

**THE HIGH COURT
JUDICIAL REVIEW**

[2019 No. 339 J.R.]

BETWEEN

D.K. (GHANA)

APPLICANT

AND

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR
JUSTICE AND EQUALITY**

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 17th day of January, 2020

1. The applicant was born in Ghana in 1981. He came to the State and applied for asylum on 2nd February, 2015. That application was refused by the Refugee Applications Commissioner on 26th February, 2016 by letter enclosing a report pursuant to s. 13 of the Refugee Act, 1996 dated 9th January, 2016 which rejected the applicant's core account. The applicant filed a notice of appeal on 21st March, 2016 and, following the commencement of the International Protection Act, 2015 in December, 2016, he was deemed to have made an application for international protection. On foot of that, he submitted his international protection application on 30th May, 2017. That application was refused by the International Protection Office on 20th October, 2017 by letter enclosing a report pursuant to s. 39 of the 2015 Act dated 20th September, 2017 which rejected the applicant's core account on credibility grounds.
2. On 1st November, 2017 the applicant appealed to the International Protection Appeals Tribunal. An oral hearing took place on 23rd October, 2018 at which Mr. Aengus Ó Corráin BL appeared for the applicant; and commendably the applicant's solicitors have instructed the same counsel for the judicial review, which is a practice that both in general and in this specific case very much assists the court.
3. In the meantime, the applicant entered into a relationship with a Nigerian national, a Ms. A.M.O, and they had a child on 27th October, 2018. Apparently they have since separated. A deportation order was made against the mother in June 2019. For some reason which is not altogether clear, the child has been given some form of permission to remain but the mother, and indeed this applicant, so far have been without permission. The mother has made an immigration application which is in process, as indeed has this applicant, that is a review application under s. 49 (7) of the 2015 Act. I could be forgiven at this stage, without in any way anticipating any of the issues, to hope that consideration might be given to the desirability of treating any immigration application by this applicant in a holistic or non-discriminatory manner in tandem with any application by the mother. Whether both parents here are equally precarious in the sense discussed in *S.T.E. & ors. v. Minister for Justice and Equality* [2019] IECA 332 does not arise of course at this point: see paras. 49 and 52 where McGovern J. considered that the question of discrimination did not arise on the facts of that particular case. (I might add by way of postscript that I feel responsible as the trial judge there for any factual confusion, because obviously I didn't make it sufficiently clear in my judgment *S.T.E. & ors. v. Minister for Justice and*

Equality [2016] IEHC 379 that all that the mother had going for her was the fact that she was the mother. Sure, by the time the father's status was considered, the mother had received permission (which was why McGovern J. said there was no discrimination), but both parents were *originally* equally precarious, and the mother's status as a parent was the activating reason as to why she got permission. I obviously failed to communicate the point, but one might venture to suggest that in principle a decision maker can't discriminate between two persons simply by gratuitously giving one of those persons a discretionary advantage and then claiming that the other one who now lacks that advantage is differently situated so can be differently treated, even though the considerations for benefiting from that advantage are equally applicable to him or her).

4. Going back to the protection appeal, that was refused by the tribunal on 2nd May, 2019 and, following the applicant being notified of that on 3rd May, 2019, he applied for a review under s. 49 (7) of the 2015 Act on foot of the birth of his child. As noted above, that remains outstanding. Leave papers were prepared on 30th May, 2019, the primary relief sought being *certiorari* of the IPAT decision. I granted leave on 8th July, 2019 and, as noted above, I have now received helpful submissions from Mr. Aengus Ó Corráin BL for the applicant and from Mr. Glen Gibbons BL for the respondents.
5. Counsel for the applicant helpfully identified three issues in written submissions and I will now turn to address those. There was also some discussion at the hearing as to whether Article 4(4) of the asylum qualification directive, Council Directive 2004/83/EC of 29 April 2004, O.J. L304/12, 30.9.2004, and the corresponding domestic legislation, had been complied with, but as that issue was not pleaded it does not fall for decision.

Issue 1: irrationality

6. Mr. Ó Corráin's first issue is whether the impugned decision of the first respondent is unreasonable or irrational.
7. Irrationality is of course a high bar: see *Meadows v. Minister for Justice, Equality and Law Reform* [2010] 2 I.R. 701. Reliance was placed (much to the applicant's chagrin, I have no doubt) on a document that was introduced in evidence by the applicant himself, a PhD thesis by Dr. Samuel Nyamuame. The tribunal's reliance and findings on the basis of that thesis were certainly unfavourable, but one cannot say that they were so irrational as not to be open to the decision maker.
8. Reliance was also placed by Mr. Ó Corráin on the fact that the applicant's subjective account was basically accepted; but that does not preclude a finding that the applicant's fears have no objective basis. As Mr. Gibbons eloquently puts it at para. 19 of his written submissions "*an ill-informed belief is still ill-informed even if a tribunal or court accepts that a party subjectively believes it*". While not directly in point, he draws attention to *Fletcher v. Commissioner of Public Works* [2003] IESC 13, [2003] 1 I.R. 465, where the Supreme Court took the view that stress and mental injury in relation to a fear of physical harm did not give rise to a cause of action where objectively the basis for the concern was not established. Indeed Mr. Gibbons also offers the perhaps more colourful example that belief in creationism (as a literal proposition that is, as opposed perhaps to a metaphorical

or poetic interpretation) is widespread in certain places. The prevalence of such a delusional belief does not make it any less objectively absurd.

9. The decision states that at the hearing the legal representatives for the applicant said that the country information did not confirm the claim. Mr. Ó Corráin, who was there of course, helpfully informs me that what he actually said was that it did not "*directly*" confirm the claim. However nothing much returns on that. Ultimately under this heading the applicant has not established that the tribunal's findings, however unfavourable, were so unreasonable as not to be open to the decision maker.

Issue 2: failure to take into account relevant factors

10. The applicant's second issue is whether the first respondent failed to take relevant factors into account or took irrelevant factors into account in arriving at the impugned decision.
11. The main focus of this argument was that the tribunal member had not taken into account the secretive nature of funeral practices in Ghana as a matter to be considered when weighing the applicant's claim that on the death of a tribal chief he would be subjected to a human sacrifice as part of the funeral rites. However, the secretive nature of funeral practices was part of the applicant's submission, and the decision says that all matters submitted were considered: see paras. 2.7 and 2.8. So one cannot say under such circumstances that the point was not considered, in the absence of the applicant proving that positively: see *per* Hardiman J. in *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 1 I.R. 418.

Issue 3: lack of reasons

12. The applicant's third issue is whether the first respondent failed to give adequate reasons for its decision in accordance with the duty to give reasons.
13. The applicant's claim is that there was an objective basis for his fears of being subjected to a ritual killing. That was rejected by the tribunal, primarily on the basis that such fears were not supported by the country information. The decision here is very different from the cryptic, Delphic or unreasoned rejections that were challenged in previous jurisprudence particularly as follows:
 - (i). In *Mallak v. Minister for Justice, Equality and Law Reform* [2012] IESC 59, [2012] 3 I.R. 297, the extent of the reasons given was that "*the Minister has considered your application ... and has decided not to grant a certificate of naturalisation. In reaching this decision, the Minister has exercised his absolute discretion ...*" at p. 302.
 - (ii). *A.P. v. Minister for Justice and Equality (No. 2)* [2014] IEHC 241 when reasons were sought under the Freedom of Information Act, 1997 the Department replied that "*the Minister has also decided not to disclose the reason for his decision to you, having considered his obligations under the Freedom of Information Act, as amended, with particular reference to ss. 18, 24, 25 and 26 of that Act*": see para. 3 of the judgment of McDermott J.

- (iii). In *T.A.R. & anor v. Minister for Justice and Equality* [2014] IEHC 385 the only reasons provided were that "*obligations to return to home country have not been deemed sufficient*" and "*the applicants may overstay following proposed visit*": see para. 4 of the judgment of McDermott J.
 - (iv). *Oates v. Brown* [2016] IESC 7, [2016] 1 I.R. 481 where the judgment of Hardiman J. records at p.492 that the solicitor's request was refused by the District Court judge in that case "*without giving any reasons whatever for such refusal, despite a specific request for reasons*".
14. The present case is at a very different point on the spectrum. Here there were in essence four reasons given:
- (i). The tribunal went through a number of documents and indicated a lack of reference in such country material to the feared ritual killing by way of decapitation that the applicant contended for: see paras. 5.9, 5.14 and 5.15 of the decision.
 - (ii). The tribunal noted at para. 5.10 of the decision that country information stated that tribal leaders had "*dismissed*" perceptions that such ritual killings took place.
 - (iii). Country information indicated that such incidents occurred "*several decades ago*": see paras. 5.11 and 5.12.
 - (iv). Other country information presented by the applicant was specifically considered and it was explained why that was not supportive of the claims: see para. 5.13.
15. Those statements well satisfied the requirements for reasons in the circumstances: see also *M.E.O. v. The International Protections Appeals Tribunal* [2018] IEHC 782 at para. 23.

Order

16. Accordingly, the proceedings are dismissed.