

THE HIGH COURT

Record Number: 2004 No. 405 JR

Between:

Olalekan Ojelabi

Plaintiff

And

The Refugee Appeals Tribunal, and The Minister for Justice, Equality and Law Reform

Respondents

Judgment of Mr Justice Michael Peart delivered on the 28th day of February 2005:

The applicant applies for leave to seek reliefs by way of judicial review challenging a decision of the first named respondent dated 2nd March 2004 in which the recommendation of ORAC under section 13(1) of the Refugee Act, 1996, as amended, to the effect that the claim by the applicant for refugee status should be refused and that the application was manifestly unfounded, be affirmed, ought to be quashed on the basis that the decision was not reached in accordance with law and on the basis of the actual facts.

A consequence of the finding that the application is manifestly unfounded is that the applicant has no entitlement to an oral hearing of his appeal. The Grounds set forth for this relief are numerous, and can be set out in summary form as follows – that the Respondent:

1. failed to consider whether the RAC was correct in finding that the applicant was not entitled to an oral hearing.
2. failed to give reasons;
3. making unwarranted assumptions concerning the Police and Courts systems in Nigeria;
4. failing to consider the well-foundedness of the claim in terms of the subjective and objective elements based on the evidence;
5. erred in the manner in which credibility was assessed, and in holding that Northern Ireland was a separate jurisdiction for asylum purposes to the remainder of the United Kingdom;
6. Erred in holding that the applicant's wife was his "alleged wife" without giving any reason why the fact of the marriage was to be doubted and why the benefit of the doubt did not apply;
7. Erred in failing to state what documentation the applicant ought to have provided and why he should have provided same;
8. Failed to consider actual facts regarding policing and the legal system in Nigeria;
9. Failing to identify his sources, and in particular whether he was relying upon a decision of the Immigration Refugee Board and the status of same in Irish Immigration Law;
10. Failed to give reasons as to why he found the Responses given by the applicant in his Questionnaire and Interview were not supportive of his claim to a well-founded fear of persecution;
11. Failed to vindicate the applicant's Human Rights to a fair, impartial and balanced hearing in accordance with law.

Some Factual Background:

It is difficult to set out any detailed evidence in relation to this application, because of the sheer paucity of information contained in the documentation forming the basis of the application for a declaration.

In his grounding affidavit the applicant states that he is fleeing Nigeria on grounds of religious persecution from which the

State of Nigeria will not protect him. He states that he was born a Muslim, but is now converted to the Christian faith and that this poses great dangers for him as a convert to Christianity. He avers that “militant Muslims came to our home to murder us and we had to flee to save our lives.” He states also that Nigeria is torn apart by religious strife and refers to some newspaper reports of killings of Muslims by Christians, and to the fact that in some Northern States in Nigeria, Sharia Law prevails since the year 2000. He also says that the police in the Northern States (his State being one of those) *“the police and the authorities will be unwilling to or unable to protect Christians.”* He states at paragraph 9 that the reason he did not complain to the police was that they would not and could not effectively protect him.

There is no detail whatsoever concerning the manner in which he was allegedly being persecuted other than what I have set forth. The remainder of the grounding affidavit is concerned more with submissions and general comments about the state of affairs in Nigeria.

I have also looked closely at the Questionnaire which he completed on his arrival here in order to find some more relevant and firm detail as to what he says happened to him and/or his family prior to his fleeing Nigeria.

He states therein that he is married, but gives the date simply as “2000”. Curiously, the dates of birth of his wife, his children, his father and mother and his four siblings are all set out in detail as to date, month and year. However, I just mention that in passing in view of the fact that the RAC refer to his marriage as his “alleged marriage” and his wife as his “alleged wife”.

When asked at Q. 26 why he feared persecution he replied:

“ I fear persecution because it makes me feel insecure, frustrated and dejected in my country of origin. I came from a Muslim home and get married a Christian lady. I then decided to follow her faith thereby get converted to Christian. Since I get converted my problems began. I was both beaten with my wife and our house was set on fire and my wife had a miscarriage. In short it makes me feel insecure to the extent of running from one place to another for protection. When it became obvious that there was nowhere to get protection and [illegible] that I now know that my wife is in Ireland. I then decided to come to Ireland for security reasons.”(sic)

In answer to Q. 27 – “what persecution do you fear?” he responded:

“I fear religious persecution from members of my family. I am by birth a Muslim and when I got married I changed to Christian. The society I lived in do not tolerate this kind of arrangement, therefore I was persecuted. Some members of my family colluded with some Muslim fanatics and me and my wife were beaten to the extent that my wife had a miscarriage and I was in a state of coma.”

In answer to Q. 28 – “From whom do you fear persecution?” he replied:

“I fear persecution from members of my family and the society I lived in especially the Muslim fanatics who [illegible] molest and harass innocent people.”

He goes on to state that the reason he did not report these matters to the police is that nothing will be done about it. He also stated that he had been mistreated or threatened by Muslim fanatics and extremists in the Northern part of the country who came and destroyed his home, and stated that these people hide under the disguise of religion to attack and molest innocent people.

He was asked also if he had ever moved to any other part of the country and he replied that he had, after the incidents and after the disappearance of his wife taken shelter in Kaduna, but that the persecution continued, and that he then went to other locations.

At Q. 35a he explained that his father is an Imam (a leader of Muslim faithful) and that he had taken a vow that none of his children would marry a person from another religion.

At Q. 39 he was asked what he feared would happen if he returned to Nigeria, to which he responded:

“Like I said earlier out of a family of five I am the only one that is a Christian and I have been rejected by my family. If I returned to my country there will be nobody to turn to and I don’t even know where to start from. I don’t have a work to do and there is no business for me. In short I will be frustrated and be made jest of by my family members and friend.

Furthermore if I return to my country there is nowhere to stay (accommodation) because I cannot afford one and there will be no food to eat. In short I would be in state of abject poverty, begging on the street to eat and sleeping under the bridge.”(sic)

He was interviewed in due course. Without setting out the detail of this interview in full, I can say the following appears therefrom.

He lived alone in 2002 and 2003 because he had moved to Ireland, but he did not know when his wife had applied for asylum here. He said his wife and he got married in 2000, that he was working for Coca Cola at the time in Kano. She was a Christian and he a Muslim, his father was an Imam who had said that none of his children would marry a Christian. He thought by going to Kano that he would have peace of mind, but there were fanatics there and that they beat himself and his wife. He said his wife was pregnant at that time and that was the last he heard of his wife in Kano. He said that he went to three other locations in Nigeria, and thinks that his wife left Nigeria in 2002, but did not know the date or the time of year she left. He could not even give an approximate date of her departure.

He was asked what kind of problems did he have in the location called Ibadan, and he stated as follows:

“Some of the Muslim people came to my home to tell me that they would maim me or kill my wife. That is the problem I was having at that time.”

He said that he did not go to the police because *“It is a family matter. There, Muslim people are very strong. They said we should go and settle it ourselves. That is why I run for my life from Ibadan to Kano.”*

The same things happened in Kano, and again he did not go to the police, because the Muslim people in the north are powerful and would influence the police. He was unable to say what month in 2002 he left Kano. Or even approximate. He was asked how, if his wife had left him, the people in Kano would know that he was in a mixed marriage and converted to Christianity. He answered that his father was an Imam and was popular and that he was looking for him since he was the first son in the family. He was asked how his father would have known where he was, and he said that he had contacts.

He was asked why he did not leave with his wife, and he stated that after the beating in Kano he was in a coma and that was the last time he saw her.

He was also asked some details about the practice of the Muslim faith such as what are the five pillars of the Islam. He could not remember, except that one was to pray five times a day, another that one must go to Mecca, and another to give alms. He was unable to name the five pillars or the name given to the daily prayer which all Muslims recite. He said he had not read the Koran because he had no interest in it.

He was asked some other matters about where he lived in Nigeria, such as some town and street names, but he gave little information.

I have gone to some trouble to set out the details of the Questionnaire and the interview because it is on foot of these documents that the RAC formed the view that this claim was manifestly unfounded, and to demonstrate how flimsy was the information imparted by the applicant. In no way can he be regarded as having discharged the onus or burden which is on him, albeit one shared with the authorities, to set forth his claim to the necessary level.

The section 13 report sets out in as much detail as possible the information such as it is which was gleaned from this application process, and came to a number of conclusions based on the lack of credibility of the applicant. The report is peppered with comments that certain matters are “vague”, “incredulous”, “difficult to accept”, “lacks logic” and so on. He was found to be evasive and uncooperative at interview. In particular it found to be incredible that the applicant, supposedly a son of an Imam would not know even basic information about the practice of the Muslim faith. But there are many matters which the RAC found not credible, and there is no need to set out each such finding in detail. It was also found that the complaints of the applicant did not come within the definition of persecution for the purposes of the Convention.

It is quite clear that the applicant was simply not found to be believable to any extent at all, and that even if a large measure of allowance was allowed to him in relation to alleged facts, even then he would not come within the meaning of persecution. But credibility was totally absent. This Court sees no reason to fault the manner in which credibility was assessed. As applications go, this one must come within the category which has disclosed no merit and lacks all credibility. In these circumstances, none of the grounds by which it is sought to impugn the decision can succeed. The reasons for the decision are clearly set out in the s.13 report and the Decision. The lack of credibility fundamentally infects the subjective element of a well-founded fear of persecution. The applicant was simply not believed, as I have said. In such a situation, the objective element of the well-founded fear assessment does not require to be made, since without a credible subjective element, the objective element does not become relevant. That disposes of the grounds relied upon which criticise the manner in which the RAC dealt with the ability of the police and Courts system to function in Nigeria.

This is a hopeless case for the applicant to succeed with. The RAC was entitled to regard as manifestly unfounded and beyond any doubt the applicant has failed to exceed the threshold of arguability required of him in applications of this kind.

I refuse leave to seek the reliefs sought.