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The high court
Judicial Review

[2005 No. 462 JR]

Between

Olga Kikumbi and Ilunga Kikumbi

Applicants

and

the Office of the Refugee Applications Commissioner
the Minister for Justice, Equality and Law Reform

Respondents

and

the Refugee Appeals Tribunal

Notice Party

Judgment of Mr. Justice Herbert delivered on the 7th day of February 2007

By order of this court (Butler, J.), made of 2nd February 2006, the Applicants were given leave to seek an Order of Certiorari by way of Judicial Review, upon the following

grounds:-

> "(ii) In assessing the Applicants' claim for asylum the First Named Respondent her servants or agents have erred in law and/or fact and/or in a combination of law and fact, and dealt with the application in a manner which was in breach of the principles of natural and constitutional justice, and was, in all the circumstances unreasonable and/or irrational.

(iii) The First Named Respondent identifies three main grounds for her not being satisfied that the Applicants are not refugees within the meaning of s. 2 of the Refugee Act 1996. Two of these grounds relate to a purported lack of credibility and/or plausibility of the Applicants particularly in the light of country of origin information. The First Named Respondent has erred in fact and/or law and/or acted in breach of the principles of natural and constitutional justice in the evaluation of country of origin information and the assessment of the Applicants' credibility in the context of said country of origin information. These errors are such as to render the decision fundamentally flawed.

(iv) In particular the First Named Respondent, her servants or agents states that there may be doubts as to whether the Applicants and their family moved from Bunia to Fataki in April 2003. The First Named Applicant stated was done because of the troubles and the Second Named Respondent stated this was done when the trouble became more serious in Bunia. The First Named Respondent states that country of origin information indicates that a major battle for Bunia broke out in May 2003. The First Named Respondent states that it is questionable that the Second Named Applicant would relocate to Fataki, the main town in the Ituri District where she asserted the conflict was. The First Named Respondent has erred in fact in finding that the main town in the Ituri District was Fataki; the country of origin information clearly states the Bunia is the main town. This error of fact is clearly material to the assessment of credibility of the Applicants and thus renders the decision fundamentally flawed.

(v) Further the First Named Respondent errs in casting doubt on the Applicants' statement that they moved to Bunia in April 2003 by stating that country of origin information indicates that a major battle for Bunia broke out in May 2003. However the Second Named Applicant expressly stated that they moved when the trouble in Bunia became more serious and the country of origin information clearly indicates that tensions had existed in the region for a number of years. Therefore it is entirely plausible and consistent with country of origin information that the Applicants moved when they stated they did. The First Named Respondent has erred in over-interpreting the country of origin information this way to support a finding of lack of credibility and has failed properly to assess the Applicants' claim in this regard.

(vi) The First Named Respondent also found that the Applicants' overall credibility was undermined due to their claim to have removed to Fataki when they were members of the Lendu Ethnic Group. The First Named Respondent states that country of origin information indicates that Fataki was under the control of militia composed mainly of

members of the opposing Herna tribe, and thus serious doubts must exist about the Applicants' claim that they moved to Fataki. This finding is flawed in a number of respects. First, the various country of origin information referred to by the first named respondent is at best unclear as to the issue of who controlled the Fataki region at this time. The First Named Respondent has erred in law and/or in fact in failing to take account of this material which supports the Applicants' claim and/or in failing to give reasons as to why she preferred one source of country of origin information over another. Secondly, one of the sources relied on by the First Named Respondent as setting out this factual material does not in fact refer to the issue at all. The First Named Respondent has erred in fact and/or in law in failing to consider the country of origin information properly and these errors have resulted in a failure to assess properly the Applicants' credibility. As credibility is central to the negative decisions made against the Applicants these errors render the decisions fundamentally flawed.

(vii) The First Named Respondent also rejects the Applicants' claim on the grounds that there are doubts as to the Applicant's description of what happened in July 2003. The first reason given by the First Named Respondent is that the Applicant's account as to how they escaped from their home is not credible. No reason is given as to why the First Named Respondent makes such a finding. This finding is a matter of pure conjecture on the part of the First Named Respondent and the First Named Respondent gives no reason for not giving the Applicants the benefit of the doubt in relation to their evidence in this regard.

(viii) The First Named Respondent also states that it is questionable that the Applicant's family, a Lendu family, were attacked while the family of a friend, also a Lendu was not. The First Named Respondent gives no reason for such a finding. The first named respondent also gives no or no substantial reason for the finding that the account of what happened when they arrived at their friend's house was not credible. The First Named Respondent has erred in law in failing to give reasons for her findings and in failing to the give the Applicants the benefit of the doubt in relation to their evidence in this regard.

(ix) The First Named Respondent also states the Applicant's account of what happened on 18th July 2003, is not plausible and undermines the overall credibility of their claim and relies on country of origin information that indicates that in July and August 2003 ethnic Lendu attacked Fataki. However, this country of origin information supports rather than undermines the Applicant's claim as the evidence given by the Applicants is that they were targeted by Hema who blamed them, as Lendu for the attacks on the area. The First Named Respondent has therefore failed to asses the country of origin information correctly and thus has failed properly to assess the credibility of the Applicants in the light of this country of origin information. The assessment of the Applicant's credibility was integral to the First Named Respondent in her decision as to entitlement to refugee status and thus the errors made in this regard render her decision invalid.
Grounds (ii) and (iii) are merely general statements that the first named respondent erred in fact and additionally or alternatively in law and, additionally or alternatively acted in breach of the principles of natural and constitutional justice in assessing the country of

origin information and in assessing the credibility of the Applicants in the context of that information. Ground (iv) constitutes the first specific ground of complaint. I propose in the course of this judgment to follow the sequence of the arguments as they were presented to the Court at the hearing of the application.

At para. 5.5 of her Report, the Authorised Officer of the first named respondent, concluded that it was questionable that the second named Applicant and her family would re-locate to Fataki, the main town of the Ituri District where she asserted the main conflict was. The Authorised Officer had previously recorded that the second named applicant claimed that they had moved to Fataki in April 2003, when the trouble became more serious in Bunia. At ground (iv) of this application for Judicial Review, the Applicant's point to the undeniable fact that the Authorised Officer, at para. 5.5 of her Report, found that the country of origin information indicated that a major battle for Bunia broke out in May 2003. Counsel for the Applicants submitted that the second named applicant correctly asserted that the main conflict was in the main town of Ituri District because this was Bunia and not Fataki as the Authorised Officer incorrectly held.
It was submitted on behalf of the Respondents that the Authorised Officer concluded that Fataki was the main town of the Ituri District from country of origin information, identified as having been downloaded from an IRIN (United Nations Humanitarian Information Unit), web site, which states *inter alia*, as follows:-

> "NAIROBI, 5 Aug. 2003 (IRIN) – Another attack on the village of Fataki about 80km north of Bunia, the main town of the troubled Ituri District of northeastern Democratic Republic of the Congo (DRC), is reported to have taken place on Saturday and Sunday according to the Missionary Service News Agency (MISNA).
> MISNA said on Monday that the attack was believed to have been carried out by ethnic Lendu militias that control the area. Fataki was the scene of a massacre of an estimated 80 civilians two weeks earlier… (etc)."

Counsel for the Respondents submitted that this was "somewhat ambiguous" and, that it as reasonable for the Authorised Officer to have concluded as she did that Fataki was the main town of the Ituri District.

I am unable to agree. I find that the Authorised Officer misdirected herself in fact in so concluding. I have no doubt that this report clearly and unambiguously identifies Bunia as the "main town" of the Ituri District. Any other construction would do violence to the grammatical structure and plain language of these paragraphs. I find that there was therefore no rational basis for the Authorised Officer to question the claimed re-location to Fataki on this ground.

However, this was not the only basis upon which the Authorised Officer found that the claimed re-location by the Applicants and their family to Fataki was questionable. In the same para. 5.5, immediately after this incorrect finding the Authorised Officer goes on to give another reason why she concluded that the claimed re-location in April 2003 to

Fataki was questionable. She states as follows:-

> "Furthermore, country of origin information indicates Fataki was under the control of the Hema militia group Union des Patriots Congolais (UPC), prior to the violence in July and August 2003, (Appendix 1 and 4). Indeed according to the newspaper article in Le Potentiel titled "Improtantes attaques au nord de Bunia, selon la Monuc" that the Applicant submitted "… the zone of Fataki was controlled until now by the Union of Congolese Patriots (the UPC), with the majority of its members belonging to the Hema, a minority ethnic group …" (Appendix 8 & on file). Considering the Fataki area appears to have been under UPC Hema militia control prior to the July/August 2003 violence, there must be very serious doubts about the Applicant's claim that her and her family moved there given her assertion they belonged to the Lendu ethnic group. This serves to undermine the overall credibility of the Applicants claim".

In my judgment, the fact that the Authorised Officer partly misinterpreted the country of origin information available to her and, misdirected her self in fact in concluding that the main town of the Ituri District where the main conflict was taking place, was Fataki and not Bunia, does not invalidate her conclusion that it was questionable that the second named applicant and her family moved to Fataki from Bunia, because that conclusion was also based upon this other entirely separate and severable consideration, which was not demonstrated to be also incorrect. In these circumstances I find that the mistake of fact on the part of the Authorised Officer was not material to or of significant importance to her conclusion so as to invalidate that conclusion.

It is not therefore necessary to consider the decision of this Court (O'Donovan J.), in the case of *ABM v. Minister for Justice, Equality and Law Reform, The Interim Refugee Appeals Authority and the Attorney General* (High Court, Unreported, 23rd July, 2001), or the decision of this Court (Peart J.), in *Da Silveira v. The Refugee Appeals Tribunal* (High Court, Unreported, 9th July, 2004). For the reasons which I have indicated I find that this application is clearly distinguishable on its facts from the case of *Traore v. The Minister for Justice, Equality and Law Reform* (High Court, Unreported, Finlay Geoghegan J., May 14th, 2004), relied upon by the Applicants.

However, I would adopt the following passage from the judgment of the learned Judge in the *Traore* Case where she held that:-

> "In reaching the above conclusion I do not wish to suggest that every error made by a Tribunal Member as to evidence given will necessarily render the decision invalid. It will obviously depend on the materiality of error to the decision reached. The error must be such that the decision maker is in breach of the obligation to assess the story given by the applicant or the obligation to consider the evidence given in accordance with the principles

> of constitutional justice."

I would also gladly adopt the following passage from the judgment of the same learned Judge in the case of *Carciu v. The Refugee Appeals Tribunal and Others* (High Court, Unreported, July 4th, 2003):

> "If a decision maker is assessing the credibility of an applicant and that decision is based on an incorrect, indisputed fact, that unless it can be established that that incorrect fact is clearly so insignificant that it was not material to the decision maker, that there is a potential breach of an obligation to observe fair procedures, or it may be asserted that the decision is unreasonable or irrational as based upon erroneous fact."

At paras. 4.4, 4.5, 5.1 and 5.6 of her Report, the authorised officer deals with the events which the second named Applicant claims took place on 18th July, 2003, in Fataki. As there is a very considerable amount of repetition between these paragraphs it is sufficient, in my view, for the purpose of this judgment, to set out in full para. 5.6 of the report which gives both the account of the second named Applicant and the conclusions of the Authorised Officer in relation to it. It was accepted at the hearing of this application for Judicial Review that the account of events on the same date given by the first named Applicant was substantially the same, – as appears from para. 5.5 of the report of the Authorised Officer in that application and I shall also set out that paragraph in full.

> "5.6 On the 18th July 2003, the Applicant claims armed Hema came to their home in Fataki and threatened her father and the family. She maintains her and her sister were in the bedroom at the time, their father shouted at them not to come out and they escaped through the bedroom window. When asked if her father shouting at them, drew the attention of those threatening her family, to her whereabouts in the house, the Applicant said 'yes, I think it did'. It was that in fact that made it that we could flee and escape through the window…"
>
> (Q. 73 pg. 24, IN). It is not credible that the Applicant and her sister managed to escape in this manner. She claims they ran to Numbi's house, who was also Lendu and stayed the night there. When asked why Numbi's house was not attacked and his family escaped considering he was Lendu, the Applicant said "specifically I don't know" (Q 76, pg. 27, IN). Again, it is questionable the Applicant's family were targeted, she managed to run to Numbi's house and Numbi who belongs to the same ethnic group as the Applicant and her family, did not appear to experience any problems. Indeed, the Applicants description of her arriving at Numbi's house, explaining the problem and "… He (referring to Numbi) went out, came back after a few minutes. He said it was the Hema. He could not do anything at that point". (Q. 69, pg. 22, IN) is not credible. When asked if

any other Lendu were attacked on 18th July, the Applicant replied "Specifically on 18th July I don't know…" (Q. 75, pg. 25, IN). In general, the Applicants account of events on 18th July, 2003 and what immediately followed do not seem plausible and again serve to undermine the overall credibility of her claim. Furthermore, country of origin information indicates in July and August in Fataki, Ituri District, ethnic Lendu opposition members reportedly killed several people and abducted others (Appendix 1 – 4). Paragraph 204 of the UNHCRH Handbook on Procedure and Criteria for Determining Refugee Status states:-

"The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicants general credibility. The applicants statements must be coherent and plausible and must not run counter to generally known facts".

"5.5 On 18th July, 2003, the Applicant claims armed persons, later identified by Numbi as Hema came to their home in Fataki and threatened her father and the family. She maintains her and her sister were in a separate room at the time, they looked out, their father shouted at them 'return' (pg. 11 IN) and they escaped through the window." When asked if her father shouting at them drew the attention of those threatening her family, to her whereabouts in the house, the Applicant said:-
"My father did see us when we were peeking but I cannot confirm those people saw us but I think they could have seen us…" (Q. 38, pg. 15, IN). It is not credible that the Applicant and her sister managed to escape in this manner. She claims they ran to Numbi's house, who was also Lendu and stayed the night there. When asked if Numbi's house was attacked by these Hema, the Applicant replied:-

"No it wasn't attacked, however, he seemed like he knew something because he said they think its us causing this and also we left quickly". (Q. 35, pg. 14, IN).

It is extraordinary the Applicant and her sister managed to escape in the manner described, run approximately 5kms to Numbi's house without encountering any problems with Hema's and Numbi, who belongs to the same ethnic group as the Applicant and her family, did not appear to experience any problems. Indeed the Applicants description of when they arrived at Numbi's house, "… we told him our problem. He was surprised. He told us to sit and left for a while. He returned in 20 minutes and told us it was the Hema tribe who'd done this……", is not credible (Q 34, pg. 12 IN). When the Applicants sister was asked if any other Lendu were attacked on the 18th July, she replied, "Specifically on the 18th July, I don't know……." (Q 75, pg. 25, IN 69/4260/03). When the Applicant was

> asked why the Hema specifically came to their home on 18th July, she stated she did not know why exactly. However, she made reference to her fathers employment position in Kinshasa. It appears from the Applicants account her father decided to leave Kinshasa and return to Bunia in 1990, some 13/14 years earlier. In general, the Applicants account of events on 18th July 2003, and what immediately followed do not seem plausible and serve to undermine the overall credibility of her claim. Furthermore, country of origin information indicates in July and August in Fataki, Ituri District ethnic Lendu opposition members reportedly killed several people and abducted others (Appendix 1-4).

The reports of the Authorised Officer disclose that the second named applicant was born on 30th June, 1975 and the first named applicant was born on 2nd September, 1986.
It was submitted by Counsel for the Applicants that the Authorised Officer was in breach of the requirement to give reasons for her findings that the evidence of the Applicants was not credible and was questionable and implausible and served to undermine the overall credibility of their claim.

In the case of *F.P. and A.L. v. The Minister for Justice, Equality and Law Reform* [2002] 1. I.R. 164, the Supreme Court was dealing with the provisions of s. 3 (3)(b)(ii) of the Immigration Act, 1999, which provides that where the Minister proposes to make a deportation order he or she shall notify the person concerned in writing of his or her proposal and of the reasons for it. Each of the applicants in that case had received a letter from the Minister in the following terms:-

> "I am directed by the Minister for Justice, Equality and Law Reform to refer to your current position in the State and to inform you that the Minister has decided to make a deportation order in respect of you under s. 3 of the Immigration Act, 1999. A copy of the order is enclosed with this letter.
> In reaching this decision the Minister has satisfied himself that the provisions of s. 5 (prohibition on refoulemenet) of the Refugee Act, 1996 are complied with in your case.
> The reasons for the Minister's decision are that you are a person whose refugee status has been refused and, having regard to the factors set out in s. 3(6) of the Immigration Act, 1999, including the representations received on your behalf, the Minister is satisfied that the interests of public policy and the common good in maintaining the integrity of the asylum and immigration system outweigh such features of your case as might tend to support your being granted leave to remain in this State."

In that case, the Applicants submitted, *inter alia*, that the Minister had given inadequate reasons or no reasons for his decision. In delivering the judgment of the Court, Hardiman, J. held as follows:-

> "I approach these contentions in the light of the authorities mentioned by the High Court Judge, which I am satisfied, were appropriate to the consideration of the point made to him. This court in *Ní Eili v. The Environmental Protection Agency* (Unreported, Supreme Court, 30th July, 1999) surveyed the authorities in some detail and, *inter alia* cited with approval the decision of Evans L., J. in *M.J.T. Securities Limited v. Secretary of State for the Environment* [1998] J.P.L. 138. Dealing with statutory obligations to give reasons, the trial judge said at p. 144 that:-
>
> > 'The Inspector's statutory obligation was to give reasons for his decision and the courts can do no more than say that the reasons must be 'proper, intelligible and adequate', as had been held. What degree of particularity is required must depend on the circumstances of each case…..'"

In the case of administrative decisions it is has never been held that the decision maker is bound to provide a "….discursive judgment as a result of its deliberations"; see *O'Donoghue v. An Bord Pleanála* [1991] I.L.R.M. 750 at p. 757.

Moreover it seems clear that the question of the degree to which a decision must be supported by reasons stated in detail will vary with the nature of the decision itself. In a case such as *International Fishing Vessels Limited v. Minister for Marine* [1989] I.R. 149 or *Dunnes Stores Ireland Company v. Maloney* [1999] 3. I.R. 542, there was a multiplicity of possible reasons, some capable of being unknown even in their general nature to the person affected. This situation may require a more ample statement of reasons than in a simpler case where the issues are more defined. Thus, in a case dealing with a response to representations of precisely the kind in question here, but given prior to the coming into force of the Act of 1999, Geoghegan J. considered the adequacy of a decision. That was in *Laurentiu v. Minister for Justice* [1999] 4 I.R. 26, where the decision was in the following form at p. 34:-

> "I am directed by the Minister for Justice, Equality and Law Reform to refer to your request for permission to remain in Ireland on behalf of the above named and to inform you that having taken all the circumstances of his case into consideration including the points raised in your submission, it has been decided not to grant your client permission to remain."

Considering this statement, Geoghegan J. held at p. 34 that:-

> "I do not think that there was any obligation constitutional or otherwise to set out specific or more elaborate reasons in that letter as to why the application on humanitarian grounds was being refused. The letter makes clear that all the points made on behalf of the applicant had been taken into

> account and of course they were set out in a very detailed manner. The letter is simply stating that the first respondent did not consider the detailed reasons sufficient to warrant granting the permission to remain in Ireland on humanitarian grounds. It was opened to the first respondent to take that view and no court can interfere with the decision in those circumstances."
>
> "The form of the decision in the present case is somewhat different so as to show compliance with the new statutory regime. Nevertheless I consider that the approach of Geoghegan J. is one that can be applied here for the reasons set out below."

In the instant case I am satisfied that the decision of the Authorised Officer clearly demonstrates that she had carefully, indeed exhaustively, considered and examined the accounts given by the applicants of the events which they claimed had taken place at Fataki on 18th July, 2003. I find that when one looks fully and carefully at para. 5.6 of her Report in the application by the second named Applicant and paragraph 5.5 of her Report in the application by the first named Applicant, it is easy to see why the Authorised Officer reached the conclusions which she did. I find that it was reasonably and rationally open to her to reach these conclusions on the very carefully identified separate aspects of the accounts given by the applicants.

Once properly admitted, the weight (if any) to be given to any evidence is exclusively a matter for the decider of fact. This generally involves evaluating an account of events in his or her country of origin given by the Applicant for asylum. The probative value (if any), to be given to information or material properly received and considered by the decider of fact may sometimes be ascertained by reference to the cogency of the account itself and the absence of inherent contradictions and errors of substance in that account. Sometimes, it is possible also to compare various elements of the account with extrinsic material which the decider of fact can accept or, which is admitted to be reliable, *viz*., country of origin information from sources of proven and accepted accuracy and reliability, such as United Nations Reports. Sometimes, however, there is no yardstick by which to determine whether a particular account or part of an account is credible or not, other than by the application of common sense and life experience on the part of the decider of fact in the context of whatever reliable country of origin information is properly before him or her. Also, the decider of fact may have had the advantage of having seen and heard the Applicant for asylum relating his or her story, making all due allowance for the various factors indicated by the UNHCR Handbook as uniquely relevant to such an account giver. The obligation to give reasons, as explained by the Supreme Court in *F.P. and A.L. v. The Minister for Justice, Equality and Law Reform* (above cited), does not, in my judgment, require the decider of fact to give reasons why she or he applying such common sense and life experience found that a particular account or aspects of such an account to be not credible.

I am satisfied, and I so find, that the Authorised Officer on behalf of the First Named

Respondent, indicated sufficiently her reasons for the negative findings. I do not accept that the Authorised Officer was obliged to indicate what weight, (if any), she placed on each of the negative findings which she made against the Applicants in considering that their account of the alleged events was not credible. This Court, on an application for Judicial Review, could not in any manner be bound or influenced in its conclusion as to whether or not a particular decision was or was not vitiated by the application of unfair procedures by the decider of fact, by some sort of anticipatory periodic table of disbelief supplied in her or his decision by that decider of fact.

At paragraph 5.5 of her Report, the Authorised Officer found it questionable that the second named Applicant and her family would relocate to Fataki in April 2003. I have already considered that conclusion and the two reasons given by the Authorised Officer for it. I am satisfied that the Authorised Officer did not over-interpret the country of origin information by accepting that a major battle for Bunia broke out in May 2003. It is perfectly plain, in my judgment, from reading para. 5.5 as a whole and not overanalysing individual sentences in that paragraph out of context, that what the Authorised Officer is questioning is the alleged removal from Bunia to Fataki by reference to the conditions in Fataki in April 2003, and, not by reference to the situation in Bunia in April 2003, whether that should be described as serious, very serious or amounting to a major battle. I am satisfied that there is no merit in this ground of application.

It was submitted on behalf of the Applicants that the Authorised Officer erred in fact, and additionally or alternatively, in law in concluding that in April 2003, Fataki was under the control of Hema Militia, so that it was not credible that the Applicants and their family, who belonged to the Lendu ethnic group, would go to live there when escaping from problems with the Hema ethnic group in Bunia. It was submitted by Counsel for the Applicants that the country of origin information before the Authorised Officer was unclear as to what ethnic group in fact controlled Fataki in April 2003, and, in that the Authorised Officer choose to accept a source which cast doubt on the Applicants' account by disregarding a source which tended to support it.

I find that there was no such doubt in the country of origin information which was before the Authorised Officer in preparing her reports, as to who controlled Fataki in April 2003. A newspaper article (translated from the French by Global Translations Limited), from the newspaper Le Potentiel, to which I have already made reference and to which the Authorised Officer expressly refers, states as follows:-

> "The zone of Fataki was controlled until now by the Union of Congolese Patriots, (The U.P.C., with the majority of its members belonging to the Hema, a minority ethnic group) a dominant armed group in Bunia, main city of the very troubled district of Iutri…."
> A Global I.D.P. Report on the Democratic Republic of the Congo dated 1st September, 2003 records that:-
> "U.P.C. Spokesman Saba Rafiki said Lendu began these attacks in mid-July looting then burning houses and shops….. Fataki was under U.P.C.

> control before the attacks …"
> A Refugees International, web Report of 22nd August 2003, refers to "the Hema led Union of Congolese Patriots (UPC) …"

I am satisfied that there is nothing in the country of origin information which was before the Authorised Officer in preparing her reports which on any reasonable construction would cast doubt on the foregoing. Even if, in the course of her findings, the Authorised Officer mistakenly referred to an incorrect Appendix to her report in which country of origin information was appended, and, I am not holding that she did, I am quite satisfied and, I so find, that the Authorised Officer carefully considered all the country of origin information furnished to her and, and an error of this nature is neither significant nor material to her conclusions.

It was submitted by Counsel for the Applicants that the Authorised Officer erred in considering that country of origin information, which indicated that in July and August, 2003, ethnic Lendu attacked Fataki, supported her conclusion that the account given by the Applicants of what they alleged occurred to them at Fataki on 18th July 2003, was not plausible and undermined their credibility. At para 5.6 of her Report on the application by the second named Applicant and at para. 5.5 of her Report on the application by the first named Applicant, the Authorised Officer found that it was questionable that the Applicants' family was targeted and that their Lendu neighbours and other ethnic Lendu in Fataki on 18th July 2003, were not interfered with in any way. At para. 4.3 of her Report on the application by the second named Applicant the Authorised Officer records and identifies by reference to the Interview Notes, this Applicant's claim that her father had problems with the Hema in Bunia in July 1999 and that they moved from there to Fataki in April 2003, because those problems had escalated. At para. 4.1 of her Report on the application by the first named Applicant the Authorised Officer after giving the relevant reference to the Interview Notes, records that this Applicant claimed that, "when trouble started my father decided we should leave Bunia and go to Fataki".

It was submitted by Counsel for the Applicants that at interview the Applicants had each stated that their family was targeted by the Hema who blamed them as Lendu for attacks in the area. At p. 11 q. 34 of her interview, the first named Applicant, speaking of the people she alleged came to the family home in Fataki on the evening of 18th July 2003, answered as follows:-

> "These people talked to my father and said "its you Lendu's who are telling certain Lendu's revolt against us and today we are finishing with you."

At p. 20 q. 69 of her interview the second named Applicant told the interviewer that:-

> "In the month of July 18th we were at home, me and my sister were in the bedroom. Suddenly there was an (Illegible) of armed people. Certainly that

> would have been the Hema. There was panic in the house. These people threatened and shouted "its you people who (Illegible) the Lendu to uprise and this time we'll finish with you."

In my judgment as one of her reasons for concluding that the account given by the Applicants of armed Hema attacking their family home in Fataki on 18th July 2003, was not credible, the Authorised Officer was pointing to the fact that the country of origin information indicated that in July and August 2003 in Fataki, Ituri District, ethnic Lendu were in control, so that what the Applicants claimed had occurred did not seem plausible. The Global IDP Report of 1st September 2003, to which I have already made reference, states, *inter alia* as follows:-

"BACKGROUND ON FATAKI HUMANITARIAN SITUATION:

> A series of militia attacks on the town of Fataki, 60km northwest of Bunia have left 200 people dead, 237 abducted and the town deserted, an official of the Hema militia group Union des patriotes congolais (UPC) told IRIN on Sunday.
>
> UPC spokesman Saba Rafiki said the Lendu began these attacks in mid-July, looting then burning homes and shops. Most of the town's residents had fled to Bule, some 7km from Fataki he said. There the displaced were receiving aid from Caritas, a Roman Catholic NGO, Rafiki said.
> Fataki was under UPC control before the attacks, he said, but bands of thieves and other attackers had been raiding and looting the deserted town. The UN Mission in the DRC, known as MONUC, sent two reconnaissance helicopters over the town on Saturday and reported it was empty of its residents and destroyed. (IRIN 1 Sept. 03)."

A country of origin Report of 30th July 2003 by the USA Agency for International Development, Office of US Foreign Disaster Assistance, which was also before the Authorised Officer, states *inter alia* as follows:-

"THE TOWN OF FATAKI IN ITURI DISTRICT IS DESTROYED.

> In July and August, ethnic Lendu opposition members reportedly killed 200 people and abducted 237 others from villages in the Fataki area. An estimated 100 ehtnic Hema residents were later deported to "labour camps" where prisoners are forced to provide agricultural labour. During a September 5 reconnaissance mission, MONUC confirmed that the town of Fataki was destroyed and abandoned. The UN Children's Fund (UNICEF), a USAID/OFDA partner, distributed high-energy biscuits, plastic sheeting and first-aid medication to nearly 18,000 IDP's in nearby Bule and 5,000 IDP's in surrounding villages."

In light of this country of origin information, I find that it was not unreasonable, irrational, unjust or contrary to commonsense for the Authorised Officer to have concluded that the Applicant's account of the events which they say occurred at their home in Fataki on 18th July 2003, did not seem plausible, and to have served to undermine the overall credibility of their claims.

The Court will therefore dismiss this application for Judicial Review.