THE HIGH COURT

JUDICIAL REVIEW

[2024] IEHC 635

[Record No. 2022/1119JR]

BETWEEN

TTM

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

AND

THE MINISTER FOR JUSTICE

RESPONDENTS

JUDGMENT of Ms Justice Miriam O'Regan delivered on 5 November 2024.

Introduction

1. The applicant is a citizen of Botswana born on 10 January 1992. On 4 November 2021 the applicant left Botswana and arrived in Ireland on 5 November 2021. She applied for international protection in Ireland on 9 February 2022. Her completed application questionnaire was delivered on 26 April 2022 and she was interviewed under s.35 of the International Protection Act 2015 ("2015 Act") on 23 August 2022, following which, she was assessed by the IPO office. The IPO recommended in a report dated 26 August 2022 that she

neither be afforded refugee nor subsidiary protection status upon a finding that her account was not credible. The applicant appealed such decision by way of appeal of 12 September 2022. The applicant was afforded an oral hearing, where she was legally represented, which occurred on 1 November 2022. The applicant was enabled to make written legal submissions both before and after the oral hearing. In a decision of 25 November 2022 it was determined that the appellant was not entitled to a refugee declaration or a subsidiary protection declaration. This decision was transmitted to the applicant under cover letter of 28 November 2022.

By an order of Meenan J of 23 May 2023 the applicant was afforded leave to maintain the within judicial review proceedings.

Applicant's Complaints

2. The statement of grounds is dated 20 December 2022 and in it the applicant impugns the decision of 25 November 2022 aforesaid. It is said that the Tribunal acted irrationally and/or unreasonably and/or took irrelevant considerations into account and engaged in speculation and conjecture in: -

a. stating that the country-of-origin information does not indicate a cultural practice in Botswana of keeping the context of criminal offences from family members;
b. finding it implausible that the applicant's family would not have told her why the men who attacked her grandparents did so;
c. determining the verbal interaction of the men who attacked the applicant was implausible;

d. impugning the credibility of the applicant on the basis of lack of information known only to individuals other than herself namely her grandparents and her attackers.

e. erred in failing to pay sufficient weight to the applicant's internal consistencies and the psychologist's letter dated 21 July 2022;

f. placing undue weight on the absence of supporting documentation;

g. concluding that the applicant could not give the level of details expected of who she fears and why she fears them; and

h. rejecting the appellant's claim to have been raped by her grandfather's murderers as a consequence of her grandfather's dealings.

The applicant complains that the core of her complaint is that she was raped twice, a point which the Tribunal did not reject as incredible. The applicant complains that the Tribunal did not apply the benefit of the doubt principle in assessing the applicant's credibility.

In written submissions the applicant argues that there was a failure to provide sufficient reasons, however, from the foregoing it is clear that such a claim was not within the statement of grounds and no leave was granted to the applicant in respect of reasons.

The Impugned Decision

3. The impugned decision runs to eleven pages and commences with an outline of history, facts and documents. The applicant made her claim for international protection on the basis that if she returned to Botswana she would face persecution and a real risk of suffering serious harm from persons who have an antagonism towards her late grandfather. The applicant gave an account at the oral hearing. She is from Botswana and has been raised by her grandparents. Her grandfather managed a builder's merchant shop, retired and became a

fulltime farmer. In May 2019, her grandmother was severely assaulted and as a consequence she can no longer walk. The incident was reported to the police and this complaint was later withdrawn as the applicant's aunt's handbag was stolen when the thieves told her that she would pay for her parents' debt. Despite asking her grandparents who the assailants were the grandparents would not tell her save they were "looking for stuff" and she would not understand. Subsequently, the applicant's grandfather told her to leave Botswana so the applicant went to South Africa and one week later her aunt told her that her grandfather had been killed by the same men.

The applicant returned to Botswana. In February 2021, the same men returned and told the applicant that it was believed that her grandfather had relied on her so she must know what he was dealing in. One of the men sexually assaulted the applicant after she indicated she did not know.

In August 2021, the men returned and threatened to make an example of her boyfriend if she did not give them the information they wanted. She was sexually assaulted again, became pregnant and had an abortion. She fears the same men will murder her and she does not believe that the police in Botswana adequately investigate rape. In addition, her grandmother does not support involving the police as her family name has been tarnished. She has indicated that Botswana is a small country and cannot relocate.

The documents furnished by the applicant consists of country of origin information and a letter from a HSE psychologist, Ms Morales, of 21 July 2022. She said that her passport was held by immigration officials at Dublin Airport.

The applicant had previously indicated that she would provide her grandfather's death certificate and her grandmother's medical records, but these were not provided.

At para. 11 of the decision it is said that all of the submissions, country of origin information and case law provided were fully considered.

The Tribunal accepted on the balance of probabilities that the applicant is a national of Botswana.

At para. 17 it was indicated that the absence of documents together with a lack of detail was particularly challenging in assessing credibility and accordingly a careful approach to the assessment of credibility was required. The Tribunal referred to an EU credibility assessment document of 2018 where at s.4.5 it was recommended that an analysis of internal consistency, external consistency, sufficiency of detail and plausibility be conducted.

Internal consistency was accepted.

In relation to the letter aforesaid of 21 July 2022 it was noted that same did not make any findings of fact. The letter indicated that the applicant appeared to present with anxiety, low mood and difficulty sleeping as a result of past experiences. The content of the letter was set out in para. 19 of the impugned decision. The Tribunal accepted that the letter did not provide objective corroboration of the applicant's application, however the letter showed that the applicant gave the same consistent account.

In para. 21 dealing with external consistency it was indicated that there was no relevant documents or country of origin information relating to her grandparents or why they were targeted. It was said that the level of detail provided was remarkably lacking in that the applicant does not know who the men were or why they have continued to attack her family and the applicant to the point of committing murder, a serious assault and two rapes. The explanation was not available to the applicant because she said her family withheld it from her.

It was noted at para. 23 that a decision maker must look through the spectacles provided by the information he has about conditions in the country in question. It was said that the country of origin information does not indicate that there is a cultural practice in Botswana of keeping the context of criminal offences from family members. After her

grandfather was murdered, her grandmother assaulted and the applicant was raped twice it was considered not plausible that her family would not have told her why the men who attacked her grandparents did so. It was noted that the country of origin information describes a functioning and active police service in Botswana therefore it was held the withdrawing of the complaint *inter alia* in respect of the grandmother's assault was not plausible nor was the family's failure to report the grandfather's murder considered plausible. It was noted that there is a low reporting rate for gender-based violence, but the country of origin information does not refer to a reluctance to report murder. It was held that when it was put to the applicant that the grandfather's murder could have been reported to the police, she replied that the police were not involved which was not considered to be a coherent answer to the question.

At para. 28 it is recorded that it was put to the applicant in cross-examination that the men involved could have put to her what they believed the grandfather was doing or otherwise have asked more focussed questions of the applicant. The applicant agreed that it was strange that they did not do so. This implausibility was considered to be a minor one because criminals are not always rational and would be disregarded if there were no other credibility difficulties.

A low rate of reporting of rape in Botswana was noted and the Tribunal accepted that the failure to report rape and have an unofficial abortion are plausible in the context of country of origin information.

In the conclusion it was noted that the applicant's account had been internally consistent however the weight to be given to this factor is reduced by the minimal amount of detail. As the applicant did not furnish any documents from Botswana relating to her claim external credibility did not arise. Her account of her family's interaction with the police was considered very implausible. The Tribunal rejected on the balance of probabilities that the

applicant's account that her grandfather was murdered, and her grandmother was seriously assaulted. Accordingly, the applicant's claim to have been raped by her grandfather's murderers as a consequence of her grandfather's dealings was also rejected on the balance of probabilities. The benefit of the doubt did not arise because the appellant's account had been rejected on the balance of probabilities and even if had arisen it could not be applied because the applicant's account was considered implausible, and the Tribunal was not satisfied with her general credibility.

The Applicant's Arguments

4. In written submissions the applicant argued that by virtue of s.28 of the 2015 Act and general principles of administrative law the respondent was obligated to decide on all core issues. It is said that the decision maker engaged in speculation and conjecture in respect of the verbal interaction between the applicant and the assailants which is said also to be an irrational finding and is disproportionate. It is complained that insufficient weight was given to the medical report and the benefit of the doubt was not applied, erroneously.

In oral submissions it is argued that there was a considerable amount of relevant evidence, not taken into account by the decision maker, in prior documents such as the questionnaire completed by the applicant and the content of the prior oral hearings. It is said that there was considerable detail given for example that the attackers attacked the applicant and she is fearful of them because of conflict with her grandfather in respect of business. It is said that the motivation of the attackers is irrelevant. It is said that it was the lack of detail which was the basis for the refusal of protection sought and that far more consideration should have been given to the letter of 21 July 2022 as same was evidence that the applicant was traumatised and required stabilisation. It is said that the core complaint in these proceedings is the manner of assessment. In particular, if the rapes had been accepted, under

s.28(6) of the 2015 Act a rebuttable presumption would arise of future persecution. It was argued that not knowing how much or how the debt arose was entirely irrelevant. The applicant was found to be internally consistent however very little weight was afforded to this finding with no weight at all being afforded to the medical letter. The applicant went through the content of paras. 25 to 28 of the decision, individually, and submitted that the failure of the respondent to include details contained in the questionnaire executed by the applicant, at para. 25, comprised a flawed assessment. It was argued that para.26 of the decision did not incorporate reference to the fact that the complaint to the police was withdrawn because subsequently the family was threatened also comprises a flawed assessment. In para. 27 there was no reference to the fact that following a report to the police of the initial assault matters deteriorated for the family and therefore this too was an error. In respect of para. 28 it is said that this is mere speculation and inappropriate.

Generally, it is said that only tangential issues were assessed and not the core issue of rape and this is inappropriate. It is argued that the decision of Gearty J (hereinafter referred to) represents a changing approach in respect of core findings. Overall it is said that by reason of the nature of the process, the incorrect reference to s.28(6) and the lack of clarity, the process and decision were unlawful.

The applicant relies on the following jurisprudence: -

(a) *Da & Silveira v RAT & Anor.* [2004] IEHC 436 (Peart J) to the effect that conclusions must be based on correct findings of fact.

(b) *IR v Minister for Justice Equality and Law Reform* [2009] IEHC 353 (Cooke J), para. 10 to the effect that the assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole when rationally analysed and fairly weighed. It must not be based on a perceived correct instinct or gut feeling as to whether the truth is or is not being told.

A finding of lack of credibility must be based on correct facts untainted by conjecture or speculation.

(c) *MM v RAT & Anor.* [2015] IEHC 158 (Faherty J) where at para. 28 it was said that the probative value of medical reports is a matter for the decision maker and that reasons must be given for rejecting medical evidence. Where there are objective findings this amounts to a higher probative value as providing potentially objective corroboration.

(d) *MM v Chief International Protection Officer & Ors.* [2022] IECA 226. In that matter one of the questions which arose was whether the decision maker failed to make a finding of fact on an important factual issue namely whether the appellant was lesbian in her sexual orientation. It was argued that the failure of the first named respondent to make a decision on a core element of the application rendered the decision invalid. At para. 79 of the judgment the Court noted that in the application form the applicant complained of fear of her husband who had threatened to kill her and also indicated that homophobia is countrywide and no reputable organisation to afford protection. The Court was satisfied that the inclusion of that paragraph in that application amounted to a general request that the decision maker take account of her lesbian sexual orientation and her physical safety would be jeopardised by returning to her country of origin and was therefore a standalone ground of fear and persecution – by reason of her sexual orientation simpliciter. It was held that by failing to deal with the issue of sexual orientation, simpliciter, the decision was flawed.

(e) *ESO v International Protection Office & Ors.* [2023] IEHC 197 (Phelan J). In that matter the application for protection status was grounded both on membership and on leadership of identified political groupings in Nigeria however separate findings were not made in this regard and therefore the decision was considered flawed.

(f) *JR v IPAT* [2024] IEHC 296 (Gearty J). The applicant's claim included that the Tribunal unfairly rejected a claim of rape against the applicant's uncle. At para. 3 of the judgment it was indicated that if an applicant establishes that he has a well-founded fear of persecution or adduces evidence of a real risk that he would suffer serious harm if he is returned he must show an inability or unwillingness of the country of origin to protect him from serious harm. The Court referenced a judgment of Ferriter J in *MY v IPAT* [2022] IEHC 345 which in turn referenced a prior judgment of Burns J in *IL v IPAT* [2021] IEHC 106 where it was held that once the Tribunal expressly or impliedly finds that an applicant has been subject to threats of serious harm there is an obligation on the decision maker to engage with s.28(6) of the 2015 Act which amounts to a rebuttable presumption of a well-founded fear. It was said that there were no findings as to whether the applicant's uncle threatened to kill him. At para. 9 of the judgment it is said that the decision stated that as there was no specificity in the claim that the applicant's uncle belongs to a terrorist organisation and the Tribunal found that this was a negative credibility factor. The Court found that this was an unexplained seemingly unnecessary step. It is said that if threats were made the decision should address whether the police were unable or unwilling to protect him from his uncle.

5. It does not appear to me that *MM* or *ESO* are relevant in this matter as the consistent fear expressed by the applicant if she was returned to her country of origin was that she would be attacked/killed by the two men who murdered her grandfather. At no time did she indicate that because she had been raped twice then she was in fear of persecution if she was to be returned.

6. It is argued that the decision in *JR* aforesaid represents a move away from prior jurisprudence in respect of making a decision on all core parts of an applicant's claim. However, for the reasons hereinafter set out and in particular the judgment of Humphreys J in *MPBK* this Court does not accept the applicant's argument in this regard (see para. 11 hereof).

The Respondent's Position

7. The respondent argues: -

(1) the benefit of the doubt did not arise as the applicant's credibility was not accepted;

(2) in *RK v IPAT & Ors.* [2020] IEHC 522 (Burns J) the Court indicated that a fact finder must analyse and assess the evidence and in so doing should apply their knowledge of life and commonsense to same and in the judgment refers to the decision of McDermott J in *KR v RAT* [2014] IEHC 625. The Court indicated that the assessment of credibility is to be made by reference to the full picture emerging from the available evidence and information taken as a whole when rationally analysed and fairly weighted so the decision on credibility must be read in the round. McDermott J in his judgment, in turn, quoted from Cooke J in *IR v Minister for Justice & Ors.* [2009] IEHC 353 to the effect that the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination and disregard of the cumulative impression made…furthermore there is no general obligation to refer in a decision in respect of credibility to every item of evidence and every argument advanced provided the reasons stated enable the applicant and the Court to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached.

The above was followed by Barr J in MAS v IPAT [2021] IEHC 841.

8. The respondent also relied on the judgment of Humphreys J in *IE v RAT & Anor.* [2016] IEHC 85. In that matter the adverse credibility finding was based on the applicant's travel arrangements and the complaint was made that the Tribunal was under an obligation to decide on the core claim which the Court understood to mean the existence or otherwise of a well founded fear of persecution. The Court referenced a prior decision of Mac Eochaidh J in *PD v Minister for Justice Equality & Law Reform* [2011] IEHC 111 which was subsequently followed by Humphreys J in *RA v RAT* [2015] IEHC 686 and again followed by Stewart J in *EKK v Minister for Justice & Equality* [2016] IEHC 38 to the effect that it is unnecessary to require a decision maker to decide on every element when an adverse finding has been made in respect of one such element. The Court indicated that where an applicant's credibility is rejected generally the Tribunal does not need to make any specific finding on whether the acts of persecution actually occurred and to what extent or whether any other element of the test or well founded fear of persecution exists. It was acknowledged that there may be islands of fact which notwithstanding an adverse credibility finding might survive for example the applicant might be a member of a particular tribe who are at risk in a particular country. The Court goes on to quote a number of other judgments where the approach above was consistent with those other judgment.

9. In *MPBK v IPAT* [2020] IEHC 450 IPAT had dismissed the applicant's appeal mainly on credibility grounds. At para. 7 of the judgment a number of general principles were set out including references to the relevant judgments in respect of such general principles namely:

(1) There is a presumption of validity of administrative decisions.

(2) There is a presumption that material has been considered if the decision says so.

(3) Judicial review is not an appeal on the merits.

(4) The weight to be given to the evidence is quintessentially a matter for the decision maker.

(5) The onus of proof remains on the applicant at all times.

(6) The applicant does not have a legal entitlement to a discursive narrative decision addressing all submissions.

10. Humphreys J. went on to consider the Tribunal's decision that the evidence given was vague. The Court held that the evaluation of vagueness or otherwise of an account is a perfectly lawful and legitimate way in which the truth or otherwise of an account can be assessed. At para. 17 the Court discussed a medical report and noted that a medic cannot testify as to how an injury were in fact inflicted and a decision in this regard depended upon a number of factors including the overall credibility of the applicant particularly their consistency and clarity. Humphreys J. quoted from the matter of *HE* 2004 UKIAT 00321 to the effect that "*Rather than offering significant separate support for the claim, a conclusion as to mere consistency generally only has the effect of not negating the claim."*

11. The Court then went on to indicate it was not following a prior decision of *VH v. IPAT* [2020] IEHC 134 and set out the following reasons: -

(1) There was no reference in the judgment at all to Irish case law apart from one on a different topic;

(2) a US Supreme Court decision of the 29 June 2020 in *June Medical Services LLC v. Russo* 591 stated *"remaining true to an intrinsically sounder doctrine established in prior cases better serves the values of stare decisis than would following the recent departure."*

(3) The judgment itself did not engage with relevant authorities.

(4) At para. 24 it was indicated that it was neither safe nor legally appropriate for a judge in judicial review proceedings to start second guessing the decision maker's assessment of the evidence save where a clear illegality is demonstrated.

Conclusion

12. Based on all of the foregoing I would respond to the applicant's argument as follows:

1. Stating that the country of origin information did not indicate a cultural practice in Botswana of keeping the context of criminal offences from family members is not irrational, unreasonable or irrelevant in the context that the only external documents available to the decision maker provided was country of origin information and the medical letter. This statement was made in the context of external credibility.

2. In my view it was well within the jurisdiction of the decision maker to make a finding of implausibility that given that there was a serious assault, a murder and two rapes that the applicant's family would not have told her why the men who attacked her grandparents did so.

3. As per the decision of Burns J. in *RK* aforesaid the decision maker was obliged to apply knowledge of life and commonsense to the analysis and therefore it appears to me it was not unlawful to come to a finding that the verbal interaction of the men who attacked the applicant was found to be implausible.

4. The lack of information tendered by the applicant as to who the assailants were and why they were attacking the family was not the only reason for an adverse credibility finding but also reference is made to the making and

withdrawal of a complaint being implausible as well as the failure of the family to advise the applicant as to why they were suffering as they were. In addition, it was found implausible that a murder would not have been reported. As mentioned in the jurisprudence the credibility issue has to be looked at in the round and in those circumstances this heading of claim can't succeed.

5. As aforesaid the weight to be attached to the individual pieces of evidence tendered is quintessentially a matter for the decision maker including in respect of the letter of the 21 July 2022.

6. The Tribunal was entitled to find that the level of detail given by the applicant adversely affected her credibility. The finding that it was considered implausible that she had been raped by her grandfather's murderers was made in circumstances where the Tribunal found that the account that her grandfather was murdered and her grandmother was seriously assaulted was rejected on the balance of probabilities. Insofar as it is now asserted that the applicant complains that the core of her complaint is that she was raped twice, this is not in accordance with her own consistent grounds of fear of persecution if she was to return to Botswana. Furthermore, as has been detailed in the decision of Humphreys J. in *IE* and jurisprudence therein referred to, given the adverse credibility findings in respect of a number of matters it was not incumbent on the Tribunal nor was it an error of law not to go on and consider the rape in isolation. In particular, it was never asserted by the applicant that because of two rapes simpliciter she was in fear of persecution.

7. There is not in my view a recent change in the consideration of a core claim because of the judgment of Gearty J hereinbefore referenced. The basis for this conclusion is similar to the reasons why *MPBK* did not follow *VH*.

8. The benefit of the doubt is to be afforded once the credibility of the applicant has been accepted, however, in this matter the respondent was dissatisfied with the applicant's general credibility.

9. The applicant's complaint that s.28(6) was erroneously understood in the decision is not sufficiently relevant to impugn the decision as s.28(2) did not arise in any event, nor was this complaint made in the statement of grounds.

10. At no time did the applicant assert that the police were unable or unwilling to protect citizens from murder or serious assault.

11. The applicant has not demonstrated how it is said certain findings were based on conjecture or speculation as opposed to based on knowledge of life and common sense.

12. The applicant is not entitled to a discursive decision and therefore it cannot be said because the decision didn't recite everything said by the applicant in the questionnaire or interviews that the decision is invalid.

13. The respondent accepted both parties' submissions on the impact of the letter of 21 July 2022.

13. In all of the circumstances the applicant has not discharged the onus upon her to demonstrate an error of law or in the process in respect of the within decision and in those circumstances her application is refused.