DECISION

AS TO THE ADMISSIBILITY OF

Application no. 43279/98

by Jerry Olajide SARUMI

against the United Kingdom

The European Court of Human Rights (Fourth Section) sitting on 26 January 1999 as a Chamber composed of

Mr M. Pellonpää, *President*,

Sir Nicolas Bratza,

Mr A. Pastor Ridruejo,

Mr L. Caflisch,

Mr V. Butkevych,

Mr J. Hedigan,

Mrs S. Botoucharova, *Judges*,

with Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 13 July 1998 by Jerry Olajide Sarumi against the United Kingdom and registered on 3 September 1998 under file no. 43279/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Nigerian national, born in 1958. He is currently being detained in an Immigration Deportation Centre awaiting removal to Nigeria.

The facts of the case as set out by the applicant and as deduced from the case file can be summarised as follows:

Particular circumstances of the case

The applicant arrived in London on 12 September 1984 and was given leave to enter the United Kingdom for one month as a visitor. He was subsequently granted leave to extend his stay until 31 July 1985 to pursue a course of studies. Further leave to remain beyond that date was refused on 10 December 1985 and he was warned on 21 February 1986 that he was liable to be deported. A deportation order was signed on 29 May 1986. The applicant alleges that he never received notice of that order and that it only came to his attention in February 1995 when his solicitor contacted the Home Office about his status in the United Kingdom.

On 27 May 1995 the applicant came to the notice of the Home Office when he was arrested on suspicion of having submitted a fraudulent social security claim. A deportation order was served on the applicant on 8 June 1995. The applicant's appeal against the order was rejected as being out of time.

On 12 March 1997 the applicant was detained at a London police station. He requested political asylum the same day. He was interviewed by Immigration Officers on 12 March and on 8 and 18 April 1997 about the grounds for his asylum request. At the interview conducted on 18 April 1997 the applicant alleged for the first time that in 1984 he had become caught up in a plot to overthrow the military regime in Nigeria when serving as an officer in the Nigerian Defence Academy. The plot was uncovered and he had to flee Nigeria since he feared for his life. The Secretary of State refused his request on 23 April 1997, finding that the applicant had given contradictory accounts of his reasons for leaving Nigeria which called into question the credibility of his claim. For the Secretary

of State it was significant that the applicant had not made a request for political asylum until March 1997 although he had arrived in the United Kingdom in 1984.

On 30 September 1997 a Special Adjudicator rejected the applicant's appeal against the decision of the Secretary of State, being of the view that the applicant was not a truthful and reliable witness and had not substantiated his account of the events relied on in his asylum request.

In a letter dated 24 October 1997 the applicant made fresh representations to the Secretary of State claiming that he feared persecution on religious grounds if he were deported to Nigeria. The Secretary of State informed the applicant by letter dated 29 October 1997 that he had not adduced any new elements which would lead him to reconsider his earlier decision. On 8 November 1997 the applicant was removed to Nigeria but was returned to the United Kingdom the following day. It would appear that the Nigerian immigration authorities refused the applicant entry since he claimed to be a Ghanaian national on arrival. On being returned to the United Kingdom the applicant made a further request for political
asylum on the grounds that he had a well-founded fear of religious persecution if deported to Nigeria. His request was refused and he appealed to the Special Adjudicator who rejected his appeal following a hearing held on 10 February 1998. The Special Adjudicator found that the applicant had not substantiated his fear of religious persecution and questioned the truthfulness of the factual basis of his claim. The Special Adjudicator concluded that the claim was frivolous and lay outside the scope of the Geneva Convention.

The applicant sought judicial review of the decision to remove him to Nigeria on the grounds that the United Kingdom authorities had procured a travel document for him from the Nigerian High Commission without his consent. On 17 August 1998 his application was refused.

Since arriving in the United Kingdom the applicant has formed a relationship with a Nigerian woman, who, according to Home Office records, is an overstayer with no claim to remain in the United Kingdom. Two children have been born in the United Kingdom from that relationship, one in 1988 and the other in 1992.

COMPLAINTS

The applicant maintains that his expulsion to Nigeria would be in breach of his rights under Articles 3 and 8 of the Convention and that he has been denied an effective

remedy, in violation of Article 13.

THE LAW

1. The applicant contends that he had been actively involved in the planning of an unsuccessful coup d'état in 1984 in Nigeria. He had in particular supplied the planners of the coup with strategic military information which he had acquired through his position in the Military Intelligence Department of the Defence Academy. The applicant claims he is sought by the authorities and if he is returned to Nigeria he faces imprisonment, torture and eventually death at their hands. He invokes Article 3 of the Convention, which provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Court recalls that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens. Moreover, the right to political asylum is not contained in either the Convention or its Protocols. However, it is well established in the case-law of the Convention institutions that expulsion by a Contracting State may give rise to an issue under Article 3 and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to expel the person in question to that country (see, among many other authorities, the Chahal v. the United Kingdom judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1853, § 73-74).

The Court notes that Mr Sarumi arrived in the United Kingdom in September 1984. Despite his claim that he had to flee Nigeria using an alias in order to escape from the authorities he never sought political asylum on arrival. Indeed it was only in March 1997 when he was faced with the risk of removal to Nigeria that he claimed political asylum for the first time. Even then his various accounts of the circumstances which allegedly led him to flee the country were inconsistent and unsubstantiated. It is also to be observed that in his second attempt to claim asylum he changed the basis of his request abandoning his claim that he had a well-founded fear of persecution for political reasons in favour of religious persecution. This shift in argument understandably led the Secretary of State

and the Special Adjudicator to question seriously the credibility of Mr Sarumi's claim.

In the view of the Court the applicant has not adduced any evidence which would lead it to depart from the assessment made by the authorities of his claim, it being noted that they had due regard to the arguments submitted by him as well as to the current situation in the receiving country. He has not shown that there are substantial grounds for believing that, more than fourteen years after leaving Nigeria, he would face a real risk of being subjected to treatment proscribed by Article 3 if removed to that country. It follows that this complaint must be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant further maintains that his expulsion to Nigeria would infringe his right to respect for family life and points in this respect to the fact that his two children have been born in the United Kingdom. He relies on Article 8 of the Convention, which provides as relevant:

"1. Everyone has the right to respect for his ... family life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court observes that the expulsion or removal of an alien by the authorities of a Contracting State in which his or her close relatives reside or have the right to reside may give rise to issues under Article 8 of the Convention (see, *inter alia*, application no. 11945/86, decision of 12 March 1987, DR 51, p. 186; Eur. Court HR, Nasri v. France judgment of 13 July 1995, Series A no. 320-B, §§ 34-46).

It is to be noted that in the instant case the applicant and his partner have both failed to comply with the immigration controls of the respondent State and have no claim to residence there. They founded a family in the knowledge of their precarious status in the United Kingdom and their liability to deportation. Furthermore, the children born of the relationship are of a young and adaptable age and it can be reasonably considered that they can make the transition to Nigerian culture and society without undue hardship. The applicant has acquired business skills during his stay in the United Kingdom which will undoubtedly assist the well-being of the family in Nigeria. In these circumstances, and in view of the real possibility of the family unit being successfully reconstituted in Nigeria, the Court finds that there are no

elements concerning respect for family life which in this case outweigh the valid considerations relating to the proper enforcement of immigration controls. It concludes that the applicant's removal does not disclose a lack of respect for his rights to family life as guaranteed by Article 8 of the Convention.

For these reasons the applicant's complaint under Article 8 must be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

3. The applicant contends that he has been denied an effective remedy in breach of Article 13 of the Convention. However, according to the Convention institutions' constant case-law Article 13 cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be: the grievance must be an arguable one in terms of the Convention (see the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23 § 52). The Court has found the applicant's substantive complaints under Articles 3 and 8 of the Convention to be manifestly ill-founded and, in the light of the reasons for this decision, it also finds that the applicant has no arguable claim under Articles 3 and 8 warranting an effective domestic remedy pursuant to Article 13.

It follows that this aspect of the case is also manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger Matti Pellonpää
Registrar President