Neutral Citation Number: [2009] IEHC 299

THE HIGH COURT

2007 549 JR

BETWEEN/

B. B.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Mr Justice Cooke delivered on the 18th day of June, 2009.

1. By order made on consent on the 22nd October, 2008, Edwards J. granted the applicant leave to apply for an order of *certiorari* to quash the decision ("the Contested Decision") of the Refugee Appeals Tribunal dated the 2nd March, 2007, rejecting the applicant's appeal against a report of the Refugee Appeals Commissioner dated the 7th November, 2006 which recommended that the applicant be not declared to be a refugee.

2. The applicant arrived in the State on or about the 1st August, 2006 and applied for asylum shortly thereafter. He claimed to have fled Rwanda in fear of persecution there for his political opinions. He said he had been employed in Rwanda as a full time civil servant in the Ministry for Finance but had been a friend of a former MP, Jean Mbanda, and had been involved in a human rights organisation which he had joined in 1993. In 2004, he became friendly with a journalist, Jean Bosco Gasasira, who edited a small newspaper. As a result, he wrote some articles for this newspaper under a pseudonym.

3. On the 25th June, 2006, Mr. Gasasira was summoned to the District Military Intelligence, (the DMI), and questioned about the articles critical of the government and about his relationship with the author of the applicant's articles. On release, Mr. Gasasira warned the applicant to be careful. The applicant felt he was no longer safe, did not go home, and later left for the town of Gisenyi, near the border with the Democratic Republic of the Congo, in order to stay with a friend.

4. Three days later, armed men came to that house and took the applicant and his friend away and interrogated them. The applicant claims that they were put into a container and the door was closed. They escaped when a uniformed soldier opened the door. This soldier then arranged for the applicant to flee on a motorbike. The applicant claims to have made his way to a friend in Burundi, where he was introduced to an agent who arranged his flight to Dublin on a false Belgium passport, via Kenya and Amsterdam.

5. The report of the Refugee Applications Commissioner which recommended that the applicant be not declared a refugee was based on a finding that the applicant's account lacked credibility.

6. The Contested Decision of the Tribunal, which is now sought to be quashed, is also based exclusively on a finding of lack of credibility. The Tribunal member's conclusion is given in succinct and plain terms in the final paragraph of the decision, as follows:-

"The effect, cumulatively, of the foregoing observations in relation to the applicant's credibility materially and detrimentally affect the veracity of what the applicant reports to state and the substantive thrust of his claim. The applicant has provided little evidence of identity or nationality or how he arrived here. The letter of 1998 only refers to an invitation. He alleges he is friendly with two MPs but neither of them has supported his application. I am satisfied that he has contrived a story for this Tribunal which is badly researched and poorly presented. His contrivance is rejected by the Tribunal."

7. The grounds advanced in support of the application to quash that conclusion are directed at demonstrating that it is vitiated by fundamental errors of fact, reached in breach of fair procedures in failing to have regard to the applicant's evidence on the relevant points and that it is unreasonable and irrational.

8. It is perhaps unnecessary to reiterate that in the scheme of the asylum process, it is no function of this Court to determine the credibility of the claim made by an applicant for refugee status. That is the exclusive function of the authorised officer of the Refugee Applications Commissioner at the investigative stage of the process, subject only to its being reviewed where necessary on appeal by the member of the Refugee Appeals Tribunal. The function of this Court on judicial review is limited to that of determining whether the negative finding of credibility has been arrived at lawfully in the course of that asylum procedure and of ensuring that it is not vitiated by any fundamental flaw.

9. The Court has had its attention drawn to much of the case law relevant to the criteria which govern the Court's function in making that determination including the following:-

Imafu v. M.J.E.L.R. (Unreported, High Court, Clarke J., 27th May, 2005):

Carciu v. R.A.T. (Unreported, High Court, Finlay Geoghegan J., 4th July, 2003)

A.M.T. v. R.A.T. [2004] 2 I.R. 607:

Memishi v. R.A.T. (Unreported, High Court, Peart J., 25th June, 2003):

Muanga v. R.A.T. (Unreported, High Court, Birmingham J., 8th February, 2008):

Tabi v. R.A.T. (Unreported, High Court, Peart J., 27th July, 2007):

Imafu v. M.J.E.L.R. (Unreported, High Court, Peart J., 9th December, 2005)

10. So far as relevant to the circumstances of the present case, the principles which emerge from that case law could be summarised as follows:

A. It is for the decision-maker to assess credibility of an asylum applicant but the assessment must be made fairly in accordance with the principles of constitutional justice and on the basis of the totality of the relevant evidence and information, objectively evaluated and rationally analysed.

B. The assessment can and should take account of the demeanour of an applicant in giving evidence but must not be based on what the decision maker considers to be a correct instinct or gut feeling that the truth has not been told.

C. Where credibility is found to be lacking, the decision must state clearly the reasons for rejecting the applicant's account and those must bear a legitimate connection to the finding.

D. An established or undisputed error of fact, on which the assessment depends, will render it invalid if it is significant and material to the negative finding of credibility.

E. Nevertheless, one or more mistakes as to fact in the course of the assessment may not either individually or cumulatively vitiate the finding if they are severable from other reasons and those reasons are a sufficient basis for the finding.

F. In considering an attack on the validity of an assessment for credibility, the Court should have regard to the terms of the decision as a whole and should refrain from the temptation to deconstruct it and subject its component parts to minute examination for isolated errors.

G. To render an assessment of credibility unlawful in the manner in which it was reached, a fundamental error is required which goes to the substance of the finding and not merely some ambiguity, lack of clarity of expression, or apparent inconsistency.

11. It is in the light of those principles that the specific errors contended for in the assessment of credibility in the present case must be judged. The applicant points, in effect, to six alleged errors of fact in the decision which, it is submitted, render it fundamentally flawed. The respondent rejects the assertion that the matters thus pointed to constitute errors of fact and maintains that even if some of them are mistaken, they are not so material to the substance of the decision considered in the round as to justify it being quashed. The six errors are claimed to be contained in the paragraphs numbered 1 to 6 in Section 16 under the heading, "Analysis of the Applicant's Claim", in the Contested Decision.

12. The first alleged error is said to lie in para. 3, where the Tribunal member finds that the applicant's account of incarceration for three days and escape from the container was implausible. The passage in question reads:

"The manner of his escape with the help of Eric's armed friend who subsequently took the applicant but abandoned Eric is also not believable. The applicant told the Tribunal that the container was locked and that it wasn't guarded."

It is alleged this is mistaken because the applicant did not tell the Tribunal the container was not locked.

13. The Court is satisfied that there is no material error in this regard and that the argument reads more into a semantic difference than is warranted in fact. The applicant may not have said that the container was not locked in the sense of it not being padlocked on the outside so that it could not have been opened by the friendly soldier but his description of the event in the questionnaire and in the Section 11 interview clearly gives the impression the container was closed from the outside and incapable of being opened from the inside. In the detailed attendance note of the appeal hearing, he is recorded as saying,

"We were taken to a lorry container and me and Eric were thrown in and the door was closed."

He was asked at the hearing if the container was guarded and he replied,

"No, because that would have attracted the attention of people."

The Court is satisfied that there is no necessary mistake of fact in the Tribunal member's understanding of that incident such as would undermine the finding as to its implausibility.

14. The second alleged error of fact is in the statement in para. 4 of that section of the decision:

"The applicant told the Tribunal that he went to Uganda to see a tribunal."

It is said that this is untrue. The applicant gave evidence of having made two visits to Uganda in 2005 and 2006 and said that on each occasion it was for business. He also claimed that he had been interrogated in relation to his attending the trial of Colonel Patrick Karegeya but that this trial had taken place in Rwanda and not Uganda. It seems likely to the Court that the impugned statement in the decision arises from an exchange at the hearing which is recorded in the attendance note made up by the applicant's solicitor as follows:

"Presiding officer: So why would they want to arrest you and let the editor of the paper go free?

Client: From my understanding, the main purpose was that I was going to Uganda. I went to the trial of ... (name)

Tribunal member: That is a different trial?

Client: Yes, that trial was between May and June 2006. I can't remember the dates."

15. Whether or not this exchange gave rise to a misunderstanding between the applicant and the Tribunal member on this precise point, the particular issue as to whether the trial was the same as that of Colonel Karegeya in Rwanda or another trial in Uganda, is not material to the substantive credibility issue addressed at the paragraph in question namely, the lack of explanation from the applicant as to why he, as a writer of ten articles under a pseudonym, should be detained, tortured, and incarcerated, while the more important critic of the government, the editor of the paper and author of many such articles, should merely have been questioned briefly and released. That doubt was obviously logical and relevant on the part of the Tribunal member and is not affected by any possible misunderstanding as to the location of the trial mentioned because it is clear from elsewhere in the decision that the Tribunal member was fully aware of the explanation of business as being the reason for the two visits to Uganda.

16. The third alleged error also concerns the editor of the paper and the apparent discrepancy between his treatment at the hands of the security forces and that meted out to the applicant. The passage challenged at para. 2 of the section reads, "The editor director of the newspaper, in which he allegedly contributed over a period of two years, did not suffer yet the applicant who was a contributor was allegedly detained and beaten over a period of three days because of critical

articles he wrote." 17. It is claimed that this is a mistake of fact because the applicant never said that the editor did not suffer. It is submitted that the contrary was the case and that the applicant had demonstrated the editor had been harassed and was under constant surveillance.

18. Again, the Court is satisfied that there is no error here on the part of the Tribunal member and that the applicant is misreading the point that is being made in that paragraph. The Tribunal member is here, as in para. 4, simply contrasting the different treatment of the editor and the applicant and using the word "suffer" in the sense that the editor on that occasion, the 25th June 2006, was merely summoned to the DMI, interrogated and released on the same day and did not "suffer" as the applicant suffered. The remark is one part of a more general doubt expressed as to whether the applicant had, in fact, been a contributor to the newspaper when he was unable to corroborate his relationship with the paper and the editor by making any effort to obtain a copy of any one of the articles he said he had contributed. Again, the Tribunal member's doubt was rational and reasonable.

19. The applicant next disputes the factors identified in para. 1 in relation to the issue of credibility where the Tribunal member questions how the applicant, when arrested and questioned by the Rwandan authorities about his visit to Uganda, could have explained the visits as being for business purposes when he was a full time civil servant in the Ministry for Finance until June 2006, that is, shortly before he fled. The Tribunal member raises the obvious query as to why the authorities would question such a trip if he was on government business and, if he was on private business, would that not be inconsistent with his position as a full time civil servant?

20. This expression of doubt is said to be irrational because it fails to accept the applicant's evidence that he and a friend set out to establish an information technology company and that he went to Uganda to study how things were done there in that field. The applicant may well complain that he was not believed but that does not mean that there has been an error of fact on the part of the Tribunal member. It is the function of the Tribunal member to assess the credibility of the account given and doing so necessarily involves raising the logical and obvious questions which go to the plausibility of the account. The question raised under this heading was entirely reasonable, having regard to the fact that the assertions were being made by the applicant and were wholly uncorroborated by any third party or even by any concrete detail as to the nature of the project, the identity of the friend, or the detail of the alleged visits.

21. The applicant also objects to the statement at page 4 of the decision, "The applicant said that he obtained a passport to enable him to travel to Uganda in 2005 and 2006 but that he doesn't have it now. It was put to him that it would be a very simple way of identifying him if he produced the same." It is objected that this was never in fact put to him at the hearing.

22. The quoted passage is from Section 3 of the Contested Decision under the heading, "The Applicant's Claim". It is not therefore one of the specific factors listed in the Section 6 analysis as the basis for the negative finding of credibility but it is in any event clear from the attendance note of the appeal hearing that the absence of any identity documents and the fact that the applicant had possessed a passport for his visits in 2005 and 2006 had been the subject of cross examination at two points and was relied upon expressly by the presiding officer in the closing submissions. While the note does not record whether the precise phrase quoted above was put to the applicant, it is clear that the issue as

to his inability to produce documentary evidence of his identity when he admitted to having had a passport, was specifically raised and put to him. The Court is satisfied that no breach of fair procedures or constitutional justice could therefore be read into the quoted passage in relation to the production of the passport.

23. Finally, it is submitted that there is an error of law in para. 6 of the Section 6 analysis where the Tribunal member refers to the fact that the applicant made no application for asylum when travelling through Burundi or Kenya. It is said that this ignores the applicant's evidence that these were not safe countries for him and that he was under no legal obligation to claim asylum in the first country he came to. The Court considers that there is no error of law, clearly, in that paragraph because it expressly acknowledges that there was no legal obligation to make the claim in either country. It is, however, an entirely proper and relevant factor to be taken into consideration when assessing the credibility as s. 11B (b) of the 1996 Act, as amended explicitly requires.

24. In summary therefore, the Court is satisfied that the grounds advanced by way of a challenge to this decision are clearly unfounded. The decision is based exclusively on a robust and forthright finding that the applicant's story of flight from persecution resulting from his involvement in writing articles for the newspaper, of his relationship with his editor, and his subsequent detention, torture, incarceration and escape was a contrivance. It has not been undermined by the attempt to pick off specific sentences in the decision as being mistaken. Viewed in the round, the assessment of credibility was and remains cogent, sufficiently free from error and secure in its basis in the contents of the interview and appeal hearing, notwithstanding the criticisms raised on this application.

25. The application will therefore be rejected.