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THE HIGH COURT

JUDICIAL REVIEW

2006 1319 JR

IN THE MATTER OF THE REFUGEE ACT, 1996 (AS AMENDED)

IN THE MATTER OF THE IMMIGRATION ACT, 1999 AND

IN THE MATTER OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT, 2000

BETWEEN

H.A.-R.

AND

S.A.-R.

(A MINOR SUING BY HER MOTHER AND NEXT FRIEND

H.A.-R.)

APPLICANTS

AND

THE REFUGEE APPEALS TRIBUNAL,

THE REFUGEE APPLICATIONS COMMISSIONER,

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,

THE ATTORNEY GENERAL AND IRELAND

RESPONDENTS

JUDGMENT of Mr. Justice John Edwards delivered on 25th day of February, 2009

Introduction

The first and second named applicants are Ghanaian nationals. They are also mother and daughter respectively. Both applicants arrived in Ireland on 22nd September, 2005 having fled from Ghana a day or two previously. On the day of their arrival in the State, the first named applicant applied for asylum. In completing the relevant documentation, the first named applicant indicated that she wanted the second named applicant, who is a minor, to be included within her asylum application and she signed the standard forms in that regard.

The first named applicant is originally from a village called Dagomba in the northern part of Ghana. However, she is estranged from her family for some years for reasons which are set out later in this judgment, and for the most part has been living in Obuasi-Adansi. Prior to leaving Ghana the first named applicant worked as a hairdresser in Obuasi Adansi. On the 11th of September, 2005 she married her partner of some years, and with whom she now has four children. She candidly admits in her s.11 interview that they formalised their relationship by marrying to facilitate the applicants' travel.

As mentioned there are now four children of the marriage. The first two children are boys and they remain in Ghana with their father. The third child, the second named applicant herein, was a girl and she was born on 4th June, 2004. The fourth child is also a girl, but she was born in Ireland in Waterford Regional Hospital on the 30th of October 2005, the first named applicant having been heavily pregnant upon her arrival in the State.

The first named applicant claims that she and her daughter have a well-founded fear of persecution as defined under s. 2 of the Refugee Act, 1996 (as amended) in the following circumstances. She claims that her family want her to be circumcised (i.e. to undergo female genital mutilation or "FGM" as it is sometimes referred to) in accordance with a tradition in her family and in her village. She contends that she will inevitably face similar demands in respect of her Ghanaian born daughter, the second named applicant.

The first named applicant claims that her problems with her family began about nine years before she fled to Ireland, at around the same time that she met her then partner, who is now her husband. She claims that her family began pressurizing her to be circumcised, and that they offered her medicine which the applicant described as "herbs mixed with water". She claims that when she spoke about this to another woman whose daughter had died while undergoing FGM, this woman said to her that, if she took the medicine, she would powerless to prevent the circumcision. The first named applicant alleges that as a result of this she fled in the first instance to the village of Kumbungu where she had a friend, and from there to Obuasi-Adansi to be with her partner. She claims that she returned to her village after having three children, thinking that she wouldn't be circumcised. She claims that when she returned to her village she was again threatened with circumcision, and was insulted. Specifically she was accused by her parents of having had three "dirty" children and was told that her children would never be accepted in the village. She was accused of returning to destroy or damage the villagers' culture, and was told that whether she liked it or not she would have to undergo circumcision. She stated that such circumcisions are always performed in her village one week before the start of Ramadan. She returned to her partner in Obuasi-Adansi before then. She alleges that her family then sought her out and were able to find her in Obuasi-Adansi. As a result of this she fled to her uncle's home taking the second named applicant with her. She claims that her uncle made arrangements for them to leave Ghana, and that she left on September 20th, 2005 via the Ivory Coast. As previously stated she arrived in Ireland on 22nd September, 2005.

The first named applicant acknowledges that while in Ghana she did not report the threats against her to the police. She contends that she did not do so because "the law respects the tradition of circumcision in my village". Moreover, nobody had intervened when her own sister had bled for several months after undergoing FGM and eventually died.

The first named applicant attended for interview on 14th November, 2005 and her application was considered by the Refugee Applications Commissioner (the second named respondent herein) in due course. Although the second named respondent considered aspects of the first named applicant's story to be vague and inconsistent, he made no specific adverse credibility finding. However, he noted that notwithstanding that FGM is outlawed in Ghana, and has been a criminal offence there since 1994, the applicant had failed to report the threats against her to the police or to seek their assistance. He held that it was reasonable to assume that State protection would have been available to the first named applicant, had it been sought. Accordingly, he was not satisfied that the first named applicant had established a well-founded fear of persecution as defined under s. 2 of the Refugee Act, 1996 (as amended) and he recommended that she should not be declared a refugee. The Refugee Application Commissioners s. 13 report is dated 22nd December, 2005.

Although the second named applicant is named in the title to the s. 13 report as being a dependent of the first named applicant, there is no reference within the body of the report to the second named applicant at all.

The first named applicant filed a notice of appeal dated 21st December, 2005. This was an appeal to the Refugee Appeals Tribunal (the first named respondent herein). This took the form of an oral hearing which took place on 13th June, 2006, and at which the first named applicant was legally represented.

The Decision of the R.A.T.
There was no issue as to the first named applicant's credibility. However, in her decision the tribunal member stated:-

"Further, even if it was accepted that the fear the applicant states she has is indeed a well-founded fear, account has to be taken of the availability of the forces of the State to counter that fear. In other words, the test as set out *in Islam and Shah* is the test to be applied, i.e. there must be serious harm and a failure of State protection.

'The evidence was that the State… denied them the protection against violence, which it would have given to men. These two elements have to be combined to constitute persecution… persecution equals serious harm plus a failure of State protection'". - Islam and Shah v. SSHD [1999] 2 ALL E.R. 545 per Lord Hoffman (U.K. House of Lords 25th March, 1999).

If persecution does not emanate from a State it has to be demonstrated that the State is either unwilling or unable to provide protection. The State is not required to provide perfect protection. When an applicant does not seek State protection it is not possible to judge whether there would have been, in the circumstances of the individual, a sufficiency of protection available. Therefore it is necessary to gauge whether the system in place is theoretically adequate. In this regard, see *Attorney General v. Ward* [1999] 2 SCJ 689.

Country of origin information submitted on behalf of the applicant entitled "Ghana: women call for Stiffer Female Circumcision Laws", indicates that FGM has been recognised as a criminal offence in Ghana since 1994. Those who perform the operation face a prison sentence of at least 3 years. FGM is still common in the north where it was widely practised before the ban and there are relatively few prosecutions. In November, 2003 the court in Ghana's upper west region jailed a 45 year old woman farmer for five years for circumcising three girls,

including a 3 week old baby. Another court in the adjoining upper east region imposed a 5 year jail term on a 70 year old for circumcising 7 girls. Women's organisation say that these convictions are evidence that some progress has been achieved in the bid to completely eliminate FGM which often leads to medical complications and can leave a woman psychologically scarred for life.

Thus it is clear that while FGM still occurs in Ghana, huge improvements have been made in efforts to combat it and to educate people regarding its dangers. It is further evident from the county of origin information that prosecutions do occur and there is nothing in the information to suggest that a complaint concerning a potential forced circumcision would be ignored by the authorities where the applicant to report same. On that basis one could say that hers is a situation in which state protection "might reasonably have been forthcoming" when viewed in the context of objective country of origin information.

In such a situation the claimant's failure to approach the State for protection defeats the claim. (*Attorney General v. Ward,* [1996] 2 SCJ 689). As the court stated in *Horvath v. Secretary of State for the Home Department* [2002] 3 ALL E.R. 577 -

> *'It would require cogent evidence that the State which is able to afford protection is unwilling to do so, especially in the case of a democracy'.*

Thus, as there is not cogent evidence that the State, which is able to afford protection, is unwilling to do so, I am of the opinion that there was/would be a sufficiency protection available and therefore the principle of surrogacy does not arise.

It is well established that an applicant's failure to satisfy any one of the criteria results in the failure to establish a claim for refugee status. Thus, this application for refugee status is refused and the decision of the Refugee Applications Commissioner is affirmed."

The proceedings herein

Although brought under the umbrella of the one set of proceedings, separate claims are made in respect of both applicants and it is appropriate to consider them separately.

The first named applicant's claim

The first named applicant has instituted judicial review proceedings seeking leave to apply for an order of *certiorari* to quash the first named respondent's decision of 26th September, 2006, and diverse ancillary reliefs. While various grounds in support of this claim are extensively pleaded in the Statement of Grounds accompanying the application, the gravamen of the first named applicant's complaints can be summarized as follows. It is contended that the first named respondent erred in:-

(a) failing to consider all of the evidence and in particular all of the evidence submitted by or on behalf of the applicants, and supported by country of origin information, relating to the unavailability of adequate State protection;

(b) failing to consider all the country of origin information and in making selective use of the country of origin information which is relied upon;

(c) failing to apply the correct legal principles relating to State protection and to have regard to the adequacy or otherwise of the perceived protection available from the State;

(d) failing to afford the first named applicant fair procedures and in particular taking into account matters that were irrelevant to the determination of the appeal and/or failing to take relevant considerations into account;

(e) failing to have any or any sufficient regard to the subjective fear of persecution, and the past persecution, suffered by the first named applicant, in so far as it was indicative of likely future persecution. In particular the tribunal is alleged to have failed to have had regard to the death resulting from FGM of the sister of the first named applicant.

The second named applicant's claim

The second named applicant, by her mother and next friend the first named applicant, seeks leave to apply for an order of *certiorari* to quash the s.13 report of the second named respondent, and diverse ancillary reliefs. While this application is significantly outside the time limit of 14 days set down in section 5(2)(a) of the Illegal Immigrants (Trafficking) Act, 2000, the Court is nevertheless satisfied that it has good and sufficient reason to extend the period within which the application may be made having regard to the fact that this applicant is a minor, and time is not normally considered to run against a minor until the minor attains his or her majority.

It is contended on behalf of the second named applicant that she was entitled to a separate consideration of the circumstances of her case, i.e., a consideration of her case, separate and distinct from her mother's case. Because the only reference to the second named applicant in the s. 13 report is in the title to report where she is acknowledged to be a dependent on the first named applicant, it is contended that the position of the second named applicant was simply subsumed in to the application of the first named applicant and that the second named applicant did not receive separate consideration.

In the alternative the second named applicant seeks leave to apply for an order of certiorari to quash the decision of the first named respondent. The grounds upon which this alternative relief is sought of the same, as in respect of the reliefs sought against the second named respondent. In other words if the court were of the view that there was a sufficient consideration of the second named applicant's case by the second named respondent and that the second named applicant's case was validly before the first named respondent, by virtue of the first named applicant's appeal against the recommendation of the second named respondent, the second named applicant contends that she did not receive a separate consideration of her case by the first named respondent. The second named applicant contends that the only reference to her in the decision of the first named respondent was single sentence on p. 2 thereof stating she (the first named applicant) "also fears for her daughter".

Submissions on behalf of the First Named Applicant

The first named applicant severely criticises the manner in which the tribunal relied upon country of origin information. According to the first named applicant, there was no basis for the tribunal's assertions that "huge improvements have been made in efforts to combat FGM", that "prosecutions do occur", that "there is nothing in the information to suggest that a complaint . . . would be ignored by

the authorities", or the conclusion that state protection "might reasonably have been forthcoming".

It was further contended that the tribunal in arriving at its decision had selective regard to the country of origin information before it. The first named applicant contends that findings relating to the availability of state protection were made without any assessment of the adequacy of such protection. Moreover, insofar as the tribunal placed reliance on changing conditions in Ghana relating to FGM, no assessment was made of how the perceived changes affected the applicants in their particular circumstances.

The first named applicant makes specific criticism of the IRIN Report quoted by the tribunal. While the first named applicant accepts that the report included the comments quoted by the tribunal, she contends that the thrust of the report referred to the inadequacy of the laws in place, and contained such statements as "the law does not punish accomplices such as parents, family and community members who help the FGM practitioner", or that "many Ghanaian women's rights activists say the current law is too lenient". Further, the report in question quoted Florence Ali, the president of the GAWW (Ghanaian Association for Women's Welfare), as saying that there were no reliable statistics on how many young girls were still being circumcised in Northern Ghana since the practice had gone underground ten years ago.

The Tribunal is criticised for not referring to the UK Home Office Report which was before it. This report states at para 6.37 thereof "the Centre for Reproductive Rights questioned whether current legislation has had the desired effect with the practice of FGM still estimated to be around 30%". Further, it is stated at para. 6.39 thereof that "the United Nations Commission on Human Rights reported that the numbers involved could be higher, noting that FGM is primarily practiced among northern sector ethnic groups, up to 86% in the rural parts of the upper west and upper east regions". Amnesty International is quoted in that report as estimating that 76% of all women in the northern regions had been excised and that some hold the opinion that the law has driven the practice underground. The Amnesty source is further quoted as saying that "the ability of police to respond to remote communities in a timely or effective manner is severely limited". It is further stated that "the procedure is perceived as an act of love to daughters that will ensure their full community recognition . . . with this practice so firmly established within the local society, simply passing a law to prohibit it, has little likelihood of success".

The first named applicant relies upon my judgment in *Simo v. The Refugee Appeals Tribunal* (Unreported, High Court, Edwards J., 5th July, 2007) in support of the proposition that a decision maker must explicitly state why certain country of origin information is to be preferred over other country of origin information. Further, the first named applicant relies upon the decision of Clarke J. in *Muia v The RAT and Others* (Unreported, High Court, Clarke J., 11th November, 2005) wherein it was stated:-

> "Where, however, as here, there is no evidence to be found in the decision that the country of origin information favourable to the applicant's case was considered and, equally, as a consequence, no rational explanation as to why it was rejected, it seems to me that there are at least arguable grounds for the applicant's contention that the decision maker did not take into account relevant considerations."

Further, reliance was placed on the decision of Clarke J. in *Idiakheua v. The*

Minister for Justice, Equality and Law Reform and the Refugee Appeals Tribunal (Unreported, High Court, Clarke J., 27th May, 2005) wherein the learned judge stated with respect to the availability of state protection:-

> "It is at least arguable that reference to an isolated example of state protection is insufficient to justify a finding of adequate state action in just the same way that the establishment of an isolated incident where state protection failed may be insufficient to establish its inadequacy. It would appear that the true test is as to whether the country concerned provides reasonable protection in practical terms - Noone v. Secretary of State for the Home Department (Unreported, Court of Appeal, 6th December, 2000). While the existence of a law outlawing the activity which amounts to persecution is a factor the true question is as to whether that law coupled with its enforcement affords 'reasonable protection in practical terms.'"

It is further submitted on behalf of the first named applicant that insofar as the tribunal referred to changed country conditions in Ghana it failed to access how such changed conditions would affect the applicant's situation. The court was referred to *Rostas v. The Refugee Appeals Tribunal* (Unreported, High Court, Gilligan J., 31st July, 2003) wherein it was held that an individualised analysis of how changed conditions will affect the applicants' situation should be undertaken. Finally, it was submitted that the tribunal failed to consider and weigh in the balance significant elements of the first named applicant's evidence concerning past persecution, including the circumstances of her sister's death from FGM. The court was referred to the decision of Peart J. in *Da Silveria* (Unreported, High Court, Peart J., 9th July, 2004) wherein the court approved of the decision of the Court of Appeal in *Karanakaran v. The Secretary of State for the Home Department* [2000] 2 All E.R. 449, where it was stated:-

> "the decision maker . . . was required to take account of all material considerations when making an assessment about the future . . . the decision maker could not exclude from consideration any matters when assessing the future unless it felt that they be could safely discarded because it had no real doubt they had not in fact occurred."

Further, the court was referred to the following statement from Professor Hathaways work entitled *The Law of Refugee Status* (Butterworths, 1991) wherein he stated:-

> "Where evidence of past maltreatment exists, however, it is unquestionably an excellent indicator of the fate that may await an applicant on return home. Unless there has been a major change of circumstances within that country that makes prospective persecution unlikely, past experience under a particular regime should be considered probative of future risk."

Submissions on behalf of the Second Named Applicant

It was contended that the Commissioner and/or the Tribunal failed to separately consider the minor applicant. Counsel cited the case of *Ojuade and Others v. The Refugee Applications Commissioner and Others ,* (Unreported, High Court, Peart J., 2nd May, 2008) in support of his contention that the second named applicant was entitled to separate consideration. At p. 17 of his judgment in that case Peart J. stated:-

> "If the Court is satisfied that substantial grounds exist for so contending,

> then it is appropriate to grant leave to the second named applicant so that a substantive hearing can occur for the purpose of deciding that this decision be quashed in respect of the second named applicant, so that a fresh appeal on her behalf should be heard."

Peart J. further stated:-

> "In my view having read carefully the decision of the Tribunal, there is only one reference, and an oblique one at that, to the second named applicant. That appears in the penultimate paragraph of the decision where the member states:
>
> '[Country of origin information] also indicates that former excisors were refusing families who wished to have their daughters circumcised, to refer them to others still practising FGM and threatened to bring in the authorities if those families tried to pursue the operation.'
>
> There is no reference specifically to the second named applicant. There is just that single reference to families who wished to have a daughter circumcised. In my view I need go no further and can conclude that there are substantial grounds for contending that the position of the second named applicant was simply subsumed into the application of the first named applicant, and that therefore the second named applicant has not yet had the benefits of the right of appeal."

Counsel for the second named applicant contends that similar considerations arise in this case.

Submissions on behalf of the Respondents

It is acknowledged by the respondents that the tribunal's decision turns mainly on the availability of state protection. The written submissions filed on behalf of the respondents quote extensively from the tribunal member's decision. In particular the court's attention is directed to the fact that the tribunal member referred to the case of *Attorney General v. Ward* [1999] 2 S.C.J. 689, as supporting the proposition that when an applicant does not seek protection it is not possible to judge whether there would have been, in the circumstances of the individual, a sufficiency of protection available. Therefore it was necessary to gauge whether the system in place was theoretically adequate. Counsel pointed out that the tribunal member referred to country of origin information submitted by the first named applicant entitled "Ghana, Women Call for Stiffer Female Circumcision Laws". This document was submitted by the applicant with her notice of appeal and established the following:-

• FGM has been recognised as a criminal offence in Ghana since 1994;

• Those who perform the operation face a prison sentence of at least three years;

• FGM is still common in the north where it was widely practised before the ban and there are relatively few prosecutions;

• In November 2003, the court in Ghana's upper west region jailed a 45 year old woman farmer for five years for circumcising three girls including a three week old baby;

• Another court in the adjoining upper east region imposed a five year jail term on a 70 year old woman for circumcising seven girls;

• Women's organisations say that these convictions are evidence that some progress has been achieved in a bid to completely eliminate FGM which often leads to medical complications and can leave a woman psychologically scarred for life.

Counsel pointed out that the Tribunal Member concluded:-

> "Thus it is clear that while FGM still occurs in Ghana, huge improvements have been made in efforts to combat it and to educate people regarding its dangers. It is further evident from the country of origin information that prosecutions do occur and there is nothing in the information to suggest that a complaint concerning a potential forced circumcision would be ignored by the authorities were the applicant to report the same. On that basis, one could say that hers is a situation in which state protection 'might reasonably have been forthcoming' when viewed in the context of objective country of origin information."

Counsel for the respondents relies upon the English case of *Z.L and V.L v. Secretary of State for the Home Department and the Lord Chancellors Department* [2003] E.W.C.A. Civ. 25 sub nom R. (on the application of *L. v. Secretary of State for the Home Department* [2003] 1 A.E.R. 1062, at [59]), wherein the Court of Appeal held that a case may be properly rejected and certified as clearly unfounded on the grounds that there is clearly a sufficiency of protection available to the claimant in the country of origin, as this goes to the heart of the key issues of well-foundedness of fear and reality of risk of harm on return.

Counsel for the respondents submits that the relevant test applied by the Irish courts is whether "on the material before the tribunal it could conclude that the applicant had not demonstrated that the protection of the state was not, or would not have been available to him". The authority cited for this was the case of *Rasheed Ali v. The Minister for Justice* (unreported, High Court, Peart J. 26th May, 2004). In that case there was no evidence that the applicant had been refused help. Peart J. referred to Professor Hathaways book entitled *"The Law of Refugee Status"* (Butterworths, 1991) (previously cited) at para. 4.5.1 and the principles in *Rajudeen v. The Minister of Employment and Immigration* [1985] 55 N.R. 129 (F.C.A.), regarding the standard of test for the adequacy of state protection. He noted that Hathaway quotes from the judgment of Hearld J. in the *Rajudeen* case as follows:-

> "An individual cannot be considered 'a convention refugee' only because he has suffered in his homeland from the outrageous behaviour of his fellow citizens. To my mind, in order to satisfy the definition the persecution complained of must have been committed or been condoned by the state itself and consist either of conduct directed by the state towards the individual or in it knowingly tolerating the behaviour of private citizens, or refusing or being unable to protect the individual from such behaviour."

Commenting on this quotation, Peart J. stated:-

> "It is the last portion of this principle upon which the applicant relies, and this is on the basis that the applicant stated that he had sought help from

the police after the 2000 incidents and that while they had said they would take action, nothing was done. It was open to the Tribunal to form the view that this fell short of establishing lack of state protection. In this regard I note another passage in Hathaway at p. 126 which contains a quotation from a decision of the Immigration Appeal Board in *Ganganee Janet Permanand* (T87-10167, August 10, 1987) as follows:-

> 'The abuse of power by agents of the State or their unwillingness to discharge their duties in respect to a particular citizen or group of citizens could indeed constitute persecution. However, to be so, such practices must be carried out systematically and with the overt or covert concurrence of the state.'
>
> If that statement be correct, there can be no doubt that the country of origin information and the applicant's own testimony falls far short of what would be required to establish, even on a low threshold of proof, that state protection was unavailable to the applicant."

The respondents draw the court's attention to the case of *Adeniran v. The Refugee Appeals Tribunal,* (Unreported, High Court, Feeney J., 9th February, 2007) wherein the issue of state protection was considered. The learned judge stated:-

> "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 the 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 a presumption could be rebutted but that such a rebuttal required clear and convincing evidence."

Counsel for the respondents submits that the applicants in this case have not provided clear and convincing evidence that the presumption that the Ghanaian state was capable for protecting its citizens had been rebutted. The respondents accept that according to the country of origin information protection against FGM is limited both in rural areas and in Northern Ghana. However, they say that this must be balanced with an unequivocal finding that protection is available in urban areas and that FGM is almost non-existent in Southern Ghana. Furthermore, they say that it is not evident from the country of origin information that the police fail to act or treat FGM as a tribunal/family matter. They point out that the first named applicant had lived in Southern Ghana for a number of years and was living there prior to her departure from the state.

In conclusion the respondents submit that the court should only review the finding that state protection "might reasonably be available to the applicant", if it was contrary to reason and common sense. The respondents submit that that is not the case. They contend that the decision of the Refugee Appeals Tribunal was made within jurisdiction and is valid.

With respect to the claim that the second named applicant did not a receive a separate consideration of her case, counsel for the respondents places heavy reliance upon the fact that the first named applicant stated expressly that she

wanted the second named minor applicant included within her asylum application and that she signed the standard documentation in this regard. The respondents rely upon the case of *Nwole and Others v. The Minister for Justice, Equality and Law Reform,* [2004] IEHC 433 in which Peart J. considered the position of minors and separate applications. He concluded in that case that the applications of the children who arrived in the State with their mother and made no separate applications nor put forward any separate or independent grounds were properly and correctly treated as subsumed or incorporated in their mother's application. He found that the duty fell upon the mother as guardian and primary protector of the best interests of the children to ensure that any individual application that was required to be made was made in respect of the children and did not accept the mother's account of events that she was not aware that her application when made incorporated her children. He said that "it is clear beyond any doubt that she intended to apply for a declaration on her own behalf and behalf of her children".

The respondents contend that the same can be said of these proceedings on the basis that:

(a) The first named applicant clearly intended that the second named applicant should be included in her application and signed documents to that effect.

(b) The first named applicant's asylum claim proceeded on that basis without complaint to the conclusion of the appeal stage;

(c) The correspondence made a clear reference to the second named applicant as a dependant in the first named applicant's asylum claim.

The respondents further rely upon the case of *Ehi Salu (a minor) v. O.R.A.C.* (Unreported, High Court, Feeney J., 12th December, 2006) wherein the learned judge concurred with the judgment of Peart J. in the *Nwole* case and stated:

> "The court is satisfied that in accordance with the approach identified by Peart J. in the *Nwole* case, that there is no obligation on the second named respondent to separately interview or consider the applicant's application where no facts or circumstances relevant to the minor, separate or distinct from the facts or circumstances relevant to the parent's application have been identified".

Counsel for the respondents concludes her submissions by contending that the complaints relating to the consideration of the second named minor applicant are wholly unmeritorious and unsustainable.

Decision

I have read all of the country of origin information that was submitted in this case. Having done so I am not satisfied that there was selective use of country of origin information. Neither am I satisfied that the finding of the first named respondent was against the thrust of the available country of origin information. This court should not interfere with a finding of the Refugee Appeals Tribunal where there is evidence to support it and where the tribunal member has, *prima facie*, acted within jurisdiction. Counsel for the respondent has correctly pointed out that the tribunal member's decision quotes extensively from country of origin information which points out the imperfections in the current system within Ghana. However, and as the tribunal member rightly pointed out, state protection does not have to be perfect. It is unfortunate that the tribunal member used the words "huge improvement" with respect to recent efforts to combat FGM and

educate people regarding its dangers. It seems to the Court that, by any yardstick, that characterisation was an overstatement and that the tribunal member indulged in hyperbole on this point. Nevertheless, I am satisfied that there was still sufficient evidence of the existence of state protection and of a generally improving situation to sustain the first named respondent's decision. In the circumstances it would wrong and inappropriate for this court to interfere with it.

I do not consider that the applicant's personal history insofar as it concerns her sister dying from FGM is of particular relevance in the circumstances of this case. There is no evidence that state protection was sought and was unavailable in the circumstances of the sister's case. Indeed, the comment might be made that having witnessed the death of her sister in the circumstances described there was all the more reason for the applicant to go to the police when she herself was threatened. People cannot expect the state to protect them if they are not prepared to invoke state protection. For a system of state protection to be effective crimes, and threatened crimes, have to be reported. Moreover, the community has to support the state's efforts by ensuring that the evidence necessary to enable action to be taken is not withheld from the police. The available country of origin information does not establish that the weaknesses in the state protection system in Ghana are primarily to do with an attitudinal problem on the part of the police. Rather, and insofar as I can glean it from the material presently before me, it seems to have more to do with a reluctance or unwillingness on the part of the general population in the northern part of the country to report incidents of FGM to the authorities. This may be a social and cultural problem, but it does not necessarily represent a failure by the state to provide the necessary protection. Moreover, there is no indication as to precisely when the first named applicant's sister died. There is certainly no evidence that her death is recent. As the Court has already held there was evidence before the tribunal as to the present availability of state protection and of a generally improving situation with respect to enforcement of laws against FGM. The sister's death could have been relevant (i) if it had occurred recently, and (ii) if it had occurred despite state protection having been requested. If both of those circumstances did obtain then it could represent powerful anecdotal evidence of the inadequacy of the present regime of state protection. However, there was no evidence that her death was recent, or that state protection had been sought but was unavailable in her case.

With regard to the second named applicant's case this court concurs with the views of Peart J. in *Nwole*, and with Feeney J. in *Ehi Salu,* and I am satisfied that her application was validly subsumed within the application of the first named applicant.

In all the circumstances I must dismiss the claims of both applicants.