

**THE HIGH COURT
JUDICIAL REVIEW**

2008 522 JR

BETWEEN

A. J. B.

APPLICANT

AND

REFUGEE APPEALS TRIBUNAL

RESPONDENT

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

IRELAND AND THE ATTORNEY GENERAL

NOTICE PARTIES

JUDGMENT of Mr. Justice Cooke delivered the 29th day of March 2011

1. By order of the Court (Clark J.) of the 23rd June, 2010, the applicant was granted leave to bring this application for judicial review of a decision made on the 13th February, 2008, by the respondent which affirmed a negative recommendation made by the Office of the Refugee Applications Commissioner under s. 13(1) of the Refugee Act 1996 (as amended), on the applicant's application for a declaration of refugee status in the State.
2. Leave was granted to seek an order of *certiorari* in respect of the respondent's decision upon three grounds. In the order in which the grounds were argued at the hearing of this application, they were as follows:
 - (1) The Tribunal member mischaracterised the applicant's fear of persecution as relating primarily to her fear of FGM, when in fact she claimed to fear women's secret societies involved in initiation practices.
 - (2) It was irrational for the Tribunal member to find that because there was no evidence to support the applicant's assertion that she feared a second mutilation, it followed that the Tribunal member should reject the applicant's evidence relating to her abduction and treatment and supporting documents that she produced relating to that abduction.
 - (3) The Tribunal member failed to consider whether effective police protection would be available to an anti-FGM campaigner in Sierra Leone, given the evidence that FGM is almost universally accepted and approved of.
3. The applicant is a national of Sierra Leone who arrived in the State in August 2006 and claimed asylum. She claims to be a widow, her husband having died in 1999 and to have four dependent children whom she has left behind in Sierra Leone.
4. It is also clear that she is a woman who is educated and had significant experience of the circumstances in which the causes of her claim to fear persecution arise. Prior to leaving Sierra Leone she had worked for a number of non governmental organisations for several years. She worked for the charity Caritas from 2000 until March 2003 and according to documents she produced, took part as a statement-taker in the government sponsored Truth and Reconciliation Commission in Sierra Leone. She holds a teachers certificate from the University of Sierra Leone and immediately prior to leaving Sierra Leone had been working for the Centre for Democracy and Human Rights (CDHR) whose director Gibril Massie Bah has furnished her with letters purporting to corroborate her account of the circumstances which led to her flight from Sierra Leone. Her asylum questionnaire contains a 13 page statement which the Court was informed is in her own handwriting. It is in good English and in a well formed hand and sets out in a clear and orderly narrative the events she claims to have experienced. She comes across from it as a competent, well adjusted and self-confident person.
5. The account she gave of the events leading to her flight can be summarised as follows. As a social worker and educator she had been involved in attempting to protect young girls from FGM. The practice is widespread and accepted as part of culture and tradition in Sierra Leone. She travelled to schools to discuss the issues and took part in radio discussions. In her work for the CDHR she was Coordinator of Children's Rights and involved in educating young children.
6. It was in that capacity that she came into confrontation with powerful groups with interests opposed to those campaigning against FGM. In particular, the "Soweis" are a group or society of women who engage in the initiation ceremonies and rituals which traditionally prepare young girls for womanhood. They are a form of secret society which seeks to protect the mystique and secrecy of the initiation rituals and practices. It is they who perform FGM on girls.
7. It is material to note that the applicant herself was subjected to FGM when young, a fact which was confirmed by a medical report furnished to and accepted by the ORAC and the Tribunal member.
8. She described how the Soweis would come to her office and cause trouble because of her activities against their interests. She then described a number of particular incidents directed at her personally. In July 2005, she was attacked by a group of these women who were in the town celebrating after an FGM ceremony. She was rescued by members of the public. She complained to the police, but she says they would do nothing for her. In July 2006, when giving a talk with two other women to a group of children on the last day of school, a group of women carrying flat swords attacked her and threw liquid in her eyes and abducted her. She says she was taken to "the secret bush" where she was stripped and beaten and the women said they were going to subject her to a fresh

mutilation. She explained that the purpose of this second mutilation was to initiate her into the secret group so that she would be prevented from speaking against it. She was held for six days. At night when the women were celebrating and drunk, she was rescued by two men who brought her to the house of her friend Angela who had learned of her abduction and had arranged the rescue.

9. In purported corroboration of this account the applicant had submitted to the ORAC two letters dated the 31st August, 2006, and the 15th February, 2007, which appeared to be written and signed by the director of the CDHR, Gibril Massie Bah already mentioned above. Both letters appear to be on the headed notepaper of the "Centre for Democracy and Human Rights" and contain details of the addresses of the head office and its various branches together with e-mail addresses and banking details. The second letter of the 15th February, 2007, is addressed to the Office of the Refugee Applications Commissioner in Dublin. In the letter of the 31st August, 2006, addressed "To Whom it May Concern", the writer confirms having known the applicant since her participation in the Truth and Reconciliation Commission and the fact that she joined the CDHR in 2003 to coordinate the "Campaign for Girl to Child Education Project". The letter describes the activities of the organisation and its successful intervention against the activities of those involved in FGM. The writer says that after one intervention:

"We never noticed that we were endangering CDHR staff and especially that of hers. Those supporting the practice and the "initiators" started to develop anti sentiments against CDHR and her in particular. They continue to personally attack her even at the office and when in the field executing her duties. In July 23 2006, CDHR was faced with a troublesome incident involving these people who have developed some grudge against us. After the incident the whereabouts of her were not known. We did all we can to find her but to no avail and we became very concerned about her safety and life. Until recently I received a call from her saying that she was personally attacked but managed to escape and is now in Ireland trying to seek asylum. This is just to reiterate that her life is at high risk if she could return to this Sierra Leone."

10. The letter dated the 15th February, 2007, is in broadly similar terms so far as the information given about the activities of the CDHR, the applicant's duties and her disappearance on the 28th July, 2006, are concerned. It is to be noted that the letter opens: "I am writing to respond to a letter dated 18th January, 2007, but received in February 2007, in Makeni, relating to some information part of your investigation into an asylum claim". The ORAC report mentions that the Commissioner's office had endeavoured to contact the CDHR by e-mail without receiving any response. There is apparently no record of a letter dated the 18th January, 2007, having been written. The applicant claimed asylum on the 25th August, 2006 and her asylum questionnaire was completed on the 5th September, 2006. The s. 11 interview was conducted on the 27th September, 2006. The s. 13 report was completed and signed by one authorised officer on the 12th March, 2007, and countersigned by a second officer on the 27th March, 2007.

The First Ground

11. The contested decision of the RAT is notable for the detail of its consideration and the obvious care which the respondent has taken in approaching the case. It runs to some 23 pages of which 9 are devoted to the analysis of the applicant's claim at Part 6. No objection is taken to the summary of the claim as made by the applicant set out in Part 3 "The Applicant's Claim".

12. The Tribunal member first asked whether there was a basis for the fear expressed by the applicant namely, that of the persecution as a member of a social group. She notes that the applicant had already been subjected to FGM and that what she fears was a second stage initiation procedure which, it is said, is not unknown in Sierra Leone. The Tribunal member concludes that this second stage initiation is a contradiction in terms and she relies particularly upon a report commissioned by the United Nations High Commissioner for Refugees from Dr. Richard Fanthorpe ("the Fanthorpe Report") the Tribunal member concludes that there is no support in that report for the particular threat claimed by the applicant namely, that she would be subjected to FGM for a second time as a basis of initiation into a secret society.

13. The earlier part of the analysis of the applicant's claim examines her fear of this second stage initiation and points out that according to the Fanthorpe Report the civil rights campaign against FGM has "not so far provoked public confrontation with the leaders of the secret societies involved" in the relevant traditions and rituals. She considers it "instructive" that the Fanthorpe Report excludes from those who come within the social group comprised of women exposed to FGM initiation rituals, those who have already been initiated. In this regard the Tribunal member quotes from the judgment in *Fornah v. Secretary of State for the Home Department* [2006] U.K.H.L. 46 and says:-

"She is clearly not at risk in this category (risk of FGM) as she has already undergone the procedure and the consensus, in the House of Lords at least, appears to be that in Sierra Leone once it's done there is no risk."

14. The second part of the analysis clearly proceeds, however, to examine the claim on the basis that the applicant feels threatened for speaking out against the FGM practice in Sierra Leone. This part of the analysis commences:

"Regarding her assertion that she was a member of a group which campaigned against FGM, even if I accept that evidence alone as possibly credible, the assessment of risk must occur within a prospective context. Regardless of what the claimant has or has not already experienced, the question to be asked is whether she requires refuge from anticipated risk in her State of origin. In the context of her alleged work, insofar as there is no credible evidence of any past persecution for reasons of that work, one can only look at persons similarly situated to the claimant in order to assess any risk going forward"

15. The Tribunal member then refers to the pressures on some anti-FGM group personnel as drawn from the Fanthorpe Report, but concludes: "It appears to me that notwithstanding some threats these organisations go about their business largely unimpeded by the non state agents". She expresses the view that even if there is some chance of persecution, protection would be available in that the Sierra Leone police (SLP) while being accused of corruption and inefficiency, has not been proven to be unable or unwilling to provide protection. Indeed, it is clear from the information available to the Tribunal member that even if there were instances where individual police units may have been unwilling to intervene to prevent FGM itself, they were willing and able to intervene to prevent attacks upon the personnel of anti-FGM groups by those who supported the practice.

16. It is thus clear from the express terms of the decision that the Tribunal member has addressed specifically and has not mischaracterised the claim to asylum based upon the threats to and attacks upon the applicant as an anti-FGM activist. Given the emphasis placed by the applicant herself on the account of her abduction and the threats of further mutilation, it is not that surprising nor unreasonable that the Tribunal member should have examined this as a possible basis for a claim to be a refugee. The appeal before the Tribunal is not, as has often been underlined by this Court, a purely adversarial challenge to the s. 13 report. It is the second stage examination of the application for refugee status. As such, the Tribunal member, like the Commissioner, has both an entitlement and an obligation to consider whether the facts and circumstances disclosed may come within the scope of the international protection of the Geneva Convention, whether or not the applicant has made the particular claim. The fact that the Tribunal member devoted an important part of the analysis to the possibility that the applicant feared a second stage initiation threat

at the hands of the Soweis if repatriated, does not constitute a mischaracterisation of the claim but was a proper consideration and rejection of a possible claim based upon the evidence given. The claim now relied upon as being the "true claim" has also been considered and been properly rejected.

Second Ground

17. The submission made under the heading of the second ground appears to be directed at a specific aspect of the argument more generally made under the primary ground above. It is submitted that the Tribunal member acted irrationally in failing to assess and evaluate the documentary evidence submitted by way of corroboration of the attacks upon her because the Tribunal member had already considered unfounded her claim to fear a second mutilation. This is directed at the passage on page 20 of the decision where the Tribunal member, having looked at the country of origin information in relation to the secret societies involved in initiation rituals, says that she does not "accept this evidence as credible and furthermore it is not borne out by any objective country of origin information" namely, the account given of the abduction. The Tribunal member says: "This is the core aspect of her claim and given that I do not accept it as credible it follows that I do not accept her evidence regarding being abducted to the secret bush (for the purpose of carrying out the practice which I do not accept occurs in the context or manner alleged), placed in a cell where she was bitten all over by wild ants, taken to a crocodile room and her feet put into the mouth of a carved crocodile for two days and chained and then returned again to the cell of biting ants, and that this went on for six days until she was rescued by two former rebels sent by her friend. (I do not accept as evidence that the documents allegedly from the CDHR as these documents purported inter alia to corroborate the alleged incident/abduction which I do not accept happened for reasons already outlined)".

18. Contrary to the submission made, the Court considers that the Tribunal member had every reason to be sceptical in these circumstances. The circumstances in which the two letters of 31st August, 2006, and 15th February, 2007 that came to be introduced are described above in paragraph 8. As mentioned, the applicant claimed asylum in the State on the 25th August, 2006. According to the letter of the 31st August, 2006, the writer had been aware of her disappearance from his own organisation since the 23rd July, of that year, had tried to find her (although the steps taken are not described) and was unaware of her whereabouts until she telephoned from Ireland on the day the letter was written. (See the letter of the 15th February, 2007). The applicant does not explain how it came about that the letter of the 31st August, 2006, was available for production at the s. 11 interview on the 27th September, 2006. While the letter of the 15th February 2007 identifies the phone call as taking place on the 31st August, 2006, the earlier letter mentions that it had been received "recently" which would appear to be an unusual expression if the phone call had been received that very day.

19. It must be borne in mind that the Tribunal member had before her the s. 13 Report in which the credibility of these letters had been discounted by the body which had received them. The Report refers to its attempts to contact the CDHR by e-mail but makes no mention of having written a letter dated 18th January 2007. It points out that although the writer claims to have spoken to the applicant on 31st August 2006 for the first time since her disappearance a month earlier "during an incident that has to do with FGM", no reference is made to the abduction or torture she claims she suffered, to the fact that she had been forcibly detained or indeed to her whereabouts in that intervening month.

20. Quite apart from such doubts as might be raised by the way in which the letters came to be produced and by the apparently deliberate help they provide in support of a particular asylum claim, the Tribunal member clearly had a basis for scepticism in the attitude being adopted by the purported director of CDHR. This purports to be an organisation dedicated to intervening to protect victims of FGM and educate those concerned against the practice. The applicant is said to have been actively involved in these endeavours and to have been one of those involved successfully in their interventions. It seems highly implausible that if the organisation can intervene successfully to protect victims and to stand up to those in the community promoting the practice of FGM, that it would not also be in a position to intervene to protect its own personnel. Furthermore, having regard to the years the applicant had invested in this work, it appears highly implausible that, having escaped from her alleged abduction after a week, she would leave Sierra Leone without making any attempt to contact the CDHR to tell them what had happened to her, that she was now safe and that she was leaving the country.

21. In the judgment of the Court the analysis and conclusion set out by the Tribunal member on pp. 21 and 22 of the decision are clear and justified by the facts of the case. She finds first, that the account of the abduction was not believable and thus effectively concludes that the events did not happen. It was thus logical for the Tribunal member to decline to attach any corroborative force to the two letters from the CDHR which endeavour to support her story when they are based only on the fact that she had gone missing at the end of July and on the phone call made on the 31st August. The Tribunal member acknowledges that country of origin information does record instances where such activists and campaigners have come under pressure, been taunted and chased out of places where FGM is practised. Nevertheless, she concludes that, applying a prospective test as to whether the applicant would be without protection should she return and reaches the conclusion:

"It appears to me that notwithstanding some threats these organisations go about their business largely unimpeded by the non State agents. There is no evidence submitted of any state interference in their work and this was never put forward or suggested in evidence. An applicant has to show that there is a serious possibility or real chance of persecution. Given the information above, I am of the view that she has failed to do this."

In the view of the Court this conclusion is amply justified particularly having regard to the fact that the applicant claims to have been a member of the staff of an organisation providing such protection.

Third Ground

22. Under the heading of this third ground it is argued that the Tribunal member failed to consider whether effective police protection would be available to an anti-FGM campaigner in Sierra Leone. It follows from the finding of the Court in the immediate preceding paragraph that this ground has not been made out either. It is true that there is information to support the proposition that there is widespread corruption and inefficiency in the security forces of Sierra Leone and there is also information to the effect that because of the traditional nature and widespread acceptance of the FGM practice, local police forces may be reluctant to intervene to protect individual women, especially where a proposed circumcision appears to have family approval. That, however, it was not the threat claimed by the applicant. Her complaint was that the SLP would not protect her from harassment and violence by the Soweis in her capacity as an anti-FGM educator and campaigner. In the judgment of the Court it was open to the Tribunal member to reach the conclusion in this regard on p. 22 of the decision namely, that the report "OGN 2006" annexed to the s. 13 report indicated "that there is no evidence to indicate that the SLP is not able to offer assistance to anyone there seeking protection". The report in question is a British Home Office Operational Guidance Note on Sierra Leone issued on the 15th December, 2006. The passage quoted by the Tribunal member is concerned with the availability of protection to former low-level members of rebel groups who faced harassment from members of the general public because of their activities during the civil conflict. While acknowledging that the SLP, which has primary responsibility for maintaining internal order, lacks investigative and forensic capabilities and was widely viewed as corrupt and incompetent, the note nevertheless concluded that it would be able to offer assistance to such former members of rebel

groups. It was thus reasonable for the Tribunal member to consider that such a finding that the SLP is able to "offer assistance to anyone seeking their protection" would include the personnel of voluntary organisations such as the CDHR and other campaigning groups when threatened or attacked by those opposed to their activities. (Emphasis added.)

23. It was argued that while the Tribunal member addressed the ability of the SLP to offer protection, she failed to examine its willingness to do so. This argument ignores the premise from which the Tribunal member's reasoning commences namely the finding that the abduction, detention and mistreatment described were not believed to have taken place. She accepts the information in the Fanthorpe report and elsewhere that such activists may encounter opposition in the form of being shouted at in the street or chased out of schools. She does not however accept that they need, or would not have, protection from the attacks and torture the applicant described if such events were to occur in the future especially having regard to the current role and influence of the various NGO's mentioned including those to which the applicant was known and with which she claimed to have contact. That is why the passage referring to those NGO's is prefaced by the statement; " Regardless of what the claimant has or has not already experienced, the question is whether she requires refuge from anticipated risk in her State of origin." It is on that basis that the Tribunal member reaches the conclusion already mentioned above that "...notwithstanding some threats these organisations go about their business largely unimpeded by the non-State agents," and accordingly, "An applicant has to show that that there is a serious possibility or real chance of persecution. Given the information above, I am of the view that she has failed to do this."

24. For these reasons the Court considers that the three grounds for which leave has been granted have not been made out and the application for judicial review must therefore be refused.