Neutral Citation [2012] IEHC 71

THE HIGH COURT

JUDICIAL REVIEW

[2011 No. 656 J.R.]

BETWEEN

O.J. (NIGERIA)

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Kevin Cross delivered the 3rd day of February, 2012

Introduction

1. The applicant is seeking various reliefs against the failure of the respondent to grant subsidiary protection dated 3rd March, 2011, and to quash a deportation order dated 25th May, 2011. By order of this Court, dated 16th August, 2011, Dunne J. granted the applicant leave to apply for judicial review on the ground set out in para. E(1) of the application. This ground was on the basis that the refusal of subsidiary protection was not arrived at in accordance with the procedures mandated by EU Directive 2004/83/EC of 24th April, 2004, (the Qualification Directive) and in particular the requirement of Article 4.1 of the Qualification Directive which states:-

> "Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for internal protection. In cooperation with the applicant and it is the duty of the Member States to assess the relevant elements of the claim."

2. Leave was granted in respect of the above application inter alia, as in the case of *Mujyanama v. Minister for Justice, Equality and Law Reform and the Attorney General* (18th May, 2011) Hogan J. made a reference to the Court of Justice on the above point.

3. Counsel on behalf of the applicant urged that I should adjourn consideration of this ground until the European Court of Justice had given a decision on the matter. This application was opposed by the respondent.

4. The matter also came before me seeking leave for judicial review on a number of grounds which may be grouped together.

5. The first substantive further ground in which leave for judicial review was sought, was the alleged failure of the respondent to provide an effective remedy in accordance with the Constitution and/or Article 13 of the European Convention on Human Rights and/or Article 47 of the Charter of Fundamental Rights of the European Union.

6. The second ground, it was alleged, was a failure by the respondents to operate a system whereby a challenge to a refusal of subsidiary protection by way of judicial review is automatically suspensory of any proposed deportation and this was in breach with the principle of equivalence.

7. There are further, what may be termed, substantive challenges to the decision on the basis that the treatment of country of origin information was irrational and unreasonable and that the conclusions did not flow from the premises and the reasons given lack clarity and further, it is alleged that application in support of subsidiary protection was stated to have been made "without prejudice" to the case of *Dokie* and *Ajibola* which matters references are pending before the Court of Justice and there was an alleged breach of legitimate expectation that the decision for subsidiary protection be delayed or that the applicant will at least be informed whether that decision would be made and given an opportunity to respond.

8. The deportation decision was also challenged on similar grounds to the subsidiary protection decision and also on its merits.

9. Accordingly, this Court i s faced with the somewhat complex position to having to determine:-

> (a) By way of a substantive application, whether there was a failure properly to transpose the provisions of Article 4.1 of the Qualification Directive by an alleged failure to co-operate with the applicant.
>
> (b) Whether a final decision on this point should be adjourned pending the conclusions of the Court of Justice in the *Mujyanama* case above.
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> (c) Whether the applicant should be granted leave on the points relating to effective remedy.
>
> (d) Whether the applicant should be granted l eave on the issue in relation o "equivalence".
>
> (e) Whether the applicant should be granted leave in respect of the various substantive facts to the alleged, unreasonableness or irrationality of the decision.
>
> (f) Whether the applicant should be granted leave in respect of the deportation decision.

10. It is also the case that any challenge to the subsidiary protection decisions by way of leave must show arguable grounds merely whereas challenges to the deportation decision must show substantial grounds.

Background
11. The applicant arrived in the State in August, 2008, and claimed asylum shortly thereafter. This claim was based on alleged fear of persecution at the hands of his then girlfriend's mother and upon religious grounds. (The applicant is Christian, having been attacked and threatened by an Islamic religious organisation and having suffered injury, including a broken leg as a result of assault by that group).

12. The applicant's claim was rejected by the RAT because the Tribunal did not accept that the behaviour of the girlfriend's mother would bring the applicant within the definition of a refugee and without accepting or rejecting the applicant's claim in relation to religions prosecution, it was deemed that the applicant could have enduringly relocated to avoid such persecution.

13. The applicant applied for subsidiary protection on 6th September, 2010, and the same was refused on 3rd March, 2011. The applicant has averred in his affidavit that he did not receive the subsidiary protection refusal, which had apparently been sent to him by letter of 5th April, 2011, until 21st July, 2011. The applicant therefore states that no extension is required and this is not disputed by the respondent.

14. The applicant applied for leave to remain on humanitarian grounds on 15th September 2009, and that application was rejected and the notification received by the applicant on 11th July, 2011.

15. The proceedings herein were initiated on 25th July, 2011.

16. It is argued by the applicant and accepted by the respondent that in the event of any relief being granted on subsidiary protection issues, that the deportation order must also be the subject of relief.

In cooperation with the applicant
17. It is argued that Article 4.1 has not been properly transposed into domestic law by means of SI 518/2006 or by any other means as Article 4.1 states:-

> "".....in cooperation with the applicant it is the duty of Member States to assess the elements of the claim".

18. It is submitted that there is no reference in SI 518/2006 to any requirements to cooperate with the applicant in the assessment of the elements of the claim. In particular it is submitted that there is a duty to co-operate, to communicate during the course of the assessment and a duty to make the applicant aware of any doubts in the mind of the Decision Maker. It is further submitted that there is a duty to prevent the applicant to attempt to refute or rebut any intended findings of the Decision Maker and to involve both the applicant and the Decision Maker in a interactive process until the final decision is arrived at and indeed to provide the applicant with a copy of any proposed decision prior to being finalised to afford to the applicant an opportunity to address any aspects that might suggest a negative result.

19. This question was first considered by Birmingham J. in *Ahmed v. Minister for Justice, Equality and Law Reform* (Unreported, High Court, 24th March, 2011) in which he said:-

> "The applicant places particular emphasis on the phrase 'in co-operation with the applicant' and says that the procedure that was followed here meant that there was no co-operation between the applicant and the respondent. A cooperative approach, it i s con tend ed, would require the respondent to update and the applicant on the information that was becoming available and invited response. In my view, the argument ignores the fact that an application for subsidiary protection is not made in isolation but is ordinarily made, and this is the situation in the present case, by someone who is applying for asylum, and has had that application considered and been refused refugee status. Even before the stage of submitting an application for subsidiary protection is reached, there had already been a considerable degree of interaction between an applicant and the authorities. This had involved questionnaires being issued and completed, interviews arranged and attended and submission of a notice of appeal and the convening of an appeal hearing."

20. In *MM v. The Minister for Justice, Equality and Law Reform, Ireland and the Attorney General* (the *Mujyanama* case) (Unreported, High Court, 18th May, 2011). Hogan J. stated:-

> "While it is true that the decisions of one or more High Court judges cannot strictly bind another, as I pointed out in my judgment in *I. v. Minister for Justice, Equality and Law Reform* [2011] IEHC 66, 'the established practice of this Court i s that, generally speaking, previous decisions should be followed':
>
> …
>
> "It is well established that, as a matter of judicial comity, a judge of first instance ought usually follow the decision of another judge of the same court unless there are substantial reasons for believing that the initial judgment was wrong ... Amongst the circumstances where it may be appropriate for a court to come to a different view would be where it was clear that the initial deci si on was not based upon a review of significant relevant authority, where there is a clear error in the judgment, or where the judgment sought to be revisited was delivered a sufficiently lengthy period in the past so that the jurisprudence of the court in the relevant area might be said to have advanced in the intervening period. In the absence of such additional circumstances it seems to me that the virtue of consistency requires that a judge of this court should not seek to second guess a recent determination of the court which was clearly arrived at after a thorough review of all of the relevant authorities and which was, as was noted by Kearns J., based on forming a judgment between evenly balanced argument."

21. When considering the meaning of "in co-operation with the applicant" in the same case, Hogan J. stated at para. 26:-

> "For my part, I rather think it unlikely from a consideration of the text, structure and general context of the Directive that the Union legislator contemplated through these bare words to constitute some sort of equal partnership between the application and the decision-maker as if they were, so to speak, the joint managers of a commercial undertaking."

22. It is true. of course, that Hogan J. did make a reference to the Court of Justice in *Mujyanama* and this will be discussed below.

23. Notwithstanding that fact, this Court has further rejected the argument in case of *B.J.S.A. (Sierra Leone (Akhiele)) v. The*

Minister for Justice, Equality and Law Reform [2011] I.E.H.C. 381.,in which Cooke J. stated:-

> "... there is no deficiency in the 2006 Regulations by reason of the absence of any express repetition of the words 'in co-operation with the applicant' in relation to the distinct assessment of an application for subsidiary protection. It is to be noted that the expression used in Article 4.1 of the Qualifications Directive in relation to the assessment of 'the relevant elements' of 'the application for international protection' covers the elements relevant to both forms of international protection. Those elements are described i n Article 4.2. They consist of the 'the applicant's statements and all documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection'. These are, in effect, the basic facts and documents relating to the applicant's personal history and to the basis of the claim and they are primarily considered and assessed in the asylum process including any appeal. The 'co-operative' nature of the first instance assessment phase is reflected particularly in, for example, the initial interview of an arriving applicant under s. 8(1) of the Act; the duty and function of the Commissioner to investigate the application under s. 11 (1): the interview of the applicant under s. 11 (2) and the powers of the Commissioner to make all necessary inquiries and obtain information; and by the reciprocal duty of an applicant to co-operate in the investigation under Article 11 C of the Act. While in an appeal to the Tribunal against a negative recommendation the onus lies with the appellant, the continuing investigative and co-operative character of the second phase is reflected in the power of the Tribunal under s. 16(6) to request the Commissioner to conduct further inquires or supply further information."

24. Furthermore, in the case of *P.I. and EI. v. Minister for Justice and Law Reform. Ireland and the Attorney General* [2011] No. 875 J.R. (Unreported, High Court. 11th January, 2012). Hogan J. again reiterated his view that this point was not likely to succeed.

25. Accordingly, it is absolutely clear that this Court has decided on a number of occasions that the State has more than adequately complied with its requirements in relation to cooperation "by the entire process in relation to asylum and that there is no obligation for the sort of interact ion that is argued for".

26. Accordingly, it follows that this Court should not be the subject of repeated lengthy arguments on the matter by applicants when the decision i s already clear. If an applicant wishes to maintain a position for further argument in the Supreme Court or elsewhere the custom of our courts is to allow such an applicant to formally raise the point so it can be fully argued elsewhere and move on, a matter that can be disposed of in seconds.

27. There is absolutely nothing in this case to distinguish it from any of the other decisions on the point.

The reference to the Court of Justice

28. It is argued that I should adjourn a final determination of the issue on this point to await the decision of the Court of Justice.

29. In the *Mujyanama* case, Hogan J. was given a translation of the Administrative Jurisdiction Council of the Dutch Council of State (*RADD Von State*) of 12th July, 2007, in case No. A.B.W. 07/14734 and 07/14733 in which he was of the view that the above decision threw new light on the possible interpretation of Article 4.1. Hogan J. quoted from the Dutch decision in the translation supplied to him as follows:-

> "As far as this subsection would already contain a directly applicable standard, there are no grounds for considering that the hearing invite cooperation obligations stretches further that giving the alien the opportunity to lodge evidence in support of hi s asylum application, and the secretary after assessing to what extent these elements arc relevant and giving rise to grant this application to inform the alien of the results of the assessment hereof, before a decision is made so as to facilitate the alien to remedy elements that incur a negative decision."

30. Hogan J. went on in his judgment to say that if this Dutch view is the correct one, would plainly entitle an order quashing the Minister's decision.

31. I am furnished with the translation of the decision and also a copy letter dated 26th July, 2011, from a Mrs. M.T. Van Schelven of the Directorate for Legal Representation in the Netherlands, in which she makes the point that the Dutch Court was considering not their implementation of the Directive, but rather the provision s of the Dutch Alien Act 2000, which predated the Directive. Clearly a Directive may be interpreted in different ways and the fact that the Netherlands by its domestic law had a different set of procedures in place than operates in this State should have no bearing on the obligations imposed by the Directive.

32. I have also been furnished with the applicant's submissions in MM. and a number of submissions al read y received in the Court of Justice from other parties.

33. Whereas Hogan J. did grant an injunction on 5th September, 2011, albeit somewhat reluctantly in the *Mujyanama* case pending the reference being decided. that was clearly granted as is stated in the judgment on the basis that if not grant ed there might be at least a perception that the outcome of the reference was thereby rendered somehow hypothetical and was reduced to the status of a moot or advised of the opinions.

34. As the law in this State is. in my opinion , entirely clear on the point and as the applicant would have a right of appeal in any event. I am not disposed to adjoin my decision on this point pending the determination of the Court of Justice, especially in view of the fact that this determination on the face of it seems to have been granted on the basis of an erroneous view of the facts in the Dutch decision.

35. Accordingly, I will refuse the request for an adjournment and will refuse the relief on the basis of ground E(1).

Effective remedy

36. The applicant through his counsel Mr. Paul O'Shea, B.L. submitted that judicial review as applied in domestic law to refusal of subsidiary protection and indeed deportation cannot be "an effective remedy" by reason of *inter alia* of the inability of the applicant to produce new material and thus rendering impossible to effectively dispute evidence before the original decision maker. It was also submitted that the alleged failure to provide an effective remedy of a refusal for subsidiary protection i s in breach of the principal of equivalence in that asylum applications proceed under domestic law (The Refugee Act, 1996 as amended) whereas subsidiary protection is a right under European Law based upon the provisions of the Qualification Directive. The principle of equivalence requires both forms of international protection being treated similarly and in those circumstances where there is a right to remain in the State

under an application where refugee status has been finally determined so there should be a right to remain in the State until an application process for subsidiary protection has finally been determined.

37. In *P.I and E.I. v. Minister for Justice. Equality and Law Reform* (Hogan J. 11th January 2012) and previously referred to, Hogan J. stated:-

> "Passing over for the moment the fact that the applicant has not specified any such remedy as alleged to be deficient and it is clear from a series of decisions of this court culminating the decision of Cooke J. in *I.S.O.F. v. Minister for .Justice, Equality and Law Reform (No. 2)* [2010] JEHC 457 and my own judgment in *Efe v. Minister for Justice, Equality and Law Reform (No. 2)* [2011] IEHC 214, that the remedy of judicial review was sufficiently flexible to vindicate the applicant's rights when such derives from the constitution, the European Convention on Human Rights or from the European Union Law. moreover quite independently from any obligations cast upon the State by Article 13 ECHR (and which litigants can, in suitable cases invoke by reference to s. 3 of the European Convention on Human Rights Act 2003), Article 40.2.3 of the constitution guarantees all litigants an effective remedy: See e.g. *Albion Properties Limited v. Moonblast* [2011] I.E.H.C. 107."

In my view therefore this aspect of the claim is unsustainable in law.

38. In this case the applicant also relied upon Article 47 of the Charter of Fundamental Rights and it was submitted by Robert Barron S.C. on behalf of the respondent and I agree that this Charter docs not expand upon the rights which a litigant enjoys under the Constitution and the European Convention on Human Rights.

39. My observations at para. 26 above apply to the submissions in relation to effective remedy.

Equivalence
40. It is argued by the applicant that as the application for asylum is proceeding under domestic law (originating in rights under the Refugee Act 1996) and the right to apply for subsidiary protection is a right under European Law (it is alleged exclusively upon the provisions of the Qualifications Directive) that the principle of equivalence requires both forms of international protection to be treated similarly.

41. It is argued that where there is a right to remain in a State until an application for refugee status has been finally determined so too there should be an automatic right to remain in the State until an application for subsidiary protection has been finally determined. It is submitted by the applicant that the failure to treat both forms of protection in an equivalent manner is contrary to European Law rendering the refusal of subsidiary protection invalid.

42. In relation to the issue of equivalence, Europeans Union Law requires an appeal against a decision that an applicant is not a refugee. An appeal against a refusal of subsidiary protection is only required in those European Union States where the application for refugee status arid subsidiary protection were examined together. This is the practice in the United Kingdom and indeed, as I understand it, in most if not all other EU States apart from Ireland.

43. Article 3.3 of the Qualification Directive (2005/85/EC) provides:

"Where Member States employ or introduce a procedure in which asylum applications are examined, both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection given under the circumstances defined by Article 15 of the Directive 2004/83/EC they shall apply this Directive throughout their procedure."

44. Dealing with this argument, Cooke J. in *S.L. (Nigeria) v. Minister for Justice and Equality* (Unreported, High Court, 6th October, 2011), stated:-

> "In the judgment of the Court. these arguments are unfounded. In essence, they ignore the basic legislative fact that the Qualifications Directive had two objectives. First it lays down common minimum standards for the substantive assessment of applications for refugee status in accordance with the Geneva Convent i on; and. second l y, it introduces to the common asylum system of the European Union a complementary form of international protection to be called 'subsidiary protection' in Un ion J aw. The provisions of the Qualifications Directive apply to both forms of international protection. The Procedures Directive, on the other hand, applies only to applications for asylum, except where a Member State has availed of the option or entitlement to put in place a 'one-stop' procedure in which a single application is made and then considered and determined in one process, covering both asylum and subsidiary protection. The Irish legislation has not, to date, taken that course and there is no obligation in Union Jaw for it to do so."

45. Cooke J. went on to state:-

> "... while Member States must achieve the common minimum procedural standards in the asylum process, they are free to choose to apply the same provisions in any other form of international protection including, obviously, subsidiary protection but are not obliged to do so."

46. The applicant relies upon the *Efe v. Ministerfor Justice, Equality and Law Reform and Ireland and the Attorney General (No. 2)* (Unreported, High Court, Hogan J., 7th June. 2011), in the above case, leave was refused but Hogan J. stated:-

> "In judicial review proceedings it is not permissible for this Court to receive and act on new evidence, since to do so would be to cross a border between appeal and review. If there were no mechanism whereby material new facts which impacted significantly on constitutional rights emerged after the relevant administrative decision could be reviewed, then such a lacuna would amount to a failure to vindicate constitutional rights for the purposes of Article 40.3 and the Court might have to give a declaration to this effect. As it happens, however, there i s such a mechanism, in that s. 3(11) of the 1999 Act allows the Minister to revoke a deportation order."

47. In this case also, should the question of additional or further information arise (and there is no suggestion that it has, and the locus of the applicant to argue this point is at least doubtful), then the applicant could have made a further application against the deportation order which the Minister could revoke with any conditions.

48. However, I will not decide this issue on the lack of *locus standi* of the applicant.

49. In *P.I and E.I. v. Minister for Justice, Equality and Law Reform*, Hogan J. (11th January, 2012) stated:-

> "In essence, therefore, as I pointed out in *SZ*, the argument based on equivalence is constructed on a false premise. As Cooke J. so painstakingly pointed out in *A*, the different treatment of asylum and subsidiary protection applications i s one which is expressly contemplated and, indeed, sanctioned by the Procedures Directive ...."

50. Accordingly, in my view, it i s clear that the applicant has no basis to argue that there has been any breach of any principle of equivalence.

51. My observations at para. 26 above are also applicable to the issue of equivalence.

The substance of the application for subsidiary protection
52. This is an application for leave in relation to subsidiary protection (apart from the argument in relation to ground E(1)(e) (as cited above) and the applicant must show merely arguable grounds rather than the substantial grounds that he must show in relation to the deportation issue.

53. The applicant has argued that he made the application for subsidiary protection "without prejudice" to certain cases pending before the CJEU (*Dokie* and *Ajibola*) and reserves the right to submit further documentation and he submitted that there was a legitimate expectation that the application would not proceed until the results of those cases became known. or that he had opportunity to provide alternative information.

54. In my judgment this submission is without merit. The applicant was obliged to make his submission for subsidiary protection. There is no suggestion that the applicant has or had any further evidence or documents to submit.

55. Whereas on some occasions it is possible to conceive that a legitimate expectation might arise fro m the silence of one party, but in this case at no stage did t he Minister make any representation to the applicant either by word , deed or omission to the effect that the application would not be determined in accordance with law pending the determination by the Court of Justice to the references in *Dokie* and *Ajiholu*. In this case the applicant has no challenge to the decision of the Refugee Appeals Tribunal and indeed he did not seek an undertaking or injunction to restrain the Minister from determining the application for subsidiary protection as had been done in other cases.

56. Had the applicant submitted further information to the Minister prior to the decision and the Minister refused to consider it, the applicant might well have had a point to make based on the legitimate expectation in addition to any other poi n t he may have had from the Minister not considering information.

57. I do not believe that there is any basis in the submission that the Minister has by virtue merely of his silence on the point, given rise to any expectation legitimate or otherwise on the part of the applicant.

58. It is further submitted by the applicant that the decision lacks clarity, it is clear that the decision is not a legal judgment. but if it is not a legal judgment it must be considered as a whole. There is not any issue of lack of clarity in that what is decided is not the issue of credibility but that the applicant can avail of state protection in Nigeria. Some doubt was expressed in relation to some issues of credibility, but I am not of the view that the case was decided on that issue, but on the safety of the applicant on relocation.

59. The decision of the Tribunal was "the reason the applicant was obliged to leave Ogun state was, he said, because of the behaviour of hi s partner's mother. This does not bring the applicant within the definition of a refugee as defined in paragraph 5.1. The alleged persecution suffered by the applicant in Kano state may or may not have happened as the applicant has recounted it. lf one accepts that it did happen, then internal relocation is a realistic option."

60. The applicant contends that the respondent did not consider the COI material in relation to the subsidiary protection however, material very similar to the COI material advanced by the applicant was integral to the decision of the Minister and this indicated widespread corrupt ion among the police force and that there was religious violence and persecution of Christians in northern Nigeria.

61. There i s no valid point to be made that the actual material exhibited by the decision maker was in fact different from the COI advanced by the applicant as it is agreed that the impact of the material actually considered is identical to that offered by the applicant.

62. The respond en t submits that whereas the COI recounts fully that there was corruption among the police force. it does not say that there is not an effective police force, to whom the applicant could apply for protection.

63. The decision of the Supreme Court in the *Meadows* case, clearly restated the test for judicial review as set out in *0' Keeffe* and *Keegan* of irrationality and unreasonableness but cl ari fi ed what i s required in certain cases, to satisfy this test is as stated by Cooke J. in *I.S.0. F v. Minister for Justice, Equality and Law Reform(No.2)* [2010] I.E.H.C. 457:-

> "Where the validity of an administrative or quasi judicial decision comes before the court on judicial review, the Court's starting point is the decision itself; the basis upon which it has been reached and the process by which it has been decided. It does not have before it an appeal against the decision, much less a merits-based appeal by way of re-adjudication of the original issue. Its jurisdiction is based upon the content of the decision and the law applicable thereto. Where the challenge to the decision is based upon the assertion that it has the effect of intruding disproportionately upon the fundamental rights of those affected by it, it is the duty of the court to assess whether the applicant demonstrates that it is disproportionate in the sense of being irrational or unreasonable according to the *Keegan/0' Keeffe* test. It does so by reference to the evidence, information and documentation available to or procurable by the decision maker at the time.... In the judgment of the Court no material difference exists between the evaluation of proportionality as regards the interference with •qualified rights' (as in the present case) and 'absolute rights' (as in the case of *Meadows*). If constitutional rights are in issue (whether absolute or qualified) it is the function and duty of the High Court to vindicate them. The same can be said for rights entitled to protection under the European Convention of Human Rights and the need for the High Court, in compliance with Article 13 of the Convention, to provide an effective remedy for that protection."

64. Taking this as the position following the *Meadow*s case, how can we treat the substantive decision of the Minister in relation to the applicant's case?

65. In my view while it is arguable that the decision, that there is a police force in Nigeria to which the applicant could get protection, is sustainable given the COI information upon which it was based, there has been absolutely no engagement (as is envisaged under *Meadows*) with the information furnished by the applicant that he had in fact sought protection from the police in northern Nigeria when he was advised that he should convert to the Islamic faith if he wished to have protection.

66. This important point raised by the applicant is simply not dealt with by the respondent in his decision and accordingly, I am of the view that it is at the very least arguable that the decision should be set aside as being unreasonable or irrational on that basis alone.

67. I think it would unfair on the applicant to limit his argument to his request for protection from the police and the failure of the decision maker to deal with that, but rather I would give leave for judicial review in relation to the subsidiary protection decision on the basis that:-

> "'The decision to refuse subsidiary protection in respect of the applicant was not proportionate or reasonable given the findings that state protection would be available if required notwithstanding the evidence that the applicant had already sought protection and the responses he received in that regard."

The deportation order
68. A number of challenges have been made to the deportation order, however, it is conceded by the respondent that if leave is granted i n respect of any of the applications in respect of the subsidiary protection matter that leave should also be granted in respect of the deportation order and accordingly I need not consider the other arguments and I grant leave in respect of E(7) of the grounds:-

> "The decision to make the deportation order in respect of the applicant was not proportionate or reasonable."

Conclusion
69. In this matter I am refusing all reliefs save granting leave for the judicial review on the grounds:-

> (a) The decision to refuse subsidiary protection in respect of the applicant was not proportionate or reasonable given the findings that State protection would be available if required notwithstanding the evidence that the applicant had already sought State protection and the responses he received in that regard.
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> (b) That if the subsidiary protection order is invalid then as a consequence the deportation order is also invalid.

70. I will hear the parties in relation to the issue of costs. The usual order would be to reserve the costs to the trial. I am minded in this case to do so, but to limit any costs to the applicant to one day and only to a challenge to the substance of the subsidiary protection decision and the deportation order and not to any costs incurred dealing with the issues of effective remedy, equivalence or the *Mujyanama* issue.

Approved: Cross, J