to what law he was referring or what country of origin information was in question. It seems to me that the Tribunal was referring to the "Shadow Report" cited above.

27. Having considered this documentation I am satisfied that the evidence before the Tribunal was such that the country of origin made clear that where forced marriage occurs it is regional, and at the instigation of the parents of the girl. I am satisfied that there also was material before the Tribunal member to the effect that the legal system in Cameroon provides against forced marriage, renders it illegal, and that similar provisions exist relating to sexual offences against minors.

28. I find that there was therefore material upon which the Tribunal could find that forced marriage was, in fact, "a breach of the law". Again in particular, the report entitled "*Women's Reproductive Rights in Cameroon: a Shadow Report*" published by the Centre for Reproductive Law and Policy in 1999 is of assistance. One finds the following statement at p. 10:–

> "A marriage contracted without the free consent of both spouses is deemed null and void (in Cameroon). The Civil Code also establishes other grounds for annulling a marriage. Under the Civil Code spouses have the obligations of co-habitation, fidelity, support and assistance. They must feed, look after and raise their children together."

29. Clearly this finding relating to the prevalence of forced marriage could have been made more explicitly. Ms. Brennan, B.L., in the course of her capable argument has criticised the Tribunal member on the absence of such clarity. Equally it would appear that the finding regarding the enforcement of law on this issue in Cameroon is less than completely explicit. Again I think Ms. Brennan's argument has some force. But in the context of the material which actually was before the Tribunal member I do not think that the evidence is sufficient to show that there was *no* basis before the Tribunal member upon which he could make the decision or arrive at his ultimate conclusion. In fact such material was there before him and was referred to albeit confusingly in the course of the Tribunal decision.

Credibility

30. The second aspect of the case relates to the issue of the applicants own credibility. This facet of the matter must be looked at in the context of the legal authorities applicable.

31. In the course of argument senior counsel on behalf of the respondent, Mr. Paul O'Higgins, S.C., has succinctly drawn attention to what he contends are significant inconsistencies in the applicant's account of events.

32. There is no doubt that the narrative history furnished by the applicant contains some material which on its face is both harrowing and distressing. In considering this, evidence I am satisfied that a Tribunal must adopt the test set out by his Hon. Judge Pearl in *Horvath v. The Secretary of State for Home Department (United Nations High Commissioner for Refugees Intervening)* [1999] I.N.L.R. 7 where at p. 17(e) of the report he stated –

> *"It is our view that credibility findings can only really be made on the basis of a complete understanding of the entire picture. It is our view that one cannot assess a claim without placing that claim in the context of the background information of the country of origin. In other words the probative value of the evidence must be evaluated in the light of what is known about the conditions in the claimant's country of origin." (Also see* Kramarenko v. Applicant and the Refugee Appeals Tribunal, Paul McGarry, The Minister for Justice, Equality and Law Reform, the Attorney General, Ireland*, Respondents, Finlay Geoghegan J., 2nd April, 2004 and Traore and the Refugee Appeals Tribunal and The Minister for Justice, Equality and Law Reform, Respondents, Finlay Geoghegan J. delivered on 14th May, 2004).*

33. The court must also apply the test set out by Kelly J. in *Camara v. The Minister for Justice, Equality and Law Reform,* (Unreported, High Court, Kelly J., 26th July, 2000), where that judge adopted the observations from the seminal authority on the issue, that is Goodwin-Gill "*The Refugee and International Law*" Clarendon Paperbacks, Oxford at p. 349 as follows:–

> "Simply considered, there are just two issues. First, could the applicant's story have happened, or could his/her apprehension come to pass, on their own terms given what we know from available country of origin information? Secondly, is the applicant personally believable? If the story is consistent with what is known about the country of origin, then the basis for the right inferences has been laid."

34. There is therefore an objective and subjective element to this test. Inconsistencies must also be assessed as material or immaterial. Material inconsistencies go to the heart of the claim. They concern for example, the key experiences that are the cause of flight and fear. Being crucial to acceptance of the story, applicants ought in principle to be invited to explain contradictions and clarify confusions.

35. There also lies upon the decision-maker a shared burden of proof as set out in the U.N.H.C.R note on *Burden and Standard of Proof in Refugee Claims*, 16th December, 1998, to the following effect –

> "The adjudicator shares the duty to ascertain and evaluate all the relevant facts. This is achieved, to a large extent, by the adjudicator being familiar with the objective situation in the country of origin concerned, being aware of relevant matter of common knowledge, guiding the applicant, providing the relevant information and adequately verifying facts alleged which can be substantiated."

36. Having regard to these principles the relevant test in this case is whether or not the applicant has, in her testimony, given evidence which is both objectively and subjectively consistent and credible. The absence of such consistency can and may be an important factor in assessing both the testimony for the purposes of seeking refugee status and also in seeking judicial review.

37. In this particular application the applicant herself speaks English. There is no indication in the Tribunal notes or the submissions made by the applicant that there has been any absence of comprehension as a result of meaning being lost in translation during any part of the procedure. Indeed the applicant's own submissions, in her own handwriting, clearly demonstrate a competent knowledge of the English language.

38. I would also emphasise that a finding of absence of consistency does not necessitate that the truth of the applicant's narrative is rejected at every point. No part of this judgment should be taken as a rejection of all of this testimony. However, the issue must be seen in the context of a number of other matters which are considered below.

39. I now turn to these various allegations and the submissions made regarding such inconsistency.

40. The applicant states in the questionnaire submitted to the Commission that the chief of her village fell in love with her when she was an adolescent. Although he was married, with six wives, he wished to marry her also.

41. In the course of her interview the applicant states that she did not know the reason for this and that the chief never gave her a reason why he wanted to marry her. She also claimed that the chief would bring her sweets and say that he was bringing them to "his wife".

42. However the respondents contend that, in the course of the hearing before the Refugee Appeals Tribunal, the applicant did not state that the chief had told her that he wanted to marry her. The tenor of her evidence at that hearing before the respondent was that it was her uncle who wanted to "marry her off" to the chief for reasons of family advancement.

43. It was further stated that the applicant believed that if she were compulsorily married to the chief she would be sacrificed because she came of a slave family and thereafter would be buried with the chief when he died. At the hearing before the Tribunal the respondent contends that the applicant stated that this fear emanated from her mother. The respondent further pointed that the United Nations has confirmed that there is no evidence of any ritual killings in the Cameroon and that they almost certainly do not occur there. The respondent therefore contends that the absence of any such evidence undermines the validity of the applicant's

claim, both as to her own fear and that of her mother.

44. In the course of her interview the applicant stated that her uncle believed that if she married the chief, her "slave blood" would be eradicated. At the time of the Tribunal hearing, however, it is said that the applicant stated that the marriage would "eradicate the slave blood from the family". This would suggest that her uncle, who was her father's brother, was affected in some way by the alleged "low" status of the family, which was of slave blood.

45. At interview before the Tribunal member, the applicant stated that it was her *mother's family* which was of slave blood and that her uncle was her *father's* brother. Her submissions to the Tribunal made on the 21st October, 2002, make it clear that her father's family did not regard themselves as having slave blood.

46. The applicant asserted that if she were married she would be sacrificed as a slave and would be buried with the chief when he died. The validity of this contention has been dealt with above. Additionally, however, at the Tribunal hearing, the respondents contend that the applicant claimed that "it was taboo for a slave to marry non-slaves".

47. The respondent further states that this apparent inconsistency was not explained either and that it would be entirely inconsistent for a chief to engage in activity which was not in accordance with custom or belief.

48. The applicant claimed that the village chief was "all powerful" and that her half brother could not protect her. Nonetheless the applicant appears to have moved in with her elderly grandmother in the same locality. There she lived from June, 2001 onwards. Thereafter she left for a house owned by a local pastor and lived there. This continued until February, 2002. This house also was only five to ten minutes walk from her uncle's house.

49. At the Tribunal hearing the applicant submitted letters, the authenticity of which is impugned, to the effect that her uncle killed her grandmother in May, 2002. The applicant stated that the reason for the killing was that her uncle, as an elder in the village "would be entitled to a commission for collecting the taxes from the local people". It is not clear as to how this would have constituted a basis or a motive for the alleged action of her uncle in killing her grandmother. This is an issue where it is unnecessary to make a finding which either accepts or rejects the applicant's account.

50. The applicant became pregnant with her twins in or about December, 2000.

51. While she was not married to the father of the twins she provided the name of their father as Esim Enoh, who was her partner.

52. The applicant gave birth to another baby in the year 2002, while in this jurisdiction but she provided no information regarding the paternity of the Irish born child.

53. The respondent points out that even though the applicant was pregnant when she left her native country, the father of this Irish born child was not mentioned in her initial application, the questionnaire she submitted, or in the course of interview with the Tribunal.

54. The respondents specifically draw attention to the fact that the applicant has named her Irish born child after the father of her twin children, even though she contends that she has not seen him since her mother's funeral in May, 2001.

55. The respondent contends therefore, that it follows that either the applicant had a child by someone not mentioned by her, or that the claim that she last saw her partner, in May, 2001, is untrue.

56. In either case, it is contended, the credibility of the applicant is put in doubt in relation to a matter which goes to the very core of her entire claim, as it would seem entirely implausible that an allegedly powerful man such as a village chief would tolerate the applicant openly conducting other relationships if, as she contends, he wanted to marry her himself.

57. The applicant also submitted certain documentation to the Tribunal. It is contended by the respondent that this is of doubtful authenticity. These documents include –

> a) An alleged medical certificate concerning her first pregnancy. The respondent states that this, unusually, predicts exactly the date of birth of the twins who were born to her on 18th September, 2001, although the contents of the document were stated to be written months prior to that date.
>
> b) An alleged logbook of her hospital appointments during pregnancy showed that she always attended hospital on a Sunday. The respondent states that at the Tribunal hearing the applicant was asked about this but did not offer any explanation. Furthermore, she said she could not remember going to the hospital on Sundays.
>
> c) A letter of 5th August, 2002, stated that the applicant's uncle had been released from custody after his alleged involvement in the death of the applicant's grandmother. The reason for this release was stated to be the influence of the chief of the village. The respondent states that this would suggest that the applicant's uncle did not suffer any adverse consequences as a result of her failure to marry the chief, despite the chief's status and prestige being at stake.

58. The applicant also states that the chief was a person of high prestige and status, a representative of the Government in her village. The respondent controverts this and draws attention to the apparent fact that the applicant was able to protect herself, although a minor, while living only under the protection of her mother and grandmother, both of whom are stated to be of "slave blood" and therefore of "low" social status. It is therefore contended that this in itself casts doubt on the assertion by the applicant that the chief was powerful to the extent she contends for and that his word was effectively law.

59. The applicant is from the south western province of Cameroon. The respondent states that in fact the country of origin information submitted by her is to the effect that forced marriage occurs in some regions of that country and that "the most affected regions are those of the grand north and the east". By implication, therefore, the respondent contends that there is little evidence that forced marriage exists in the south of the country from which the applicant originates.

60. One turns then to documentation submitted relating to the prevalence of forced marriage in Cameroon.

61. The applicant submitted materials from an internet site, known as AFROL.com, which stated that "forced marriage is usual". However, the respondent points out that in the same document it is stated that forced marriage is regional in nature and occurs at the initiative of parents, as it states that "in some regions girls' parents can and do give them away in marriage without their

consent". However, the respondent states that no report from Amnesty International, the U.S. State Department, Human Rights Watch, or the United Nations has been produced to support the applicant's version of events *viz*. that forced marriage is *usual*.

62. The respondent further states that the Tribunal itself sourced a document compiled by The Centre for Reproductive Law and Policy Association of Women Jurists of Cameroon which confirms that "Marriage contracted without the free consent of both spouses is deemed null and void". It is further stated in this document that there is in Cameroon a phenomenon of "parental selection of a spouse" according to custom, and that such customs vary according to ethnic group. However, it is stated there is no suggestion that forced or compulsory marriage was usual or that it would occur in circumstances of pressure from family members but *against the wishes of parents* as claimed by the applicant.

63. The respondents also point out that the document compiled by the Centre for Reproductive Law and Policy Association of Women Jurists of Cameroon confirms that sexual assaults against minors and incest are considered to be serious criminal offences. Forced marriages are stated to be null and void. The respondents state that this criminal law in relation to sexual offences, would apply to the chief if, as is suggested, he were to force the applicant to marry him or to submit to sexual relations. The respondent also states that any alleged threat of human sacrifice would be a criminal offence and therefore "the chief's alleged behaviour regarding his marriage proposal" would be a breach of the law as found by the Tribunal.

Consideration of the Legal Issues

64. The relevant legal authorities cited in the consideration of credibility are first *Horvath v. The Secretary of State for Home Department* (United Nations High Commissioner for Refugees Intervening) [1999] I.N.L.R. 7. This authority emphasises the need for a complete understanding of the entire picture and the necessity that a Tribunal place any claim in the context of the background information available regarding the country of origin.

65. To the same effect are *Kramarenko, Applicant v. The Refugee Appeals Tribunal, Paul McGarry, The Minister for Justice, Equality and Law Reform, The Attorney General, Ireland*, Respondents Finlay Geoghegan J., 2nd April, 2004 and *Traore and The Refugee Appeals Tribunal and The Minister for Justice, Equality and Law Reform*, Respondents, Finlay Geoghegan J., 14th May, 2004 (both unreported).

66. I accept that these authorities lay down the necessity that the evidence regarding the claims made by any applicant must be considered in context.

67. The court must also apply the test set out by Kelly J. in *Camara v. The Minister for Justice, Equality and Law Reform* (Unreported, High Court, Kelly J., 26th July, 2000). Here the test has two aspects: (a) could the applicant's story have happened, or could his/her apprehension come to pass on the applicant's own terms, having regard to the country of origin information? (b) is the applicant personally believable? Is a story consistent with what is known about the country of origin? Clearly, therefore, the *Camara* test contains both subjective and objective elements. This test must of course be applied with particular focus on issues which are of central importance such as the cause of an applicant's flight and fear.

68. What is the essential case being made by the applicant in this case? In a sentence it is that if she had remained in her own country she would have been subject to a compulsory marriage to the village chief with the risk that as a person of slave blood, she might be buried on the chief's death, as a human sacrifice.

69. I am afraid that in this case I am not satisfied that the applicant has adduced sufficient evidence to demonstrate that the Tribunal decision should be set aside. It will be recollected that the applicant has been on notice of the fact that the issue of credibility arose in stark terms in the recommendation of the Commission and in the decision of the Tribunal. Despite this, no additional convincing supporting information has been adduced in order to demonstrate either the objective or subjective truth of her contentions. Nor has the applicant been able to adduce any response to any of the issues identified by the respondent in the course of this hearing, either in written or oral submissions. While certain aspects of the applicant's narrative could indeed have occurred, insufficient evidence was adduced in order to establish her claim on the central and material issues which relate to the cause of flight and fear and certainly not sufficient to demonstrate any error by the Tribunal going to jurisdiction.

70. The respondents have outlined a number of issues cited in this judgment. Each one of these issues raises question marks regarding consistency. I am satisfied that taken together, these inconsistencies (which go uncontroverted) are such as to be a failure to bring the case within the two facets of the test laid down in *Camara*. Having regard to the respondents' submissions outlined above, which I accept, this court has no alternative but to conclude that for the purposes of this hearing the applicant has also failed to satisfy the onus of proof as set out in *Kramarenko* and *Traore*.

71. For completeness, reference should also be made to the authority of *O'Keeffe v. An Bord Pleanála* [1993] 1 I.R. 39 at p. 72. Having regard to the matters outlined above I am satisfied that there was in fact relevant material before the Tribunal member from which he could have formed the view that he did.

72. I am also satisfied that the Tribunal member was entitled to reach the conclusion which he did regarding the credibility of the applicant, the nature of the evidence, and the documentation stated to be of Cameroon origin which was placed before him.

73. It is hardly necessary to re-emphasise that these proceedings are brought by way of judicial review. It is not an issue for this court to express a view as to whether or not it would have arrived at the same conclusion as the decision-maker. The test is whether or not the applicant can demonstrate that the decision-making process was so flawed as to go to jurisdiction so as to justify the granting of an order by way of judicial review.

74. Having regard to the findings outlined above, this court must decline this application.