Neutral Citation Number: [2008] EWHC 2385 (Admin)

Case No: CO/10050/2007

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/10/2008

Before :

MISS FRANCES PATTERSON QC
(Sitting as a Deputy High Court Judge)

- -

Between :

The Queen on the Application of Maryam Umar	**Claimant**
- and -	
The Secretary of State for the Home Department	**Defendant**

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

Miss Gita Patel (instructed by **Miles Hutchinson and Lithgow**) for the **Claimant**
Mr David Blundell (instructed by **The Treasury Solicitor**) for the **Defendant**

Hearing date: 1st October 2008

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Judgment
As Approved by the Court

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MISS FRANCES PATTERSON QC

The Deputy Judge:

Introduction

1. The Claimant is a Nigerian national. She is Muslim of Fulani ethnicity and was born in Sokoto. She arrived in the UK with her husband Umar Tukur on a visitor visa on the 23rd of March 2005. She has two children both born in the United Kingdom after her arrival in 2005.

2. Her husband claimed asylum on the 16th February 2006 and the Claimant applied for asylum as a dependent on his claim. In so doing she claimed to be a Sudanese national. She says that was because someone told her husband that people from Nigeria could not get asylum. Her husband's claim for asylum was refused and certified under S94 (3) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). There has been no challenge to that decision

3. The Claimant later claimed asylum in her own right on the basis that she was fearful of persecution on return to Nigeria from her husband's family towards herself and her sons. The application was refused and certified by the Secretary of State as clearly unfounded on the 13th of August 2007 pursuant to s 94(2) of the 2002 Act. Permission was granted to bring judicial review proceedings to challenge the certification claim on the 19th February 2008.

4. Counsel for the Claimant and the Defendant were agreed that the principal issues in the case were :

   i) was there sufficiency of protection for Mrs Umar in her country of origin, Nigeria? And

   ii) was there a possibility of internal relocation within Mrs Umar's country of origin?

The Facts

5. The Claimant was born on the 1st of January 1984 in Sokotu State, Nigeria. Her father's father was born in Sudan so that her father was considered to be a Sudanese national event though he was born in Nigeria. The Claimant accepts that neither she nor her father has any right to claim Sudanese nationality now.

6. The Claimant has a good level of education and studied to be a midwife for 5 months. When she was studying she met her future husband, Umar Tukur. He was from the Hausa ethnic group and the Yauri royal family. His family did not like the Claimant. They said that she was a bad girl who had had other boyfriends and who came from a servant family. Her grandfather was a servant to the Emir of Birnin Kebbi where his job was to look after the Emir's horses. Likewise, the Claimant's future husband's family did not like the fact that her mother worked as a cleaner in a hospital. They told Umar that he could not marry the Claimant.

7. The Claimant and Umar married on the 9th of October 2004. The marriage was registered in the Kaduna State. Umar had planned to return to finish his studies to be a

pilot in South Africa. He decided that it would not be safe to leave the Claimant at her father's who was in poor health. The couple could not live near to Umar's family as the family did not like the Claimant. They went to live in Kaduna state (about 6 hours by road from the husband's family.)

8. Umar's family came looking for the couple and told the Claimant's parents that they wanted to kill the Claimant. Her parents did not tell them where the newly married couple were living. Somehow the family found out and at the end of October, when her husband was away, his family arrived at the couple's house in Kaduna. The Claimant was asked whether she was pregnant and upon confirming that she was she was beaten and kicked. She lost consciousness, bled heavily and lost the unborn child that she was carrying.

9. The Claimant was asked in the Home Office screening interview how she knew that those who assaulted her were Umar's family. She did not know their names but replied that they told her that they were member of Umar's family. They looked like him, were tall and had the same complexion.

10. The incident was not reported to the police or to any non government organisation (NGO). The Claimant says that "Umar's family have power and people in important jobs including the police and justice work and the authorities would favour them over us." Beyond saying in interview that one was a justice called Sani Adumu she did not identify the positions held by her husband's family or identify them by name. She simply said that her parents cannot take a stand against that type of person.

11. The Claimant and her husband then made steps to leave Nigeria which they did on the 23rd of March 2005 and arrived in the United Kingdom. As they knew nothing about claiming asylum they arrived on visitor visas.

12. Since leaving Nigeria the Claimant has spoken to her family who have reported that members of her husband's family have come to their house at least 3 times and threatened to kill the Claimant and her son. Her husband's family have been to where the Claimant's mother works and made similar threats to the welfare of the Claimant to her. The family have not been violent on these visits.

13. In November 2005 Umar had a telephone call from an unidentified member of his family who said that his family knew that he had a son and that they did not want the son to live.

14. No evidence was produced from the Claimant's husband as part of her claim.

Legal Framework

15. When a person makes an asylum and/or human rights claim, the Secretary of State for the Home Department may certify that claim as clearly unfounded under s 94 (2) of the 2002 Act.

16. The effect of a certificate under s 94 is that a claimant may not appeal under s 82(1) of the 2002 Act while he/she is within the United Kingdom: see sections 92(1), s92(4)(a), and s94(2) 2002 Act.

17. The meaning of 'clearly unfounded' was considered by the Court of Appeal in *ZL and VL v Secretary of State for the Home Department and Another* [2003] EWCA Civ 18. That decision was in the context of transitional provisions in s 115 of the 2002 Act which are not different in any material particular to s94.

Lord Phillips MR held at paras 56 and 57 that the test as to whether a claim was clearly unfounded was an objective one which depended not on the Home Secretary's view but upon a criterion that the court can readily re-apply once it has the material before it which the Home Secretary had.

Lord Phillips MR said

> "The decision maker will –
>
> i) consider the factual substance and detail of the claim
>
> ii) consider how it stands with the known background data
>
> iii) consider whether in the round it is capable of belief
>
> iv) if not, consider whether some part of it is capable of belief
>
> v) consider whether, if eventually believed in whole or in part, it is capable of coming within the Convention.
>
> If the answers are such that the claim cannot on any legitimate view succeed, then the claim is clearly unfounded; if not, not".

18. That is essentially the same test as adopted by Lord Hope in *Thangarasa v Secretary of State* [2002] EWHC UKHL 36 at para 34 in applying the manifestly unfounded test in section 72(2)(a) of the 1999 Act, namely, that the claim " is so lacking in substance that the appeal would be bound to fail." Lord Hope emphasised that the issue "must be approached in a way that gives full weight to the United Kingdom's obligations under the ECHR". Thus as Lord Phillips MR said in *ZL* at paras 49 and 57 "an arguable case" or one that could "on any legitimate view succeed" would not qualify for certification. The question of whether a claim qualifies for certification is a narrow one and the threshold for certification is high.

19. The test for evaluating whether sufficiency of protection exists is that set out in *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489. As Lord Hope said at p499 g-h:

> "the obligation to afford refugee status arises only if the person's own state is unable or unwilling to discharge its own duty to protect its own nationals. I think that it follows that, in order to satisfy the fear test in a non state agent case, the applicant for refugee status must show that the persecution which he fears consists of acts of violence or ill treatment against which the state is unable or unwilling to provide protection. The applicant may have a well founded fear of threats to his life due to famine or civil war or of isolated acts

> of violence or ill treatment for a Convention reason which may be perpetrated against him. But the risk, however severe, and the fear, however well founded, do not entitle him to the status of a refugee."

20. Similarly, the level of protection in the home state is not such that it is expected to be absolute guaranteed immunity. As Lord Clyde said in *Horvath* at p 510 f " that would be beyond any realistic practical expectation." Lord Clyde adopted, at p 511 a-b, as a useful description of what is intended, the formulation set out by Stuart Smith LJ [2000] INLR 15 at para 22

> "In my judgement there must be in force in the country in question a criminal law which makes violent attacks by the prosecutors punishable by sentences commensurate with the gravity of the crimes. The victims as a class must not be exempt from protection of the law. There must be a reasonable willingness by the law enforcement agencies that it to say the police and courts to detect, prosecute and punish the offender."

21. As to the test for internal relocation Lord Bingham in *Januzi v Secretary of State for the Home Department* [2006] 2 AC 426 at para 21 said :

> "The decision maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so……All must depend on fair assessment of the relevant facts."

22. Lord Hope at para 47 said:

> "The question where the issue of internal relocation is raised can, then, be defined quite simply. As Linden JA put it in *Thirunavukkarasu v Canada(Minister of Employment and Immigration) (1993) 109 DLR (4th) 682, 687,* it is whether it would be unduly harsh to expect a claimant who is being persecuted for a Convention reason in one part of his country to move to a less hostile part before seeking refugee status abroad. The words "unduly harsh" set the standard that must be met for this to be regarded as unreasonable. If the claimant can live a relatively normal life there judged by the standards that prevail in his country of nationality generally, and if he can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect him to move there."

Submissions

23. The Claimant's case is that there is an arguable case on sufficiency of protection and internal relocation. As a result the certificate should be discharged and the Claimant should have the right of an in-country appeal.

Sufficiency of Protection

24. Miss Patel argues that the state of Nigeria is unable and unwilling to provide protection for Mrs Umar.

25. She argues that the system of protection is lacking in Nigeria and so the protection of international community should be available as a substitute. She refers to that part of Lord Clyde's judgement in *Horvath* at p514 f, g and h where he says:

> "[T]he persecution with which the Convention is concerned is a persecution not countered by sufficient protection….the concept of encouragement or toleration on the one hand may be seen as expressing the same thing and the failure by the state to provide adequate protection. A toleration which amounts to a constructive persecution by the state and the failure by the state to provide adequate protection may be two sides of the same coin. It may be permissible to use language of a failure of protection against abuse as an equivalent to an encouragement or toleration of the abuse or to an acquiescence of it."

26. In particular, Miss Patel says that the Nigerian state in its approach to women evinces a failure to provide adequate protection to women. She refers to the fact that whilst Nigeria is on the White List that is for men only.

27. On independent objective evidence Miss Patel submitted that the *Immigration and Refugee Board of Canada, Nigeria: Domestic Violence: recourse and protection* available to victims of domestic violence report supported her submission. In particular, she relies upon the reference that there are no laws in Nigeria at the federal or state level that specifically criminalise domestic violence and that whilst women married under Igobo law can seek a divorce if they have been excessively chastised by their husbands that chastisement has to be fairly severe.

28. Miss Patel relies on paragraphs within the report that specifically set out that Nigerian police seldom intervene in cases of domestic violence. In particular, given that the assault here was not carried out by the husband and thus is not a conventional act of domestic violence, Miss Patel relies upon a paragraph which she says refers to assaults by family members. The relevant part of the paragraph relied upon reads as follows:

> "women's rights defenders working to protect victims of domestic violence have been threatened by family members of victims and that these threats are not often appropriately addressed by the police. The report provides the example of an

> activist who assaulted a victim's husband in front of a police station, an incident that was not addressed by the police."

29. Miss Patel further submits that in the *2007 Country of Origin Service* there is evidence that supports her contention that the police do not intervene to protect women. In particular, she refers to that part of the Report which says that the police are poorly paid, poorly resourced and are ill equipped to deal with violent crime. She drew particular attention to paragraph 8.06 which says:

> "the United Nations Commission on Human Rights Report of the Special Rapporteur on extra judicial summary or arbitrary executions, dated January 2006 adds:
>
> 'The Nigerian police have grown significantly under civilian rule to 325,000 in 2005. But numbers are still inadequate, their level of training and funding insufficient, and their morale low. Although Nigeria suffers from high violent crime rates the force is chronically under resourced. All too often new recruits have to pay for their own uniforms, salaries may be delayed for many months, equipment required in an emergency needs to be borrowed from other agencies, and complainants (even those alleging murder) are asked to cover the costs of the police investigation, including travel and accommodation. Where they cannot afford to do so, the investigation fizzles. In addition, corruption is widespread amongst police officers in part due to very low salaries'."

30. The same point Miss Patel says is made in the Country of Origin Information Report of the 13th of November 2007. That refers to a Human Rights Watch report on "Criminal Politics- Violence, 'Godfathers' and Corruption in Nigeria published in October 2007. That refers to the reputation of the police force as being corrupt and that their capacity to carry out criminal investigations is extremely lacking. It makes the point that just as important as the police shortcomings as an institution are the political pressures that often prevent the police from investigating abuses connected to politicians or other prominent people allied to the ruling party.

31. Miss Patel submitted that in relation to women in general and the Claimant, in particular, it was arguable that there was not a sufficiency of protection for women within their home state. In support she referred to the US Department of State's *Country Reports on Human Rights Practices 2006 : Nigeria*. In particular, she relied on that part of the report that referred to domestic violence as being widespread and was often considered to be socially acceptable. It recorded that the police do not normally intervene in domestic disputes which are seldom discussed publicly. The law was said to permit husbands to use physical means to chastise their wives as long as it did not result in grievous harm which is defined as loss of sight, hearing, power of speech, facial disfigurement or life threatening injuries. The other reference that Miss Patel relied upon was to the *Criminal Politics: Violence, Godfathers and Corruption in Nigeria* report the relevant part of which I have summarised above.

32. Mr Blundell, for the Secretary of State submits in relation to the White List on which Nigeria was placed for men on the 2nd of December 2005 that that fact does not prevent the Secretary of State from certifying a claim as clearly unfounded. There should be, he submits, no difference in the approach to women. The question is whether the claim is valid or not.

33. Mr Blundell further submits that in her assessment the Secretary of State took all matters at their highest, as she had to do, apart from the incident relating to the assault which was the only incident in respect of which she expressed some lack of credibility.

34. In support of those submissions he refers to *R(on the application of Obasi) v Secretary of State for the Home Department* [2007]EWHC] Admin 381 a case which dealt with a challenge to the certification of the claimant's asylum claim where the claimant was a Nigerian national. Issues of sufficiency of protection and internal relocation were relevant in that case. A live issue was whether there was sufficient protection in the state of Nigeria. Sullivan J. described the question before him at para 13 as " not whether the police generally are corrupt or inefficient, but whether they are willing to pursue this kind of offence and able to do so as to give a sufficient degree of protection."

35. Mr Blundell refers also to two other decisions on the part of the Immigration Appeal Tribunal dealing with Nigerian nationals. The case of *BL*- Obgoni Cult Protection – Relocation Nigeria CG [2002] UKAIT 07108 which refers to the background material which shows that the Nigerian authorities have been acting against a particularly powerful secret society which did not suggest that the government was unwilling or unable to provide protection. The case of *CO Sufficiency of Protection – Internal Relocation OPC Nigeria CG[2002] UKAIT* 04404 likewise recognised that whilst the Nigerian police did have problems maintaining law and order there was clear evidence of police action such that proper reliance could be placed on police protection.

36. Further, according to Mr Blundell there was clear evidence of other avenues of protection as set out in the Defendant's decision letter from paragraphs 34-58. In those paragraphs the Defendant sets out that she has sought information on what further avenues of redress are available in Nigeria.

37. Information about various non government agencies is set out. Included within those paragraphs also, is evidence about organisations that support individuals that have been victims of injustice and harassment from non state agents as well as information about NGOs that are specific in providing support to women.

Decision

38. In my judgement the paragraphs relied upon by Miss Patel in the various reports do not support her submissions that the police will not intervene in the circumstances that relate to the claimant. The reports deal with threats by families of the victim to women's rights workers and do not relate to the situation, as we have here, of threats and an assault on the claimant by people who say that they are members of the husband's family.

39. The situation here is one of violence within a domestic setting but not, unless there is some evidence that can be found to support an extended meaning of domestic violence within Nigeria, an incident with would normally be regarded as such. No evidence was adduced other than as set out above to support an extended meaning to the term domestic violence in Nigeria. The references, therefore, to inaction on the part of police to domestic incidents relied upon by the Claimant have no relevance to the Claimant's situation.

40. The difficulty with all of Miss Patel's points in relation to the Nigerian police is that the Claimant never reported the assault upon her to them. It is not known what their attitude would have been to such a complaint. There is no evidence that in the particular circumstances here they would have failed to investigate the matter. Whilst there is some evidence that there is a degree of codification in Nigeria whereby husbands can chastise their wives and that the police take no action in those circumstances there is no evidence that the police will not intervene in incidents of violence in the domestic setting which involve members of the broader family. None of the references made to the documentary objective evidence supported a submission by the Claimant that a broader interpretation of domestic violence was taken in Nigeria such that it would extend beyond the husband and include members of his wider family.

41. Further, in my judgement I consider that there is clear evidence that there are sufficient gender specific NGOs that would be able to assist the claimant if she chose to elicit their help. At no stage has she made a request that they do so.

42. In addition, whilst the two IAT cases are some time ago and therefore I do not attach a great deal of weight to them, there is no evidence that there has been any material change in circumstances in Nigeria since the case of *Obasi.* Whilst each case is fact specific, and I have reached my conclusions in this case on the basis of the evidence before me, the findings made in *Obasi* support my own conclusion in the instant case. In my judgement the Secretary of State was entitled to certify the claim on the basis that if the Claimant had gone to the authorities they would have given her a sufficiency of protection.

Internal Relocation

43. The defendant's decision letter refers to paragraph 1.02 of the *COIS Report on Nigeria* dated May 2007. It sets out that Nigeria is divided administratively into 36 states and a Federal Capital Territory. The states are further sub divided into 774 local government areas. Paragraph 7.06 of the report states:

> "According to the Minister of Internal Affairs, Dr Iorchia Ayu there is no longer any state persecution in Nigeria. Persons that encounter any difficulties from non state agents are able to relocate internally. There is free movement for all citizens within the country. Those who travel overseas to claim asylum have no reason to do so. Although claiming asylum overseas reflects badly on the country returnees will not encounter any problems on return."

Paragraph 7.08 continues,

> "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 vigilante group or if they flee violent conflict."

44. The Claimant submits that she had sought to relocate internally at the outset. After her marriage she moved with her husband to the Kaduna state some 6 hours away. Despite that, her husband's family was able to trace her and, she says, it would happen again. Internal relocation was thus not an option in her case. Although they had not harmed members of her family they had proffered threats against her. Her contention was that her husband's family was extremely powerful and that whilst she accepted that there was no objective evidence in support of her assertions that the family would find and kill her it did not mean that they would fail in their quest to do so.

45. In addition, the Claimant felt that with any move she would be discriminated against. Any relocation she submitted would thus be unduly harsh. She referred to *Human Rights Watch, "They do not own this place" : Government Discrimination against "Non Indigenes" in Nigeria* and relied in particular on p 131 where it says:

> "One federal government official in Abuja told Human Rights Watch: ' I don't have any problem with the idea of moving to another place and being discriminated against, because I know that if these people move to my home the same thing will happen to them.' And one member of parliament from the southwest of the country confessed that he even found it difficult not to discriminate against his own non indigene constituents. "

46. The Defendant submitted that it had to be recalled that the Secretary of State would be returning as part of a full family unit. Both the Claimant and her husband were young, fit and well qualified: the husband was a pilot and the claimant a midwife. In fact neither had qualified in their chosen career but for a variety of reasons had left part way through the qualification process in each of their professions.

47. The Secretary of State contended that as Nigeria was a large country there were a number of other regions that the Claimant and her family could go to including going to see her family in the Kebbi state. Although the husband's family had been to visit they had not been violent to her family. As there was no objective evidence that she would be discriminated against it would not be unduly harsh for her to relocate It was accepted that she may face some difficulties but that did not mean that it would be unduly harsh to relocate.

48. The Defendant relied upon *Obasi* where the issue of internal relocation in Nigeria was also a live issue. So, too in that case, it was considered within the Nigerian context in

the IAT cases of *BL* (supra), *CO*(supra) and *PI* [2002]UKIAT 04720. In all of those cases internal relocation within Nigeria was held to be a possibility.

Decision

49. I have considered the issue of internal relocation at all times against the test of whether it would be unduly harsh for the claimant to relocate. It is true that both the country guidance cases and *Obasi* were dealing with Nigerian males. It is true also that the *Human Rights Watch Report* was not mentioned in any of those cases. But the principles of internal relocation that were applicable in those cases in such a large country as Nigeria are clearly applicable here. Miss Patel did not point to anything that demonstrated the contrary. It is evident that nationals do move within the country of Nigeria to various parts of it.

50. In my judgement if such a move takes place there may be some initial difficulty and there may be some discrimination, as Miss Patel points out, but that is very different from establishing that such a move would be unduly harsh for the claimant. She will have the comfort of her family unit. She is young and fit. There is no objective evidence that her husband's family would search for her or would be able to search for her in other parts of the country so as to preclude the prospect of an ultimately successful internal relocation.

51. It is thus plain that internal relocation is an option in this case and for those reasons the Secretary of State was entitled to conclude, and I conclude that the claim was bound to fail.

Other factors

52. At the beginning of the case Miss Patel raised an issue that there was a clear Convention reason which was not accepted by the Secretary of State in paragraphs 8 and 9 of the decision letter. The defendant protested that such a claim had not been raised before. It is not raised in the Grounds of Claim.

53. The Convention reason adds nothing to the claim. I have found that there is both sufficiency of protection for the claimant in Nigeria and a realistic possibility of the Claimant being able to relocate internally. Each of those reasons would mean that a Convention claim would not succeed.

54. It follows that the certification by the Defendant was lawful. I dismiss the claim on both of the grounds that it has been brought.

55. No order as to costs save for legal aid taxation of Claimant's costs.

56. Permission to the Claimant to appeal refused on the basis that there is no reasonable prospect of success and there is no other substantial reason to appeal. The Defendant had applied the correct legal test and taken into account all material considerations.