Neutral Citation: [2015] IEHC 56

THE HIGH COURT

JUDICAL REVIEW

[2010 No. 1096 J.R.]

BETWEEN

J. V. D. V. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND J. V.), [2010 No. 1096 J.R.] and D. V. (A MINOR SUING BY HIS MOTHER AND NEXT FRIEND J. V.) [2010 No. 1097]

APPLICANTS

AND

THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM AND ATTORNEY GENERAL IRELAND

RESPONDENTS

Judgment of Ms. Justice Faherty delivered on the 27th day of January 2015

1. This is a telescoped hearing for judicial review where the applicants seek, inter alia, an order of *certiorari* of a decision of the Refugee Appeals Tribunal refusing their claim for refugee status.

2. The first and second named applicants arrived in Ireland on the 9th November 2007 and claimed asylum on that date. The third named applicant was born in Ireland on the 23rd June 2008 and an application for asylum was made on his behalf on the 23rd March 2009. All three applicants claim refugee status based on claimed religious persecution.

Background

3. In summary, the first named applicant's account of the events which led her to seek refugee status is as follows:

The first named applicant was born in Niger in 1975 and lived in southern Niger all her life. She attended primary school for six years and secondary/commercial school for two years. As of the beginning of October 2007, the applicant, who is unmarried, resided with her four children, her parents and siblings in southern Niger. The applicant and her family were Christian and lived in a predominantly Muslim country. According to information given by the first named applicant in the course of her s. 11 interview, there was a religious and political crisis in Niger and rebels were "*killing people*". In her Questionnaire, the first named applicant claimed to have a fear of persecution on religious and political grounds. She claimed that an incident on the 2nd October 2007, namely an attack by rebels on her as a Christian, was the trigger for her leaving Niger. The circumstances of that incident are referred to elsewhere in this judgment. According to the first named applicant, she and the second named applicant made their escape by running into the bush where they remained for a week. During this time, the first named applicant met a pastor from her church who said he would help her and who arranged for her to leave Niger with her son. The first named applicant believed she and her son departed Niger on the 7th October 2007 and after a month on a ship, arrived in Ireland in November 2007.

Procedural history

4. In a report dated the 12th March 2008 the Refugee Applications Commissioner refused the first and second named applicants asylum claim, in the first instance not being satisfied that the first named was from Niger and on the basis of a number of adverse credibility findings, followed by further findings with respect to the availability of State protection and internal relocation in Niger. In a report dated the 5th June 2009, the Commissioner rejected the third named applicant's application on the basis, inter alia, that "*the applicant's mother's testimony on his behalf was subjective throughout and lacked objective basis*" and "*it has been established that there are discrepancies in the applicant's account which would undermine the credibility of the claim*". The Commissioner found "*the applicant's mother has not satisfied the examiner that her child would be persecuted in the future in Niger due to religious beliefs given the statements produced and the subjective nature of her testimony*". Further, the Commissioner found "*the applicant's mother has not established either State protection or internal relocation were not viable options for her and her child*."

5. The first and second named applicants appealed the Commissioner's recommendation to the Refugee Appeals Tribunal on the 30th April 2008 and the third named applicant's appeal was lodged on the 13th July 2009.

6. The two appeals were heard on the 28th April 2010 and a joint decision (dated 9th July 2010) issued on the 15th July 2010 affirming the recommendation of the Commissioner in all cases that the applicants not be declared refugees. The overall assessment with regard to the first named applicant was as follows:

"*…, I have concluded that the first applicant was not a credible witness in relation to her alleged subjective fear of persecution or in her recounting of the events that led to her coming to this country*."

The challenge to the Tribunal's Decision

7. The decision is challenged on the following grounds.

> 1. The Tribunal Member failed to perform her function of assessment of the facts in accordance with the Refugee Act 1996 or the UNHCR Handbook and/or S.I. 518 of 2006.
>
> 2. The Tribunal erred in law and acted in breach of fair procedures the manner in which adverse credibility findings were arrived at.

3. Country of origin information was not dealt with properly.

4. The Tribunal Member's decision is vitiated by the presence of bias.

8. I propose firstly to deal with the allegation of bias.

9. The Tribunal Member's s.6 analysis comprises some 21 paragraphs. Seven of these deal with the Tribunal Member's view of a confrontation which took place between the Tribunal Member and the then counsel for the applicants at the commencement of the oral hearing. This confrontation had its genesis in the question of whether or not the first named applicant required an interpreter. Ultimately, it became clear that no interpreter was required and the hearing commenced. In the course of her decision the Tribunal Member noted, inter alia:-

> *"In several years acting as a member of the Refugee Appeals Tribunal, I have never encountered behaviour of this kind during an oral hearing. I am recording the fact of this behaviour not because of any wish to criticise or censure counsel for the applicants but rather so that the applicants can be assured that the behaviour of their counsel has not in any way influenced my assessment of the merits of their appeal. I am very aware of my obligations and duties as a member of the Refugee Tribunal. Accordingly, I wish to formally state for the record that I have in no way allowed the behaviour of counsel for the applicants to affect my consideration, assessment or determination of the applicant's case."*

10. In their written submissions, the applicants state as follows:-

"With respect to the unfortunate confrontation at the oral hearing between the TM and the BL, and notwithstanding the TM's statement in the actual decision, the decision is vitiated by the appearance of bias. The test for objective bias is 'whether a reasonable person in the circumstances would have a reasonable apprehension the applicants would not a fair hearing from an impartial judge on the issues', as per Denham J in *Bula Ltd v. Tara Mines Ltd (No 6)* [2000] 4IR 412, at 4041 and which was followed in *Kenny v. Trinity College Dublin* [2008] 2IR 401, at para. 19. It is also noted that there is no such duty of impartiality imposed on legal representatives – see *O'Brien & Ors v. Moriarty Tribunal* [2010] IEHC 388, where Hedigan J. quotes from *Geveran Trading Company Limited* and where Arden L.J. stated '*…an advocate, for instance, has no duty not to be partisan. The judge, on the other hand, must be independent and free from any actual or apparent bias*.'"

11. The respondents submit that no suggestion of bias arises from the exchanges which took place between counsel for the applicant and the Tribunal Member, and in this regard rely on the dicta of Barron J. in *Orange Communications Limited v. Director of Telecoms (No. 2)* [2000] 4IR 159:-

> *"Insofar as bias may be found to exist or to have existed, it will always predate the actual decision or contemplated decision. Bias does not come into existence in the course of a hearing. It may become apparent in the course of a hearing and in that way alert a party to the possibility of bias and so enable such party to establish facts which show that the attitude adopted by the decision maker in the course of the hearing was one which might have been expected having regard to those facts. The essence of bias then is the perception - the strength of that perception not being relevant for the purpose of this definition - once all the facts are known that the particular decision maker could never give or have given a decision in relation to the particular issue uninfluenced by the particular relationship, interest or attitude. Obviously, if it is perceived that it may influence a decision yet to be given, it must exist at that stage."*

> *"Clearly the principles of bias are too wide to be set out in one definition. However it seems to be that the essence of bias is the existence of some factor as already explained that constitutes a set of circumstances from which a reasonable observer might conclude that there was a real possibility that such factor would cause the decision maker to seek a particular decision or which might inhibit him or her from making his or her decision impartially and independently without regard to such factor. As I have already indicated, this factor must predate the decision complained of or the contemplated hearing."*

12. The applicant's counsel does not gainsay the jurisprudence relied on by the respondents but contends that, albeit the confrontation arose in the course of the hearing, if the court believes the hearing may have been unfair because of the exchange then the decision should be quashed, if not for bias, then for taking "irrelevant matters" into consideration.

13. I am satisfied that the applicants have not established the decision should be vitiated on grounds of bias. There is no evidence of any external factors which could give rise to either actual or objective bias, nor is there evidence of prejudgment on the part of the Tribunal Member vis a vis the applicant's claim. I am equally persuaded that the applicants have not established that the confrontation which took place at the commencement of the hearing and elements of which would appear to have lingered on in the course of the hearing (from my reading of the note of the hearing exhibited in the first named applicant's grounding affidavit) had any bearing on the substantive findings made by the Tribunal Member with regard to the applicant's claim for refugee status. Furthermore, I accept the respondent's submission that at no stage was the Tribunal Member requested to recuse herself and in this regard I adopt the dictum of Henchy J. in *Corrigan v. The Irish Land Commission* [1977] IR 317, where it is stated:-

> *"I consider it to be settled law that, whatever may be the effect of the complaining party's conduct after the impugned decision has been given, if, with full knowledge of the facts alleged to constitute disqualification of a member of the tribunal, he expressly or by implication acquiesces at the time in that member taking part in the hearing and in the decision, he will be held to have waived the objection on the ground of disqualification which he might otherwise have had."*

The alleged failure to properly assess the applicant's claims and/or unfair adverse findings made by the Tribunal Member

14. A number of matters arise for consideration under this heading.

Whether the Tribunal Member accepted that the first named applicant was a Christian from Niger?

15. The applicants submit that "in failing to express in clear and unambiguous terms whether or not it was accepted that the applicant is a Christian from Niger, who suffered an attack from MNJ rebels, and whose son was seriously injured, and in the light of country reports stating that political and religious strife is such that the country has been designated a risk threat, the Tribunal failed to determine core elements of the claim."

16. On the issue of whether it was accepted the first named applicant was a Christian from Niger, I am satisfied that in this regard

the Tribunal Member did accept the first named applicant's evidence: This is apparent from the Decision, expressed as follows:-

" *As stated in paragraph 3 above, counsel for the first applicant addressed several issues regarding credibility findings contained in the s. 13 report. I am prepared to afford the first applicant the benefit of the doubt in this regard. I am willing to accept the possibility that some unfair conclusions may have been drawn as regards the credibility of the first applicant on foot of her failure or inability to answer questions regarding her native country and I make so such similar findings*"

I reject the contention that it was insufficiently clear as to what part of the s. 13 report the Tribunal Member gave the first named applicant the benefit of the doubt. Furthermore, there is nothing in the overall analysis conducted by the Tribunal Member to suggest that she did not accept that the first named applicant was a Christian."

There is thus no merit in this argument.

The alleged failure to assess all of the first named applicant's evidence in the context of the Tribunal Member's finding of inconsistency in the first named applicant's evidence

17. The Tribunal Member stated:-

" *The first applicant has made allegations in her Questionnaire and Interview of a beating and attempted rape by rebels. However, when taken through her evidence by her counsel she made no mention of these allegations. On my prompting, her counsel gave her a further opportunity to describe what, if anything, the rebels did to her. On this occasion the first named applicant claimed that the rebel who came to her house "tried to grab her" but she ran out the door".*

Counsel for the applicant contends that the first named applicant was not given an opportunity at the oral hearing to address this inconsistency. I do not find merit in this submission. By way of preliminary observation, the Tribunal Member did not make an actual finding of inconsistency, although I accept that same could be implied from the manner in which the issue is addressed in the Decision. There was however no unfairness in how the issue was dealt with. In section 3 the Tribunal Member records:-

> *"At this point, as it was clear that [counsel] had finished taking the first applicant through her evidence, I asked whether the first applicant was abandoning her earlier claim of assault and attempted rape by rebels. [Counsel] said she would deal with the matter on re-examination."*

Furthermore, the hand written note of the Tribunal hearing, exhibited in the first named applicant's affidavit, records that the Tribunal Member's query as to whether the first named applicant was abandoning the attempted rape and beating allegation was addressed by the first named applicant's then counsel clarifying, in the course of legal submissions, that the first named applicant's perspective was that "*she felt they had tried to rape her, I asked her what created this subjective fear and she said this is what happens there*". Therefore, as both the Decision and the note of the hearing record the opportunity given to the first applicant to clarify what she was alleging, which was availed of by the applicant and her then counsel, no question of unfairness arises.

Alleged error of fact by the Tribunal Member

18. The recital of first applicant's evidence made reference to her having "*explained to the Tribunal, by way of background, the situation regarding certain rebel groups in Niger. She described two groups of rebels. Firstly, the Tuareg rebels who oppose the Niger Government. Secondly, a group of rebels called "Justice for the People" who are largely Muslim and who attack Christians. She explained that this latter group is the one relevant to her application for asylum*." It is submitted that the Tribunal Member committed an error of fact in finding that the first named applicant had described two groups of rebels in Niger when in fact the first named applicant's evidence concerned one group, the Nigerien Movement for Justice (MNJ), a predominately Tuareg ethnic group which emerged in 2007.

19. The respondents contend that there is no basis for a finding that the Tribunal Member erred in fact. They point to the first named applicant's s.11 interview which took place on the 10th March 2008 where she advises that the rebel group who attacked her had no name; only later (on the 5th June 2009), in the course of her s.11 interview concerning the third named applicant's application for asylum, did the first named applicant refer to the rebels by name (Justice for the People). The respondents submit that even if the Tribunal Member did err it was not a material matter and in any event such error could only have served to broaden the extent of the Tribunal Members analysis of the first named applicant's claim.

20. From my analysis of the available country of origin information, the Nigerien Movement for Justice (MNJ) is a Tuareg rebel group. However, when the Tribunal Member referred to the applicant having described two rebel groups, namely "*Tuareg rebels who oppose the Niger Government*" and "*a group of rebels called 'Justice for the People' who are largely Muslim and who attack Christians*", this information was gleaned from the applicant herself, as is clear from the note of the oral evidence exhibited in the grounding affidavit. In the circumstances and having regard to the threshold for material error set out in *A.M.T. v RAT* 20044 IEHC 219, I do not find merit in the applicants' argument that the error was so material as to render the decision invalid.

The alleged failure of the Tribunal Member to address significant aspects of the first named applicant's evidence regarding the events of the 2nd October 2007

The principal contention of unfairness made on behalf of the applicants is that the Tribunal Member failed to address significant aspects of the first named applicant's evidence regarding the events of the 2nd October 2007 and, in effect, it is argued that her "real story" was not addressed and that the recitals in the decisions are not a fair account of the said events.

The Tribunal Member found as follows:

> *"I now turn to the assessment of whether the first applicant has a well founded fear of persecution. Looking first at the subjective element of that test, this primarily requires an evaluation of the first applicant's statements. The first applicant's evidence is, in summary, that a rebel pushed the half opened door in her home further open and the door banged against a kettle of boiling water causing the water to spill onto her infant son thereby burning him. The first applicant picked her son up and ran out to the back door. She made it clear that she was not chased or followed by the rebel. The first applicant stated that she believed the rebel was going to rape and kill her because of stories she had heard from people and from television so she ran away and hid with her infant son in the bush for nearly a week. While hiding out she met a pastor she knew who told her she should leave Niger. He brought her and her son to a place where they boarded a ship."*

Counsel for the applicants submits that the recitals in the Decision read as if the "postman" called to the applicant's house and not rebels, and pointed to the following passage in aid of this argument:-

> *"Even if I accept that the first applicant had a subjective fear that the alleged rebel intended to harm her, because of stories she had heard, an examination of her evidence to the Tribunal reveals no objective basis for that fear. The alleged rebel pushed open a half open door which caused the boiling water to fall on the first applicant's son. He did not pour the water on the infant. He did not beat the first applicant. He did not attempt to rape the first applicant. At best he tried to grab her but he did not attempt to follow her while she picked up her child and ran out the back door. I therefore cannot accept that there is any evidence that he was in fact a rebel intent on doing her or her child harm.*
>
> *Her subjective fear of being harmed by the alleged rebel is further undermined by the fact that after 32 years of living in …. she has never been harmed by the rebels she allegedly fears.*
>
> *Accordingly, I do not accept that there is any objective basis for what I consider to be an unreasonable fear on the part of the first applicant that she was in grave danger."*

21. It is argued that the Tribunal Member unfairly concluded that the first named applicant was not a credible witness in relation to her alleged subjective fear of persecution without having addressed what in fact had happened to the first named applicant's house which, it is submitted, on any reasonable basis would give the first named applicant cause to be afraid. Counsel relied on the following extract from a note of the oral hearing before the Tribunal, exhibited in the first named applicant's affidavit, as support for the argument that important elements of the evidence was not considered by the Tribunal Member when assessing the applicant's core claim.:-

> *" [A] A mud house not strong, part of it destroyed. Rebels chasing the Christians.*
>
> *[Q] Could they not rebuild house?*
>
> *[A]By time I left house was destroyed."*

22. Furthermore, in both her s. 11 interview and at oral hearing, the first named applicant had made it clear that the attack was not confined to her house: In the course of her s. 11 interview she had stated "*everyone was running*" and that "*when this happened everybody scattered*", a description she again gave at the oral hearing before the Tribunal when she referred to "*everyone scattered*" and "*everyone fled*", as recorded in the note of the hearing exhibited in the first named applicant's grounding affidavit.

23. It is further submitted that the first named applicant testified at the oral hearing that after the attack, she did not know where her children were. This state of knowledge was not reflected in the Tribunals Member's decision in circumstances where the Tribunal Member went on to make an adverse credibility finding in the following terms:-

"*However, I did find it difficult to accept that the first applicant did not ask the pastor to try and find her children, the father of her children or her own family before she left Niger. This was a man who allegedly went out of his way to help and clearly had the resources to so do. In those circumstances it is not credible that she did not ask him to try to find her family or at least to make enquiries about them. The first applicant explained that there was no point returning to her home to look for her family because they feared the rebels and therefore would not go back. This seems a defeatist attitude from someone who had never been harmed by rebels in her 32 years and I believe it casts a significant question mark over her credibility*"

24. The applicants submit that the evidence the first named applicant gave at the hearing was in the following terms (as per the note of the hearing exhibited in the applicant's grounding affidavit):

> *"[Q.] Can I ask you about family, any contact?*
>
> *[A.] No.*
>
> *[Q.] Ask the pastor where are your family?*
>
> *[A.] No. I didn't know where they were. Everyone fled*
>
> *When this problem happened they cannot come back to the house."*

25. It is submitted that the applicant's reason for not asking the pastor to find her family was not addressed by the Tribunal Member in the making of the adverse credibility finding.

26. The applicants further contend that there is a lack of clarity in the decision as to what exactly the Tribunal Member determined in relation to the first named applicant's core claim. Save findings that the first named applicant was not credible in relation to the evidence given as to why she did not ask the pastor to find her children and in relation to her account of her travel to Ireland (both of which the applicants submit are peripheral matters), the Decision does not recite whether the first named applicant's core claim relating to the events of the 2nd October 2007 was believed or otherwise. In this regard, the applicants point to the already quoted extract from the Decision "*Even if…grave danger*." This, they contend, can only be interpreted as the Tribunal Member saying, based on her reading of the account given by the first named applicant, that the latter had no reason to be afraid but, the applicants submit, the Tribunal Member did not state the reason for her finding in this regard. Furthermore, in so far as the Tribunal Member found "*no objective basis*" for what she considered "*to be an unreasonable fear on the part of the first applicant that she was in grave danger*", it is submitted that this finding was arrived at without the first named applicant's evidence regarding the destruction of her house having been considered.

27. The respondents refute any suggestion that the Tribunal Member failed to record or consider the first named applicant's evidence or that there is any lack of clarity in the Tribunal Member's findings. With regard to the alleged failure to consider the applicant's evidence regarding her house, the respondents rely on the following extracts from the first named applicant's s.11 interview:

> *"[Q.] What happened?*
>
> *[A.] We were in the house, I was making food. The problems started again and everyone was running, My boy was crawling. One of them came and pushed the door in and hit the kettle and the water poured on him." and*

"[Q.] You say part of your home was destroyed, when was this?

[A.] That was when they came.

[Q.] What part, what exactly happened?

[A.] They pushed the door and were kicking things so half of it was destroyed."

28. Furthermore, the respondents point to the following recital contained in section 3 of the decision as to what the applicant stated at the oral hearing:

> *"The first Applicant told the Tribunal that on the 2nd October 2007, when her son[] was a year old, one of the rebels came to her house in[ ]She was alone with her son. Her three older children aged three six and nine at the time, were out with the first Applicant's sister (the first Applicant's siblings and parents also lived in the same house). When the rebel pushed the door of her house open, the door banged against the kettle, causing boiling water to spill on her baby son. The first applicant grabbed her son and ran out the back door. She said the rebel did not follow her. She ran to the bush and remained there with her son for almost one week."*

29. With regard to the claim the Tribunal Member erred in failing to address the reason given by the applicant for not asking the pastor to find the three elder children, the respondents argue that there can be no basis to impugn the Tribunal Member's finding, given that the applicant herself testified that the children were with her sister at the time of the alleged attack. The court notes that in this regard counsel for the respondent suggests that the children were thus capable of being located, although there is no specific finding in the Decision to this effect.

30. From a consideration of the above submissions, two issues arise for determination. The first is whether the first named applicant's evidence regarding her core claim was properly considered. I am not satisfied that it was. In coming to this conclusion, I have had regard to the note of the hearing, exhibited in the grounding affidavit and which has not been challenged by the respondents, which records the applicant's evidence that her house was destroyed by rebels and that the claimed attack was not confined to the applicant's house, insofar as the evidence given by the first named applicant suggested that others too had fled in the course of the attack. This account would appear to be consistent with the information in the first named applicant's Questionnaire where she states "*Part of my house was destroyed and my family people scattered to unknown destination*" and consistent with what was said by her at interview. It seems to me that these were central issues to which the Tribunal Member (who is the sole arbiter of the credibility or otherwise of such claims) should have averted when reaching her decision that there was no objective basis for the applicant's fears and that the first named applicant's fears were unreasonable. There is no discernable means of knowing from the Decision whether the evidence regarding the destruction of the house and that others and not just the first and second named applicants had cause to flee, and which was potentially relevant to any conclusion the Tribunal Member might reach on the credibility of the core elements of the applicant's story, was weighed in the balance. I am not persuaded by the respondents' argument that it was sufficient that the issue was alluded to in the s. 11 interview notes which were before the Tribunal Member. Nor can what is set out in the Decision be considered as the totality of the applicant's evidence concerning the claimed attack, or indeed an accurate summary thereof, since the note of the oral hearing put before this court contains a reference to the house having been destroyed and to people, including the applicant, having cause to flee. For those reasons I am not satisfied the Tribunal Member's only failure was that she omitted to use the word "*destroyed*" in the Decision. The first named applicant was entitled to have all relevant elements of her core claim considered, particularly when aspects of her claim, if found to be credible, had the potential at least to influence the decision maker's assessment of the reasonableness of her fears. That she was afforded such consideration as regards a material aspect of her claim is not evident from this Decision. The absence of such consideration affects the Tribunal Member's conclusion that the first named applicant's fears were unreasonable to a material degree.

31. With regard to the adverse credibility finding regarding the failure of look for the first named applicant's other children, I am not convinced that there is in the Tribunal Member's treatment of this issue the degree of unfairness suggested by the applicant's counsel; clearly, the Tribunal Member took cognisance of the applicant's evidence that she did not ask the pastor to find the children as they would not have returned to the house after the claimed attack. I accept however that the finding does not record the first named applicant's explicit statement (recorded in the exhibited note of the evidence given at the hearing) that she did not ask the pastor to look for them because she did not know where they were. However, to my mind, a consideration of her evidence as to her lack of knowledge of her children's whereabouts, at best, might have tempered the view adopted by the Tribunal Member but, overall, this complaint, had it been the sole issue for consideration in these proceedings would not be sufficient to impugn the Decision. I say this because it was within jurisdiction and rational for the Tribunal to make a credibility finding on the failure of the applicant to at least ask the pastor to make enquiries about the children.

32. The second issue for determination is whether the Tribunal Member overall has given a clear and rational basis for the rejection of the applicant's claim. I accept the applicant's arguments that the Decision does not yield a clear understanding whether the first named applicant's account of the core events of the 2nd October 2007, i.e. that rebels came to her house, was believed or otherwise. Indeed the phrase "*I therefore cannot accept that there is any evidence that he was in fact a rebel intent on doing her or her child harm*" does not answer the question whether the Tribunal Member believed or not that the applicant's house was attacked by a rebel; it could be read as the Tribunal Member simply finding that the rebel was not intent on doing harm. For the reasons I have set out above, the finding of "*an unreasonable fear on the part of the first Applicant that she was in grave danger"* cannot stand because it is not discernable from the Decision whether the Tribunal Member's finding of unreasonableness took account of the applicant's claim that her house was destroyed or that "*everybody fled*". Equally, I find it unsafe to let stand the finding that there was "*no objective basis for* [the first named applicant's] *fear*" (insofar as this finding is based on the Tribunal Member's erroneous summary of the first named applicant's evidence), in the absence of any consideration given by the decision maker to the fate of the house or the claim that others were also affected. The credibility or otherwise of the factual matrix presented by the applicant should have been clearly set out by the Tribunal Member before addressing the question of the unreasonableness or otherwise of the applicant's fear and before opining on the lack of an objective basis for that fear.

33. In arriving at the aforesaid conclusions, I adopt the principle enunciated in *Kramaranko v. Refugee Appeals Tribunal & Ors* [2004] 2ILRM 550 that it is incumbent on a Tribunal or adjudicator to assess the applicant's credibility whether in general or on specific factual issues and make a clear finding thereon. As I find the claim that the house was destroyed to be a central issue, in the words of MacEochaidh J in *EPA v. Refugee Appeals Tribunal* [2013] IEHC 85:-

> *"A clear and reasoned finding on this central issue was required of the Tribunal and a failure by the Tribunal Member to decide this critical part of the applicant's claim in express terms establishes a substantial ground that the decision in unlawful."*

34. The full picture, as presented by the first named applicant, was not analysed and in this regard the Tribunal Member breached the guidelines set by Cooke J in *I.R. v. Minister for Justice Equality and Law Reform & Ors* [2009] IEHC 353, in particular guideline 4, as follows:-

> *"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."*

35. Thus by reason of the foregoing, I find that the Tribunal Member erred to such extent that it affects the decision in the case.

The alleged failure of the Tribunal Member to deal properly with country of origin information submitted on behalf of the applicants.

36. In their written submissions, the applicants contend as follows:-

> "It is a requirement that in assessing both the credibility of the applicant and the objective evidence relating to country conditions in the applicant's home country the decision maker must consider the evidence of the applicant in the context of the available and up to date country of origin information. …However the Tribunal in the present case confined its assessment to limited citations of the country reports before it."

37. On the 30th April 2008 when filing their notice of appeal, the first and second named applicants submitted the following documents for consideration by the Tribunal:

1. Baptist Press "Persecution and Hardship in West Africa" 4-12-2003.

2. US Department of State International Religious Freedom Report, 2003 Niger.

3. Eagle World News "Niger Orders Expulsion of 100,000 Arabs to Chad.

38. On the 22nd April 2010 further documentation was submitted as follows:

1. OSAC "Niger 2010 Crime Safety Report 21-4-2010"

2. Travel Guide to Niger, Africa.

3. Embassy of the United States 2009, Niger Human Rights Report.

39. With regard to the third named applicant's appeal, on the 13th July 2009 the following country of origin information was submitted:

1. The 2003 US State Department Report on Niger.

2. Violence in Niger 9-11-2000.

3. Reuters Alert Net: Niger Government denies army abuses in Sahara.

4. WOW Gambia Niger: Army rebels commit abuses against civilian rights group.

5. Wikipedia: Law Enforcement in Niger.

6. Niger Arrest Editor over Corruption Report.

7. Amnesty International Report 2009, Niger.

40. Counsel for the applicant drew the court's attention, in particular, to the following extracts from the aforementioned reports.

41. From "The World Factbook"

" *A predominantly Tuareg ethnic group emerged in February 2007), the Nigerien Movement for Justice (MNJ), and attacked several military targets in Niger's northern region throughout 2007. Events have since evolved into a budding insurrection"*

From the Violence in Niger document:-

> *"Islamic fundamentalists attacked an SIM Mission Station as well as churches in Maradi (100 miles east of Madaoua). Similar attacks were reported in the capital city of Niamey. Churches were burned, vehicles torched and windows smashed. The SIM Finance Officer was damaged as well as the home of a missionary family. The mob also vandalised a bible school run by another mission in Maradi."*

From the WOW document, the following extracts:

> *"The Nigerien army and rebels in the country have yet to formally respond to charges by rights groups that both sides are committing abuses against civilians"*
>
> *"Rebels interviewed by HRW admitted to placing landmines on major roads around Agadez, Iferouane and Arlit. (The rebels) claimed they were aiming to target military vehicles (but), including those used to escort civilian convoys, the HRW Report says. The rebels are also suspected of having placed landmines that killed 2 civilians in the southern cities of Maradi and Tahoua on 10 December."*
>
> *"The MNJ denies responsibility, blaming the army instead". "There is no element of the MNJ that would target civilians." The group's spokesperson in Belgium... told IRIN following the incidents"*

It was submitted that this information, in particular, was important to the applicants claim as they hailed from southern Niger.

42. The court was further referred to an extract from "Law Enforcement in Niger" as follows:-

> *"The police of all branches have consistently been accused of inadequate training and equipment and ineffectiveness. Foreign governments have described police corruption, especially the demand of bribes for services as endemic.*
>
> *The police force, which is under the direction of the Ministry of Interior, is ineffective in the assessment of foreign governments, primarily because of inadequate resources. Basic supplies, such as vehicle fuel, radios, uniforms, handcuffs, batons, and badges are scarce. Patrols are sporadic, and emergency respond time in Niamey can take 45 minutes. Police training is minimal, only specialised police units had basic weapons handling skills. In December 2003, the National Assembly adopted legislation granting police more decision making authority and increased compensation: However, corruption has remained pervasive."*

43. Reliance was also the following extract from the 2009 Amnesty International Report:-

> *"Armed conflict between government forces and a Tuareg-led armed opposition movement, the Niger Peoples Movement for Justice (Mouvement des Nigeriens pour la justice – MNJ) , based in the Agadez region in the north continued throughout the year. Despite calls by civil society and political parties to engage in talks with the MNJ, the Nigerien President ruled out any dialogue describing the MNJ as "bandits" and "drug dealers". The government renewed several times the state of emergency in the Agadez region which gave additional powers to the security forces."*

44. By way of preliminary submission, the respondents take issue with the arguments advanced by the applicants with regard to the Tribunal Member's handling of country of origin information on the basis that the claim now being made by the applicants was not pleaded in their statement of grounds. I accept that to be the case and I note that there is no reference to the manner in which the Tribunal Member assessed country of origin information in the grounding affidavits in the present proceedings. Counsel for the applicant answered the respondent's criticism by stating that the applicant's statement of grounds and notices of motion were dated 29th July 2010 and 30th July 2010 respectively, yet the applicants only received the respondents' statement of opposition in November 2014. While that is indeed the case, it nevertheless does not deflect from the fact that even if the respondents had filed their statement of opposition at an earlier stage, there was still nothing in the statement of grounds to alert the respondents to the arguments now being pursued by the applicants concerning the Tribunal Member's assessment of country of origin information. The respondents however, in their written submissions, addressed the merits of the applicants' arguments on this ground. As I am satisfied in this case that no prejudice accrues to the respondents by allowing the applicants make their submissions, I am prepared to consider the substantive arguments made by both sides.

The respondents contend:-

> "The Tribunal Member's determination that the applicant's claim has no objective basis is based on an assessment of the applicant's evidence in the context of the relevant background situation through an analysis of the relevant country of origin information. It is submitted that it is clear from the Tribunal determination that the Tribunal Member considered the country of origin information submitted and considered it carefully in the context of the applicant's claim. It is submitted that the Tribunal Member set out careful reasons as to why the country of origin report concerning the Tuareg was not relevant. The Tribunal Members report records that the Tribunal was referred to country of origin information on Niger dated 2009 which referred to a rebel group from the Tuareg nomadic pastoralist community carrying out attacks in northern Niger and military posts and a uranium mine and the Tribunal Member determined that she did not accept that this was relevant to the applicant's case rejecting interpretation of 'pastoralist' offered on behalf of the applicant. It is submitted that the country of origin information was all carefully considered in the assessment of the applicant's claim."

45. In oral submissions, the respondents make the case that be it the rebels are referred to either as Tuareg or JFP/MNJ in the country of origin information before the Tribunal Member, there was in any event no reference in that information to attacks on Christians; rather insofar as attacks are noted, it was against military groups and/or government outposts, not Christians, and in this regard, the respondents rely on the already quoted extract from the World Fact Book and place reliance on the following extract from the 2009 Niger Human Rights Report (US) as follows:-

> *"In 2007, the Tuareg Rebel Group Nigerien Movement for Justice (MNJ) launched a series of attacks against military and strategic installations in the north."*

The analysis conduced by the Tribunal Member

46. In her s. 6 an analysis of the first named applicant's claim, the Tribunal Member states:-

> *"I have carefully assessed the Applicant's evidence, including the country of origin information evidence and submissions submitted on her behalf, and I am not persuaded that same qualifies her for refugee status. Her evidence failed to persuade me that she faces a real threat of persecution should she return to Niger."*

47. In the "*conclusion*" section, there is reference to "all relevant documentation" including "*country of origin information*" having been considered.

48. Section 3 of the decision records that the Tribunal Member was referred by the then counsel for the applicants to the "*Travel Guide to Niger 2010*" (on the issue of the first named applicant's knowledge of French).

Section 3 also records the presenting officer putting to the applicant that "*the country of origin information submitted on her behalf does not corroborate her claim that a rebel group called "Justice for the People" is indiscriminately attacking Christians*."

In section 4 ("*Submissions*"), counsel for the applicants refers the Tribunal Member to the 2003 US Department of State document which, inter alia, noted:

"*.. there have been instances where members of the Islamic majority were not tolerant of the rights of members of minority religions to practice their faith*."

Reference was made to a further extract from that document which detailed an attack on the abundant life church in Maradi by Islamic Fundamentalists in 2000. The presenting office is recorded as observing that that particular document was 10 years old. The "*Submissions*" section also records the Tribunal Member being referred by the applicant's counsel to "*country of origin information*

from 'Baptist Press' 2003" which she said showed that Christians are "*discriminated against*" and the Tribunal Member finding as follows:-

> *"I do not accept that this document is relevant to the applicant's case as it refers solely to discrimination against Christian Missionaries and neither applicant in the instant case is a missionary."*

49. That section also records that counsel for the applicant referred to "*country of origin information on Niger dated 2009 which referred to a rebel group from Tuareg nomadic pastoralist community carrying out attacks in northern Niger on military posts and a uranium mine because of claims the government neglected the northern region and treated Tuareg people like second class citizens. The Tuareg people are nomadic pastoralists and make a living through herding. I do not accept that this document is relevant to the applicant's case.[Counsel] submitted that the attacks were carried out for religious reasons. When she elaborated it became clear she was of the view that the word "pastoralist" indicated that the attacks were religiously motivated. I feel compelled to reject her interpretation of the word "pastoralist" in the instant context*".

50. Reg. 5. 1(a) of the 2006 Regulations imposes a statutory obligation on a decision maker to consider country of origin information when assessing applications for refugee status. How country of origin information should be assessed by a decision maker has been the subject of a number of decisions of this court. In *U.I. v. Refugee Appeals Tribunal & Ors* [2007] IEHC 72 Murphy J. stated:-

> *"It seems that an assessment of credibility, must accordingly, include an assessment of all relevant country of origin information. An assessment is more than an omnibus listing. A mere reference to taking into account the country of origin information submitted by the Refugee Legal Service would not appear to be an assessment let alone a rational analysis of the totality of the evidence."*

Counsel for the applicant submits that the analysis conducted by the Tribunal Member did not meet this standard. Counsel further relies on the dictum of Barr J. in *Chen v. Refugee Appeals Tribunal & Ors* (1st October 2014) where the judge states:-

> *"In the present case there was a large amount of country of origin information submitted on behalf of the applicants, both to the RAC and on appeal to the RAT. The RAT appears only to have had regard to one piece of COI on the basis that it dealt with Fugian province. This was the UK Home Office Report of April 2002 which was attached to the s. 13 report. Where COI documentation is submitted, it must be looked at and incorporated into the decision of the Tribunal, if only rejecting the documents, the reasons for so rejecting the documentation should be clearly stated. In this case, the remainder of the COI documentation was ignored by the RAT. It is necessary to refer the matter back to the RAT for further consideration of the applicant's claim in light of all the documentation submitted. The RAT will have to reconsider in the light of all the COI submitted whether the applicant and her husband are refugees owing to the fact that they fear persecution by reason of their membership of a particular social group."*

51. A Tribunal Member is not entitled to be selective in his or her assessment of country of origin information. In *D.V.T.S v. Minister for Justice & Ors* [2007] IEHC Edwards J. held that a Tribunal Member:-

52. "*Could not arbitrarily prefer one piece of country of origin information over another and had been selective in the material relied upon in arriving at the conclusion that the objective element for a well founded fear as defined in the United Nations Convention relating to the status of refugees 1951 had not been established by the applicant. In the case of conflicting information, it was incumbent on the (Tribunal) to engage in the rational analysis of the conflict and to justify the preferment of one view over another on the basis of that analysis*." It is argued by counsel for the applicants that a selective approach was adopted in this case.

53. The respondents argue the applicants' reliance on D.V.T.S is misplaced and refutes the contention that the Tribunal Member preferred one piece of country of origin information over another, rather, it is argued that the Tribunal Member found that the country of origin information did not support the claim advanced by the first named applicant that she was targeted because she was a Christian.

54. Moreover, the respondents' counsel, in arguing that the Tribunal Member had regard to all the country of origin information, relies on the dictum of McDermott J. in *B.J. v. Refugee Appeals Tribunal* [2014] IEHC 429 as follows:-

" *It is not necessary that particular reference be made to each document submitted, but it is clear in this case that all the materials submitted were considered: there was no evidence to suggest otherwise*."

Viewing the arguments advanced by the applicants against the aforesaid jurisprudence, I am not satisfied that substantial ground has been made out by the applicants on this issue. While I accept that not every piece of country of origin information was cited in the Decision that does not mean it was not considered; there are sufficient indicators therein that the country of origin information was the subject of analysis by the Tribunal Member and in so finding I rely on the approach adopted in *B.J. v RAT*. Furthermore, where information was specifically referred to and rejected, reasons were given for the rejection. I am not persuaded that the Tribunal Member was selective in her approach. The weight to be attached to any piece of evidence is entirely the preserve of the Tribunal Member. I would add that the overwhelming sense from the information which was before the Tribunal was that the focus of the MNJ rebel attacks (who the first named applicant says she feared) was on military posts, Government installations and uranium mines in the north of the country. While counsel for the applicant pointed to a reference in the WOW document to an incident concerning civilians in the south of Niger, this, to my mind, is not sufficient to impugn the Tribunal Member's assessment as it is not evidence that Christians were the target of that attack. The first named applicant's claim after all is a fear of persecution on religious grounds. Insofar as there was, in the information furnished to the Tribunal, reference to attacks on Christians, I am satisfied, both from a perusal of the information that was before the Tribunal and from the decision itself, extracts from which are quoted herein, that the Tribunal Member took account of that information and that it was weighed accordingly. The weight attributed thereto was entirely a matter for the Tribunal Member.

The alleged failure of the Tribunal Member to consider whether the applicant's are exposed to future persecution by reason of their religion and nationality

55. The applicants submit that that the Tribunal Member had a duty not to foreclose on the question of whether the applicants might suffer persecution in the future even if part of the account given by the first named applicant was disbelieved. In this regard, reliance is placed on the dictum of MacEochaidh J in *M.M.A v. Refugee Appeals Tribunal & Ors*, 13th February 2013 where he states:-

> *"I note that the case law, and in particular, the decision of Cooke J. in MAMA v. the Refugee Appeals Tribunal [2001] IEHC 147, clearly sets out the law on when an international protection decision maker must decide whether there is a*

risk of persecution in a forward looking way based upon an accepted nationality or ethnicity. When does that core element have to be decided? The MAMA case examines the point at which a Tribunal Member or a decision maker can find that the underlying facts supporting the claim for persecution are so lacking in credibility that there is no reason to proceed to determine ethnicity or the question of applying the forward looking test as to a fear of persecution.

I have no doubt that if the credibility were fair findings, this is the case which would have fallen squarely within the category of cases where the decision maker should have asked the question: 'What if I am wrong about credibility – should I decide the rest of the issues in the case?.'"

56. The respondents argue that the Tribunal Member's obligation to apply a forward looking test was encompassed in the finding that an examination of the evidence, in particular country of origin information, revealed no objective basis for the first named applicant's fears.

57. In *V.Z. v. Minister for Justice Equality and Law Reform & Ors* [2002] 2IR 135, McGuinness J. adopted the guidelines set out in the UNHCR Handbook on what may constitute a "*well founded fear of being persecuted*" and quoted from the Handbook:-

"As regards the objective element, it is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgment on conditions in the applicant's country of origin. The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin - while not a primary objective - is an important element in assessing the applicant's credibility. In general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there."

58. The respondents also argue that, in any event, the Tribunal Member is entitled to take account of adverse credibility findings when considering the extent to which an assessment of future persecution is necessary. The decision maker is not required to shut her eyes to the applicant's credibility. They point to the dictum of Cooke J. in *M.A.M.A. v. Refugee Appeals Tribunal & Ors* [2011] IEHC 147 where the judge states:-

"This court accepts as correct the approach to the standard of proof outlined in this case law. The sole fact that particular facts or events relied upon as evidence of past persecution have been disbelieved will not necessarily relieve the administrative decision maker of the obligation to consider whether, nevertheless, there is a risk of future persecution of the type alleged in the event of repatriation. In practical terms, however, the precise impact of the finding of lack of credibility in that regard upon the evaluation of the risk of future persecution must necessarily depend upon the nature and extent of the findings which reject the credibility of the first stage. This is because the obligation to consider the risk of future persecution must have a basis in some elements of the applicant's story that can be accepted as possibly being true. The obligation to consider the need for "reasonable speculation" is not an invitation or pretext for gratuitous speculation: it must have some basis in, and connection to, the apparent circumstances of the applicant."

59. The respondents submit that the above case can be distinguished from the applicants' circumstances on the basis that in *M.A.M.A.* there had been a finding by the tribunal that "*the situation in Sudan is indeed dire*" and that" *the ongoing situation in and around Darfur is a cause of great concern in the international community*" which, according to Cooke J. "*made it imperative that the appealed decision should address the issue as to a forward looking risk of persecution should the applicant be returned to Sudan*".

60. It is argued that in the present case, while the Tribunal Member accepted that the applicants were from Niger, she was not persuaded there was any objective basis for the applicant's fears and the first named applicant's subjective fear was found to be unreasonable. The respondents further placed reliance on the dictum of McDermott J. *in B.J. v. Refugee Appeals Tribunal & Ors* [2014] IEHC 429 where it is stated as follows:-

"The court is satisfied that the Tribunal in both cases conducted a forward looking test in considering the country of origin material submitted. …… I am also satisfied that the reference to a requirement of "firm evidence" that persecution "will" occur must be considered in the context of the entire decision which proceeded on the appropriate burden and standard of proof referring at times to the "serious possibility", "reasonable chance" or "real chance" of persecution and the citation and reliance upon the relevant statutory provisions concerning those matters. I am, therefore, satisfied that the grounds in respect of this aspect of the case have not been established."

61. In the circumstances which presented in this case, I am satisfied that the Tribunal Member's obligation to consider whether the applicants might suffer persecution in the future was fulfilled by the consideration given to the country of origin information and the Tribunal's finding that the first named applicant's claims were not supported by such information. Consequently, it is not necessary for this court to consider the matter in the context of the test laid down in *M.A.M.A.* and approved in *M.M.A.*

Conclusion

In two respects, namely the failure of the decision maker to take account of relevant evidence and the absence of a clear finding on the credibility or otherwise the first named applicant's core claim, substantial grounds have been made out such as warrants the granting of leave. I formally grant leave and as the hearing was conducted on a telescoped basis, I will make an order quashing the decision and remitting the matter for consideration before a different member of the Refugee Appeals Tribunal.