Case No: C5/2006/1080

Neutral Citation Number: [2007] EWCA Civ 707
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No. AS/13758/2004]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 21st June 2007

Before:

LORD JUSTICE MUMMERY
LORD JUSTICE DYSON
and
LORD JUSTICE RICHARDS

- -

Between:

AI (Nigeria)

Appellant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

- -

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Ms F Webber (instructed by Messrs Ovo) appeared on behalf of the **Appellant**.

Mr D Pievsky (instructed by Treasury Solicitors) appeared on behalf of the **Respondent**.

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Judgment

(As Approved by the Court)

Lord Justice Dyson:

1. This is an appeal from the decision of the Asylum and Immigration Tribunal ("AIT") promulgated on 9 March 2006, dismissing the appellant's appeal on both asylum and human rights grounds. The appellant is a citizen of Nigeria. She arrived in the United Kingdom on 29 May 2004, and claimed asylum a few days later. The basis of her claim was that she was a Methodist Christian who lived in Kano, which was a predominantly Muslim area. She left the country following a riot which broke out on 2 May in which 600 mainly Muslim people were killed, and after an attack by Muslims on Christians in Kano on 13 May. She said that she feared persecution by Muslims on account of her religion. Her claim was refused by the Secretary of State on 7 July 2004 on the grounds that although localised incidents had occurred, there was an effective level of protection.

2. She appealed to the adjudicator. By a determination promulgated on 28 September 2004, Mr Camp, the adjudicator, allowed her appeal on asylum and human rights grounds. He accepted the appellant's evidence that she was a Christian who had been living in Kano and who had been caught up in the revenge attack by Muslims on 13 May 2004. He took into account the CIPU Nigerian Country Report of April 2004 and other in-country evidence contained in the appellant's bundle. The only evidence he quoted was a passage from a report by the Austrian Red Cross dated 2002, which was in these terms:

> "While the 1999 Constitutions [sic] provides for equality of men and women, the reality of women in Nigerian includes discrimination both on a legal as well as on a social level. The lives of women are defined almost exclusively by their role as wife and mother and they are subjected to a series of traditional norms which are extremely hard to counteract. Single women are considered to be sexually available, even in big cities such as Lagos. The dependency of women on the social network of support and protection is therefore even more pronounced than for Nigerian men. Personal status law can be based on civil law, Sharia law or customary law, quite often leading to conflicting legal outcomes in the case of inheritance or divorce. Harmful traditional practices such as female genital mutilation (FGM), early marriages and humiliating treatment and widows can be encountered in many parts of Nigeria despite recently introduced legal provisions banning such practices on state level."

3. On the basis of that evidence the adjudicator found at paragraph 14:

> "… that the appellant, as a woman without support, with no husband and a small child, would be at significant risk of persecution and ill-treatment in Nigeria."

She was at risk of persecution because of her status as a lone woman rather than because of her religion. The adjudicator bore in mind the majority opinions of the House of Lords in Shah and Islam [1999] 2 AC 629. He said:

> "Even if the Government is able to provide a measure of protection against religious violence, there is evidence that protection for vulnerable women is inadequate. In my

judgment the appellant has a well-founded fear of persecution because of her identity as a Nigerian woman."

4. The Secretary of State appealed on a number of grounds. These included:

    1) there was no discriminatory legislation against women in the Nigerian constitution;
    2) the objective evidence relied on by the adjudicator spoke of discrimination not persecution;
    3) the persecution claimed emanated from non-state agents and the adjudicator had failed to consider either sufficiency of protection or internal relocation.

    The Secretary of State also appealed on the ground that the adjudicator's categorisation of Nigerian women as a social group ignored the "cautionary remarks" made in Shah and Islam and was an error of law.

5. The IAT gave permission to appeal on 13 January 2005. The AIT considered the Home Office CIPU Country Report of April 2004 relied on by the appellant to which the adjudicator had referred, as well as to the decision of Shah and Islam. In paragraph 15 they concluded as follows:

> "Our assessment of the objective evidence quoted by the Adjudicator and from the Country Report provisions that we have set out above does not indicate the kind of discrimination which can properly be described or characterised as institutionalised. Clearly there are elements of discrimination against women in Nigeria but there are many positive aspects also, as can be seen from the above quotations. We consider that the situation markedly contrasts with that described by the House of Lords in Shah and Islam. We do not consider that the Adjudicator was entitled to find as he did that the appellant is a member of a particular social group. We do not consider that the levels of discrimination that we have identified from the evidence before the Adjudicator concerning the situation for women in Nigeria in any sense are such as can properly be said to amount to persecution and that is relevant both to the question of definition of particular social group and the kind of risk that the appellant might face on return. We do not consider that we are simply expressing disagreement with the Adjudicator. We do not consider, contrary to Mr Lewis' submission that the findings he came to were open to him on the evidence before him. We consider that he was entitled to find no more than [that] there exists a level of discrimination against women in Nigeria but the evidence does not show that a single woman returning with a small child and with no family in Nigeria faces a risk of anything more than discrimination to a certain extent as regards aspects of Nigerian society. We agree with Mr Lewis that the issue of relocation does not need to arise in the circumstances and we do not consider this is an appropriate case for consideration at stage two. We have the Adjudicator's findings before us and the objective evidence considered by him, and we have concluded that this is a

> case where determination can properly be characterised as being perverse as being one to which a reasonable Adjudicator could not come to on the evidence before him. We therefore substitute for the Adjudicator's decision our decision dismissing the appeal both under the Refugee Convention and under the Human Rights Convention."

6. The appellant's grounds of appeal in this court are first that the AIT should not have interfered with the adjudicator's decision, because his decision was lawful and was one that was open to him on the evidence before him, and secondly, that the AIT's own decision was wrong in law.

7. Miss Webber submits that the evidence before the adjudicator entitled him to find that women, or lone women, in Nigeria constituted a social group, and that the appellant had a well-founded fear that she would be at risk of persecution if returned. Although the adjudicator did not spell out the nature of the persecution she feared, it was implicit in paragraph 14 of his determination, which referred back to paragraph 9 and the Austrian Red Cross report, that if she returned to Nigeria, the appellant would face a real risk of sexual predation, violence and degradation. The Austrian Red Cross report provided evidence that lone women were vulnerable to such sexual exploitation; they were perceived as being sexually available. In addition to the Red Cross report, Miss Webber submits that there was further evidence on which the adjudicator was entitled to base his conclusion that, as a lone Nigerian woman, without the support of a family or other social network, the appellant would be vulnerable and at risk of persecution. She refers to the fact that as recorded at paragraph 7 of the adjudicator's determination the appellant said:

> "To get a job, it was necessary to sleep with people."

She refers also to the report dated 2004 by Amnesty International which includes the following:

> "Violence against women remained widespread and persistent. Gender-based violence reported in 2004 included sexual violence, violence in the family, female genital mutilation and forced marriage. Discriminatory legislation remained in place."

She refers to passages in the Red Cross report which were not quoted by the adjudicator including a passage which states:

> "It is extremely difficult to make a living in Nigeria without the support of the extended family or another social network."

Finally she refers to the CIPU report which in turn quotes from the US State Department report that states that abuses are common, "especially wife beating", and that:

> "Rape and sexual harassment continue to be problems. Prostitution is rampant, particularly in urban areas."

Miss Webber submits that this evidence was ignored by the AIT in reaching its conclusion that the evidence disclosed no more than that the appellant would face a risk of discrimination. She says that the AIT's finding of perversity overlooked the

careful approach of the adjudicator and appeared to require that all women be at risk of persecution as a precondition of finding that the particular appellant be at such risk. It also appeared to overlook the evidence of likely exposure to sexual violence and degradation which the adjudicator found important in reaching his conclusion of a risk of persecution. She submits further that the authorities demonstrate that all that is required to define a particular social group is that the group is united by a common immutable characteristic and/or is recognised as having a distinct identity in the relevant country; see Lord Bingham of Cornhill in Fornah v Secretary of State for the Home Department [2006] UKHL 46, [2006] 3 WLR 733, paragraphs 11 to 16.

8. She contends that it was open to the adjudicator to find that Nigerian women were a particular social group united by their gender and by cultural, legal, and social discrimination. Having found, on the basis of the report to which I have referred, that discrimination faced by women generally constituted them a particular social group in Nigeria, the adjudicator, submits Miss Webber, was entitled to accept that the appellant's particular vulnerability (as someone with no family to provide her with protection and support, which the objective evidence showed to be necessary) put her at risk of persecution. She further submits that insofar as the Secretary of State contends that the adjudicator erred in law in failing to specify the nature of the persecution faced by the appellant, it is not open to him to do so because this was not one of the grounds of appeal to the IAT. Insofar as the AIT upheld the Secretary of State's submission that the adjudicator had failed to deal with sufficiency of protection and internal relocation, they were wrong to do so. At paragraph 16 the adjudicator said that there was evidence that some attempt was being made to provide protection against religious violence, but that protection of vulnerable women was inadequate. As for internal relocation, Miss Webber relies on paragraph 15 of the adjudicator's determination, which is in these terms:

> "The evidence relating to her home village and her father's marriage to someone who was not freeborn is not part of her claim for asylum. It relates to her reasons for being unable to relocate to her home village."

9. In the alternative, Miss Webber submits that if the decision of the adjudicator was wrong in law, so too was the decision of the AIT in that:

    1) they failed to address the evidence as to the vulnerability of single women to sexual predation;
    2) they misdirected themselves in law on the membership of a particular social group; and
    3) they failed to address Article 3 of the European Convention on Human Rights.

10. Mr Pievsky submits that the AIT were right to find errors of law in the adjudicator's decision. He identifies the following errors. First, the finding of persecution was not supported by evidence and was not reasoned. Secondly, the decision that the appellant was a member of a particular social group was flawed. Thirdly, the adjudicator failed to consider the questions of sufficiency of protection or internal relocation. He also submits that the AIT's decision on the merits of the appeal was correct in law.

11. I am satisfied that there was no evidential basis on which the adjudicator could reasonably find that the appellant was at risk of persecution as a Nigerian woman, or a lone Nigerian woman. It is clear that the adjudicator was of the view that the

passage in the Austrian Red Cross report that he quoted at paragraph 9 provided the essential evidence on which he could rely. The last sentence in the quoted passage had no application to this case. The appellant was not at risk of FGM or early marriage and she was not a widow. She was not therefore vulnerable to any of the "harmful practices" identified in the passage in the Red Cross report. The adjudicator must therefore have had in mind the single sentence "single women are considered to be sexually available even in big cities such as Lagos" when he made his finding, but in my judgment the fact that single women are considered to be sexually available is not evidence that they are persecuted.

12. The position might have been different if the evidence were that single women are routinely raped and subject to other sexual abuse, but the single sentence does no more than provide an example of discrimination against women. That is consistent with the opening sentence of the quoted passage which states that the reality for women in Nigeria includes discrimination both on a legal and on a social level. The fact that the adjudicator only quoted from the Austrian Red Cross report indicates that he considered that it provided the strongest evidence of persecution but for the reasons that I have given it does not. Nor does the other material relied on by Miss Webber. The Amnesty International Report contains a generalised statement that violence against women remains widespread and persistent. The examples given are sexual violence, violence in the family, FGM and forced marriage. Only the first of these could have any possible application to the appellant. The same point can be made in relation to the CIPU report. As for prostitution, which is said in the CIPU report to be "rampant", I do not consider that prostitution per se is evidence of persecution. Prostitution under threat of violence may be a different matter, but the evidence does not suggest that the appellant would be at risk of that. Nor does the fact that the appellant said in her evidence to the adjudicator that "to get a job it was necessary to sleep with people". That is certainly evidence of discrimination. In my judgment, however, it is not evidence of persecution.

13. I would therefore hold that the AIT were right to say at paragraph 15 that there was no evidence that the appellant would face a risk of persecution as opposed to discrimination if she returned to Nigeria. They were therefore right to allow the Secretary of State's appeal. I do not find it necessary to deal with the other arguments raised as to the correctness of the adjudicator's decision.

14. In view of the fact that there was no evidence on which a finding of a well-founded fear of persecution could be based, it followed inevitably that the AIT would dismiss the appellant's appeal for that reason. It is therefore unnecessary to decide whether their decision on the particular social group point was correct in law.

15. For the reasons that I have given I would dismiss this appeal.

Lord Justice Richards:

16. I agree.

Lord Justice Mummery:

17. I agree.

Order: Appeal dismissed.