THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 277 J.R.]

BETWEEN

C.O.O. (NIGERIA)

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

REFUGEE APPEALS TRIBUNAL

ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms. Justice Stewart delivered on the 12th day of January, 2016

1. This is telescoped hearing for judicial review seeking *certiorari* to quash a decision of the Refugee Appeals Tribunal dated 19th November, 2009, and remitting the appeal of the applicant for *de novo* consideration by a different tribunal member.

Background

2. The applicant is a Nigerian national, born on 23rd March, 1969. She is of the Igbo ethnic group and a Christian. The following is the account given by the applicant that gave rise to her claiming international protection in this State. She married on 14th December, 1996, and lived with her husband in a village where her father-in-law was chief until he died in 1994. The applicant's husband was next in line to become chief but could not take up the role until he had a child. The applicant's difficulties with her husband's family arose because she did not have children. In 1997 or 1998 her husband's four brothers and two sisters forcibly performed female genital mutilation on the applicant because they believed women who do not have this done, do not get pregnant. The applicant and her husband had to move to another town in 1998 because the difficulties persisted with her husband's siblings. However, they continued to cause difficulties for the applicant even after the couple moved, by harassing the applicant in her new home. The applicant's husband reported the difficulties to the elders and the siblings promised to make peace. This, however, never materialised.

3. On 24th July, 2006, the applicant was working in her shop next door to her home, when her husband was out. Two of her husband's siblings came to the shop and assaulted the applicant. They returned the following day and burnt down her house. The applicant went to Lagos and stayed with a friend. She remained there for three days before leaving for Ireland. The applicant left Nigeria on 30th July, 2006, departing from Lagos airport with an agent, and travelling via Amsterdam to Dublin. She arrived in Dublin on 31st July, 2006. Her husband remains in Nigeria.

4. The applicant completed the initial ASY1 form on 1st August, 2006, and the application questionnaire on 9th August, 2006. She attended at the offices of the Refugee Application Commissioner (RAC) on 9th March, 2007. The RAC issued a negative decision in respect of the applicant's claim dated 16th March, 2007. The applicant's legal advisors issued a form one, notice of appeal to the Refugee Appeals Tribunal (RAT) on 4th April, 2007.

Impugned decision

5. The decision dated 19th November, 2009, was issued to the applicant with a cover letter dated 27th January, 2010, and exhibited from p.11 of the booklet of pleadings. The tribunal member sets out the applicant's claim, submissions made at the hearing before the tribunal and the applicable law. From p. 27, under the heading 'analysis of the applicant's claim, the tribunal member states as follows:

> "The Country of Origin Information together with the Notice of Appeal have been studied in depth in the context of the Applicant's credibility.
>
> Further the applicant's Legal Advisor handed to the Tribunal Statutory Instrument No. 518 of 2006 and paragraph 5, subsection 2 refers. This relates to assessment of facts and circumstances. This document and the paragraph referred to have been studied and applied to this decision.
>
> The Applicant in her demeanour in the opinion of the Tribunal was less than credible. Her account of her harassment over some eight years following her departure from Mbaise after she had been according to the evidence forcibly circumcised was lacking in credibility. She stated that she had been harassed over the next eight years in the way of name calling and maybe having some items thrown at her.
>
> The core of the Applicant's claim is that on 26 July 2006 her house was burned down but she made no effort to contact the police.
>
> The Applicant immediately went to Lagos where she stayed with a friend who contacted a Mrs Browne who apparently brought the applicant to Dublin. The cost of this travel was somewhere in the region of the equivalent of €1,500. This money was provided by a friend called Charity.

> The Applicant's husband remains in Lagos and it is unclear to the Tribunal why the Applicant did not stay there with him. She excused her departure on the basis that the husband's sister was in Lagos. Lagos has a population of ten to twelve million people and in the circumstance it might be considered the Applicant would be safe to remain there.
>
> It is simply not credible the Applicant would not have contacted the police arising from the criminal activities of her husband's two brothers. The allegation is that her house was burned down by these individuals and yet she considered the police would not have engaged in pursuing the matter arising from the criminal activities of her husband's siblings.
>
> In the opinion of the Tribunal the Applicant had not indicated or demonstrated that the harassment she was subjected to was as a result of her race, her religion, her nationality, her membership of a particular social group or political opinion.
>
> Further in the opinion of the Tribunal the Applicant could have remained in Lagos without any difficulty or could have avoided her relatives in other parts of Nigeria where she could have brought her ability as a trader to maintain herself."

6. The tribunal member then recites the law applicable when assessing the internal relocation alternative and concludes by affirming the negative decision of the RAC that the applicant should not be declared a refugee.

Preliminary issues

7. This matter first came before this Court on 18th June, 2015, when the respondents initiated a preliminary application. Counsel on behalf of the respondents submitted that the commissioner had made various findings in dealing with the applicant's application for asylum, only some of which were appealed to the Refugee Appeals Tribunal (RAT). One of the findings made by the commissioner was to the effect that the acts complained of by the applicant (in essence harassment by her in-laws and physical attacks by her in-laws) had not occurred for convention reasons. The respondents contended that this specific finding by the commissioner, i.e. a lack of a convention nexus was not appealed to the tribunal. The respondents contended that two consequences follow from the failure of the applicant to appeal that part of the finding by the commissioner to the RAT, namely:

> 1) In circumstances where there has been a failure on behalf of the applicant to invoke the appellate jurisdiction of the RAT, it is inappropriate to seek to have this Court (the High Court) exercise a supervisory jurisdiction by way of judicial review in relation to the tribunal decision.
>
> 2) A finding that the acts complained of occurred for one of the Convention grounds as are set out in s. 2 of the Refugee Act, 1996 (as amended) is vital to a finding that the applicant qualifies for refugee status. Without such a finding the applicant cannot qualify and the applicant in failing to invoke the appellate jurisdiction of the tribunal member in respect of this finding rendered her own appeal to the Tribunal moot.

8. This Court rejected the respondents' preliminary application for the following reasons. The question of the applicant appealing the finding in relation to a lack of a convention nexus was the subject matter of the notice of appeal, albeit not under a specific heading entitled 'failure to find a convention nexus'. It was abundantly clear from any reading of the tribunal decision and indeed the notice of appeal that the question of the applicant's entitlement to refugee status, i.e. that she had a claim that had a convention nexus, was both contained in the notice of appeal and was apparent therefrom and also it is apparent that it was dealt with by the tribunal member. The Court can only assume that an experienced tribunal member such as the person who determined the applicant's appeal would not have embarked upon an examination of such matters had he been of the view that the matter was not appealed and therefore not relevant to the work which the tribunal had to undertake.

Applicant's submissions

9. Counsel for the applicant, Mr. Colm O'Dwyer, S.C., with Mr. Ian Whelan, B.L., submitted that the RAT erred in law and breached fair procedures in the assessment of credibility; in a failure to give reasons, and in the assessment of internal relocation.

10. Counsel argued that the demeanour of the applicant was deemed 'less than credible' but no reasons were given for this finding. The applicant further submitted that reasons were not given for finding that her departure from Mbaise was incredible, and her stated reasons for not seeking state protection were not taken into account by the tribunal member. The tribunal member's finding of a lack of a convention nexus was stated without any reasons being given for same. Counsel contended that the applicant's claim is that of persecution based upon membership of a particular social group.

11. The applicant relied upon the decision of Cooke J. in *I.R. v. Minister for Justice, Equality and Law Reform & anor.* [2009] IEHC 353, maintaining that the contested decision falls far short of the standards enunciated in that judgment. The applicant also relied upon the decision of MacEochaidh J. in *R.O. (an infant) v. Minister for Justice and Equality & anor*. [2012] IEHC 573.

12. The applicant argued that the internal relocation assessment carried out in this case was unlawful, and relied upon the case *of E.I. & anor. v. Minister for Justice, Equality and Law Reform & anor.* [2014] IEHC 27. The applicant submitted that the respondents have conceded that the internal relocation finding was unsustainable; however, the applicant contended that in the instant case, that finding is not severable from the decision because of the equivocal nature of the credibility findings. The applicant argued that no definitive credibility findings have been made against the applicant and therefore, the decision cannot stand on that basis alone.

Respondent's submissions

13. Counsel for the respondents, Mr. Niall O'Hanlon, B.L., submitted that the decision contains substantial and reasoned negative credibility findings made against the applicant. Issues with the decision, counsel contended, are merely as a result of a stylistic choice of language, rather than a lack of clear reasoning in the decision. The respondents further submitted to the Court that these proceedings amount to an attempt by the applicant to appeal a decision of the RAT.

14. The respondents contended that because the credibility findings are substantial, the issue of internal relocation does not arise as a matter of law, and where the applicant was not found by the tribunal to have suffered persecution for a convention reason, the question of internal relocation simply does not arise.

Decision

15. The applicant submitted that the internal relocation assessment was carried out in circumstances where equivocal credibility findings were made. Therefore, the applicant's submission in regards to internal relocation is predicated upon this Court accepting the applicant's argument that the credibility findings are equivocal. I will deal with that aspect in due course. The internal relocation finding made by the tribunal is set out as follows:-

> "Further in the opinion of the Tribunal the Applicant could have remained in Lagos without any difficulty or could have

avoided her relatives in other parts of Nigeria where she could have brought her ability as a trader to maintain herself."

This does not comply with the requirements as set out by Clark J. *in K.D. [Nigeria] v. Refugee Appeals Tribunal & ors.* [2013] IEHC 481. However, the respondents argued that the credibility findings are substantial and, therefore, the internal relocation finding can be severed and the decision should not be vitiated as a result.

16. In *O.B.H. v. Minister for Justice and Law Reform & ors.* (Unreported, High Court, 6th May, 2015), at para. 40 thereof, Faherty J. states as follows:

> "The court does not propose to engage in an in-depth analysis of the Tribunal Member's credibility findings, since on any reading can best be described as equivocal. To borrow the phraseology of MacEochaidh J. in *E.I. v. Min. for Justice,* there is no clearly expressed comprehensive rejection of the applicant's credibility. The Tribunal Member's expressions, such as having '*no confidence in'* or having '*a problem with*' the applicant's evidence or documents or that his evidence 'seems strange' do not sustain the respondents' written arguments that "the applicant's credibility was seriously in doubt". To my mind, insofar as the Tribunal Member rejected the applicant's claim it was on the basis that internal relocation was an option for him."

It seems to me that the above extract is particularly apt in the applicant's case. It is unclear upon reading the decision if the applicant's claim has been rejected because of credibility or because the claim of persecution did not have a convention nexus. It would appear that the issue of internal relocation was considered in circumstances where it may have been accepted by the tribunal member that she was harassed by her husband's siblings. However, the applicant's claim was not solely that of a person harassed by her in-laws. She had stated throughout the asylum process that her claim was based upon harassment, assault and female genital mutilation. The tribunal member does not make a clear and definite finding in relation to FGM as a core element of her claim of persecution. If the tribunal member is to dismiss the applicant's claim because of a lack of credibility, then the decision should contain clear reasons for that rejection. Regulation 5(2) of the European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006) provides as follows:-

> "The fact that a protection applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall be regarded as a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated, but compelling reasons arising out of previous persecution or serious harm alone may nevertheless warrant a determination that the applicant is eligible for protection."

This is recited by the tribunal member at p. 23 of the decision. If an applicant raises a claim of past persecution then the tribunal member is obliged to consider same, unless there are definite findings that the event did not occur, with reasons being given for the rejection of the applicant's account.

17. Upon assessing the adequacy of reasons, MacEochaidh J. sets out the following at para. 30 of R.O. (an infant) (supra):

> "In view of the foregoing, I approach the review of the adequacy of reasons in this case by asking the following questions:
>
> i. Were reasons given or discernible for the credibility findings?
>
> ii. If so, were the reasons intelligible in the sense that the reader/addressee could understand why the finding was made?
>
> iii. Were the reasons specific, cogent and substantial?
>
> iv. Were they based on correct facts?
>
> v. Were they rational?"

I am not satisfied that the decision meets the criteria set out above.

18. For the reasons outlined above, I am not satisfied that the applicant's claim was given the proper and due consideration in the process of the appeal before the Refugee Appeals Tribunal. I therefore propose to grant leave and to grant an order of certiorari quashing the decision of the tribunal member and further remit the matter for de novo consideration by a different tribunal member.