Case No: C5/2007/0511

Neutral Citation Number: [2007] EWCA Civ 1532
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No: AS/05012/2005]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 7th November 2007

Before:

LORD JUSTICE MUMMERY
LORD JUSTICE LAWS
and
LORD JUSTICE LLOYD

- -

Between:

JV (TANZANIA)	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

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Mr G Hodgetts (instructed by Messrs Wilson & Co) appeared on behalf of the **Appellant**.

Mr J Auburn (instructed by The Treasury Solicitors) appeared on behalf of the **Respondent**.

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Judgment

(As Approved by the Court)

Lord Justice Laws:

1. This is an appeal with permission granted by Sir Henry Brooke on 5 April 2007 against the decision of the Asylum and Immigration Tribunal (the AIT) of 23 October 2006 to dismiss the appellant's appeal against the Secretary of State's refusal of his asylum claim notified by letter dated 18 March 2005.

2. The appeal first went to an adjudicator who dismissed it on both human rights and asylum grounds on 6 June 2005. However, a reconsideration under the current statutory regime which was by then in force was sought, and on 2 May 2006 the AIT held that the adjudicator's decision was flawed by an error of law and remitted the case for a fresh hearing on the evidence. So the matter was reheard on 17 October 2006 and the decision now under appeal at length arrived at on 23 October 2006.

3. The case is a somewhat unusual one in that the essence of the appellant's claim to be recognised as a refugee is his assertion that he has been rendered stateless by the authorities of his country of nationality, Tanzania, who have refused to recognise his status as a Tanzanian citizen. The appellant's assault on the decision of the AIT consists of a series of criticisms of the tribunal's findings of fact. It is therefore appropriate to set out the appellant's own case on the facts as the AIT summarised it. No criticism (as I understand it) is made of this summary:

> "3. …Briefly he states that he is the child of an Indian national who left India and went to Zanzibar whilst it was still under British rule, and therefore his father had British citizenship. His mother retained her Indian nationality but obtained a dependant's residency permit in Tanzania. His father did not obtain Tanzanian nationality until 1990. The Appellant was born after Tanzania obtained independence from British rule and after the Union between Zanzibar and Tanganyika in 1964. He says that those of his siblings who were born prior to Union day were given Tanzanian nationality; those who weren't including the Appellant were not recognised as Tanzanian citizens. Despite this in 1987 he obtained his first Tanzanian passport, which was valid for 10 years. It expired in 1997. In 2000 he applied for a replacement passport, handing in the application form and various other documents which were required. He says that initially he was told to return after a few days; which he did, but was informed that the file was lost and he would have to come again. This happened again. About four months after he first made his application he received a letter advising him that he was not in fact entitled to Tanzanian nationality because his parents were not Tanzanian nationals at the date of his birth. This was

in fact a misconstruction of the relevant legal provisions dealing with citizenship.

4. The Appellant says that he took various steps to obtain a passport, including seeking the advice of the Legal and Human Rights Centre, which is similar to a Law Centre or Legal Advice Centre. Through them approaches were made both to the Indian High Commission (because the Chief Minister advised that he was of Indian nationality) and the British High Commission (because the Appellant's father was a British citizen at the time of his birth). Neither was able to assist him, but he did receive a letter from the British High Commission advising him that he was entitled to Tanzanian nationality, and explaining that the authorities appeared to have misconstrued section 5(2)(a) of the Tanzania Citizenship Act.

5. The Appellant states that he took this letter to the Immigration Office who still rejected his claim and appeared to have been so incensed by the Appellant brandishing a letter from a former colonial power that they detained him for five days, mistreating him during that time. Before that however he and his siblings had received a letter from the Immigration Services advising them that they were not citizens of Tanzania and that they would have to 'regularise' their citizenship, which appears to be an invitation to the Appellant and his siblings to seek naturalisation.

6. Following five days of detention the Appellant was released. He went to Dar-es-Salaam. The Legal and Human Rights Centre told him not to return to Zanzibar after he told them that he had been detained. He says that he went into hiding. He sold his house for $23,000 and used this to live on. He says that he moved around as he could not stay in one place for too long, and he would have had to register with the local government minister, the Mjumbe and he would know that he did not have citizenship. He says that he tried to pursue his claim through the Legal and Human Rights Centre but that because the file kept being passed around from person to person he became frustrated and eventually decided to leave Tanzania. He found an agent and travelled out of Tanzania.

7. We should note here that the Appellant initially made an application for a visitor's visa under an assumed name. Although the visa was granted, we understand that it was not used by the Appellant, and that he applied for it on the advice of an agent. He

> subsequently hired a further agent who assisted him in leaving Tanzania. He arrived in the United Kingdom on the 23 September 2004. He applied for asylum on the 8 March 2005. He says that he delayed making his application because he was awaiting receipt of documents to support his claim which could not be posted to him and had to be personally transported for him."

4. This narrative suffices as a factual introduction upon which I may explain the issues in the case, though I should note that it will be necessary to refer in dealing with some of the points advanced by the appellant to one or two of the details in the case. I shall come to that in due course.

5. The case sought to be made on appeal before the AIT was summarised by the AIT at paragraph 8 of their determination. They stated that his case was as follows:

> "…the decision of the Home Office to remove him would place the United Kingdom in breach of its obligations under the following enactments:
>
> (i) the United Nations Convention on the Status of Refugees (and 1967 Protocol) (the 'Refugee Convention'); or
>
> (ii) the Council Directive 2004/83/EC on the minimum standards for the qualification and status of third country national or stateless persons as refugees or as persons who otherwise need international protection ('the Qualification Directive'); and/or
>
> (iii) Articles 2, 3 and 14 of the European Convention on Human Rights (ECHR).

The appellant contends that authority of this court (see Lazarevic v The Secretary of State for the Home Department [1997] 1 WLR 1107; [1997] Imm AR 251; compare Revenko v The Secretary of State for the Home Department [2001] QB 601; [2000] Imm AR 610, CA) establishes that at least in some circumstances, deprivation of nationality may amount to persecution within the meaning of Article 182 of the Refugee Convention.

6. The AIT heard live evidence from the appellant. They considered a large number of documents. They accepted by reference to Lazarevic that:

> "…deprivation of nationality *can* amount to persecution [see paragraph 37]".

They held that the Tanzanian authorities had misinterpreted the relevant national legislation, consisting (as I understand it) in section 52A of the Tanzanian Citizenship Act (see paragraphs 4, 5 and 37 of the AIT determination). But upon their findings this was no more nor less than an error. The AIT were not

satisfied on the evidence

> "…that this was a wilful denial of nationality, or that the reason for it was based on the appellant's perceived political opinions or his ethnicity [paragraph 37]."

7. The AIT was not satisfied (paragraph 38) that the appellant had been arrested or detained as he had claimed. He had not been threatened with deportation. He fled the country when he could perfectly well have remained and sorted out the difficulties he faced with the assistance of the Legal and Human Rights Centre which had already started to represent him (see paragraphs 39 and 41). They found also (paragraph 42) that his credibility was undermined having regard to the provisions of section 8 of the Asylum and Immigration Treatment of Claimants (Etc) Act 2004, given the fact that he had entered the United Kingdom by deception and had then not claimed asylum for a period of some six months. The AIT addressed the issue of risk on return (paragraph 43). They found none. On the contrary, the willingness of the Legal and Human Rights Centre to help him resolve his nationality claim if he returned showed there was a procedure of some sort available to that end. There was no evidence that he had sought to resolve the matter in this country through the Tanzanian High Commission or through his present solicitors. There was no evidence that he would be deprived of his nationality just by seeking to argue his case or that he had been targeted because of any political or national affiliation (paragraph 43).

8. The AIT was not assisted by the written statement of a Mr Saleh, who said that the appellant would be detained on return but gave no reason, and whose evidence (in part, in any event) relied on what had been said to him by the appellant. So it was the AIT dismissed the appeal.

9. Mr Hodgetts represents the appellant. His skeleton argument seeks to divide the case into what is referred to as the citizenship issue and what is referred to as the ill-treatment issue, and it is submitted that the AIT's treatment of both issues is marred by errors of perversity. There is also a suggestion that Article 3 of the European Convention on Human Rights has been misunderstood. Essentially however the claim made is an allegation or series of allegations of perverse findings.

10. As regards the contention that a denial of citizenship may amount to persecution, it is clear from Lazarevic (and is plain on principle) that it could only do so if the denial is actuated for a Convention reason: political affiliation or of course any of the other matters specified in Article 18 (2) of the Refugee Convention. A primary question in this case, were one looking at it as judge of fact, would be: why did the Tanzanian authorities deny the appellant's claim to Tanzanian citizenship? The respondent Secretary of State has in counsel's skeleton argument referred to a welter of correspondence, all of which was before the AIT. It is unnecessary to go into it letter by letter. It is enough to say that it is wholly clear to my mind that the appellant's claim was denied because of the authority's interpretation of the legislation and not for any other, certainly not for any capricious or discriminatory reason. They had encouraged the appellant to apply for citizenship by naturalisation. They had granted

citizenship by descent to four of the appellant's siblings. They had recognised both of his parents as citizens. Both the British High Commission and the LHRC seem to have considered that an application for citizenship by naturalisation would be (or would have been) appropriate. Against that background it is no exaggeration to say that an attempt to mount a perversity challenge faces a very tough climb indeed. And although I do not think Mr Hodgetts quite accepts this, there is on the face of the papers no challenge to the finding by the AIT at paragraph 37 that there was an error of interpretation here and no wilful denial of nationality. Mr Hodgetts says that these matters are challenged on an implicit basis, because there is a challenge to the AIT's finding that the appellant was not detained. That seems to me an extremely fragile ground on which to assert that central findings in this unusual case should be struck down as frankly perverse. Nor is there any challenge to the finding that the appellant did not apply to be naturalised, nor to the points relied on by the IAT under Section 8 of the 2004 Act.

11. In these circumstances there really is no basis for any principled assault on the overall conclusions of the AIT, and it is only out of respect for the grant of leave by Sir Henry Brooke and Mr Hodgetts' tenacity this morning that it seems to me to be appropriate to go any further at all.

12. I will deal with the matters briefly. The appellant has advanced, as I have said, a series of arguments of perversity. They are marshalled under some eight heads. These points fail to recognise the need to read the decision as a whole. I will not go through all of them. The flavour is given by the first, which concerns the allegation of detention. I will come to some but not all of the others.

13. On point one, it is said that the AIT's conclusion in paragraph 38 that the appellant was not detained and ill treated was an irrational conclusion. This is what the AIT said:

> "We have considered the Appellant's evidence in relation to the arrest and detention and we are not satisfied that he was either arrested or detained in the circumstances which he describes for the reasons which he claims. We have reached this view for several reasons. The most cogent in our view is that he would not have been released as he claims because he had told them that he was going to sort out his nationality. Another reason is that his evidence on this has not been entirely consistent in that during his interview he accepted that he did not really know why he had been released. In addition, the Appellant was by then being represented by the Legal and Human Rights Centre who could have taken up the issue of unlawful detention on his behalf."

14. Among other things, Mr Hodgetts says that as regards the second reason there given, his evidence was not in fact inconsistent, because he was never actually the reason for his release -- he only speculated about it. That being so, the first

reason, says Mr Hodgetts, also falls away and the third of the three reasons relating to the LHRC is simply asserted to be manifestly irrational.

15. As regards the point on inconsistency, the appellant's own case and evidence before the AIT is recorded in the determination. At paragraph 19 they quote the appellant as saying:

> "After three to four days I told them that I had applied for immigration status. I think that is why I was released".

The AIT continued:

> "He said that he was released unconditionally and that it was because 'I had told them that I had applied for citizenship'".

I may break off there. It seems to me that unless it can be said that this misreports the appellant's case or his evidence, the AIT were perfectly entitled to take the point they did as regards a degree of inconsistency. And once one appreciates that there is nothing in the rest of the assault on this finding at paragraph 38, it was a matter for the tribunal to decide what they made of the representation by the LHRC. The arguments here are, I fear, at best extremely tenuous.

16. Mr Hodgetts laid emphasis this morning first of all on what are enumerated in his skeleton as points 4 and 7. Point 4 says it was irrational to hold there was no evidence that he would be deprived of his nationality on return. Point 7 asserts in this context that in the circumstances it was irrational to find he would face no risk on return.

17. Mr Hodgetts says the AIT's reasoning ignores the fact that on return the appellant would face the Immigration Authorities who would or might detain him. There is some material from Mr Saleh and from the United States Department report that supports the proposition that there would be problems on his return.

18. There is, however, despite Mr Hodgetts's protests, no case made from first to last that the appellant was denied citizenship for any reason other than a mistake. That is a matter I have already thought it right to emphasise. Mr Hodgetts submits that on return nevertheless he would be detained or might be ill-treated contrary to Article 3. There is simply no basis of any substance for such a view. Mr Hodgetts says that his client could not now apply to be naturalised. He is not in a position however to argue that no claim for citizenship could be advanced. Nor, having looked at the text to which he drew our attention, do I consider that his claim in this context is advanced by the United States Department report.

19. Mr Hodgetts moved next to point 2. That relates to findings in paragraphs 39 and 41 that the appellant would face no risk of deportation, and it was said that these findings are irrational because inconsistent with written evidence. However, it is demonstrated in the respondent's counsel's skeleton argument

that there was evidence supporting the AIT's view. It was a matter for them to conclude as they would.

20. These points and all the others are in truth no more than attempts to rerun the case on the factual merits. They are comprehensively answered in detail and correctly in counsel's skeleton argument for the Secretary of State. I should add there is an allegation that the AIT made a factual mistake relating to one of the appellant's brothers. If they did, I cannot see it was of any substantial materiality. There is a linguistic point which I have mentioned in passing without describing it, relating to the language of Article 3 of the European Convention. The point is completely ephemeral, nor in my judgment is there any force in Mr Hodgetts's assault on the AIT's discounting the utility of a written statement made by Mr Salway.

21. I am sorry that I have found it necessary to be so dismissive in this appeal. But it is (or it should be) commonplace that the perversity test that has to be met if error of fact is to be treated as error of law is a formidable one. In this court, it has been said that perversity means what it says (see Miftari v The Secretary of State for the Home Department [2005] EWCA Civ 4 81). That with respect is no coincidence. If the Court of Appeal, concerned in these cases as it is only to see whether the AIT has perpetrated a legal error, were to allow an appeal on the ground that a finding of fact could not be sustained only because its basis was tenuous rather than nonexistent, the court would be exceeding its own statutory authority and usurping the statutory authority of the AIT. The fact that it is our duty to look at these cases with anxious scrutiny, as it has been put many times over the last twenty years, does not turn the perversity test into something different. This case was never a perversity case, with respect to Sir Henry Brooke. It is an attempt, as I have said, to appeal the factual merits again, and as such it is a misconceived enterprise. For those reasons I would dismiss the appeal.

Lord Justice Mummery:

22. I agree.

Lord Justice Lloyd:

23. I agree.

Order: Appeal dismissed