THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 1412 J.R.]

BETWEEN

B. O. AND A. O.

(AN INFANT SUING BY HER MOTHER AND NEXT FRIEND, B. O.)

APPLICANTS

AND

MINISTER FOR JUSTICE AND LAW REFORM,

REFUGEE APPEALS TRIBUNAL, IRELAND AND ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 27th day of January, 2017

1. These are telescoped proceedings in which the applicants seek individual orders of *certiorari* of the decisions of the Refugee Appeals Tribunal ("the Tribunal") which upheld the recommendations of the Refugee Applications Commissioner ("the Commissioner") not to declare them refugees.

Extension of Time
2. A short extension of time was required for the purpose of the within proceedings which the court was satisfied to grant, there being no objection by the respondents.

Background
3. The applicants are Nigerian nationals who sought refugee status in the State. The first named applicant states that she is a Christian member of the Yoruba tribe and hails from Lagos. In 2003, she met her husband who is a Muslim. They married in February 2006. She asserts that both his family and hers were opposed to their relationship and subsequent union, because of the difference in their religions. As a result, the first named applicant was regularly subjected to beatings by her own family between 2003 and 2006. They ultimately rejected her. Between 2003 and 2006, she resided, together with her husband, with her husband's family in Lagos. She and her husband moved to a different address in Lagos in January 2006, where the first named applicant remained until February 2007.

4. In or about August 2006, when the first named applicant was approximately two months pregnant, her mother in law told her that she should abort the baby. Neither she nor her husband was agreeable to a termination and consequently she was rejected by her mother-in-law.

5. On 23rd December, 2006, the first named applicant's husband left their home in Lagos to go to work. He failed to return. The first named applicant feared for his safety. She reported his disappearance to the police but they were unable to locate him. The applicant stated that she did not know what happened to her husband but that his mother did not approve of her marriage to him. She has had no contact with her husband since December 2006.

6. According to the first named applicant, the last time she saw her mother –in- law (January 2007), they had an argument and her mother in law injured her with an iron and she also poured hot food over her. The applicant asserts that she left Nigeria on 7th February, 2007, and travelled to Ireland with an agent.

7. She claimed asylum in the State on 8th February, 2007. The grounds of her claim were that she feared that she could be harmed by her own family or her husband's family if she were to return to Nigeria.

8. The first named applicant gave birth to the second named applicant on 17th March, 2007, and an asylum claim was made on her child's behalf on 3rd August, 2007. The basis of this asylum claim was that the first named applicant feared that the second named applicant would be killed arising out of the disapproval of the marriage between the first named applicant and her husband. The case was also made at the s. 11 interview under the Refugee Act, 1996, ("the 1996 Act") which was conducted on 17th August, 2007, that the second named applicant would be subjected to FGM by her husband's family, that the first named applicant's own family would give her tribal markings and that as an adult she would be subjected to the same problems as the first named applicant in that she would not be allowed to marry person of her choice and that she could perhaps disappear like her father.

9. The first named applicant's asylum claim was rejected by the Commissioner in a s. 13 report, under the 1996 Act, dated 9th August, 2007. It was rejected on the basis of credibility concerns raised as to whether she was the partner of a Muslim husband; that it did not appear credible that her and her husband's families would have allowed their relationship to continue between 2003 and 2006 without taking any action to end it; and on account of credibility concerns regarding her account of her travel from Nigeria to this State. It was also found that internal relocation within Nigeria was a viable option for the first named applicant given the limited group of people she feared.

10. The Commissioner's s. 13 report on the second named applicant's claim issued on 22nd August, 2007. The reason given for the rejection of the claim was that there were "a number of credibility concerns as outlined … in relation to the applicant's mother's claim on which [the second named applicant's] claim largely is based. In addition it is not apparent that the option of internal relocation is not a viable option for the applicant and her mother".

11. Both decisions were appealed to the Tribunal. The Tribunal conducted a single oral hearing in respect of both appeals on 21st July, 2010 and issued two decisions on 7th October, 2010 upholding the Commissioner. Both decisions are more particularly referred to else in this judgment.

12. The decisions are challenged on the basis that:

> "(ii) The RAT erred in law and breached the principles of fair procedures and natural and constitutional justice in failing to adequately assess the subject of the availability of state protection to the Applicants in Nigeria as it is obliged to do and the decision is therefore invalid.
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> (iii) The RAT erred in law and breached the principles of fair procedures and natural and constitutional justice in deciding the appeals in *pro forma* fashion with no individual analysis of the Applicants' claims.
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> (iv) The RAT erred in law and breached the principles of fair procedures and natural and constitutional justice in failing to give reasons/adequate reasons for the decisions and in engaging in conjecture in the evaluation of the Applicants' claims.
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> (v) The RAT erred in law and breached the principles of fair procedures and natural and constitutional justice in arriving at conclusions regarding the first Applicant's credibility without giving the first Applicant the opportunity to comment on several matters which were under consideration by the RAT.
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> (vi) The RAT erred in law and breached the principles of fair procedures and natural and constitutional justice in failing to have any adequate regard to the Notice of Appeal and further supporting documentation submitted by the Applicants in support of their claims to be refugees and in further failing to have adequate regard to the findings arrived at in the section 13 report compiled by the RAC.
>
> (vii) In determining the second Applicant's application the RAT relied on country of origin information which was not disclosed to the Applicant and therefore breached principles of *audi alteram partem*.
>
> (viii) In determining the second Applicant's application the RAT failed to appropriately weigh in the balance the country of origin information before it.
>
> (viv) In determining the applications the RAT applied an incorrect test in applying the internal relocation alternative."

The applicants' submissions

13. A principal complaint is that the Tribunal Member erred in finding that state protection was available for the first named applicant. While the Tribunal Member found that the first named applicant was afforded state protection by virtue of police intervention after she reported her husband's disappearance, she failed to have regard to the true cause of the persecutory treatment of which the first named applicant complained, namely the domestic violence sustained by her at the hands of her own and her husband's family.

14. The Tribunal Member then went on to make a finding that internal relocation was an option for the first named applicant. This was done without regard to the provisions of Reg. 7 of the European Communities (Eligibility for Protection) Regulations 2006 ("the 2006 Regulations"). Furthermore, the principles set out by Clarke J. in *K.D. (Nigeria) v. the Refugee Appeals Tribunal* [2013] IEHC 481 were not adhered to. In particular, the decision-maker failed to identify an area of Nigeria to which the first named applicant could safely relocate. It is submitted that as the relocation finding was made in circumstances where no issue was taken in the s. 6 analysis with the first named applicant's credibility as to her fear of persecution, it was incumbent on the decision-maker to conduct, in the words of MacEochaidh J. in *E.I. v. Min. for Justice* [2014] IEHC 27 a "*full blooded*" (para. 9) consideration of the internal relocation option.

15. Similar to the frailties which attach to the assessment of the first named applicant's claim, a number of serious issues arise with regard to the analysis to the claim put forward on behalf of the second named applicant. It is clear that this analysis commences with the finding that internal relocation was an option for her. Again however, as with the first named applicant, no area of Nigeria is identified. Nor was there any analysis of the second named applicant's personal circumstances, nor of those of the first named applicant as someone who was without the support of a husband or a family. Furthermore, the Tribunal Member erred in finding state protection would be available for the second named applicant if she relocated in circumstances where the country of origin information furnished to the Tribunal Member states that the state protection is not available for victims of domestic violence.

16. As with the first named applicant, the internal relocation assessment did not conform to the "*careful*" inquiry advocated by Clark J. in *K.D. (Nigeria)*. It is further submitted that insofar as the decision-maker refers to country of origin information as evidence that internal relocation was an option, it is not clear what information was being referred to.

17. Moreover, the fact that the decisions (made on the same day) states respectively that Nigeria has population of 140 million (the child's case) and 120 million (the first named applicant's case) is indicative of the level of consideration which was applied. The assessment of internal relocation takes up a substantial portion of the analysis of the applicants' respective claims. Yet none of the tests set out in Reg. 7 (1) of the 2006 Regulations are applied to their claims. Moreover, the test as to whether internal relocation was a viable option was applied otherwise than from a forward looking perspective in that it is suggested that the first named applicant should have relocated. It is submitted that the internal relocation assessments are fundamentally flawed.

18. Counsel also submits that the finding in the second named applicant's decision that "the applicant's mother's claim lacked credibility" and that she was not entitled to refugee status was not made in the first named applicant's decision. In particular, no finding was made as whether the first named applicant was credible or otherwise in relation to her claim that she was the victim of domestic violence. All the Tribunal Member suggests is that the first named applicant was not credible as to whether or not she went to the police in relation to the assaults perpetrated on her by her mother-in-law. It is submitted that even if the court were to find that the first named applicant's decision does contain a credibility finding, it was not a fundamental finding such that it went to the heart of her claim. At the end of the day, the Tribunal Member did not address the first named applicant's belief that she would not get assistance from the police, a belief that was backed up entirely by country of origin information to which the Tribunal Member did not have regard.

19. Furthermore, it is not satisfactory, just because the first named applicant was not believed in relation to that particular claim, that there would be no consideration of the risk to the second named applicant from FGM and/or tribal markings giving the country of origin information referable to the issue of FGM in Nigeria. It is submitted that the Tribunal Member was required to conduct a more comprehensive analysis of the second named applicant's fear of FGM and tribal markings, even if the first named applicant was not found credible with regard to her claim to be the victim of domestic violence.

20. In addition to having breached the requirements of Reg. 7 of the 2006 Regulations, the Tribunal Member failed to adhere to the

requirements of Reg. 5 which provided, inter alia, that account must be taken of all relevant facts as they relate to the country of origin at the time of taking a decision on a protection application. Given the strength of the country of origin information furnished to the decision-maker, regard should have been had to same so as to justify the conclusions reached as to the availability of state protection for the applicants and that they could relocate internally. If the Tribunal Member was to counterbalance the available country of origin information, which stated that police protection was not available for victims of domestic violence, she was required to provide reasons for so doing and to point to country of origin information to support her findings in that regard and/or to support her conclusion that the applicants could relocate within Nigeria. In this regard, counsel relies on the decision of Murphy J. in *I v. Refugee Appeals Tribunal* [2007] IEHC 72.

21. Insofar as the Tribunal Member referred, in the second named applicant's decision, to country information, it was by way of reference to unidentified country of origin material attached to the s. 13 Report in respect of the second named applicant. It is submitted that it is fundamental that the submissions which were made on behalf of the applicants (and their country of origin information) were considered and that one piece of information is not simply preferred over another without reasons for the said preference. Counsel cites the judgment of Edwards J. in *D.V.T.S. v. Minister for Justice, Equality and Law Reform* [2007] IEHC 305 where he states:

> *"While this court accepts that it was entirely up to the Refugee Appeals Tribunal to determine the weight (if any) to be attached to any particular piece of country of origin information it was not up to the Tribunal to arbitrarily prefer one piece of country of origin information over another. In the case of conflicting information it was incumbent on the Tribunal to engage in a rational analysis of the conflict to justify its preferment of one view over another on the basis of that analysis".*

The respondents' submissions

22. There is no merit to the applicants' claim that the decision of the Tribunal concerning the first named applicant is deficient because no reasons are provided in relation to a finding of adverse credibility. An adverse credibility finding was made and a reason given for same. This is clear from what the Tribunal Member states in her summary of the first named applicant's claim. When read as a whole, the decision clearly contains a credibility finding. There is no basis for the applicants' submission that any such finding has to be necessarily located in the s. 6 analysis, once there is a clear finding made in the decision. Clearly, the Tribunal Member raised issues regarding her credibility. The decision-maker clearly regarded the contradictions in her evidence, as before the Commissioner and at oral hearing before the Tribunal, as of importance. That finding, linked as it is to the comment in the s. 6 analysis of the second named applicant's claim, constitutes a clear adverse credibility finding in respect of the first named applicant and was not just a throw-away remark.

23. It is submitted that the court should be slow to impugn this finding which arises from the credibility issues identified by the decision-maker as arising from the contradictory nature of the first named applicant's evidence before the Commissioner and the Tribunal.

24. Overall, the decision in respect of the first named applicant contains a clear adverse credibility finding and a clear finding that state protection was available to her. Given the unequivocal comment on the first-named applicant's credibility in both her own and the second named applicant's decision it is clear that the Tribunal had a lawful basis to reject her claim without it being necessary to embark on a consideration as to whether internal relocation was available to her (which, in any case, the Tribunal Member did in fact consider). If the court finds that the Tribunal Member made clear credibility and/or state protection findings, then it is immaterial whether the internal relocation findings are flawed. In this regard, counsel relies on the approach of Humphreys J. in *R.A. v. Minister for Justice, Equality and Law Reform* [2015] IEHC 686 where he states, *inter alia*, that "*a finding that state protection is open to an applicant is fatal to an application*". (para.24) Thus, given that there was an unequivocal credibility finding made in respect of the first named applicant, any potential flaw in the decision-maker's internal relocation finding is of no relevance, particularly in circumstances where it was also found that state protection was available for her. In this regard, reliance is placed in the decision of Noonan J. in *M.O. v. Refugee Appeals Tribunal* [2015] IEHC 55 as to the onus which is on a protection applicant to rebut the presumption that a state can protect its citizens.

25. While the internal relocation finding made with regard to the first named applicant is succinct, the decision cannot be vitiated on that basis given the other pillars by which it can be sustained, namely the adverse credibility finding and the finding that state protection was available.

26. It is also clear from the second named applicant's decision that the decision- maker considered the claims advanced on her behalf with regard to FGM and tribal markings. However, as is evident from the decision, such fears were found to have been raised only at a late stage of the asylum process.

27. In respect of the second named applicant, the principal concern of persecution appears to have related to FGM and tribal marking. The Tribunal unequivocally found the claim of FGM and tribal marking not to be credible and thus that was dispositive of her claim. As such, an analysis of internal relocation was not required by the decision-maker. In any event, the Tribunal Member engaged on a proper assessment of the potential for the second named applicant to relocate by reference of country of origin information and found that "internal relocation to escape ill- treatment from non-state agents is almost always an option". The country of origin information relied on was from the joint British – Danish fact finding mission to Abuja and Lagos Nigeria 19th October to 2nd November 2004, as reported on in January 2005.

28. It is submitted that even if a "*full-blooded*" internal relocation assessment was required (which counsel states was not the case), the factual matrix in the applicants' cases may be distinguished from what was considered in *E.I.* where MacEochaidh J. found that a threat potentially existed for the applicants in that case from a number of relatives living in different places across Pakistan (See paras.13-14).

29. Insofar as reliance is placed by the applicants on principles 7 and 10 of *K.D. (Nigeria),* those principles are premised on a well-founded fear of persecution having been established, which is not the case here since the Tribunal Member found state protection was available to both applicants.

30. In summary, the respondent submits that where, in the round, there was a clear rejection of the first named applicant credibility, that is dispositive of the applicants' proceedings and the court does not have to embark upon an analysis of the internal relocation finding. Equally, even if the credibility findings are found to be equivocal in one or other of the decisions, if the court is satisfied that clear findings were made that state protection was available for the applicants, that is equally dispositive of the within proceedings and any perceived flaws in the credibility and internal relocation findings are not sufficient to vitiate the decisions.

Considerations

The Tribunal's decision in respect of the first named applicant
31. By way of preliminary submission, the applicants say that it was wrong in law for the Tribunal Member to state that an individual cannot be considered a refugee only because he or she has suffered outrageous behaviour from his or her fellow citizen's in the country of origin. The Tribunal Member stated:

> "It is clear from the Applicant's evidence that the only persons who caused her any difficulties in Nigeria are members of her own family and her in-laws. An individual cannot be considered to be a Convention Refugee only because he has suffered in his homeland from the outrageous behaviour of his fellow citizens. In order to satisfy the definition the persecution complained of must have been committed rather than condoned of by the State itself and consist either of conduct directed by the State towards the individual or in it knowingly tolerating the behaviour of private citizens or refusing or being unable to protect the individual from such behaviour".

It is contended that this approach is contrary to the Convention definition of a refugee and the definition set out in the UNHCR Handbook. They further assert that insofar as the Tribunal Member opines that persecution must have been committed rather than condoned by the state itself that is also wrong, albeit that it appears that the decision-maker did accept that persecution may arise if a state knowingly tolerates the behaviour of private citizens or refuses or is unable to afford them protection. The respondents submit that there is no merit in the argument that the Tribunal Member wrongly defined persecution for the purposes of the Convention. It seems to me that while the Tribunal Member's definition of persecution is expressed somewhat clumsily, the various elements of the Convention definition are recognised. The decision-maker was clearly cognisant that persecution by non-state actors occurs in circumstances where same in tolerated by the state or where the state is unwilling or unable to afford protection from such persecution. Accordingly, the applicants' complaint is not accepted.

32. The decision in respect of the first named applicant is challenged, inter alia, on the basis that the Tribunal Member failed to properly assess the adequacy of state protection for the applicant as a victim of domestic violence in Nigeria said by the applicant to have been sustained by her at the hands of her husband's family and her own family on grounds of religion and arising from the fact that she as a Christian married a Muslim. On the issue of state protection for the first named applicant, the findings of the Tribunal were as follows:

> "The Tribunal is not satisfied that the Applicant is without state protection in her country of origin. Her husband allegedly disappeared on 23rd December, 2006. She reported his disappearance to the police and the Tribunal is satisfied from the applicant's evidence that they took steps to investigate his disappearance by making enquiries at his mother house, his place of work and with his associates. Indeed the police kept the Applicant advised of their progress and abreast of developments."

The Tribunal Member was satisfied that "if the Applicant were to return to Nigeria …there is no reason for believing that she could be located by her in-laws". She was further satisfied that even if the first named applicant were located by her in-laws, if she reported her concerns to the authorities they would protect her.

33. The case made on behalf of the first named applicant is that the Tribunal Member was not entitled to make a finding that state protection was available just because the police investigated her husband's disappearance in circumstances where the country of origin information demonstrated that the Nigerian police did not investigate complaints of domestic violence.

34. The respondents contend that the applicants' submissions are premised on the basis that the first named applicant was found credible with regard to the issue of domestic violence. However, the respondents argue that her credibility in this regard was put in issue by the Tribunal Member, given the contradictions in her account as to whether she had reported her in-laws' violence towards her to the police. It is further contended by the respondents that even if the Tribunal Member did not address the question of whether state protection from the threat domestic violence from her mother-in-law was available to the first named applicant that is of no relevance given that the decision-maker had rejected her claim to be in fear of her in-laws on credibility grounds. Therefore, the respondents contend that the state protection finding which the Tribunal Member did make can be sustained.

35. The credibility finding relied on by the respondents, in disputing the argument that the Tribunal erred in the manner in which she addressed the question of state protection, is expressed as follows in the first named applicant's decision:

> "The Applicant told the Tribunal that her mother-in-law had injured her with an iron and poured hot food on top of her. At interview the Applicant was asked whether she had reported her mother in laws actions to the police and she indicated that she had not because she felt that the police had not taken any action in relation to her husband's disappearance and she felt that they would not be in a position to assist her. On the other hand at the oral hearing the Applicant indicated to the Tribunal that she reported the alleged attack by her mother-in-law to the police and that they had indicated that it was a family matter and they would not be prepared to take any action. The Applicant was unable to offer any explanation for the contradiction in her evidence and credibility issues arise in this regard. The Applicant also told the Tribunal that she was beaten up on many occasions by her mother and her elder sister because they were unhappy with her because of her relationship with her muslim partner. The Applicant confirmed to the Tribunal that she never complained to or reported any of these alleged assaults to the police."

36. Counsel for the applicant submits that while the summary of the first named applicant's claim records some contradictions in her evidence that was not sufficient to impugn her credibility given that no finding was made adverse to her in the s. 6 analysis. He further submits that the Tribunal Member did not say that it was a fundamental credibility finding.

37. On the issue of the location of the finding, I find that the mere fact that the finding is set out in the summary of claim, as opposed to the s.6 analysis, is of no particular relevance. Rather, the issue is whether, as phrased, it can be said to be a clear rejection of the first named applicant's claim that she was subjected to persecution by her in-laws (and her own family) as a result of her marriage to a person of a different religion. I am not satisfied that there has been a conclusive adverse credibility finding of the first named applicant's claims as to the treatment she alleges she sustained at the hands of her in-laws. The decision states that "credibility issues arise" on foot of the contradiction. The decision-maker however does not go on to resolve this at any point in the decision. That is the difficulty.

38. The respondents also point to the finding on the first named applicant's credibility as set out in the decision on the second named applicant's claim. It reads:

> "The claim advanced on behalf of the Applicant is exactly the claim as was advanced by her mother on her own behalf apart from the alleged fear of FGM and tribal markings. Nothing further was asserted in the Applicant's Notice of Appeal and the Applicant's claim is indistinguishable from the facts advanced by her mother on her own behalf. The Tribunal was satisfied that the Applicant's mother's claim lacked credibility and that she was not entitled to Refugee status".

39. The respondents thus argue that the credibility finding made in the first named applicant's decision was copper-fastened by the above finding in the second named applicant's decision. It is argued that while the approach of the Tribunal Member may be a little unorthodox it has to be remembered that the claims involved a mother and child and therefore it cannot be said that the processes by which decisions were arrived at were entirely independent of each other.

40. I find that I am in agreement with the applicants' submission that it is entirely unsustainable that the first named applicant would have to read both decisions together in order to ascertain if her credibility was impugned. As the question of the first named applicant's credibility as to whether she reported the actions of her in-laws to the police was not resolved in a conclusive manner by the decision-maker, it follows, to my mind, that it cannot be said that the state protection finding as set out in the first named applicant's decision was sufficient to determine that the first named applicant was not a refugee, as contended for on behalf of the respondents in the within proceedings.

41. In any event, I note that the Tribunal Member did in fact positively assert that if the first named applicant was located by her in-laws in Nigeria and that if she reported her concerns to the police that the police would protect her. Whether or which this finding was made by the decision-maker as a state protection finding *simpliciter* or made in the context that internal relocation was an option for the first named applicant (and the decision is somewhat unclear in this regard), it remains the case that this finding was made. If it has been properly arrived at it is sufficient to sustain Tribunal's rejection of refugee status for the first named applicant. However, the case made on behalf of the first named applicant is that the decision-maker failed to have regard to the submissions made on appeal as to the objective situation in Nigeria on the issue, and that the Tribunal Member made the state protection finding without regard to the country of origin information which had been furnished in aid of the first named applicant's appeal.

42. The UK Home Office report on Nigeria 15th January, 2010 states, inter alia:

> "The persistence of patriarchal attitudes and deep-rooted stereotypes concerning women's roles and responsibilities that discriminate against women and perpetuate their subordination within the family and society. …the continued high incidence of female genital mutilation in some areas of the country…[and] the absence of national legislation prohibiting this harmful traditional practice…the continuing prevalence of violence against women, including domestic violence, lack of legislation to address violence against women."

It goes on to state:

> "No functional feasible measures have been taken by the government in protecting women from violence both from state actors and non-state actors."

It further documents:

> "About one-third of every woman in Nigeria (sic) has at one time or the other been a victim of violence in its diverse form. Violence against women is mostly perpetrated by husbands, fathers, and relatives (basically people known to the women who suffer the violence). It is further reinforced by the culture of silence about violence against women especially the domestic type and other types perpetrated by family members."

The report also states:

> "The provisions of both international and regional laws on violence against women are not known to most Police Officers and Judges in the customary courts and even in some higher courts. Hence, Police Officers dismiss cases of violence against women as domestic affairs (private matters) that should be settled within the family, while some Judges in the customary courts, without any recourse to the provision of international and regional laws on violence against women, directly apply customary laws even when such reinforcesviolence against women."

43. In *M.O. v. Refugee Appeals Tribunal* [2015] IEHC 55, Noonan J. addressed the presumption that a state is capable of protecting its citizens, as follows:

> *"It seems to me that the authorities establish that there is a presumption that a state is capable of protecting its own citizens. Whilst that presumption can be rebutted, it requires clear and convincing proof to do so. If the decision maker arrives at a conclusion in this regard, the court cannot substitute its own judgment for that conclusion and will only interfere where it is established that the conclusion is one which no reasonable decision maker could have arrived at based on the evidence. It is immaterial whether the court agrees with the conclusion or not." (Para.20)*

44. On its face, the country of origin information put before the Tribunal on behalf of the first named applicant had the potential to support her contention that, if returned to Nigeria she would not be safe, and was thus capable of assisting her in rebutting the presumption that a state can protect its citizens. As to whether the country information constituted "*clear and convincing*" evidence of the absence of state protection, that is of course a matter for the Tribunal to weigh and not this court. Counsel for the applicants submits that whilst the Tribunal Member did not necessarily have to agree with the viewpoint expressed in the above report, she was obliged to take account of it, and if rejecting it state why this was so, which did not happen in this case. I agree with this contention, particularly in light of the decision-maker's assertion in the first named applicant's decision that the police would protect her if under threat from her in-laws. The clear import of the country of origin information, which the Tribunal Member did not address, was that there are no laws prohibiting domestic violence in Nigeria and that the police offer no protection in such cases. While in rare cases it may not be necessary for a decision-maker to consider country of origin information because of an *absolute* rejection of an applicant's subjective credibility, I find that no such unequivocal credibility finding was made in this case as might dispense with the requirement to consider the objective situation in Nigeria.

45. Accordingly, the decision-maker's finding as to state protection has no proper factual basis as she did not have regard to available relevant country of origin information. In those circumstances, the Tribunal Member did not give a proper reasoned decision in this regard, as required for the principles set by Cooke J. in *I.R. v. Min. for Justice* [2009] IEHC 353, and indeed by Reg. 5 of the 2006 Regulations.

46. In all the circumstances, I find that it cannot be said that state protection was assessed having regard to the available and relevant country of origin information. Ultimately, the Tribunal Member made a finding that state protection was available in respect of something which was not the cause of the applicant's fear of persecution and which did not reflect the prevailing information on the lack of state protection for victims of domestic violence in Nigeria.

47. Accordingly, the state protection finding made in respect of the first named applicant cannot stand. Nor can the respondent rely on a rejection of the first named applicant's credibility as dispositive of her claim for refugee status, as this court has found for the reasons set out above.

48. It remains now to be considered whether the Tribunal Member's finding that the first named applicant could relocate within Nigeria is sufficient to sustain the decision.

49. The Tribunal Member addressed the option of internal relocation by applying a forward looking test that if the first named applicant returned to Nigeria she would not be located by her in-laws and that even if located she would receive protection from the authorities. She went on to state:

> "Nigeria has a population of approximately 120 million and it seems extraordinary that the Applicant would elect to travel to Ireland a country where she knew nobody, in an advanced state of pregnancy, rather than relocate to an area in Nigeria where she would not be harmed or interfered with by her family".

50. I am satisfied that the internal relocation finding cannot sustain the decision. I find that it does not comply with the requirements of Reg. 7 of the 2006 Regulations or with the principles set out by Clark J. *K.D.(Nigeria)*. At a minimum, the Tribunal Member was obliged to identify a "part" of the first named applicant's country of origin "where there is no well-founded fear of being persecuted…" This is required under the 2006 Regulations. As I stated in *O.B.H. v. Refugee Appeals Tribunal* (unreported, Faherty J., 6th May, 2015)

> *"It seems to me that the phraseology of Regulation 7(1) requires that whatever "part" of the country of origin has been earmarked by a decision maker as a viable internal relocation option, it should be identified with some degree of specificity in the decision, be that by reference to a town, city, state or other geographical area, as the circumstances of the case may dictate.*
>
> *This is so because Regulation 7(2) mandates the decision-maker to have regard to "the general circumstances prevailing in that part of the country" (emphasis added) and "the personal circumstances of the applicant." (Para.47-48)*

51. It was conceivably open to the decision-maker to make the finding that the risk of persecution in the first named applicant's case would be removed if she relocated to another part of Nigeria, given that her alleged tormentors were non-state actors who were apparently located in and around Lagos. However, the decision-maker went on to state that even if she were located by her in-laws, if she reported her concerns to the authorities they would protect her. I have already determined that this finding was not lawfully arrived at given the failure of the Tribunal Member to consider the country of origin information which suggested that the contrary was the case. In any event, even if the Tribunal could reasonably conclude that there was some part of Nigeria (although the decision lacks any detail as to where in Nigeria the first named applicant could relocate) where the first named applicant would not be at risk of persecution from her in-laws and her own family, there remains the fact that the decision does not contain any assessment of the first named applicant's "personal circumstances" in the context of analysing the reasonableness of her relocating within Nigeria, as required by Reg. 7(1) and (2) of the 2006 Regulations. In *K.D (Nigeria)* Clark J. described the obligation on the decision-maker in the following terms:

> *"Reasonableness: It is not enough for the protection decision-maker to determine that the risk of persecution is absent from the proposed area of relocation. He or she must go on to consider whether it would be reasonable to expect the applicant to stay in that place, having regard to his / her personal circumstances and the general conditions prevailing on the ground, in accordance with Regulation 7(2) of the Protection Regulations. The reasonableness assessment is not concerned with assertions such as 'I won't know any one', but rather with matters of substance such as whether the applicant is old, infirm, ill, has many small children or is without family support and other real issues." (Para.28)*

52. At a minimum, the Tribunal Member was obliged to establish whether relocation within Nigeria would be unduly harsh for the first named applicant particularly in circumstances where the first named applicant was a single mother and would be apparently without family support. While these factors were ultimately for the Tribunal Member to determine in considering the reasonableness of the relocation option the fact of the matter is that they were not considered. I find that the absence of any consideration, on the face of the decision, of the first named applicant's "personal circumstances" is sufficient to impugn the finding that there was an option for the first named applicant to relocate within Nigeria. All in all, the decision cannot be sustained by reason of the internal relocation finding.

The Tribunal's decision in respect of the second named applicant

53. The s.6 analysis of the second named applicant's claim was as follows:

> "The Tribunal is satisfied that there are numerous areas in Nigeria where the Applicant could reside without coming to the attention of her father's family. In this regard the Tribunal notes country of origin information appended to the section 13 report the U.S. Department of State Nigeria Country Report on Human Rights Practices indicates that Nigeria is a federal republic composed of 36 states the capital territory with a population of approximately 140 million. The Tribunal is satisfied that there is no reasonable basis for believing that the Applicant could be located by her in laws were she to return to Nigeria. Further Country of Origin information appended to the section 13 report at appendix C indicates that internal relocation to escape ill treatment from non state agents is almost always an option.
>
> The Tribunal is further satisfied that the Applicant's mother's fears in relation to possible female genital mutilation and tribal marks being carried out on the Applicant against her wishes are not well founded; such fears were raised for the first time at a late stage in the asylum process. The Tribunal is satisfied from Country of Origin information that internal relocation is a viable option for persons seeking to avoid forced female genital mutilation and tribal markings at the hands of their families."

54. The basis upon which the second named applicant sought refugee status included, *inter alia*, the claim that she would be persecuted in Nigeria for the same reason as the first named applicant, namely that she would be harmed or killed because she was the child of a marriage which was disapproved of by both the first named applicant's family and her husband's family on religious grounds. This claim, as asserted on behalf of the second named applicant, was rejected by the Tribunal Member on credibility

grounds, the decision-maker finding that the second named applicant's claim in this regard was "indistinguishable from the facts advanced by her mother on her own behalf" and the Tribunal finding that the "Applicant's mother's claim lacked credibility".

55. The court, for the reasons set out earlier in this judgment, has found that there has not been, in the first named applicant's decision, an unequivocal rejection of the first named applicant's credibility regarding her asserted fear of persecution from her in-laws on ground of religion. In my view, the summary rejection by the Tribunal Member of the second named applicant's fear based on the same ground cannot stand in the absence of any proper credibility findings in the second named applicant's own decision on this aspect of her asylum. Given the equivocal status of the credibility findings made in respect of the first named applicant and the failure to state unequivocally as to whether the credibility of her claimed fear was rejected, I am satisfied that it was not open to the Tribunal Member to determine the second named applicant's claimed fear of persecution at the hands of her parents' families on grounds of religion in the *pro forma* fashion in which it was determined. What was required, at a minimum, was a reasoned analysis, in the second named applicant's decision, as to why the claim was rejected. This was particularly so given the absence of any such unequivocal rejection of her mother's claim in the latter's decision, upon which the decision-maker could then rely when considering the similar claim advanced on behalf of the second named applicant.

56. The Tribunal Member also rejected the second named applicant claims that she would be subject to FGM by her father's family and to tribal markings from her mother's family. These fears were found by the Tribunal Member not to be well founded on the basis that they "were raised for the first time at a late stage in the asylum process".

57. On behalf of the second named applicant it is submitted that it was not satisfactory for the Tribunal Member not to adjudicate on the risk posed to the second named applicant, in light of the available country of origin information on FGM and tribal markings which was before the Tribunal. The applicants submit that these fears were asserted on her behalf in the course of the s.11 interview conducted in respect of the second named applicant and, accordingly, it was not a late claim. They also submit that the Tribunal Member was not entitled to use a credibility finding made in respect of the first named applicant's claim to reject the second named applicant's claim to be in fear of FGM and tribal marking when these fears did not form part of the claims advanced by the first named applicant on her own behalf. I am not persuaded by the applicants' argument in the latter regard. Their contention is, to my mind, a misreading of what the Tribunal Member stated. The applicants also contend that it was "an error of fact" on the part of the Tribunal Member to find that the FGM and tribal marking claims were made at only a late stage in the asylum process.

58. The respondents assert that the FGM and tribal marking claims were considered by the decision-maker but discounted on credibility grounds for the reasons set out in the decision, namely that they only arose late in the asylum claim. The respondents also submit that the applicants' assertion that the Tribunal Member erred in fact is not pleaded in the statement of grounds. I agree with this submission. I find it difficult to relate anything in the applicants' grounds of challenge to the Tribunal's finding that the FGM and tribal markings fears were not well-founded. This finding is not challenged with any degree of particularity such as would require this court to consider its lawfulness or otherwise.

59. As already referred to, I am satisfied that the second named applicant has challenged (in grounds (iii) and (iv)) the Tribunal's findings regarding that aspect of her claim that aligned with that of her mother. This challenge has been made out for the reasons the court has already set out. Thus, the Tribunal's rejection of this aspect of the second named applicant's claim cannot stand. I should say, at this juncture, that there is no merit in the challenge (ground (vii)) to the second named applicant's decision on the basis that when making the internal relocation finding the Tribunal Member relied on country information not disclosed to the second named applicant. The information referred to by the Tribunal Member was that which attached to the s.13 report. Thus it was information which was known to the applicants' legal representatives. They had every opportunity to comment on same in their appeal submissions, if they so wished.

60. Notwithstanding the rejection of the second named applicant's credibility as regards her fears of persecution, internal relocation was considered as an option for her. Indeed, somewhat curiously, the s.6 analysis commences with a consideration as to whether the second named applicant could relocate internally within Nigeria despite the subsequent adverse credibility findings.

61. It falls to be considered whether the finding that internal relocation was an option for the second named applicant is sufficient to sustain the decision notwithstanding that this court has impugned the Tribunal's rejection of that aspect of the second named applicant's claim for refugee status which was based on the claim advanced by her mother, on the basis of the absence of reasons in the decision.

62. I find however that the internal relocation finding cannot sustain the decision. As with the first named applicant's decision, no part of Nigeria has been identified as a relocation site, as required by Reg. 7 of the 2006 Regulations, be that by reference to a general geographical area, city or otherwise. While the court, in principle, accepts that it was open to the Tribunal Member to opine, in the context of the second named applicant relocating within Nigeria, that there was "no reasonable basis for believing that [she] could be located by in-laws were she to return to Nigeria", and that "internal relocation is a viable option for persons seeking to avoid forced female genital mutilation and tribal markings", it remains the case that the decision-maker's analysis does not include any consideration of the second named applicant's "personal circumstances", as required by Reg.7 of the 2006 Regulations. It is not for this court to express an opinion as to the scale of such analysis. However, it is my view that had there been an analysis of the first named applicant's personal circumstances in the latter's decision, which logically would have had to include the second named applicant's details as the child of the first named applicant, it may be that a detailed analysis of the second named applicant's personal circumstances might not have been required to have been embarked on in her own decision, save a cross reference to the first named applicant's decision. Neither decision however contains the requisite consideration. For all the said reasons the finding that internal relocation as an option for the second named applicant cannot stand.

Summary

63. For the reasons set out in this judgment, and to the extent set out herein, I am satisfied that the challenge to the respective decisions has been made out. As these are telescoped proceedings, I will grant leave together with an order of *certiorari* quashing the respective decisions and I will remit the matters for *de novo* consideration before a different member of the second named respondent.