

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2009 No. 539]**

**BETWEEN**

**D. O.**

**APPLICANT**

**AND**

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

**RESPONDENTS**

**AND**

**HUMAN RIGHTS COMMISSION**

**NOTICE PARTY**

**JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 20th day of June 2013**

1. This is a 'telescoped' application for judicial review of the decision of the respondent refusing a recommendation of asylum. The applicant makes a complaint that the Tribunal failed to decide her core claim which was that she feared persecution because she was perceived to be a witch. The respondent's reply is that the applicant did not seek asylum in Ireland on that basis.

2. The applicant is from Ghana and was born in 1969. She has third level education and worked as a teacher from 2001 until 2007.

3. On 7th June 2007, the applicant completed an application form in accordance with s. 8 of the Refugee Act 1996, by which she sought a declaration of refugee status. She indicated that the reasons for seeking asylum were "political, religion, social". An officer of the Commissioner for Refugee Applications noted as follows:

"Applicant says that she was been forced in to marrying a Muslim by her uncle. Applicant owned land and there was a confrontation between the Muslim man and the applicant a day before he died. The applicant does not know what happened this man, but the authorities are after applicant in relation to it. She fled to Ireland to get away." [sic]

4. A questionnaire was also completed by the applicant. She indicated that her partner was in Ireland. Question 21 on the questionnaire asks 'Why did you leave your Country of Origin?' Over about 60 lines of writing, in fluent English and in clear handwriting, the applicant explains the essence of her case.

5. Her uncle arranged her marriage to an older Muslim and she "rejected the idea outright" because of her Christianity and because the man "was far older than me" and "he had two wives, in which one died of HIV/Aids".

6. The applicant says that following the death of her uncle, the man in question, who apparently had paid money to the applicant's uncle in respect of the promised marriage, sought to take the applicant's land in compensation. A confrontation ensued and the applicant reports that she told the man in question that:

"He would die first and whatever evil plans he executed for me will backfire. He would not prevail. The next day, [the man] was found dead on my piece of land".

7. The applicant says that she received a telephone call from her sister, warning her not to return to her apartment because "some angry mob, believed to be Muslims, and two men, believed to be from the police" had come looking for her.

8. A number of months after the applicant wrote the account I have just described, the applicant was interviewed pursuant to s. 11 of the Refugee Act 1996 on behalf of the Refugee Applications Commissioner. The applicant was asked why she left her country of origin. Again, she described the confrontation with the man in question and said "because I had an argument with him, I was being chased as a suspect by the police. So I never went home since then". The applicant was asked what happened to the man in question and she answered "I don't know what happened. Anything unnatural and they relate it to witchcraft and want to lynch me".

9. This was the first time the applicant indicated a connection between the death of the man and that she was perceived to be a witch. In answer to a question as to whether she could move to another part of Ghana, she also referred to this perception of her and indicated that a Pastor would not let her stay in a particular place because he thought she was a witch. The applicant was asked what she would fear if she were returned to Ghana and she said "if I go back to Ghana, I will be lynched by the deceased man's family".

10. Later in the interview, she is asked "who exactly is after you in Ghana?" and she replies "Two policemen, angry mob of Muslims for having confrontation [with the deceased]".

11. Further, she is asked whether somebody pursued her in Ghana after May 2007, and she replied:

"Nobody came after, but I lived like a prisoner, not going out. I was being chased by the Muslim group and the police too. When I was going to the Volta region because there was a barrier I had to disguise myself as a man as they were looking for me."

12. The applicant indicated that a Muslim mob pursued her following the death of the Muslim man she refused to marry and to whom she refused to give her land.

13. At the end of the s. II interview, the applicant amended her exchange and added another reason as to why she had left her country of origin, saying "It is because of my telepathic nature that they think I am a witch and want to lynch me".

14. The Office of the Refugee Applications Commissioner produced a report pursuant to s. 13(1) of the Refugee Act 1996, stating that the applicant feared persecution in Ghana for reasons pertaining to her religion and political opinions. The s. 13 report records: that the applicant fears that she could be wrongly prosecuted for the death of the man in question; that the police were looking for her in relation to his death; that the applicant's problems "relate to the death of a man on her land"; and that on hearing that the police were looking for her, the applicant fled. Finding that there was adequate State protection in Ghana, a recommendation to refuse asylum status was made.

15. The Refugee Legal Service filed a Notice of Appeal on behalf of the applicant. This Notice asserted that the grounds on which the applicant claimed to have a well founded fear of being prosecuted were "membership of a particular social group" and religion.

16. It is noteworthy that the Notice of Appeal form states:

"Please state clearly and concisely the grounds on which you are seeking to appeal the recommendation of the Refugee Applications Commissioner. The grounds of the appeal should indicate-

(a) to what extent (if any) you contend that the recommendation of the Refugee Applications Commissioner... erred in fact;

(b) to what extent (if any) you contend that the recommendation of the Refugee Applications Commissioner... erred in the application of the relevant law;

(c) any additional information."

17. The Notice of Appeal records the confrontation between the applicant and the deceased man and says that:

"She fled because she feared that members of [his] family, or locals would take the law into their hands, despite the appellant having played no part in [his] death."

18. The Notice of Appeal says that the Commissioner's error in law and/or in fact was to decide that the applicant's circumstances did not meet the criteria in s. 2 of the Refugee Act 1996, and it positively asserted that the applicant had been persecuted "on the grounds of her religion and membership of a particular social group".

19. At no stage does the Notice of Appeal identify which social group the applicant belonged to. Nor does the Notice of Appeal record any error on the part of the Commissioner in failing to identify and assess a claim made by the applicant that she feared persecution because she was perceived to be a witch. The Notice of Appeal is detailed and covers eight separate grounds of appeal.

20. On 17th January 2008, the applicant's lawyers wrote to the RAT and said that they wished to submit information in support of the appeal. Three categories of information were submitted. These categories of information are referred to as 'Query 1 of 3, Query 2 of 3, Query 3 of 3'. The information submitted to the RAT had been obtained by submitting queries to 'the Refugee Documentation Centre' (the "RDC"). I understand that the RDC is an independent service which operates under the aegis of the Legal Aid Board and maintains a collection of objective up-to-date country of origin information and asylum, immigration, and human rights documentation for general access. The RDC also provides a query and research service for the Refugee Legal Service and Legal Aid Board, Office of the Refugee Applications Commissioner, Refugee Appeals Tribunal, Irish Naturalisation and Immigration Service, Department of Justice and Equality and private practitioners associated with the above which is not available to members of the public.

21. Three queries were submitted to the Documentation Centre:

"1. Any recent reports of women being forced into marriage in Ghana. General reports re: treatment of women.

2. Reports of prevalence of mob justice in Ghana. Reports re: lack of due process for suspects.

3. General reports re: corruption, misconduct of police, regarding treatment of suspects. Particularly with reference to reports of female suspects/detainees being raped in detention."

22. In July 2008, the applicant's lawyers submitted further country of origin information relating to human rights abuses by police against suspects and relating to the prevalence of mob justice in Ghana.

23. In the exchange between the applicant's lawyers and the Refugee Documentation Centre, the response to the queries raised and the documents submitted in January 2008 to the RAT, it is possible to see what case was sought to be made on behalf of the applicant to the RAT. At no stage did the applicant's lawyers ask the Documentation Centre to research the position of persons perceived as being witches. Their concern, as revealed by these queries, was the position of women forced into marriage, the prevalence of mob justice and the extent to which the police are degraded.

24. Counsel for the applicant has relied upon this country of origin information in support of the claim that the applicant's claim was that she was persecuted because she was perceived to be a witch because that country of origin information describes, in certain places, the occurrence of violence against suspected witches.

25. A handwritten note was exhibited on behalf of the applicant which appears to record an exchange between the Tribunal Member and the applicant as to whether persons were blaming the applicant for the death of the man in question and asked how the applicant knew that the mob claimed that she was a witch. The applicant replied that although she had not seen or met this mob, her sister told her that the mob claimed that she was a witch.

### **The Tribunal Decision**

26. Section 2 of the decision of the Tribunal entitled 'Grounds of Appeal' says that:

"The Applicant's claim is based on the grounds of appeal contained in the Form 1 Notice of Appeal and the submissions therein, the country of origin supporting documentation, supporting documentary evidence and the submissions outlined at the oral appeal."

27. The Tribunal then sets out the applicant's claim. No part of this account refers to the applicant's alleged fear of persecution or harm because people perceive her to be a witch.

28. Section 4 of the Tribunal's decision entitled 'Submissions' records the applicant's legal representative as saying there was a lack of human rights in Ghana; that there was no State protection and that the applicant would not get a fair trial in Ghana. There is no reference in this section of the Tribunal's decision to any submission having been made regarding the applicant's fear of persecution because of her being perceived to be a witch.

29. Section 6 of the Tribunal's decision is entitled 'Analysis of the Applicant's Claim'. In examining the incidents surrounding the death of the man who sought to take the applicant's land, the Tribunal Member refers to that chapter in the applicant's life as a claim she advances in support of religious persecution. The Tribunal notes that the applicant did not state at the hearing what social group she was relying upon.

30. I have carefully reviewed all of the papers in this case. My view is that the applicant did not seek asylum in Ireland because she feared harm on the basis of being perceived to be a witch in Ghana.

31. The reasons for my conclusions are as follows.

(i) A clear statement claiming this fear is not contained in her s. 8 ASY 1 Form or in her own handwritten answer to the questionnaire as to why she was seeking asylum.

(ii) Notwithstanding references to her association with being a witch in the interview conducted by the Office of the Refugee Applications Commissioner, the Commissioner and his officials make no reference to this category of fear in their s. 13 report. The fact that this defect is not the subject of any complaint in the Notice of Appeal persuades me that neither the applicant nor her lawyers were concerned to advance this as a reason for seeking asylum protection in Ireland.

(iii) In submitting country of origin information in support of the Notice of Appeal, the applicant's advisors requested the assistance of the Refugee Documentation Centre. Information was sought in respect of a variety of matters but no request was made about the position of persons perceived to be witches in Ghana. Had this been the basis of or an important part of the applicant's claim, it is likely that the applicant's experienced legal advisors would have sought to substantiate the applicant's fear by seeking relevant and supportive country of origin information. That they did not do this is telling.

(iv) No complaint is made in these proceedings, whether by legal submission or by affidavit evidence, that the description by the Tribunal Member of the submissions made by the applicant's legal representative is inaccurate in any way and thus the evidence suggests that the applicant's lawyers did not advance a claim orally based on the applicant's persecution for reasons related to witchcraft.

(v) The Tribunal notes that the applicant did not state at the hearing what social group she was relying upon. In these proceedings, that statement by the Tribunal Member was not sought to be contradicted. The evidence presented does not appear to demonstrate anything to the contrary and thus I can conclude that the applicant did not identify 'women perceived to be witches' as the social group she claimed membership of and which attracted persecution.

32. The episode in the applicant's life concerning the confrontation she had with the person she was required to marry contains threads of persecutory tales - forced marriage, anti-Christian sentiment, mob violence, absence of State protection, etc. My view is that this tale, be it true or false, was not accompanied by a focused claim that the facts revealed the persecution of a woman believed to be a witch.

33. It would be harsh indeed to criticise the Tribunal for not having answered a case made obliquely, if at all. The decision of the Tribunal fairly answers the case that was made and did not fail to answer a claim that the applicant feared persecution on the basis of being perceived to be a witch because it can hardly be said that such a claim was ever made.

34. I therefore refuse to condemn this decision and decline to grant leave to seek judicial review.