

Case No: C5/2007/0250

Neutral Citation Number: [2008] EWCA Civ 1042
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM AND IMMIGRATION TRIBUNAL
[AIT No: AA/06351/2006]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Thursday, 12th June 2008

Before:

LORD JUSTICE LONGMORE
and
LORD JUSTICE MOSES

Between:

KS (SUDAN)

Appellant

- and -

**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Respondent

(DAR Transcript of
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Official Shorthand Writers to the Court)

Mr P Jorro (instructed by the Refugee Legal Centre) appeared on behalf of the **Appellant**.

Ms L Giovanetti and **Mr R Dunlop** (instructed by the Treasury Solicitor) appeared on behalf of the **Respondent**.

Judgment

(As Approved By Court)

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Lord Justice Moses:

1. This is an application for permission to appeal, advanced on two bases, both of which are linked and go to the credibility of the account of this appellant. The immigration judge refused the application for asylum on the basis that although he was a Berti from the Darfur region he was not at particular risk because he did not accept that the applicant had been captured by the Janjiweed or military authority, had been interrogated or imprisoned, had been kept in custody albeit in hospital and escaped. He found on the contrary that his departure was as a result of particular planning. He then went on to consider, albeit in terms that had been overtaken by the law, whether it was unduly harsh to expect him to relocate in Khartoum.
2. The applicant contended that his village had been raided and burnt by the Janjiweed in 2003 and he had been held prisoner along with thirty others. He said he had been questioned and beaten three times a day during interrogation. His wound, he said, had festered. He was taken to hospital but the soldiers who were guarding him would not allow him to be treated. He was further interrogated and beaten and taken back to hospital, remaining there for four weeks where he was guarded by a guard at the door of the ward. He was then, he said, befriended by a nurse who helped him to escape and walk out of the hospital. He stayed with the nurse before working his passage to Libya where he stayed for ten months and then travelled, spending time, three months in Italy, two months in France, before travelling to the United Kingdom.

3. The judge correctly directed himself of the need for caution and particularly the wholly human and understandable tendency of anyone desperate to remain in the United Kingdom, having fled from another country, to exaggerate. He, however, disbelieved this applicant, in part rejecting the evidence of an expert, Mr Verney, who had said that the account of the escape was consistent with other reliable accounts and the expert had no reason to dismiss the story.

4. It is, of course, trite to observe that the fact finding body, namely the immigration judge, is entitled to reject the view of an expert as to credibility and indeed is under an obligation to reach his own conclusions as to whether an applicant is worthy of belief or not. In the instant case, in a single paragraph, the immigration judge rejected Mr Verney's account on the basis that he had not indicated what reliable accounts he was referring to. I would tend to accept the submission, forcibly made by Mr Jorro, that it really did not assist to know what those other reliable accounts were; but, nevertheless, reading the decision in the round it is plain to me that the immigration judge was entitled to reject the impact of what Mr Verney said. After all, experts called on behalf of the applicants would no doubt hear stories such as the account given in this case on many occasions, just as tribunals finding the facts will do; that is the whole problem. When you hear a story over and over again, the tendency is to become case-hardened and say: I have heard that story before. And if you are an expert who has sympathies with those making such applications and advancing such appeals, exactly the same grounds will be used as a basis for fortifying the strength and credibility of the account given. Yet it would only remain for a cynic to observe that if a particular

account of escape reaches wide currency it will be all too easy to be used and deployed by someone seeking to exaggerate his own account.

5. But the reality of this case is that it ought not to be confined and focussed upon the particular evidence of the expert. The judge was bound to look at the evidence in the round; and he was entitled, as he did in the next following paragraph, to reject the account of the escape as being implausible and improbable, as he did, on the terms advanced by the applicant himself. Of course, as Mr Jorro submits correctly, a judge must not disbelieve an applicant merely on the basis that he finds the account improbable and implausible because it is outwith the sort of experience that one would get, for example, in Europe, as opposed to a distressful county such as Sudan. But it is plain to me that that was not the basis upon which the immigration judge rejected the account, even though he used the word “improbable”. He looked at the account given by the applicant and tested it for inconsistencies in its own terms and he was perfectly entitled to conclude that, on the one hand, the account of the brutal treatment and detention did not fit with his being left in a hospital, on the one hand guarded, and then, as it was found, all too easy to be allowed to walk out of the hospital with the aid of the nurse.

6. And in those circumstances the judge was entitled to reject the impact of the expert evidence and further to reach the adverse credibility conclusions as to the grounds advanced by the applicant. What was particularly important was whether the applicant fell within a particular category that would expose him to a greater risk other than merely returning to the camp. Having found, as he

was entitled to do in my judgment, that the applicant was not to be believed, the judge was entitled to conclude that he was not exposed to any particular risk, and would not be exposed to any particular risk, on return.

7. In my view it is not arguable to the contrary on either of the two grounds and I would refuse permission.

Lord Justice Longmore:

8. I agree

Order: Application refused