

CO/1232/2006

Neutral Citation Number: [2007] EWHC 381 (Admin)  
IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT

Royal Courts of Justice  
Strand  
London WC2

Friday, 16th February 2007

B E F O R E:

**MR JUSTICE SULLIVAN**

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**THE QUEEN ON THE APPLICATION OF ANTHONY CHIEDU OBASI**

**Claimant**

-v-

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Defendant**

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**MS FRANCES WEBBER** (instructed by Messrs Christian Khan) appeared on behalf of the  
Claimant

**MISS SUSAN CHAN** (instructed by Treasury Solicitor) appeared on behalf of the Defendant

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**J U D G M E N T**  
**(As approved by the Court)**

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34. MR JUSTICE SULLIVAN: The claimant is a Nigerian national, born on 24th February 1981. On 25th February 2005 he left Nigeria, with financial assistance from his mother, and arrived in the United Kingdom the next day. He claimed asylum and human rights protection. It is not in dispute that his human rights claim stands or falls with his asylum claim.
34. Both claims were certified as clearly unfounded in a decision letter dated 9th March 2005 ("the decision letter"). The decision letter was reaffirmed in a number of subsequent decision letters to which it is unnecessary to refer for the purposes of this judgment.
34. Following certification, removal directions were made. The first attempt on 21st July 2005 failed because, according to the defendant, the claimant refused to board the flight. The second attempt on 16th August 2005 also failed. The defendant says that the claimant was violent and aggressive towards his escorts, and the claimant says that he was assaulted by those escorts. It was contended on his behalf that removal from the United Kingdom would breach his rights under Article 6 of the European Convention on Human Rights because he needed to remain in the United Kingdom in order to pursue his intended civil claim for assault. Because of public funding difficulties, those proceedings have not yet been instituted.
34. The claimant's Article 6 claim was dealt with in a decision letter dated 12th December 2005. The defendant concluded that there would be no breach of Article 6 if the claimant was returned to Nigeria, but this was on the basis that the claimant would be able to invoke Article 6 in any application to re-enter the United Kingdom in order to attend one or more subsequent stages of his civil claim.
34. Notwithstanding Ms Webber's valiant attempts on the claimant's behalf, I am satisfied that the Article 6 claim is hopeless. This is a simple allegation of assault, with each party alleging that the other was the one who was violent. There is no conceivable reason why the proceedings should not be initiated and preparatory steps carried out while the claimant is in Nigeria. There is a dispute as to the extent to which it is possible to access telephones in Nigeria, but that is not the point. Documentation in a simple assault claim such as this is not likely to be very extensive, and if there are genuine difficulties in accessing a telephone, then the postal service should suffice. I accept that, given the nature of the claim, it is likely that the claimant would have to attend for the hearing itself, but as the decision letter dated 12th December 2005 points out, the claimant may seek permission to re-enter for that specific purpose. Whether a refusal would be a breach of Article 6 can be considered if and when such an application is made, and if and when it is refused.
34. I turn therefore to the principal challenge: the certification of the claimant's asylum claim. The relevant authorities are well known and it is unnecessary to rehearse them in this judgment. I have to consider the question: would this claim be "bound to fail" if it went before an immigration judge on appeal.
34. There is no criticism of the manner in which the decision letter described the claim for asylum in paragraphs 7(a) to (l). In summary, the claim is based on the fact that the claimant's father was the king of the Itu-Aguneze village in Anambra state, which is a state in eastern Nigeria. When the claimant's father died in January 2003, the claimant

was expected to be the next king of the village (as the firstborn son), but he did not wish to become king, because holding that office involved rituals and sacrifices which were contrary to his Christian faith, which he had adopted whilst he was studying at university. The claimant said that he had been threatened by his village kinsmen with being thrown into a shrine, the Amadioha Shrine, where he would be killed by wild animals. His kinsmen locked him up for three days without food and water. To buy time, the claimant agreed to undertake the first stage of his coronation on 16th January 2005. However when the second stage of the coronation was due, towards the end of that month, with his mother's help he caught a bus to Lagos and went to a hotel, where he stayed for just over a month. He experienced no problems in the hotel, although he only went out at nighttime, and his mother and sister came to visit him in the hotel.

34. The claimant was asked why he had left to go to Lagos and why he did not seek protection from the authorities. Paragraph (h) in the decision letter records his answers thus:

"h) Based on the telephone call you received from your relatives, 'they were looking for me all over'. There are no organisations you could turn to and the police are corrupt and 'if they can't get anything from you they won't help you'. They would also tell you to settle it with your people as it is a traditional matter. The St Peter's Church could not help you because 'I haven't had any opportunity to meet them' [references made to the responses in interview].

i) There is no place you knew where you could go and be safe in Nigeria, even in Lagos you would only come out at night. You remained in Lagos for a month and about three or four days. You did not experience any problems there because 'they don't know where I am'. You left Lagos as it was a matter of time before your kinsmen found you. There is 'no part of Nigeria that is safe for me in the circumstances'."

34. The decision letter did not take issue with the claimant's account of events on credibility grounds. Accepting the claimant's version of events at face value, the decision letter concluded that the claim was clearly unfounded for two reasons. First, the state would afford the claimant a sufficiency of protection (paragraphs 9-31). Second, there was no obstacle to internal relocation within Nigeria, which was a large and populous country (paragraphs 31-38).

34. Dealing with these two issues in turn, although Ms Webber pointed to passages in the April 2006 Country of Origin Information Report Nigeria, the claimant faces an initial difficulty in that he made no attempt whatsoever to seek protection from the authorities. The letter says:

"22. It is noted that you did not make a report to the police as you claim that they are corrupt and that you would be told that as it is a traditional matter you should sort it out with your people (AIR Q36). However, your statement is not supported by the objective evidence above in that the authorities have demonstrated a willingness to intervene in cases involving cults and ritual sacrifices.

23. It is evident that Nigerian police have a willingness to arrest those they

suspect of being involved with ritual sacrifices. There is no reason to believe that were you to bring your problems to the attention of the authorities they would refuse to help you."

34. Ms Webber submits that willingness does not necessarily translate into an ability to take effective steps, and points to the following paragraph of the decision letter which begins with this sentence:

"Nevertheless, it is accepted that the police are widely seen as being undisciplined, badly trained and poorly led, and unable to deal with the level of violent crime that they have to face. ... Corruption was rampant, usually taking the form of bribes at highway checkpoints, and more than 250 police were arrested during the year and another 300 dismissed from service for corruption. In addition, more than 30 officers around the country were arrested in connection with armed robbery."

34. The information in respect of that issue contained in the decision letter echoes the position, which is set out in somewhat more detail in the April 2006 report.

34. The question, however, is not whether the police generally are corrupt and/or inefficient, but whether they are willing to pursue this kind of offence and able to do so, so as to give a sufficient degree of protection. The issue of protection against cult violence in Nigeria is dealt with in a country guidance case, BL (Ogboni cult - Protection - Relocation) Nigeria CG [2002] UKIAT 01708. In that case the Tribunal was considering an alleged threat from what was described as "a particularly powerful secret society known as the Ogboni". Having reviewed the objective evidence, the Tribunal concluded that:

"... the general tenor of the background information does not suggest that the government is either unwilling or unable to provide protection ..."

34. Ms Webber pointed out that the material on which the Tribunal relied was somewhat dated to say the least, that is to say reports in 2000 and 2001 (see paragraph 9 of the Tribunal's decision). However, it must be borne in mind that there is no suggestion on behalf of the claimant that the authorities would be unwilling to assist, apart from the contention that they would simply say this is a traditional matter. There is nothing in the objective material to support the proposition that in respect of traditional matters the authorities are unwilling to assist and/or that circumstances had changed adversely from the claimant's point of view since 2001. The focus of the argument has been rather more on the extent to which the authorities are able to pursue such offences, and the passages cited by Ms Webber do not in my judgment suggest that the authorities are any less able to pursue such offences now than they were in 2001. That impression is reinforced by the more recent reports, referred to by Miss Chan on behalf of the defendant, namely the October 2006 Country of Origin Report Nigeria and the very recent Operational Guidance Note in respect of Nigeria dated 18th January 2007.

34. It is unnecessary to set out lengthy extracts from those documents because the position is helpfully illustrated within the decision letter itself. Paragraph 21 says this:

"As reported on the BBC News Website on 13 August 2004, 'Nigerian police say they have found a further 33 bodies in addition to the 50 already uncovered in fetish shrines in south-eastern Anambra state. A traditional

cult reputed to carry out ritual killings is thought to have carried out the murders. Some of the corpses had hands, genitals or heads missing. Police have displayed skulls — and five men of the 30 or so people arrested in connection with the murders — to correspondents in the capital, Abuja. 'Police are concerned about how the headless bodies found their way into the shrines,' said deputy police chief Sunday Ehindero. However, a spokesman for those arrested denied any involvement in the killings. 'Since I have been there, for two years, I have not seen anybody killed by these people. Rather, the shrines kill,' said Colin Obi. He said bodies had been brought to the Okija shrines by family members. Mr Ehindero said groups involved in disagreements had gone to the shrines to take part in black magic rituals. 'What we are saying is that we found there is a parallel court,' he said. Police found the shrines are being tipped off by a local villager in Okija who reported the priests had eaten the flesh of some of their victims."

34. That paragraph confirms that the police in the claimant's home state of Anambra are indeed prepared to pursue cult crimes and, while a large number of bodies were found, it cannot be said that arresting some 30 people is evidence of a lack of will and/or ability to pursue such crimes. In my judgment the defendant was therefore entitled to certify the claim, on the basis that if the claimant had gone to the authorities they would have given him a sufficiency of protection.

34. The letter makes the further point which is linked to the question of internal relocation, and it is this, in paragraph 27:

"Nigeria is divided administratively into 36 states and a Federal Capital Territory. In the unlikely event that the police in your local area would not offer you the protection you required, it is considered that you can also seek the assistance of the police from another area. There is no evidence to suggest that police officers of another police station would seek to deny you protection."

34. So whatever might be the disinclination or the lack of ability of the local police force in Anambra state, if internal relocation is a realistic possibility, then, as the letter says, the claimant can look to the police officers of another police station for protection.

34. It is unnecessary to examine the issue of sufficiency of protection in any greater detail because the possibility of internal relocation is in my judgment a complete answer to this claim. The claimant is a fit, young (26 years old), single man, with a good education to university level. He was able to take the bus to Lagos (with his mother's help) and to stay there for a month, where he was visited by both her and his sister. His mother was able to give him significant financial help to enable him to leave Nigeria. It is plain that he is neither poor nor uneducated, nor does he have ties as would, for example, a parent with children, an unmarried woman requiring protection from male members of her family, a farmer whose only livelihood had been gained from a particular farm, etc. Put simply, in terms of his own personal circumstances, if anyone would be able to relocate within Nigeria, which is a large populous country with many substantial towns, then it would be a person in the position of the claimant. That is of course subject to the determination and/or the ability of his kinsmen to pursue him in those parts of Nigeria which are outside

his home village or home state.

34. Apart from the claimant's contention that his kinsmen are pursuing him, there is virtually no evidence on this topic. There is no suggestion that any attempt was made to trace him to Lagos. It is perfectly true that the claimant says he went out only at night, but there is nothing to suggest that that was due to anything more than his own subjective fear. There is no evidence that it was necessary to remain indoors until nightfall. It is perfectly true that, very sadly, his younger sister was raped. The claimant says in a letter that those who raped her made it clear that they were looking for him and would seek to find him. It is not clear where the rape occurred. At first sight it might have been thought that it was in the claimant's younger sister's home village. But the letter refers to the room where she was schooling and, whilst there is no evidence about the matter, Ms Webber submitted on instructions that in fact it was where the claimant's younger sister was at university. However that may be, there is no information at all about whether she had taken any steps to avoid her kinsmen knowing where she was at university, how far away the university was from her home village, etc.
34. All of the objective evidence suggests that the reach of cults is localised (see the October report and the January Operational Instructions). Ms Webber relied in particular on this passage from the April 2006 report:

"6.08 'If a person relocates within Nigeria, he or she will usually seek to find shelter with a relative or a member of his or her community of origin. This means, however, that the same network which accord protection can become a source of persecution if somebody has run afoul of his or her community. Informal communication networks function very well in Nigeria, and it is not too difficult to find a person one is looking for. This is true also for so-called big cities whose neighbourhoods are structured along village and community lines.'

'The viability of an internal relocation alternative therefore depends on whether anybody would be interested to follow someone to e.g. Lagos. It is very hard to make a general statement for such cases. People might be able to relocate if they have run into trouble with a rival ethnic community or a vigilante group or if they flee violent conflict.'

34. There is then a passage which deals with people who have difficulties with their own community, and the example is given of a woman who refuses to enter into a marriage or to undergo female genital mutilation. The point is made that such persons might not easily be harboured by their relatives or members of their community in another part of the country:

"Leaving their family signifies social and economic exclusion for the large majority of Nigerians and in particular for women.'

34. As Miss Chan pointed out, there are two answers to that passage in the claimant's case. Firstly, there is no evidence, apart from the claimant's expressed fear, that his kinsmen

would pursue him to, for example, Lagos or some other urban area where there was a significant Christian population, much less is there any evidence of their ability to pursue such an intention.

34. Secondly, the passages are dealing with those who will need to find shelter with relatives or with their own community. That would apply with particular force to vulnerable members of society, for example those who are too young or too old to live independently, those who for cultural reasons cannot do so, for example single women, those who for economic reasons must seek the assistance of family or community, for example those with children to look after. But the claimant is not in that position. As I say, he is a fit, young, single, well-educated man. There is absolutely no reason, if he has difficulty with members of his own community, why he should seek to rely on that community. So far as his family are concerned, it is plain that the close members of his family, his mother and his sister, are very supportive and, moreover, they have been supportive in a practical way, that is to say by providing financial assistance.
34. For all of these reasons, it is plain beyond any doubt that internal relocation is an option in this case and for these reasons the Secretary of State was entitled to conclude, and I conclude, that the claim was indeed bound to fail. It follows that the certification was lawful.
34. Thank you. Any further applications?
34. MISS CHAN: I am grateful. There is an application for costs from the Secretary of State. I believe that the other side is legally funded, so it would be the usual order in such cases.
34. MS WEBBER: My Lord, the claimant is legally aided. Clearly I cannot resist an order in the usual form.
34. MR JUSTICE SULLIVAN: The usual terms?
34. MS WEBBER: Yes. My Lord, I would seek leave to appeal your Lordship's judgment, on both of those two parts. Not in relation to the Article 6 claim, but in relation to the certification as clearly unfounded, on the basis that the test is an objective one and that on the evidence before your Lordship the claim could not be said to be bound to fail.
34. MR JUSTICE SULLIVAN: Yes. Thank you very much.
34. The claimant is to pay the defendant's costs, but those costs are not to be enforced without leave of the court. Detailed assessment for Community Legal Funding purposes.
34. MS WEBBER: Thank you.
34. MR JUSTICE SULLIVAN: Permission to appeal is refused. I do not think there is a real prospect of success on the facts of this case.