Case No: C5/2007/1642

Neutral Citation Number: [2008] EWCA Civ 204
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ASYLUM & IMMIGRATION TRIBUNAL
[AIT No: AS/05957/2005]

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday, 13th February 2008

Before:

LORD JUSTICE TUCKEY
LORD JUSTICE RIX
and
LORD JUSTICE JACOB

- -

Between:

KM (SUDAN) **Appellant**

- and -

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT **Respondent**

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Mr A Jafar (instructed by Sheikh & Co Solicitors) appeared on behalf of the **Appellant**.

Mr A Sharland (instructed by Treasury Solicitors) appeared on behalf of the **Respondent**.

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Judgment

(As Approved by the Court)

Lord Justice Tuckey:

1. This is an appeal by KM from a decision of the AIT which, on a full reconsideration, dismissed her appeal from the Secretary of State's decision to refuse her claims for asylum, humanitarian protection and related Human Rights Act relief.

2. The appellant, a 30-year-old Sudanese national, entered the United Kingdom using a false passport on 19 February 2005 and claimed asylum nine days later. The basis for her claim was that she belonged to the Falata tribe, a persecuted minority from Darfur, where she and her husband, who was a member of the rebel Sudanese Liberation Army ("SLA"), lived. She fled Darfur to Khartoum and thence to the United Kingdom after being targeted by the authorities on account of her husband's activities after she had been caught helping the SLA.

3. The appellant's evidence to the immigration judge was that in 2003 her husband, whom she married that year, had become a member of the SLA for whom he raised funds, recruited men and attended training camps to enable them to fight against the Janjaweed who were assisting the Sudanese government in their efforts to crush the ethnically african minorities in southern and western Sudan. In July 2004 the appellant's village was attacked by the Janjaweed and her house was burnt down. She had, however, returned to the village and had her home rebuilt the following month. In September 2004 the authorities twice raided her house, searched for weapons and asked questions about her husband. She then moved to her parents' home but returned to her own house from time to time. She last saw her husband on 26 December 2004. On 10 January 2005 she was arrested whilst preparing to take medicine and other provisions to the SLA by donkey. She was taken to the police station where she was beaten into unconsciousness because she continued to deny any involvement with the rebels. But, she said, later the same day she was liberated when SLA fighters attacked the police station. She was advised to go to another village two hours' walk away, which she did and thence by lorry to her uncle's house in Nyala. He paid a lorry driver 7 million Sudanese pounds to enable her to leave the country. She had travelled to Khartoum, concealed in the back of his lorry for four days, where a fortnight later, an agent took her to the airport from which she flew to the United Kingdom. She was pregnant when she arrived and gave birth to her daughter on 16 October 2005.

4. The appellant's appeal against the Secretary of State's rejection of her claims was first heard by an immigration judge in 2005. He rejected her account in its entirety, finding that there was no likelihood that she was a member of the Falata tribe from Darfur. However, Mr Jafar, who has appeared for the appellant throughout these proceedings, persuaded a senior immigration judge to order a full reconsideration on grounds which bear some similarity to those he now advances on this appeal.

5. The reconsideration was heard by Immigration Judge Grant. The appellant gave evidence through an arabic interpreter. The immigration judge concluded:

> "28. On the totality of the evidence and applying the

> lower standard of proof I find that the appellant is not a member of an African tribe such as the Falata or that if she is she does not come from the Darfur area and has never lived there at any material time. I also find that she has never been the wife of an SLA activist and that she herself has not at any material time been a supporter of the SLA… The appellant is not and was not at any material time of interest to the Sudanese authorities."

The judge gave a number of reasons for this conclusion, which Mr Jafar attacks on this appeal, for which a senior immigration judge was persuaded to give permission.

6. I will deal with each of Mr Jafar's points in turn but before doing so I must start with a statement of the obvious, which is that challenges to findings about credibility are, to say the least, very difficult to mount in this court for the simple reason that such findings are findings of fact and appeals to this court, in cases of this kind, are confined to errors of law.

7. With that in mind I turn to the grounds. Ground 1 arises out of what the appellant said in her screening pro forma questionnaire on 28 February 2005. The following exchange is recorded in a series of 22 questions:

> "20: The basis on which the applicant is claiming asylum? DUE TO HUSBAND'S INVOLVEMENT -- POLITICAL
> 21: If political, which groups/parties involved? [And the interpreter has recorded] 'EQUALITY + JUSTICE'"

And then after that the letters GRP, which is accepted as an abbreviation for group. There is then something crossed out.

8. In paragraph 25 of his reasons, after referring to this exchange the immigration judge said:

> "The Justice and Equality Movement is a Darfurian-based rebel movement which is said by the COIS glossary to have emerged in 2001. The JEM was involved in the armed rebellion alongside the SLA. The appellant subsequently claimed that her husband was at all material times a member of the SLA and when asked by the [Home Office Presenting Officer] to explain the answer given in screening she said that she had said that he belonged to the SLA and that he had been fighting for equality and justice. According to the COIS report the SLA was fighting for greater political and economic rights for the African inhabitants of Darfur. The JEM was fighting against the marginalisation of the Darfurian tribes. The fact that their aims appear similar may be the reason why

> the groups are said to have joined forces in January 2006 but when the appellant gave her answer in her screening interview she had not been asked to give the aims of either her husband or of the movement of which she claimed he was a member. She had been asked to name the movement and she named what turned out to be the wrong one. It may be argued that I must accept her explanation because she has not given the precise name of the JEM but has instead transposed the names "Equality and Justice" but she has also used the word "group" and I find that she was answering the question put to her but that her knowledge of political activities in Darfur was too weak to be able to name the JEM accurately."

9. Now Mr Jafar says that this was an unjustified conclusion for the judge to reach. It did not take account of the appellant's assertion that she had actually told the interviewing officer that her husband was a member of the SLA and that she had then gone on to say that the aim of the SLA was equality and justice and had not said anything which could have lead anyone to believe that she was referring to the JEM. Mr Jafar relies on the fact that on the form the abbreviation for group does not appear in inverted commas as do the preceding words and therefore should not be taken as having been what the appellant actually told the interviewing officer.

10. In my view there is nothing in this ground of appeal. It is quite clear that the immigration judge did take account of the appellant's explanation for what she is recorded as saying and he was perfectly entitled to draw the inference which he did, which was that the appellant had made a mistake, but a very telling one in terms of the involvement of her husband.

11. Mr Jafar prayed in aid the decision of an immigration judge in the case of YL as to the status of such interviews: they are not intending to elicit details of a claim; and the interviewee is not given an opportunity to correct the answers recorded or sign a record of the interview. Those are all matters which an experienced immigration judge (as this judge self-evidently is from the way I read his decision) would have been well aware of and would have taken account of when reaching a conclusion as to what to make of an answer given in such an interview.

12. Ground 2 of Mr Jafar's grounds of appeal complains about the conclusion which the immigration judge summarises in paragraph 27 of his reasons, which was:

> "I find however that her story is so totally inconsistent with the objective evidence of what was actually going on in the region from which she claims she originates and where she claimed she lived that it cannot be true."

He relies on seven points where objective evidence is relied to test the appellant's evidence and the immigration judge concludes that her evidence is

inconsistent with that objective evidence.

13. The first two points arise out of what the immigration judge said in paragraphs 22 to 24 of his reasons. In paragraphs 22 and 23 the judge made a number of findings which Mr Jafar does not challenge. In the helpful skeleton argument filed on behalf of the secretary of state prepared by Mr Jeremy Johnson, who does not appear today but which we have read and are grateful for, those findings are summarised as follows:

> "(i) the army moved into western Darfur in January 2004 causing hundreds and thousands of refugees to flee to Chad;
>
> (ii) in her asylum interview the Appellant referred to a series of attacks from the beginning of 2003 during which houses were burned and the inhabitants attacked and killed;
> (iii) the Appellant had not mentioned an attack in July 2004 in her asylum interview;
>
> (iv) in 3 different places in her interview the Appellant gave dates that were one year earlier than those given in her statement;
>
> (v) the Appellant's explanation for the inconsistencies was implausible.
>
> (vi) the COIS report shows that the armed rebellion began in 2003 and that the government responded with 'ethnic cleansing'."

14. Paragraph 24 of the immigration judge's reasons, which gives rise to the first two of Mr Jafar's complaints, says:

> "To return to the objective material, by March 2004 the Janjaweed militia were carrying out systematic killings of African villagers in Darfur. By April a 45-day ceasefire had been signed. The ceasefire did not hold but I find that the matters complained of by the appellant as having happened in July 2004 were far more likely to have happened in or before April 2004 and that after that date the inhabitants of her village would either have fled to Chad or been killed. The reports state that the devastation left the villagers without food or water and it is not credible that the appellant returned to a village in the Darfur region and had her home rebuilt so that by August 2004 it was capable of being visited by the Janjaweed in search of her husband… The appellant's solicitors have included in their bundle an Amnesty International report dated November 2003. The manner in which the villagers and the little

> infrastructure which existed within them were destroyed and emptied of their inhabitants leaves the reader in no doubt that it would have been impossible for the villagers to return and it would also have been unthinkable because not only was there nothing to which they could return but there was also the frightening prospect that the Janjaweed might return at any point to complete the destruction. I find that the appellant's claim that her village was destroyed only in July 2004 and that the surviving villagers returned to rebuild their homes is not consistent with the history of events set out in the Amnesty International report."

15. Now Mr Jafar, under some pressure from the court, strove to support his submissions about this (and indeed a number of the following paragraphs) which were to the effect that the finding which the judge made was perverse or entirely unsupported by the objective evidence. He referred us to snippets of that evidence, the totality of which is contained in an enormous bundle of material running to over 400 pages, to seek to justify his complaint. All I think I need say, without being discourteous to Mr Jafar, is that I remained totally unpersuaded by those submissions. Almost on any page of the material (certainly on the pages to which Mr Jafar referred) there is evidence which shows that it was open to the immigration judge to reach the conclusions which he did. There is material to support this and indeed a number of the other conclusions which he reached to which I will come in a moment.

16. It is of course the function of the specialist tribunal to evaluate such material and it is clear in this case that the material comes from a number of different sources. It is not enough to point to a sentence or two, as Mr Jafar strove valiantly to do, to say that the finding was not justified. I am in no doubt that the two points which arise out of paragraph 24 of the reasons which the immigration judge made were justified by the evidence. I am equally in no doubt that his approach to this and indeed the other points which I will come to in a moment disclose no error of law.

17. But moving on to the later points: Mr Jafar's third point arises out of the immigration judge's conclusion in paragraph 26 that the appellant's evidence that her house had been raided twice in September 2004 could not be true. If, as she said, her husband was a coordinator of the SLA in the area and she was known to be an SLA supporter, she would, so the immigration judge concluded, have been killed or taken prisoner at that time if she had been visited in the way which she described.

18. In support of this conclusion the immigration judge again relied on a number of reports which no doubt are in the material with which we have been supplied, but Mr Jafar, in his submissions to us, submitted that these reports refer only to the killings and arrests of *men* who were targeted by the Janjaweed and there is no reference to women being similarly treated. Again, the objective evidence simply does not justify this submission; still less does it justify any submission that the immigration judge's conclusion contained an error of law.

19. Mr Jafar's fourth and fifth points arise from the fact that in paragraph 29 of the immigration judge's decision he says that he found the appellant's account about being caught and detained on 10 January 2005 preparing to take supplies to the SLA by donkey highly implausible, given the general security situation and the well-documented manner in which female members of the ethnic minority African tribes were treated by the Janjaweed and their colleagues. He goes on to say that the SLA had signed a ceasefire bringing the conflict to an end on 9 January and so it was not credible that they had attacked the police station the following day, in the course of which the appellant had been released, as she claimed. In his challenge to this part of the immigration judge's reasoning Mr Jafar points to objective evidence that women did go out on donkeys to fetch water despite the risk posed by the Janjaweed. He also relies on the fact that the ceasefire was made with the SPLA, representing the southern Sudanese people, and not with the SLA, for whom he submits that treaty made things worse.

20. But the risk which the appellant faced by going out on a donkey was not simply from the presence of the Janjaweed but because she was preparing and taking supplies to the SLA, who were their enemies. It is true that the ceasefire was not signed by the SLA but this did not, I think, undermine the immigration judge's more general conclusion, which was that it was not credible that the appellant was in this village at all at the material time.

21. Mr Jafar's sixth point arises out of the immigration judge's finding at paragraph 32 where he said:

> "The appellant claims…she spent four days in the back of a lorry travelling to Khartoum. The Secretary of State considers that the appellant would not have been able to travel by lorry to Khartoum without being discovered at one of the numerous roadblocks through which the appellant acknowledges they passed on the way. Although Mr Jafar has pointed out correctly that there is no evidence of the nature and number of those roadblocks I find it implausible that she negotiated each one without being discovered."

22. Mr Jafar referred us to a Danish fact-finding report made in 2000 which says that border control officers in Sudan can easily be bribed to allow deserters and draft evaders to leave the country. He argues that if that is the case those manning less stringent road checkpoints could also be bribed. I do not think this report undermines the immigration judge's conclusion in any way. It was the duration of the journey and the sheer number of roadblocks which had to be negotiated which led him to find that the appellant's account was implausible but in any event in paragraph 32 the immigration judge goes on to add that his credibility findings did not turn on the manner in which the appellant claims she left Sudan, so this was not a finding which was crucial to his conclusion.

23. Nor was the seventh point which Mr Jafar makes, arising out of what the immigration judge said about the birth of the appellant's daughter in paragraph 33 where the appellant had said that she last saw her husband who

was the child's father on 26 December 2004 and that the child was born at 44 weeks. The immigration judge said he found this implausible. That is a conclusion which Mr Jafar says was mistaken or even perverse because the statistics show that 5-10% of all pregnancies continue to at least 42 weeks' gestation. This may have been a somewhat harsh conclusion for the immigration judge to make but he made it clear, as I have already said, the judge made it clear that nothing turned on these dates.

24. So that deals with each of the seven points which Mr Jafar relied on in support of his second ground of appeal, which, for the reasons I have given, I reject. Mr Jafar, realistically, did not pursue his third ground which he disarmingly admitted sounded good when he wrote it but did not look so good when he came to prepare for today's hearing, so I do not need to deal with this ground.

25. For the reasons I have given I would dismiss this appeal.

LORD JUSTICE RIX:

26. I agree

LORD JUSTICE JACOB:

27. I also agree.

Order: Appeal dismissed.