Neutral Citation Number: [2012] IEHC 46

THE HIGH COURT

2008 386 JR

BETWEEN

F. O. O.

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Hogan delivered on the 2nd February, 2012

1. The applicant is a Nigerian pastor who has built his own church in Lagos. He arrived in the State in August, 2007 whereupon he claimed asylum. The Refugee Appeals Tribunal ultimately ruled against his application by decision dated the 21st February, 2008. The applicant now applies for leave to apply for judicial review to quash that particular decision.

2. The essence of the applicant's case is that in his role as a Christian pastor he has spoken out openly against the operation of Sh'aria law in Nigeria. As a consequence he contended that he became the target of a militant Islamic group called "Ahaddinjay". He contended this group accused him of being responsible for the death of one of their members and that, as a resulted, he was targeted by members of that group.

3. Matters are said to have come to a head in February, 2007. The applicant's church was burnt down and the following day his sister was murdered. He contends that he then advised the police of these developments and he in turn was advised to leave Lagos. He then went to a neighbouring state Oyo, where he stayed with his sister-in-law. He then left Nigeria to travel to Benin. He then subsequently returned to Nigeria but finally left Nigeria in August, 2007. He says that he took a ship from Port Harcourt to Morocco and from Morocco to Cork in September, 2007.

4. The applicant contends that he fears for his life if he returns to Nigeria, and that he will once again become a target for Islamic groups. He further contends that there is no effective state protection in Nigeria and it is on that basis that he claims that he has a well founded fear of persecution.

5. The Tribunal member did not think that the matters which the applicant complained amounted to persecution within the meaning of the Convention. It is also clear that the Tribunal member considered that the applicant's claim was wholly lacking in credibility:-

> "The applicant in his demeanour presented as lacking in credibility and his evidence was simply, certainly as far as the Tribunal is concerned, quite unbelievable."

6. The Tribunal member also went on to say in the same vein that the applicant's:

> "demeanour and credibility was unfocused and whilst he may be suffering from illnesses brought on by stress, the Tribunal will be of the view that he would be the author of his own misfortune."

7. The Tribunal member also found against the applicant on two other grounds. First, he stated the applicant "could easily have relocated". Second, the Tribunal member doubted whether the applicant could really be said to have well founded fear of persecution given that he had visited the United Kingdom almost ten times in two years before returning to Nigeria in each case. It was only subsequent to those trips that the applicant decided to come to Ireland and claim asylum.

The Tribunal's Credibility Assessment

8. The first thing to note about the Tribunal member's decision is that one cannot readily discern the reasons given for the conclusion reached. As we have seen, the Tribunal member expressed the view that the applicant's demeanour was "lacking in credibility" and that his evidence was "quite unbelievable." Passing over the fact that the description of a witnesses' demeanour as being "lacking in credibility" is itself an uncertain expression, the truth of the matter is that an assessment of demeanour in itself can rarely be a sure ground for dismissing the cogency of a witnesses' evidence by reason of that fact alone.

9. As Atkin L.J. so memorably observed in *Lek v. Matthews* (1926) 25 Lloyds Reports 525:-

> "The lynx-eyed judge who can discern the truth teller from the liar by looking at him is more often found in fiction or in appellate judgments than on the bench."

10. This is perhaps especially true in the context of asylum claims, not least that allowance will often have to be made for translation difficulties and different cultural norms in terms of the assessment of the demeanour of any witness. As Cooke J. observed in *IR v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353:-

> "In most forms of adversarial dispute the assessment of the credibility of oral testimony is one of the most difficult challenges faced by the decision-maker. The difficulty is particularly acute in asylum cases because, almost by definition, a genuine refugee will be someone who has fled home in circumstances of stress, urgency and even terror and will have arrived in a place which is wholly strange to them; whose language they do not speak and whose culture may be incomprehensible. Inevitably, many will have fled without belongings or documentation from areas in a state of anarchy or from the regimes responsible for their persecution so that obtaining any administrative evidence of their status and even identity may be impractical, if not impossible."

11. Cooke J. then went on to articulate nine guiding principles which have been consistently followed by this Court. It is sufficient for

present purposes to refer to principles 4,5 and 9:-

> "(4) 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.
>
> (5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding…..
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> (9) Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated."

12. It seems to me that the applicant can establish substantial grounds for contending that the Tribunal member violated these principles, not least in the absence of any reasoned dialogue to explain his conclusions. Why, for example, was the applicant's demeanour lacking in credibility? Did he hesitate to answer difficult questions? Did his answers given the impression that he had been coached or that his answers had been pre-prepared according to a set script? Did he unnecessarily avoid eye contact? Absent an explanation - which would not have to be discursive or lengthy - this Court might be coerced to conclude that the Tribunal member elected to disbelieve his evidence for purely subjective reasons, contrary to the fourth principle articulated by Cooke J. in *IR*.

13. The same holds true so far as the conclusion that the applicant's evidence was "quite unbelievable" is concerned. Doubtless the Tribunal member did not intend that these words should be interpreted absolutely literally, but yet it is not clear which parts of the account are to be rejected (and why) and which are not. Thus, it does not seem to be in dispute but that the applicant was a Christian pastor in Nigeria or that he had given offence to Muslims by his denunciation of the Sh'aria law and by the stridency of his Christian preaching. The Tribunal member appears to agree that such had occurred, since he expressed the view that he was not surprised "that the Muslim community would take grave exception to the manner of his preaching".

14. One is left to presume, therefore, that the Tribunal member discounted the applicant's narrative regarding the burning of the church or the murder of his sister on the following day. Yet the reasons for this conclusion are simply not explained. As Cooke J. observed in *SBE v. Refugee Appeals Tribunal* [2010] IEHC 133:

> "Where a finding is made on credibility, an appeal decision of this kind should show clearly the process by which it is reached and identify the salient points or issues on which an applicant has not been believed."

15. Accordingly, if this narrative is to be rejected on credibility grounds, then one might have expected that it would be rejected on familiar grounds which have a clear connection to readily ascertainable objective evidence. Thus, for example, the country of origin information might not support the story regarding the destruction of the church in February 2007 or the murder of his sister. One might also have expected, for example, that details of these events would be recorded in at least the specialist newspapers covering Nigeria, so that the absence of such media accounts might well have been a factor which might have led the Tribunal member (assuming, of course, such was the state of the evidence) to reject the applicant's account on credibility grounds.

16. In this regard, it may also be noted that the applicant was described by the report of the Office of the Refugee Applications Commissioner on 30th October 2007 as having submitted a newspaper article dealing with the Niger Delta Oil Crisis and photographs of the remains of his church. This material may or may not be relevant, but in this instance the ninth principle articulated by Cooke J. in *IR* comes into play:-

> "Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated."

17. Here again the material submitted by the applicant might well have had a direct relevance to the credibility assessment conducted by the Tribunal. If that material were found not to support the applicant's claim, that it itself might well have a direct relevance to such an assessment. But if this material is to be rejected, then, as Cooke J. reminds us in *IR*, the reasons for that rejection should be stated. As this was not done, then that in itself points to a further ground in respect of which substantial grounds have been established.

The Internal Flight Option

18. The Tribunal member also concluded that the applicant had the option of internal flight and, furthermore, that as the applicant had travelled frequently between Nigeria and the United Kingdom, this was inconsistent with the existence of a well founded fear.

19. So far as the internal flight option was concerned, no explanation whatever was offered for this conclusion, beyond a reference to the UNHCR Handbook and a quotation from the judgment of the English Court of Appeal in *R. v. Home Secretary, ex p. Robinson* [1997] EWCA Civ. 2089. Here again, a conclusion of this kind would seem to be inadequate, again for the reasons articulated by Cooke J. in *SBE*. In that case the Tribunal member had reached a generalised conclusion - just as in the present case - that the applicant could have safely relocated "in another part of Nigeria which has 130 million citizens". Cooke J. took the view, however, that such a finding was in itself inadequate:-

> "If the opinion thus expressed in that single sentence is intended to be a finding which supports the confirmation of the negative recommendation, it is in the Court's judgment clearly inadequate. It is devoid of any substantiation by reference to the facts of the case, the circumstances of the applicant and of his family or to the nature of the threat of persecution which relocation would serve to avoid.
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> It is well settled law both generally in the application of the Geneva Convention and of the 1996 Act and specifically by virtue of Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006, that a finding that internal relocation will provide protection involves a two fold consideration:
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> > (a) First, the identification – if only in general terms – of an area or place in the country of origin which can reasonably be expected to be free of the particular source of persecution from which the applicant requires protection; and
> >
> > (b) Secondly, an inquiry sufficient to confirm that a relocation there is feasible and reasonable to

> expect of the applicant (even if it involves hardship,) having regard to the personal circumstances of the applicant and of his family.
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> This second consideration is relevant because there may well be reasons of ethnicity, religion, political affiliation or family history why an applicant might not be able to move to or be safe in a given relocation and that can only be decided if the area or place is identified and has been made known to the applicant. In this case no particular area of possible relocation was mentioned either by the Tribunal member or in the s. 13 report so the applicant has never had it identified. No consideration was given as to whether there were areas outside Anambra state where Massob was active and if so which areas they were. This omission is all the more surprising in this decision because the Tribunal member quotes directly from para. 91 of the UNHCR Handbook: "In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would have been unreasonable to expect him to do so."

20. This analysis has clear resonances for the present case. Among the questions which the Tribunal must ask in respect of this issue is whether it is reasonably possible for this particular applicant to travel to another part of Nigeria in safety or whether, given his preaching activities, it is nonetheless likely that he would be targeted by Islamist groups and that police protection is likely to be inadequate. This is of the essence of the forward looking analysis which lies at the heart of any assessment regarding a well founded fear. Yet, in the absence of such an analysis, the applicant can clearly demonstrate substantial grounds of challenge to this aspect of the decision as well.

Travel from Nigeria to the UK

21. So far as the travel to the UK is concerned, this in itself would generally be inconsistent with a well founded fear. But the salient feature of this travel is that it all appears to have taken place before the events of February 2007 of which the applicant complains relating to the burning of his church and the murder of his sister. The applicant is entitled to say that it was those events which grounded the well founded fear, so that his travel *prior to that date* is not rationally connected to the question of his well founded fear.

Conclusions

22. For all of those reasons, I consider that the applicant has demonstrated that he has substantial grounds for challenging the decision of the Tribunal and I accordingly propose to grant leave to challenge that decision. I will discuss with counsel the form of the order.