Neutral Citation: [2014] IEHC 509

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 1524 J.R.]

IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT 2000, SECTION 5 AND IN THE MATTER OF THE REFUGEE ACT 1996 (AS AMENDED)

BETWEEN

N. O.

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL AND MINISTER FOR JUSTICE AND LAW REFORM

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered on the 2nd day of October, 2014

Introduction

1. In this application, the applicant seeks *certiorari* by way of an application for judicial review to quash the decision of the first named respondent (hereinafter referred to as "*RAT*") not to grant the applicant refugee status dated 18th October, 2010.

2. In the event that the applicant succeeds in securing this relief, the applicant also seeks by way of consequential relief, an order of *certiorari* of the proposal to make a deportation order in respect of the applicant.

3. The applicant also seeks an extension of time within which to bring the within proceedings.

Extension of Time

4. The applicant received the RAT decision on 18th October, 2010 and immediately contacted his solicitor and arranged to meet him. The applicant informed his solicitor that he wished to challenge the validity of the said order and the file was sent to counsel for his opinion under cover of letter dated 21st October, 2010. Further instructions relating to the applicant's case was sought and was provided on 12th November, 2010. The pleadings were settled and returned to the applicant's solicitor on 29th November, 2010. Due to the inclement weather prevailing at the time, the applicant was unable to travel to Tullamore to finalise the pleadings until 7th December, 2010. The proceedings were instituted on 8th December, 2010.

5. There is no replying affidavit on this aspect. In the circumstances, no case has been made that the respondents would be prejudiced by the extension of time sought.

6. I am satisfied that the applicant decided within the relevant period that he wished to seek judicial review of the RAT decision. He acted promptly in going to see his solicitor and a case was prepared for counsel without delay. While there was some delay on the part of counsel in returning the papers to the solicitor, the period cannot be seen as being unduly long, given the demands placed on a busy junior at that time of year.

7. The applicant has stated that due to the inclement weather prevailing at the time, he was unable to travel to Tullamore to finalise the proceedings until 7th December, 2010. The proceedings were issued on the following day. In the circumstances, I am satisfied that there is good and sufficient reason for allowing the extension of time sought in this case. Accordingly, I will extend the time for institution of the within proceedings up to and including 8th December, 2010.

Background

8. The applicant is a national of Nigeria, a member of the Edo tribe and a Christian. He met his wife, I.O., as a university student in 1999. He began to experience problems in 2005 when Itohan was told that she could no longer associate with him because she has been promised, by way of a forced marriage, to a man named Alhaji Musa Abu, who had paid a price to her father. Itohan is Christian and Mr. Abu is Muslim.

9. In May 2006, the applicant was kidnapped by Mr. Abu and his associates. Mr. Abu told the applicant to leave his then girlfriend and he offered him a bribe to do so. Mr. Abu warned the applicant that he would kill him if he refused to leave her alone and that he had committed similar acts of violence in the past.

10. The applicant was tied up by Mr. Abu's men and left at a road junction in Benin City. He reported this matter to the police, who questioned Mr. Abu but, in the absence of witnesses, no further investigations were conducted. In addition, Mr. Abu was able to persuade the police that he was not involved as he had been out of the country on a business trip at the relevant time.

11. In early June 2006, a number of men, including Mr. Abu, broke into the applicant's home. They assaulted Itohan who was pregnant at the time. They informed the applicant that they were aware of the fact that he had made a complaint to the police and warned him to stay away from the police. The applicant was badly beaten over the head. His wife was taken to hospital where she suffered a miscarriage. He went to the police immediately and they promised to investigate the incident.

12. Despite all this, the applicant and Itohan were married on 5th December, 2006. That month, a number of men including Mr. Abu set fire to the applicant's family home while his wife was present therein. His motorcycle was incinerated, but his wife managed to escape out the back of the house. This incident was again reported to the police. The police warned him to be careful for his own security and that Mr. Abu was a dangerous man who had to be avoided.

13. Following the acts of violence perpetrated against the applicant and his wife and the miscarriage she suffered, the couple separated and his wife went to live with her uncle in January 2007. The applicant moved to Lagos at that time and he lived there until September 2007.

14. In September 2007, the applicant was stabbed in the arm in an unsuccessful attempt to kill him. The man who assaulted him told him that wherever the applicant went in Nigeria, he would be found. This incident was not reported to the police out of fear of reprisals.

15. The applicant moved to Iguobaazuwa village in Edo State. In October 2008, the applicant was again assaulted by Mr. Abu's men but managed to escape. The applicant learned that his wife was living in Ireland and he travelled here on 31st October, 2008 and applied for asylum.

16. The applicant filled out the usual questionnaire and was interviewed pursuant to s. 11 of the Refugee Act 1996 (as amended). In a report pursuant to s. 13 of the 1996 Act, the ORAC recommended that the applicant should not be declared a refugee.

17. The applicant appealed this finding to the RAT and a hearing was held on 19th July, 2010. In a decision dated 28th September, 2010, the RAT held that the applicant was not a refugee.

Supporting Documentation
18. In support of his application before the RAT, the applicant submitted three police reports in relation to his complaints. These documents are significant and their content should be set out fully. The first document was dated 28th December, 2006 and was addressed to the applicant's wife. It was signed by Mr. Sunday Maya, the Area Crime Officer on behalf of the Assistant Commissioner of Police, Zone A, Benin City. It stated as follows:-

> *"REF No. CR3000/EDS/ACBZ/VOL.5/110*
>
> *Mrs. I.O.*
>
> *No. 51 Mission Road*
>
> *Benin City*
>
> *Police Investigation Report*
> *Re: Complaint Against Alhaji Musa Abu & others for assault, killing of an unborn child, arson and threatening violence*
>
> *1. I am directed to refer to your petitions dated 5th June and 11th December, 2006, respectively on the above subject matter and to communicate to you the outcome of the matter.*
>
> *2. You will recall that on 5/6/2006, you reported that you were unlawfully beaten up by one Alhaji Musa Abu and his cohorts, for allegedly not marrying him. That in the process you lost your three month old pregnancy. That your refusal to marry the man that is far senior to you necessitated your incessant attack and assault. That on 11/12/2006, when the said Alhaji Musa Abu received the information that you secretly got married to one Mr. N.O. at the Ikpoba-Okha Local Government Marriage Registry, Benin City on 5/12/2006, he grew annoyed and mobilised some irate youths to set your family house ablaze. That the fire was eventually put off with the swift intervention of some good citizen.*
>
> *3. Consequents upon your first report, statements were recorded from both parties, while you will recall that you were taken to the hospital for treatment where a medical report later revealed that you lost your three month pregnancy and sustained injuries but Alhaji Musa Abu could not be prosecuted then because your family waded into the matter with a view to resolve the scourge. That sequel to the reprisal which occurred on 11/12/2006 where your family house was set ablaze, your statement together with other witnesses were recorded. That while investigation lasted, effort made to locate Alhaji Musa Abu and his cohorts proved abortive. That the scene of crime was visited where myriads of property touched by the fire were observed and taken to the police station for further probe.*
>
> *4. From the investigation so far conducted, the following facts were deduced:-*
>
> *(i) That Mr. and Mrs. Igodaro are the biological parents of Mrs. I.O.*
>
> *(ii) That Mrs. I.O. was born on 3rd March, 1977.*
>
> *(iii) That when Mrs. I.O. was twelve years old she was given out in early marriage to one Alhaji Musa Abu who was already 45 years old then.*
>
> *(iv) That the said Alhaji Musa Abu took the financial responsibility of sending Mrs. I.O. to school alongside catering for her parents.*
>
> *(v) That when Mrs. I.O. grew up she discovered Alhaji Musa Abu to be too old for her age and thus fell in love with one Mr. N.O.*
>
> *(vi) That when Alhaji Musa Abu got wind of the secret affairs, he connived with others to beat her up on 5/6/2006.*
>
> *(vii) That Mrs. I.O. was taken to the hospital for treatment where a medical practitioner confirmed her to have lost a three month old pregnancy.*
>
> *(viii) That on 11/12/2006 Alhaji Musa Abu and his cohorts took advantage of Mr. and Mrs. I's application to resolve the matter which they could not carry out rather their daughter went further to actualized her affairs with Mr. N.O. by getting married secretly at the Marriage Registry to set Mrs. I.O. family house ablaze.*
>
> *(xi) That though Alhaji Musa Abu absconded immediately after the commission of the offence to avoid police arrest and prosecution, investigation also revealed that he left with a threat to kill Mrs. I.O. and her family wherever he comes across them.*

5. Recommendation: sequel to the above investigation and findings it is glaring that Alhaji Musa Abu acted out of provocation. That despite this, he lacked the legal backing to embark on such dastardly act.

6. Therefore, while it is recommended that Alhaji Musa Abu and his cohorts be charged to court for the offence of: assault, killing of an unborn child, arson and threatening violence as soon as they are caught, it is advisable that you should be security conscious, as the hoodlums determination to actualize their inordinate threat cannot be entirely invalidated.

7. Your cooperation to this end is highly solicited, in order to avert further incident please."

19. The second report was dated 22nd December, 2008, and was addressed to the applicant and was written by Mr. Rufus Orunkoyi, Assistant Commissioner of Police, Zone A, Benin City:-

"REF No. CR3000/EDS/ACBZ/VOL.5/110

Mr. N.O.

C/O Mrs. J.O.

[Address redacted].

Benin City

Police Investigation Report
Re: Complaint Against Alhaji Musa Abu & others for kidnapping and threat to life.

1. With reference to a letter dated 15th December, 2008, written by one Mrs. J.O. on your behalf requesting for a reissue of police investigation report on the above subject matter, I hereby reproduce as contain in my earlier report with reference No. CR/3000/EDS/ACBZ/VOL.4/426 dated 1st June, 2006:

With reference to your report dated 3rd day of May 2006 on the above subject matter.

2. You complain that Alhaji Musa Abu sent his boys to kidnap and detain you against your will for two (2) days and threatened your life asking you to leave Itohan whom you are presently dating secretly.

3. Based on this complaint, Alhaji Musa Abu and two (2) others were arrested, their residential houses and business premises were visited along with other suspected places which could have been used for the commission of the offence of kidnapping.

4. From the investigation conducted, the following facts emerged:-

(i) That Mr. and Mrs. I. who are the biological parents of Mrs. I.O. gave her out to Alhaji Musa Abu in early marriage when she was twelve (12) years old.

(ii) That you, Mr. N.O. was in secret love affairs with Itohan.

(iii) That at the said time of commission of offence, Alhaji Musa Abu travelled out of Benin City to Republic of Benin, a neighbouring west Africa country on business trip and therefore it was not possible for him to be at the scene of crime though in your statement you said you saw Alhaji Musa Abu in the room you were detained on the second day and he told you 'you man I am giving you chance to live so you should stop seeing Itohan and I will give you money but if you refuse you will regret ever coming into life'. You said that he told you he had previously dealt with people who are senior to him not to talk of you small boy that you should go and ask about him and should not play smart. The earlier you quit the affairs the better and that he will be monitoring you. He insisted that you should take the money and leave Itohan or else you will regret that he is not a man of empty words. It was immediately your eyes were tied back and you were taken away and dumped. When your eyes were untied by passer by you discovered that you were at Ikpoba Slope by Edwah Road junction.

(iv) During the visit to all suspected places that might have been in detaining you for the two (2) days, you were unable to establish the actual place used because in your statement, you said your eyes were tied up at various stages, that did not make you know the actual place of detention.

Recommendation: from the above investigation in findings your relationship with Itohan is the basis for your being kidnapped and threatened. The scene of crime cannot be ascertained by you and there is no other independent witness to corroborate your allegations. For now, there is no sufficient evidence to prosecute Alhaji Musa Abu and others, you are advised to steer clear from his path as no one could rule out the actualisation of his threat. You are also advised to be security conscious because it is clear that you are dealing with Alhaji Musa Abu and some faceless people. Case is closed for lack of sufficient evidence. Please."

20. The third report was also dated 22nd December, 2008 and was from the same writer. It was addressed to the applicant's wife. It stated as follows:-

"Ref No. CR3000/EDS/ACBZ/Vol. 8/66

Mrs. I.O.

C/O Mrs. J.O.

[Address redacted.]

Benin City

Police Investigation Report
Re: Complaints against Alhaji Musa Abu and Others for assault, killing of an unborn child, arson and threatening violence

1. With reference to a letter dated 15th December, 2008, written by one Mrs. J.O. on your behalf requesting for progress made so far on the above subject matter.

2. We inform that further to my report reference No. CR3000/EDS/ACBZ/Vol. 5/110 dated 28th December, 2006, recommending that Alhaji Musa Abu and his cohorts being charged to court, the action is yet to be implemented because he is still on the run and evading arrest for this offence and other offences committed by him.

3. Presently his motor company and other business premises are under key and lock because it was discovered that he is into a syndicate in stolen vehicles from neighbouring countries and also received stolen vehicles with the country for sale. He was also discovered to be a member of syndicate that specialises in human trafficking across the border of Nigeria to neighbouring west African countries.

4. All efforts made so far to arrest him proved abortive as his whereabouts is unknown.

5. In view of this events, the case has been closed and may be reopened for prosecution if culprits are arrested in future. It is also still advised that you should be security conscious, please."

The Creditability Issues
21. In the course of its decision, the RAT made a finding that the applicant had failed to provide a reasonable explanation to substantiate his claim that Ireland was the first safe country in which the applicant had arrived since his departure from his country of origin and that s. 11B(b) of the Refugee Act 1996 (as amended) was applicable.

22. Section 11B(b) provides that in assessing credibility of an applicant for the purposes of the determination of an appeal, the Tribunal:-

"shall have regard to the following:

…

(b) whether the applicant has provided a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing from his or her country of origin or habitual residence."

23. The applicant submits that the RAT erred in relying upon s. 11B(b) of the 1996 Act. The applicant stated that he travelled to Ireland having learned that his wife was residing here. However, at no point did the applicant contend that Ireland was the first safe country of origin in which he had arrived following his departure from Nigeria. In fact, at all times, he informed the authorities that he had travelled via France and Finland. The applicant cited the decision in *T. (F.) v. RAT & Ors* [2013] IEHC 167, where MacEochaidh J. stated as follows:-

"The provisions of s. 11B(b) of the Act are applicable where a claim is made by an applicant that Ireland was the first safe country encountered after he or she departed his or her country of origin. No such claim was made by the applicant in this case. It is, of course, perfectly permissible for a decision maker on an application for international protection to have regard to the failure of an applicant to seek refuge in a safe country encountered en route to Ireland. However, given the mandatory terms in which s. 11B of the Act is expressed ('The Commissioner or the Tribunal ... shall have regard to the following ...') it seems to me that the provision should only be cited in the connection with a credibility finding where its strict terms are met."

24. In the circumstances, the applicant submitted that the RAT acted *ultra vires* in applying s. 11B(b) of the 1996 Act and acted irrationally in taking account of an irrelevant consideration in the determination of his appeal.

25. The respondent accepted that the finding regarding the first safe State offends the principle set out by MacEochaidh J. in the *T. (F.)* case as the applicant did not expressly state that he regarded Ireland as the first safe State in which he arrived after leaving Nigeria.

26. In these circumstances, I am satisfied that the applicant's submissions are correct and that this credibility finding of the RAT cannot stand.

27. The RAT also made an adverse credibility finding under s. 11B(c) of the 1996 Act. It provides that the Tribunal must have regard in assessing the applicant's credibility to *"whether the applicant has provided a full and true explanation of how he or she travelled to and arrived in the State*".

28. The applicant stated that he flew from Lagos to Paris. He spent two days in France and then travelled on by air to Finland. He spent one night in Finland before travelling to Dublin. The Tribunal held that his account of his travel to Ireland "*has not been substantiated to the satisfaction of the Tribunal*". The applicant submitted that s. 11B(c) of the 1996 Act requires the RAT to consider whether the applicant provided a full and true explanation for his travel to and arrival in the State.

29. The applicant submitted that he had applied for asylum in Dublin Airport having disembarked from a flight from Tampere in southern Finland. An Italian passport in the name of Valentino was confiscated at Dublin Airport. His account of his travel was consistently stated in his asylum questionnaire, his interview under s. 8 of the 1996 Act and his interview under s. 11 of the 1996 Act. In the circumstances, it was submitted that the RAT failed to specify which elements of his travel account were accepted and which were rejected.

30. The applicant further submitted that s. 11B(c) of the 1996 Act was not relied upon by ORAC in its report under s. 13 of the said

Act and this finding, it was submitted, was "*merely incidental to the personal account given in this case and [does] not go towards his core claim*". See *T.(F.) v. Refugee Appeals Tribunal & Ors* (supra).

31. The applicant cited the following passage from the judgment of McDermott J. in *S.A. v. Refugee Appeals Tribunal* [2013] IEHC 277:-

> *"Though these are matters to which the Tribunal was obliged to have regard, care must be taken to ensure that a disproportionate emphasis is not placed upon them in the overall assessment of the applicant's claim."*

32. The applicant submitted that the RAT further rejected the applicant's credibility on the basis that Mr. Abu's failure to kill the applicant despite opportunities to do so, had not been explained to the satisfaction of the RAT. It was submitted that in arriving at this conclusion, the RAT had failed to address the applicant's evidence that he had been subjected to specific instances of serious harm in the past. This included kidnapping, the effective killing of his unborn child, arson and serious assault. In the absence of any assessment of the full picture from the available evidence and information, this credibility finding was, it was submitted, tainted by conjecture and/or speculation.

33. The allegations of kidnapping, killing of his unborn child, arson and serious assault were supported by documentary evidence in the form of the police investigative reports. Therefore, in order to arrive at the conclusion that Mr. Abu's failure to kill the applicant undermined his credibility, this documentary evidence had to be discounted.

34. In *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353, Cooke J. stated:-

> *"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."*

35. In this case, no reference was made to the police investigation reports when assessing the applicant's credibility and no reasons were proffered as to why they should be discounted. The decision does not explain why the documents' corroborative effect was dismissed, discounted or rejected. The applicants relied on the case of *Surman Barua v. Minister for Justice and Equality* [2012] IEHC 456, where it was held that if documents which are *prima facie* corroborative of the applicant's account of relevant events are to be discounted, dismissed or rejected, or somehow found not to have corroborative effect, it is incumbent on the decision maker to explain why.

36. The applicant complains that the decision does not follow the scheme under Regulation 5 of the European Communities (Eligibility for Protection) Regulations 2006. At no stage does the RAT attempt to identify which part of the applicant's story was unsupported by documentary evidence and having done so, how the credibility of the applicant's story is then to be assessed. See *Barua v. Minister for Justice* (supra) and *D.N. v. Minister for Justice and Equality* [2013] IEHC 447.

37. The RAT also made the following finding:-

> *"Finally, it must be pointed out that the applicant is not fleeing from an irate husband whose wife is fleeing from an arranged marriage. In fact, the evidence is that the applicant's wife was never married to [Mr. Abu]."*

38. The applicant submits that it was unclear from this statement whether the RAT rejected the veracity of the applicant's account on this basis (which appears to have been the intended exercise) or whether he regarded the risk of persecution as low.

39. The applicant points out that Mr. Abu had paid a bride price or dowry to marry the applicant's wife, I., yet the RAT took no account of this when making its assessment. The applicant referred to the Report of the Immigration and Refugee Board of Canada entitled *"Nigeria: Forced Marriage Among the Yoruba, Igbo and Hausa-Fulani; Prevalence, Consequences for a Woman or Minor who refuses to participate in the marriage; availability of State protection (February 2006)"* which was before the RAT at the time of its decision. In particular, the applicant had regard to the following portion from that report:-

> *"Under customary law, a bride price, or dowry, is paid to the bride's family by the groom (Bamgbose July 2002, 5; Asylum Aid May 2003, 20). In order for a woman to leave the marriage and 'regain her freedom,' repayment of the bride price is required (Bamgbose July 2002, 5). If the bride price is not repaid, the marriage is considered to still be valid, and any child to whom the woman gives birth is considered the child of her estranged husband (ibid)."*

40. The applicant explained to the RAT that Mr. Abu had never given the applicant a chance to repay the dowry. The applicant submitted that this finding suffers from the additional frailty that it takes no account of relevant COI, which in general terms supported his contention that Mr. Abu had persecuted him even though the proposed forced marriage had not yet taken place.

41. The applicant submitted that overall, having regard to the full picture presented by the evidence before the RAT "*it is difficult to see that this part of the decision achieves its stated purpose – weighing absence of documents and examining whether aspects of the applicant's narrative do not need confirmation". See D.N. v. Minister for Justice and Equality* (supra).

42. In the circumstances, it was submitted that the RAT decision failed to assess, adequately or at all the credibility of the applicant and thereby acted irrationally and/or disproportionately, or *ultra vires* or in breach of constitutional justice.

43. In response, the respondent submitted that the Tribunal held "*his account of his travel to Ireland has not been substantiated to the satisfaction of the Tribunal*". The Tribunal had regard to the fact that the applicant claimed to have left Nigeria and travelled to Paris and through immigration, without a passport. The Tribunal also had regard to the claim by the applicant that he travelled from Paris to Finland, and then to Dublin and when asked to explain why he took such an unusual route he replied "*I knew little about Ireland*". It is submitted that the Tribunal was entitled to rely on s. 11B(c) having regard to the evidence before it. The respondent submitted that to criticise the Tribunal for using the term "*substantiate*" in that context, is to over analyse the language of the Tribunal decision. It was submitted that this is not permitted. As Feeney J. stated in *O.A.A. v. Minister for Justice, Equality and Law Reform* [2007] IEHC 169:-

> *"The courts must pay due deference and regard to an adjudicator. Part of that is a recognition that it is not the court's function to dissect, parse or disassemble the written decision but rather to look at it in the round. Excessive concentration on a particular phrase or word can lead to an incorrect approach at variance with the requirement to consider the full context and meaning of the written decision."*

44. The respondent submitted that the Tribunal did not place a disproportionate emphasis on the means by which the applicant had travelled to the State. It was submitted that it must be noted that while adverse credibility findings were made, the Tribunal did not state that the entire claim, or the core of the applicant's claim was rejected, nor was the decision based on the lack of credibility. It was submitted that rather than discount the documentary evidence, the Tribunal had in fact relied upon the content of the police investigation reports in finding that State protection was available to the applicant.

45. The respondent submitted that as the Tribunal had found that State protection would be available to the applicant, the adverse credibility findings were not fundamental to the decision of the Tribunal.

46. Having considered the submissions on behalf of the parties, I am satisfied that the adverse credibility findings cannot be sustained. In relation to the applicant's account of his travel to the State, he had been consistent in his account during his dealings with the asylum officials. He had been in the company of a trafficker or agent at the time. The Tribunal gave no reasons as to why his account was unbelievable. I am satisfied that in the circumstances the credibility finding made under s. 11B(c) of the 1996 Act, cannot stand.

47. The rejection of the applicant's credibility on the basis that Mr. Abu had failed to kill the applicant despite opportunities to do so, had not been explained to the satisfaction of the Tribunal. In arriving at this conclusion, the Tribunal failed to address the applicant's evidence that he had been subjected to incidents of serious harm by the henchmen of Mr. Abu. This included, kidnapping, the killing of his unborn child, arson and serious assault. I am satisfied that the applicant's complaints in relation to this finding, that in the absence of an assessment of the full picture from the available evidence and information, this credibility finding is tainted by conjecture and speculation.

48. In order to arrive at the conclusion that Mr. Abu's failure to kill the applicant, undermined his credibility, the documentation in the form of the police reports, had to be discounted. In *I.R. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 353, Cooke J. stated as follows:-

> *"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."*

49. In failing to put this credibility issue in the overall context of the available information, the Tribunal strayed into speculation or conjecture to the effect that Mr. Abu had not tried to have the applicant killed. There was no evidence supporting this conclusion. There was evidence that an attempt had been made to kill the applicant when in September 2007, one of Mr. Abu's men had seriously assaulted the applicant with a knife. In the circumstances this finding on credibility cannot stand.

50. The statement that the applicant was "*not fleeing from an irate husband whose wife is fleeing from an arranged marriage. In fact the evidence is that the applicant's wife was never married to [Mr. Abu]",* is a statement which is consistent with the facts presented, but was of no probative value in relation to the applicant's credibility. It neither confirmed nor denied any credibility issue on the part of the applicant. It was an irrelevant and superfluous statement.

51. In the circumstances, I am satisfied that the Tribunal did not carry out any comprehensive examination of the applicant's credibility and in the circumstances the findings on credibility will have to be struck down.

The Issue of State Protection

52. In its decision, the RAT held that State protection was available to the applicant. The applicant has submitted that in a case where there are credibility findings against the applicant, it was illogical and redundant to make a finding on State protection. They cited the following portion of the judgment of Clark J. in *S.I.A. (Sudan) v. Refugee Appeals Tribunal* [2012] IEHC 488 at para. 18:-

> *"The experience of the Court is that there is a tendency among protection decision makers to consider the availability of internal relocation even when the applicant's narrative is found implausible. In general, such abundance of caution, which emanates from the EC's (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) and Regulation 7(1) thereof, only works if the decision maker also adds words to the effect. 'Even if I am wrong about my assessment and what the applicant says could be true, then moving to another area to escape her persecutors would be an option rather than seeking international protection' or 'even if I had not made adverse credibility findings and I accepted all that she says …'. Without words to that effect, the exercise is illogical in a claim which has been rejected on credibility grounds. No such qualifying words were used in this case."*

53. The applicant notes that no such words of qualification were used by the RAT in the present case. While the inclusion of such words may have made the decision read better, I am not satisfied that their omission vitiates the decision in this regard.

54. The applicant has argued that the RAT adopted mutually inconsistent findings in relation to the police reports. At one stage, the RAT stated that "*the veracity of these reports cannot be verified. If they are forgeries it goes against the applicant's credibility*". The applicant complains that no attempt was made to verify the authenticity of these documents, nor was any explanation given as to why the documents could not be verified. In such circumstances, to conclude that they may be forgeries that go against the applicant's credibility breaches fair procedures and flies in the face of commonsense, in that there is no evidence to support the conclusion.

55. The applicant complains that the RAT then proceeded paradoxically to rely upon the said reports. In this way, it is submitted that the decision creates two mutually exclusive realities:-

> *"In the first, the applicant submitted false police documents in support of his asylum claim.*
>
> *In the second, the applicant is the verified victim of serious criminality at the hands of a notorious villain."*

56. The applicant relies on the dictum of McMahon J. in *W.M.M. v. Refugee Appeals Tribunal & Ors* [2010] IEHC 171 at para. 18:-

> *"While the obligation to provide clear reasons is of importance in most administrative decisions, it is of more urgent importance in asylum applications as, pursuant to s. 16(17) of the Refugee Act 1996, the Commissioner's s. 13 report and the Tribunal's appeal decision must be furnished to the Minister to form part of an applicant's file before him in the event that an application for subsidiary protection and/or leave to remain on humanitarian grounds is made. An entirely credible applicant could be at an unwarranted disadvantage at that stage if the Minister's agents were unable to discern*

from the decisions of the asylum authorities that the applicant's account had been found credible and whether it was accepted that she would face a risk of serious harm within the meaning of the Geneva Convention, the Refugee Act 1996, or the Protection Regulations, if returned to her country of origin."

57. The applicant submits that in the circumstances the RAT decision fails to conduct any or any adequate assessment of the veracity or reliability of the documentation submitted by the applicant in support of his refugee application. Instead, it leaves the issue of credibility hanging in the air. In the circumstances, it is submitted that the RAT acted grossly unfairly, irrationally or disproportionately or *ultra vires* or in breach of the rules of constitutional justice.

58. The applicant argues that this failure by the RAT to carry out any adequate assessment of the documentation, was compounded by the conclusion reached by the RAT that:-

> *"It is difficult to understand how the applicant can persist in his claim and the total dismissal of the competence of the Nigerian police in Benin. Alhaji Musa Abu was detained and apparently absconded. The police have documented the complaints and deprived Alhaji of the opportunity of using his premises in pursuance of his criminal activities. Additionally, the police are intent on charging him, when the opportunity arises, with serious criminal offences."*

59. The applicant accepts that this was clearly one interpretation that could, in isolation, be placed on the police investigation reports. However, they point out that Mr. Abu remains at large and therefore continues to pose a threat to the applicant, notwithstanding that the matter had been reported to the police. It was submitted by the applicant that the police reports show that the police are ineffective because Mr. Abu remains at large several years after the lodging of the complaints against him.

60. In his interview, the applicant had stated that Nigeria was a corrupt place that works by influence. Even after the initial report in 2006, the applicant was still attacked by Mr. Abu's men. In these circumstances, the applicant argued that it was incumbent on the RAT to assess whether the clear evidence of corruption and ineffectiveness on the part of the Nigerian police could reasonably explain why Mr. Abu remained at large and whether the applicant therefore had a well founded fear of being persecuted if he were to return to Nigeria.

61. The applicant submitted that the RAT did not appear to address COI relevant to the applicant's claim and instead reached its conclusions on COI relating to cults as well as the largely ineffective police investigation of the applicant's complaints. In argument, the applicant had tried to make the case that the RAT failed to have regard to a 2009 Amnesty Report on Nigeria and a 2008 US State Department Report. The respondent objected to the introduction of these reports as they had been exhibited in an affidavit sworn on 23rd April, 2014, by the plaintiff's solicitor, but had not been put in evidence before the RAT. I rule that the objection of the respondent is well founded and that the said reports could not be relied upon as they had not been before the RAT when reaching its decision on 28th September, 2010.

62. The applicant submitted that the RAT failed to have regard to relevant COI and thereby acted irrationality or disproportionately or *ultra vires* or in breach of constitutional justice. He submitted further that the conclusion that State protection was available to the applicant was irrational and disproportionate.

63. The respondent argued that regard must be had to the presumption laid down in *Canada (A.G.) v. Ward* [1993] 2 SCR 689, that a State must be presumed capable of protecting its citizens. In the course of his judgment, La Forest J. stated:-

> *"Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty. Absent a situation of complete breakdown of state apparatus […], it should be assumed that the state is capable of protecting a claimant."*

64. This dictum was applied with approval by Birmingham J. in *GOB v. Minister for Justice, Equality and Law Reform* [2008] IEHC 229. In *O.A.A. v. Minister for Justice, Equality and Law Reform* [2007] IEHC 169, Feeney J. stated as follows:-

> *"As pointed out by Herbert J. in the Kvaratskhelia case it is the function of the Refugee Appeals Tribunal and, not this court in a judicial review application to determine the weight, (if any) to be attached to country of origin information and other evidence proffered by and on behalf of an Applicant. The Tribunal member correctly identified that the obligation was on the Applicant to provide clear and convincing evidence of the State's inability to protect. This was not a situation of a complete breakdown of law and order and therefore the correct approach was that it must be presumed that the State was capable of protecting its citizens. It was recognised that such presumption could be rebutted but that such rebuttal required clear and convincing evidence."*

65. The applicant had stated in his interview that he had reported his difficulties to the police on three occasions. The first report of 2006 had been before the Commissioner. At his interview, the applicant said he would get other reports. He duly submitted two further police reports both dated 22nd December, 2008. The respondent pointed out that at interview, the applicant said that he had gone to the police immediately after the alleged assault in 2006 and the fire in December 2006 "*because they [the police] were in the best position to protect us*".

66. The respondent submitted that it was a matter for the Tribunal to assess the material before it. The respondents relied upon the dictum of Keane C.J. in *Baby O. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 169:-

> *"In this case, it was entirely a matter for Mr. Leahy [the decision maker] to assess the weight that should be given to the various matters to which I have referred and it could not be said that there were no grounds on which he could not have reasonably arrived at the decision that her application for refugee status was manifestly unfounded."*

67. A similar finding was made by Herbert J. in *D.K. v. Refugee Appeals Tribunal* [2006] 3 I.R. 368, in which case he stated:-

> *"It is the function of the first respondent and, not of this court in a judicial review application, to determine the weight, (if any), to be attached to this country of origin information and other evidence offered by and on behalf of the applicant in this case."*

68. On the basis of the 2006 police report, it was submitted that the decision maker could come to the conclusion that the police were, in fact, pursuing serious charges against Mr. Abu, which showed that he did not have influence over the police.

69. The respondent argued that the COI before it demonstrated that while the police in Nigeria can be criticised, there were

considerable elements within the Nigerian police force who could be relied upon to fulfil their functions and offer protection when it is sought. The RAT did not quote from the COI, but referred to it in the following manner:-

> *"To a certain extent, the applicant is correct in his criticism of the effectiveness of the police in Nigeria. However, there are considerable elements within the Nigerian Police Force (NPF) who can be relied upon to fulfil their functions and offer protection when it is sought. For example, Country of Origin Reports (COIS Report on Nigeria 2008/9; IRB Report on Cults and Protection Issues Arising) are agreed that the Nigerian Police Force will take appropriate action when members of cults resort to criminal action such as threatening behaviour or murder."*

70. The respondent submitted that the references to COI were sufficient. They pointed out that in *K.D. (N.) v. Refugee Appeals Tribunal & Anor* [2013] IEHC 481, the Tribunal relied upon undisclosed COI and Clark J. held:-

> *"The Court takes notice that the references made by the Tribunal Member come from well-known and repeated extracts from annual reports on Nigeria published by the UK Home Office and the US Department of State which seem to find their way into most decisions about the level of state protection available from the Nigerian police force. Most practitioners in the field can recite the arguments for and against the proposition fairly well by heart. The argument for an effective police force is that a complainant who is dissatisfied with a particular level of the police can take his / her complaint to a higher level, while the contra argument is that in reality, that rarely happens. Therefore, while referring to undisclosed COI calls for valid criticism, in the circumstances of the now extremely well known COI, the prejudice suffered was minimal, if any. The applicant was represented at the appeal stage by lawyers who must be aware of the general tenor of the COI which is frequently referred to in Tribunal decisions regarding the Nigerian police force. The fact of non-disclosure is in the circumstances a very minor technical breach which did not affect the validity of the decision."*

71. The respondent submitted that the Tribunal did not find the police reports were forgeries but rather considered the possibility that either they were forgeries which would go against the applicant's credibility or that they contained information which undermined the applicant's claim that the police force was incompetent or otherwise unable or unwilling to protect the applicant. The Tribunal merely noted that the veracity of the documents could not be verified, and did not find that they were forgeries. As Cooke J. stated in *I.R. v. Minister for Justice, Equality and Law Reform* [2010] IEHC 353, if the Tribunal discounts or rejects documentary evidence, it must give a reason for doing so. It was submitted that it was clear that the Tribunal had neither reached the conclusion that the police investigation reports should be rejected or discounted, nor had any reasons been given for doing so.

72. The Tribunal had regard to the contents of the police investigation reports. The Tribunal noted that the documents provided certain information including that Mr. Abu was arrested and later absconded, that he was charged with the offence of kidnapping but that it was demonstrated that he was not present in Nigeria at the time of the kidnapping, and that when he is detained, he will be charged with assault, killing of an unborn child, arson and threatening behaviour. The Tribunal also noted that the police had prevented Mr. Abu from using his premises in pursuance of his criminal activities and that they were intent on charging him with serious criminal offences, once the opportunity arose.

73. The Tribunal concluded that the Nigerian State took reasonable steps to prevent the persecution or the suffering of serious harm by the applicant.

74. The respondent submitted that it was clear that the applicant sought protection from the State on a number of occasions. Though no suggestion had been made by the applicant at any stage that he had any reason to fear the police, or that they would refuse to act for any convention reason. While the applicant contended that the police would not act because of the connections of Mr. Abu, this was neither borne out by the evidence in general or the content of the police investigation reports. The Tribunal concluded both objectively and subjectively that there was evidence that the Nigerian State took reasonable steps to prevent the persecution or the suffering of serious harm by the applicant.

75. The respondent submitted that it was clear from the authorities that State protection was not required to be absolute or perfect. In support of this contention, they relied upon the following dicta of MacEochaidh J. in *T.O. v. Refugee Appeals Tribunal* [2013] IEHC 258, where the judge noted that the Tribunal Member had:-

> *"assessed all of the evidence and while accepting that there can be problems within the Nigerian Police Force she makes the finding that state protection would have been available to the applicant. I find no legal fault with this finding of the Tribunal. It is clear that in making the finding the Tribunal Member took cognisance of the dicta of Lord Hope in Horvath v. Secretary of State for the Home Department [2000] 3 WLR 379 to the effect that:*
>
> > *'The primary duty to provide the protection lies with the home state. It is its duty to establish and to operate a system of protection against the persecution of its own nationals. If that system is lacking the protection of the international community is available as a substitute. But the application of the surrogacy principle rests upon the assumption that, just as the substitute cannot achieve complete protection against isolated and random attacks, so also complete protection against such attacks is not to be expected of the home state. The standard to be applied is therefore not that which would eliminate all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard, which takes proper account of the duty which the state owes to all its own nationals...under reference to Professor Hathaway's observation in his book, at p. 105, it is axiomatic that we live in an imperfect world. Certain levels of ill-treatment may still occur even if steps to prevent this are taken by the state to which we look for our protection.'"*

76. The respondent contended that the findings of the Tribunal in relation to State protection were entirely reasonable and made *intra vires*. They further submitted that the evidence proffered by the applicant was insufficient to rebut the presumption in *Canada (A.G.) v. Ward*, (supra); *O.A.A. v. Minister for Justice, Equality and Law Reform*, (supra); and *G.O.B. v. Minister for Justice, Equality and Law Reform*, (supra) and the Tribunal was entitled to rely on the availability of State protection.

77. The applicant submitted the three police reports as part of his claim for asylum. It was a matter for the RAT as to what weight would be given to the documents. It is clear from the decision that the RAT afforded them considerable weight. The documents established that the police had acted on the complaints made by the applicant. It appears that Mr. Abu had been arrested, or at least questioned in relation to the kidnapping charge but had been able to provide credible evidence that he was out of the country on a business trip at the time that the offence was committed.

78. After the applicant's house was set ablaze, he made a further complaint to the police. It appears Mr. Abu took flight after this incident. It is clear from the documents that the police were searching for him and when found would charge him with assault, killing

an unborn child, arson and threatening violence. In addition, Mr. Abu's business premises had been seized by the police due to the fact that he was suspected of being part of a syndicate which dealt in the smuggling of stolen vehicles. He was also wanted for the offence of human trafficking. The police stated that Mr. Abu would be arrested on these charges as soon as he was found.

79. In the circumstances, the RAT was entitled to come to the conclusion that the police were taking seriously the complaints made by the applicant and his wife against Mr. Abu. It was a matter for the Tribunal to weigh the evidence presented in relation to the protection afforded to the applicant by the police in Nigeria.

80. The RAT was entitled to hold that in the circumstances outlined, there was adequate State protection available to the applicant in Nigeria and on this basis, he was not to be regarded as a refugee. I am satisfied that this finding was open to the Tribunal Member. The applicant has failed to rebut the presumption that absent clear and convincing proof to the contrary, a State is to be presumed capable of protecting its citizens. Accordingly, I refuse to quash the findings of the RAT on the issue of State protection. The applicant's application for an order of *certiorari* striking down the decision of the RAT dated 28th September, 2010, is refused.