

THE HIGH COURT

2007 1272 JR

BETWEEN

A. J. AND F. P. J.

(A MINOR SUING BY HER MOTHER AND NEXT FRIEND A.J.)

APPLICANTS

AND

**THE REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE,
EQUALITY AND LAW REFORM, THE ATTORNEY GENERAL AND HUMAN
RIGHTS COMMISSION**

RESPONDENT

JUDGMENT of Mr Justice Cooke delivered on the 21st day of July, 2009.

1. This application for leave to seek judicial review of an appeal decision of the Refugee Appeals Tribunal raises two issues: 1) are "good and sufficient reasons" within the meaning of s. 5(2) (a) of the Illegal Immigrants Trafficking Act 2000, shown for the grant of the necessary extension of time to enable the application to be entertained; and, 2) if the application is admissible are substantial grounds in the sense of paragraph b) of that subsection raised for contending that the decision in question ought to be quashed? As the first of these issues involves some consideration of the merits of the case proposed to be made, it is appropriate in this judgment to examine the grounds proposed first.

2. The first named applicant (hereinafter the "applicant",) was born in Nigeria in March, 1972. She has had education to third level and holds a Masters Degree in business administration from Lagos University. She joined Omega Bank, later Spring Bank, as a trainee manager in 1998 and pursued a successful career with successive promotions until she was appointed Operations Manager of its Otta branch in 2003. In January, 2004 she says she was told by a senior manager that at a forthcoming board meeting she was to be invited to become a member of the society or organisation which, at question 17 of her Section 11 Interview, she named as the "Reformed Ogboni Fraternity". She refused the invitation because she had heard the Ogboni were a cult which engaged in sacrifices and, as a Christian, she considered this would be incompatible with her beliefs.

3. In May 2004, in advance of the Central Bank audit, reposting exercises were carried out in the branch to cover up inadequacies in the accounts and she was told a large discrepancy was discovered as a result of which she was at first suspended and later asked to leave and her employment was terminated. She believes these matters were contrived as the problems were never notified to the regulatory authority or investigated by the auditors but were designed to get rid of her because of her refusal to join the Ogboni.

4. It is not disputed that the Ogboni group or network is comprised of members drawn from the elite in the higher levels in financial and commercial institutions in Nigeria. What is in issue is the extent to which the traditional or original Ogboni cult remains a sinister and secret cult capable of violence, as compared with the Reformed Ogboni Fraternity which is considered to be a benign organisation founded in 1914 as an alternative and which is based on tenets compatible with Christian and other non-traditional beliefs.

5. The applicant is married and has two small sons who remain in Nigeria with their father.

6. Following her dismissal from the Omega Bank, the applicant found that the shares she was entitled to together with her insurance cover and pension entitlements had been revoked. She also found it impossible to get other employment because the bank would not provide her with a reference. In these circumstances she sought legal advice and on 4th September 2006, lawyers on her behalf wrote to the bank to make her claim for wrongful dismissal and then commenced High court proceedings on her behalf which are still pending.

7. She says she then began to receive threatening phone calls demanding that she drop the case and a sinister note was passed to her through her son at school. People came to her house while she was out and damaged it and beat her husband. This was reported to the police and a copy of the report on that complaint as recorded in the station diary extract was produced.

8. As a result of these problems and threats, she says she left Nigeria with the help of her husband and a customer who arranged for her to travel on a false Nigerian passport with an agent who brought her via Dubai and London to Ireland. She arrived on 15th February, 2007 and applied for asylum. Her daughter, the second named applicant, was born her on 16th February, 2007.

9. Her fear of persecution is based on her claim that if returned to Nigeria she and her family, including the second named applicant, will be at risk from the Ogboni cult because of her refusal to join and that the Nigerian authorities are unwilling or unable to protect her against the threats and activities of such a powerful and well connected cult.

10. In a Section 13 Report of 13th April, 2007 the Refugee Appeals Commissioner considered that the applicant had failed to establish a well-founded fear of persecution and recommended she be not declared to be a refugee. In effect, the authorised officer questioned credibility of the fears expressed about the threats from the Ogboni cult based on the applicant's apparent lack of familiarity with the Reformed Ogboni Fraternity and on the availability to her of internal relocation.

11. The appeal to the Refugee Appeals Tribunal was rejected by a decision of the 15th August, 2007 ("the Contested Decision".) In essence, the Tribunal member found the applicant had not established a well-founded fear of persecution as claimed for two reasons:

1) There were "a number of quite obvious credibility issues" in the case;

2) Country of origin information available to the Tribunal did not support her claim that the Ogboni resorted to violence to enforce recruitment of members and that for those who feared or had experience of such ill-treatment there was a

general sufficiency of protection available and safe relocation within Nigeria was possible.

12. It is in these circumstances that the applicants seek leave to apply to quash the Contested Decision as being invalid. In the proposed statement of grounds filed on 4th October, 2007 some 29 grounds are put forward. At the conclusion of the presentation of the applicant's case counsel for the applicants accepted the suggestion put by the Court that those grounds might be distilled to three broad complaints of invalidity which might be formulated as follows:

- 1) The Tribunal member erred in law in relying selectively on country of origin information submitted or available to the Tribunal and failed to weigh that information rationally and fairly;
- 2) The Tribunal member's conclusion as to the applicant's lack of credibility is irrational and unreasonable;
- 3) The Tribunal member failed to make any independent assessment or determination of the claim made on behalf of the second named minor applicant.

13. The first ground is directed primarily at the consideration given in the Contested Decision to country of origin information relating to the Ogboni cult which was, of course, the source of the threats which formed the basis of the applicant's expressed fears. In general terms, the Tribunal member concludes that the applicant has in effect exaggerated those threats because, according to the country of origin information, it is improbable that such an organisation would resort to violence as a means of recruiting members or punish those who refuse to join.

14. Relying primarily on a report commissioned by the Immigration Board of Canada of July, 2005 and a United Kingdom Home Office Operational Guidance Note on Nigeria, the Tribunal member considers that neither the traditional Ogboni society nor the Reformed Ogboni Fraternity pose a threat of violence as their main activities appear to be those of advancing the financial, commercial and social interests of their members and that, for those who did fear ill-treatment at the hands of the cults, police protection was available.

15. There is no doubt that the appraisal thus made of the role of the Ogboni cult and the distinction made between the traditional animist cult and the Reformed Ogboni Fraternity is amply supported by the documentation before the Tribunal on the appeal including the two particular reports which it cites. The applicant's complaint, however, is that the documentation also contained references which indicated the possibility of the cult having a more sinister aspect and that those were ignored by the Tribunal member. In particular, the applicant points to a document entitled "Accord: Response to Information Request 2004/5/6" which, it is argued, demonstrates that the traditional cult is extremely influential in the Yoruba tribe (to which the applicant belongs,) and amongst the financial and commercial elite of Nigerian society and that it is not unknown for people to be pressured and threatened by them. Further, it is suggested that the documentation shows that the Nigerian authorities have been ineffective in curtailing their influence and their activities.

16. The Court has considered all of the documentation including particularly the extracts listed in the applicant's written submissions and referred to expressly in oral argument. While it is true that some of the anthropologists quoted in those documents and reports referred to the cult "sanctioning criminal and unsocial behaviour" and especially to pressure being brought to bear upon sons who refuse to take a father's place as a member in the cult, the picture that emerges is not obviously at variance with the overall appraisal made by the Tribunal member.

17. In the first place, a clear distinction is drawn in all of the reports between the traditional cult and the Reformed Fraternity which was apparently established by an Archdeacon Thomas Ogunbiyi in 1914 as a secularised society which could be joined by Christians. It was this entity that the applicant said in the Section 11 interview that she had been asked to join and the country of origin information appears to be unanimous in describing that organisation as a form of Yoruba support network which is uninvolved in any of the traditional rituals and has only law abiding activities. Even in the descriptions of the current activities of the traditional cults the references to sanctions and possible violence are guarded. Thus, the Accord document says of reports of punishment of criminal behaviour: "While death sentences (mostly by poisoning) or the use of physical violence cannot be excluded, Ogboni would resort to death penalties only in very extreme cases as their function is about social cohesion not about the destruction of the community". Furthermore, while a family might put pressure on a member to join the cult because of the benefits the influence could bring to it, the balance of information suggests that the cults themselves do not - other than in rare cases of sons succeeding fathers - forcibly recruit members. As the Accord document itself says on this issue, "the reports are mixed".

18. The Court is satisfied in these circumstances that the conclusion reached by the Tribunal member could not be said to be perverse or contrary to the overall effect of the information that was available in that documentation. It must also be borne in mind that the Tribunal member was obliged to take a forward-looking approach and to consider whether, as of the month of August 2007, there was a well-founded basis for a fear on the part of the applicant if returned to Nigeria thereafter. In that regard the Tribunal member was clearly influenced in the assessment of the risk by two other factors. First, there was no direct evidence that the threatening phone calls after she started her legal action, the note passed in the school or the assault on her husband at home, were caused by or orchestrated by the cult as such. She has made that assumption. Secondly, if her family was at risk, as she says, the cult has had ample opportunity to carry out its threats since 2006 but has not done so although the legal action has not been withdrawn and it is being advanced on her behalf by her husband.

19. The second ground alleges that the assessment of credibility was unreasonable and irrational. It is unnecessary to rehearse once more the limited scope of the Court's jurisdiction in this regard to interfere with a decision maker's assessment of credibility. The Court's function is confined to verifying that there has been no material error of law in the process by which a conclusion as to lack of credibility has been reached.

20. In the analysis of the claim at section 6 of the Contested Decision the Tribunal member identifies a number of factors as undermining credibility:

- She did not know of the distinction between the traditional Ogboni cult and the Reformed Ogboni Fraternity or "society" as the Tribunal calls it at that section.

- Her evidence in relation to her legal action against the bank and her uncertainty as to her role as a witness, her delay in seeking legal advice when she worked without pay for eight months and then did nothing about her dismissal for a period of 12 months,

- The fact that the Ogboni do not appear to have followed up on their alleged threats.

21. It is submitted that to base a finding of lack of credibility on these aspects of her personal history and claim was unbalanced and unreasonable and therefore irrational.

22. The Court cannot agree. The queries raised by the Tribunal member followed logically from the case as presented by the applicant. She is an educated woman who had pursued a successful career in a financial institution and achieved a management position. It is a fair assumption that such a person has acquired the ability to make decisions and to exercise authority and responsibility to the satisfaction of her superiors.

23. It is, accordingly, entirely relevant and inevitable that in such circumstances the decision maker should express surprise that such a person would acquiesce in unpaid work for so long or fail to seek legal advice as to her rights for so long. In the Court's judgment the doubts identified were cogent, pertinent and substantial and the arguments now raised against the finding raise no error of law but effectively invite the Court to substitute a different view.

24. As regards the distinction between the Reformed Ogboni Fraternity and the traditional cult, that too is a matter to which the Tribunal member was clearly entitled to have regard given that this was a case of an appeal with an oral hearing. It is to be noted that the Reformed Ogboni Fraternity is first referred to not in country of origin information but by the applicant herself at question 17 of the Section 11 interview. That was the name she gave of the cult when describing the invitation she received from the senior manager to join it. Given her level of education, the length of her experience working in the bank, and, according to the country of origin information, the pervasiveness of membership of the Ogboni networks in banking and finance throughout Nigeria, it is entirely reasonable for the Tribunal member to query the credibility of the applicant's denial of knowledge of the distinction when confronted with information that the branch she has named is a law-abiding non-violent organisation according to the country of origin information.

25. Finally, the applicant claims that the Tribunal has failed to make an individual assessment and to rule on the claim of the second named applicant, the applicant's two year old daughter. It is clear that the applicant's daughter's claim for refugee status was included with that of the applicant as she expressly confirmed at question 1 of the Section 11 interview. At question 43 she was asked what fear she had for her daughter if returned to Nigeria and she replied "The same thing. If I take her back the same people might be after her." It is also clear that, apart from the reference to her having been born here, at section 3 of the Contested Decision, the individual circumstances of the second applicant are not referred to or separately examined by the Tribunal member. The applicants argue, (relying particularly on the judgment of Peart J. in the Ojuade case,) that this is a failure which vitiates the Contested Decision.

26. It must be borne in mind that the Tribunal member is hearing an appeal and he is clearly obliged to rule on the issues raised in the appeal against the Section

13 report. That claim, so far as it related to the second named applicant, was explicitly rejected at paragraph 4.11 of that report. The grounds of appeal were set forth in a set of submissions sent to the Tribunal by the applicant's solicitors under cover of a letter dated 12th June, 2007. No ground of appeal was raised independently by reference to the situation or the claim of the child. The grounds advanced related exclusively to the credibility of the first named applicant's story and the evidential value of the country of origin information and its assessment.

27. As has already been indicated in this judgment, those grounds were fully addressed by the Contested Decision. Accordingly, there has been no failure on the part of the Tribunal to determine any distinct claim made on behalf of the second named applicant. No such claim was made. This is not a case like, for example, the Ojuade case in which the fear of persecution took a form which directly affected and threatened the child independently of the mother namely, a threat that the child would be subjected to forcible circumcision. In the present case the only source of a risk of persecution is that of the threats alleged to have been made against the first named applicant arising out of her refusal to join the Ogboni cult and a subsequent commencement of legal proceedings against the bank. The only relevance of this to the second named applicant is that it is argued she would be exposed to the same risk as other members of the family. That risk has, however, been discounted for the reasons given in the Contested Decision. There was therefore, no distinct claim to refugee status on behalf of the second named applicant which might have been examined by the Tribunal member.

28. The Court is, accordingly, satisfied that no substantial ground was raised for the grant of leave in this case.

29. In those circumstances it is not strictly necessary to rule on the application to extend time. Nevertheless, it may be useful for the future to indicate that had it been necessary to so rule the Court considers that the explanation given at paragraph 18 of the applicant's affidavit is an inadequate basis for the grant of an extension even though the extension in question at four weeks may not appear to be exceptional. It is inadequate in that it gives no dates which would enable the Court to assess at which point and for what reason the delay actually occurred. The dates of contact with the solicitor, of the instruction of counsel, and of the receipt of the opinion and draft proceedings are unstated although they are presumably readily ascertainable from the case file. In the absence of that information the Court is not placed in the position to judge whether any good or sufficient reason for the four week delay existed.

30. Accordingly, the application for leave is refused.