

**THE HIGH COURT  
JUDICIAL REVIEW**

**IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS  
(TRAFFICKING) ACT, 2000 (AS AMENDED)**

**[2023] IEHC 438**

**[Record No. 2022/988/JR]**

**BETWEEN**

**O. R. A.**

**APPLICANT**

**AND**

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

**RESPONDENTS**

**JUDGMENT of Mr. Justice Charles Meenan delivered on the 20<sup>th</sup> of July, 2023**

**Introduction**

1. In these proceedings the applicant is applying to the court for leave to seek certain reliefs by way of judicial review against the first named respondent (the Tribunal). In the first instance the application was made *ex parte* but the court directed that leave be on notice to the Tribunal and the second named respondent. The Tribunal and the second named respondent having been duly served with the papers oppose leave being granted to the applicant.

**Background**

2. The applicant is a man of 29 years from Ekiti State in Nigeria. He lived on a farm owned by his mother with his wife and children. On 17 April 2019 he was on the farm with his mother when herdsmen arrived at the property. The herdsmen forced the applicant and his mother into a trailer which contained other people from another farm who had also been taken by force. The trailer was driven to another part of Nigeria, a journey that took several hours.

3. The applicant and his mother were taken to an area with other people and tied up. The herdsmen asked the applicant's mother whom they could call for the purposes of obtaining a ransom. She replied that she had no family. The applicant and his mother were forced to work in the fields.

4. After being held for a number of months, the herdsmen took the applicant's mother. The applicant followed them and claims he was stabbed in the stomach by one of the herdsmen. The applicant alleges that his mother was raped by seven men and was then shot and killed.

5. Some time later the applicant, together with a group of people who were also being held, were taken as a group to get water. One of the herdsmen followed with a gun. The applicant alleges that this herdsman was intent on raping one of the women present and dropped his gun. The applicant stated that a second woman lifted a stone and hit the herdsman on the head. When this happened a group, including the applicant, escaped by running into the bush and ended up alongside an express road. A truck stopped and took them to Niger. The applicant stated that he was helped in Niger by a man named Father John.

6. The applicant claims that he stayed in Niger for a few months before travelling to Ireland. The applicant maintains that if he returns to Nigeria, he will not be safe as he fears the herdsmen and he maintains he has a well-founded fear of persecution and/or serious harm as a result of this.

7. The applicant was interviewed under s. 13(2) of the International Protection Act 2015 (the Act of 2015). The applicant then completed the questionnaire for the International

Protection Office (“the IPO”) and was interviewed under s. 35 of the Act of 2015 on 10 May 2022.

8. By letter dated 1 July 2022, the applicant was informed that an International Protection Officer had recommended that pursuant to s. 39 of the 2015 Act that he should not be given a refugee or subsidiary protection. The applicant appealed this recommendation by a notice of appeal dated 7 July 2022 to the Tribunal.

9. On 29 September 2022, the Tribunal heard the applicant’s appeal. By decision dated 25 October 2022, the Tribunal affirmed the recommendation made by the International Protection Officer pursuant to s. 39(3)(c) that the applicant should be given neither the refugee declaration nor a subsidiary protection declaration.

#### **Application for Judicial Review**

10. The applicant sought leave to seek a number of reliefs by way of judicial review. In particular, the applicant sought an order of *certiorari* quashing the decision of the respondent affirming the recommendation of IPO.

11. An amended statement of grounds set out the legal grounds in respect of which the relief was being sought. The applicant maintains that the Tribunal acted illegally and/or irrationally in its assessment of certain documentary evidence in particular, a medical report from Dr Giller which found that the applicant’s physical injuries and psychological condition was “highly consistent” with his account of the injuries he received whilst he was kidnapped.

12. The applicant maintains that the Tribunal acted unfairly and/or irrationally in its assessment of his credibility. He maintains that the Tribunal failed to properly apply the benefit of the doubt principle as regards his claim. Further, the applicant maintains that the Tribunal took into account immaterial considerations and/or treated irrationally country of origin information (COI).

#### **Consideration of application**

13. As earlier stated, having heard the *ex parte* application the court directed that the application for leave be on notice to the respondents. In opposing leave, the respondents filed written legal submissions in response to the written submissions of the applicant. I have considered both sets of submissions in detail and the parties have, helpfully, set out the relevant legal authorities.

14. In order for this court to grant leave to challenge the decision of the Tribunal the applicant must establish “substantial grounds” for doing so.

15. The decision of the Tribunal is very detailed and runs to some 36 pages. Further, the Tribunal had the advantage of being able to assess the applicant whilst giving evidence (see *ME v RFT* [2008] IEHC 192). It should be noted that in reviewing the decision of the Tribunal this court is not acting as a court of appeal. It is not open to me to reconsider the evidence before the Tribunal and, possibly, substitute my view for that of the Tribunal. Rather, the role of the court is to consider the procedures followed by the Tribunal and the legal principles applied. Insofar as the Tribunal reached conclusions on the evidence before it, I have to consider whether such conclusions are rational and supported by the evidence heard.

16. At the heart of the decision of the Tribunal is the credibility of the applicant. If the Tribunal reaches the conclusion that an applicant is not credible on central features of his or her claim, then that claim will not be rescued by country-of-origin information (COI). COI may well corroborate a claim, but it cannot go so far as to establish facts of events found not to have occurred.

17. In considering the issue of credibility the Tribunal is entitled to consider consistencies or inconsistencies in an applicant’s questionnaire and interview. If an applicant gives evidence of a material fact to the Tribunal, having failed to mention that fact whilst completing the questionnaire or in the course of the interview, such will be a consideration in assessing credibility.

**18.** In its lengthy determination the Tribunal considered the evidence given by the applicant in detail. The Tribunal identified a number of core credibility concerns:

- (i) There was no mention before the Tribunal hearing as to any potential motivation on the part of the herdsmen as to why the applicant and his mother had been kidnapped.
- (ii) The evidence of the applicant concerning the demand for ransoms was not given during the s. 35 interview.
- (iii) At the Tribunal, the applicant gave evidence of being stabbed in the stomach when he tried to follow the herdsmen who took his mother. Such a serious event was not mentioned by the applicant in his s. 35 interview.
- (iv) Before the Tribunal, the applicant gave evidence of being made to work by herdsmen. This was not mentioned during the s. 35 interview.
- (v) There were inconsistencies between the evidence given by the applicant during his s. 35 interview and his evidence to the Tribunal as to how he escaped.
- (vi) In addition, the Tribunal identified a number of other credibility issues.

**19.** The applicant submitted a medical report to the Tribunal in respect of his injuries. It was submitted by the applicant to this court that this report was not appropriately dealt with by the Tribunal. The Tribunal stated:

“(4.3.6) Similarly, in respect of the medical report submitted, the Tribunal does not accept that the conclusions therein mean that the injuries described were caused in circumstances claimed, by the persons claimed, or for the reasons claimed. The psychiatric details provided therein are similarly based on the self-reported symptoms of the appellant. If he is not generally credible, conclusions reached on his self-reported incidents and symptoms cannot be accepted as credible. As such, the Tribunal does not

accept that this report can positively affect the credibility of his claim, nor should it lead to a conclusion that his claim is credible, in light of the issues identified above.”

20. It seems to me that the Tribunal is fully entitled to reach this conclusion on the medical report (see *MM v. RAT and Others* [2015] IEHC 158). For my own part, I find it, to say the least, astonishing that the first time the applicant mentioned an injury as potentially serious as this was before the Tribunal and not in the questionnaire or interview.

21. In support of his application the applicant submitted a police report and an affidavit from his wife. The Tribunal concluded that this documentation could not be independently verified and could not be accepted without accepting the applicant’s general credibility, which the Tribunal did not do.

22. The Tribunal did not accept that the applicant was a farmer or was treated in the manner claimed. The Tribunal went on to consider the consequences for the applicant, being a failed asylum seeker, of being returned to Nigeria. The Tribunal considered the COI, which did not suggest execution to failed asylum seekers. The applicant’s claim of feared persecution was based on the claim that he was previously targeted because of his farming activity. This was not accepted by the Tribunal, which found that there was no claim or evidence to suggest that a person in the position of the applicant would otherwise face risk of persecution if returned to Ekiti State, Nigeria.

### **Conclusion**

23. By reason of the foregoing, I am satisfied the applicant has failed to establish substantial grounds for me to grant leave to seek the relief sought. I therefore dismiss the application. As for costs, my provisional view is that the respondents are entitled to the costs of the application (to include reserved costs) to be adjudicated in default of agreement. However, if the applicant wishes to contest this, he may do so by delivery of written submissions (not in excess of 1,500 words) to be lodged and served no later than 15th September 2023. In the event of such

submissions being delivered, I will allow the respondents to file submissions (no longer than 1,500 words) on or before 5th October 2023. I will list the matter for mention before me for final orders on 12th October 2023.