

**HIGH COURT  
JUDICIAL REVIEW  
IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT  
2000 (AS AMENDED)**

[2022] IEHC 685

**[2021 No. 678 JR]**

**BETWEEN:**

**BBA, OAA  
AND  
TBA, AND EAA  
(MINORS SUING BY THEIR FATHER AND NEXT FRIEND, OBA)**

**APPLICANTS**

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

**RESPONDENT**

**JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 23rd day of  
November 2022.**

1. This is a challenge to a decision of The International Protection Appeals Tribunal (the Tribunal) which recommended that the applicants be given neither a refugee declaration nor a subsidiary protection declaration
2. The applicants arrived in Ireland from Nigeria on tourist visas in February 2019 and claimed refugee status. BBA and OAA are married. TBA and EAA are their daughters.
3. The applicants claim that they are under threat from BBA's relations in Kogi State, Nigeria. They allege that these relations will harm the family and force female genital mutilation (FGM) on TBA and EAA if they return to Nigeria.
4. This Court has examined the decision of the Tribunal in light of guidance given at para. 11 of the judgment of Cooke J. in *I.R. v Minister for Justice, Equality and Law Reform and The Refugee Appeals Tribunal* [2009] IEHC 353.
5. Assessment of credibility of an applicant for international protection must be based on correct analysis of factual materials. If documents capable of having material bearing on credibility are excluded from consideration, adequate reasons must be given for this course of action. Issues about genuineness of documents must be resolved using fair procedures.
6. The Tribunal erred in law in its determination by excluding at least one document from consideration and by incorrectly analysing facts relevant to another. The document definitively excluded from consideration was a report from the Commissioner of Police in Lagos dated 15 January 2020 which was issued in response to a letter from solicitors in Lagos dated 19 November 2018 to Nigerian Police Force Headquarters in Abuja.

7. The letter dated 19 November 2018 was also categorised in the determination of the Tribunal as “alleged” and was treated as either not genuine or suspect.
8. The Tribunal did not disclose the basis on which these documents were rejected or refer concerns about their authenticity or contents to the applicants or the presenting officer.
9. This letter was given no weight as a matter which could go in favour of the appellants. The Tribunal concluded that if it was genuine, it showed that BBA and OAA waited until they had got to Ireland and then instigated her brother in Nigeria to make a complaint to police about the Offin clan’s alleged threats to inflict FGM on her daughters.
10. These conclusions lacked any factual basis. There was no evidence that BBA or OAA had instigated her brother to make a report to Nigerian police. The letter from the solicitors in Lagos to police headquarters in Abuja predated the family’s departure for Ireland.
11. These errors of law are sufficiently serious to justify an order setting aside the determination of the Tribunal. The material excluded or misinterpreted was capable of having a significant impact on the Tribunal’s assessment of credibility of BBA. The decision will be set aside. The appeals will be remitted to the Tribunal for re-hearing.
12. BBA gave evidence at an oral hearing before the Tribunal on 17 June 2021 that her brother had contacted the police in Nigeria about threats made by members of the Offin clan prior to departure of the applicants to Ireland. The Tribunal queried why this report had been made by her brother and how it had been accepted by police from a party other than BBA herself.
13. The Tribunal was sceptical of the veracity of BBA’s evidence on this matter. The two documents were sent to the Tribunal by the solicitors for the applicants in September 2021. The purpose was to provide collateral support for BBA’s evidence on this issue. The Tribunal rejected these documents without giving adequate reasons and without giving an opportunity to the applicants to address any concerns about their authenticity.
14. The reasons for the Tribunal’s decision recommending refusal of protection to the applicants were set out in its determination. The Tribunal concluded that BBA and OAA gave unreliable and contradictory accounts in support of their claims that they fled Nigeria with their daughters in order to save them from serious harm from FGM in Nigeria. The veracity of their claims was rejected.
15. The Tribunal rejected a claim that members of the Offin clan had made threatening phone calls to either BBA or OAA that they would subject her daughters to FGM in the period between 2009 and 2013. There was no suggestion by BBA or OAA that they had received any more recent telephone threats of that sort.
16. The Tribunal concluded that a group that attacked OAA at a petrol station in May 2014 and rang him the next day had nothing to do with the Offin Clan.

17. The Tribunal also rejected a claim by BBA and OAA that a male stranger who appeared in their bedroom in May 2018 was acting on behalf of the Offin clan. This man was recounted as saying "You can run but you cannot hide". This man made no mention of FGM or their daughters or the Offin clan. The Tribunal noted that BBA and OAA previously gave inconsistent accounts of this incident.
18. The Tribunal noted that BBA and OAA did not complain to police about any of the telephone threats, or the incident at the petrol station or the incident involving the intruder at the house. They did not make any complaints to NGOs or state authorities dealing with FGM in Nigeria.
19. BBA submitted a copy of a letter dated 15 August 2018 claimed to be from solicitors in Lagos. This stated that it was sent on her behalf to the Offin clan in Kogi State. It alleged that the family "...has resorted to all manner of threats that are life threatening in its quest to ensure that the family tradition of circumcision is successfully performed on our client's daughters." The tribunal noted that this letter made no reference to the 2014 and 2018 incidents.
20. The Tribunal considered materials relating to whether FGM was common or legal in Lagos. At para.4. 3. 8 of the ruling the Tribunal found as follows:

"The Appellants have lived all their married lives in Lagos. The dependent daughters have lived all their lives in Lagos. Whist the Tribunal accepts that FGM may still be carried out in rural villages such as where the first named Appellant was brought up and carried out by members of the Appellants' ethnicity and clan (fn.1) the Tribunal is satisfied on the COI (fn.2) that FGM is illegal in Lagos. The Tribunal notes that under the Violence Against Persons Prohibition (VAPP) Act 2015, FGM is prohibited, penalising those who perform the act with varying lengths of imprisonment and a fine. The Tribunal is satisfied that the dependent daughters are not at risk of FGM if they return to Lagos. Furthermore, the Tribunal has not found the alleged threats made by the Offin clan credible and therefore finds that the dependent daughters have been threatened with FGM at all." Fn.1 references "EASO report February 2019." Fn.2 references "US Department of State, Nigeria 2018 Human Rights Report 13th March 2019; Freedom House, Freedom in the world 2019- Nigeria Profile; Too Many FGM and the law in Nigeria – 2018."
21. On 7 September 2021 three documents were provided to the Tribunal by the solicitors for the applicants. Their covering letter advised that BBA had been given the first two documents by her brother who is a doctor in Nigeria. The date of the determination discloses that the Tribunal had already reached a conclusion adverse to the applicants. The matter was reconsidered in the light of these further documents. The initial view of the Tribunal did not alter.
22. The first document is a photocopy of a letter from "Peachtree Solicitors" of Lagos dated 19 November 2018. This was addressed to the Inspector General of Police in Abuja. It identified that it was sent at the behest of the brother of BBA. It complained that three

family members and others had insisted to BBA that her daughters undergo FGM, and threatened her with serious danger, and that her daughters would be taken from her.

23. This letter was accompanied by the second document. This is a photocopy of a report dated 15 January 2020, stated to be from the Commissioner of Police in Lagos, to whom the matter raised in the letter dated 19 November 2018 had been referred for investigation. The report indicates that the writer had made contact with the alleged victims who were not available to give statements "but a call was made to them from their location and they confirmed the attempt made on their lives to abduct them and forcefully circumsize (sic) pages A7 and A8 by the Suspect pages B1, B2 and B3, there is ongoing effort to apprehend Pages B1, B2 and B3 who were initially invited in the light of the ongoing investigation but they declined to honour the invitation."
24. No suggestion was made during the hearing on 17 June 2021 that any attempt had been made on the lives of any of the applicants or to abduct and forcefully circumcise the girls. Nothing was put before the Tribunal about any communication from Nigerian police to them. Both BBA and OAA stated that they had not been in contact with the police at any stage about the matter. Nothing was said about any conversations between the brother of BBA and family members who allegedly threatened her.
25. The Tribunal made a factual error in stating in its determination that the letter from Peachtree solicitors was sent after the applicants arrived in Ireland. The date on the letter does not disclose this. The Tribunal disregarded this correspondence. The Tribunal stated that it would not rely on the police report "as it cannot prove the veracity of same but furthermore because it is entirely inconsistent with the Appellants' own evidence."
26. One possible interpretation of this finding is that the Tribunal was stating the effect of the rule against hearsay. By this rule of evidence, both the fact and terms of any prior account of an incident given by any witness to a third party are inadmissible in as evidence that an account was given and or as evidence of the truth or falsity of the content of such account. Material from that third party is not receivable in proof of any of these matters.
27. If these rules were applied, the Nigerian police report could not be evidence of threats by members of the Offin clan to BBA and her family or that she spoke to any member of the Nigerian police about such matters. BBA could be cross examined on any inconsistencies between her evidence and what was in the police report. She might agree or disagree that she gave a particular account to a member of the Nigerian police on a prior occasion.
28. A cross-examination would require that the Tribunal be reconvened. As the hearing had concluded when this documentation was provided, the other course open to the Tribunal was to disregard what was inadmissible and now untestable.

29. This Court doubts that the Tribunal had the rule against hearsay in mind when it formulated the part of the determination which dealt with this matter. International protection officers and appellate tribunals must evaluate documentation which is often not capable of independent authentication, and which may contain hearsay statements. Evaluation will involve considering any pointers which have a bearing on authenticity of a document and on weight to be given to information within that document. Both elements of evaluation may take place at the same time.
30. It is necessary to keep in mind that a document may include materials that may have a bearing on one or more issues which a deciding body must determine. A document may contain material which is very relevant to a particular issue and also other material which must be disregarded for one reason or another when considering a different issue.
31. The full text of the relevant part of the Tribunal's adjudication reads as follows:
- "The Appellant's solicitor submitted three further documents to the Tribunal on the 7th September 2020. In those documents there is a copy letter from Peachtree Solicitors to the Inspector General dated the 19th November 2018 whereby the first named Appellant's brother made a complaint to the police. The Tribunal finds it unreasonable that the Appellants themselves did not attend the police on any occasion since 2009 and then request the first named Appellant's brother to make a complaint on their behalf whilst they are living in Ireland. There is an alleged police report dated the 15 January 2020 in response to the alleged complaint made by the first named Appellant's brother in November 2018. The Tribunal asked whether the Appellants had been in contact with the police about this complaint or at any stage and both Appellants stated that they had not and that it was the first named Appellant's brother who contacted the police. The Tribunal explained that it found it difficult to understand how the police could accept such a complaint if it was not being made directly by the people who were affected by the complaint itself. Both the Appellants and the Appellant's Solicitor stated that was the position that the police practices were different in Nigeria. However, in the alleged police report it refers to the fact the police had been talking to the Appellants. The Tribunal therefore will not be relying on this alleged police report as it cannot prove the veracity of same but furthermore because it is entirely inconsistent with the Appellants' own evidence".
32. The third document tendered by the Solicitors was a photocopy of a letter dated 28 May 2020. This purported to be a medical report by a Senior Medical Officer of the Onikan Health Centre and Maternity Annexe. It was on headed notepaper of the Lagos State Government. The Reference on the letter is OH/09/40918 and the Admission File No is OHC/09/98076 which stated that registration occurred on 17 May 2019.
33. The following two paragraphs of this document indicate an obvious problem which made it difficult for a decision-maker to place reliance on it:

"Mrs BBA, DOB 06/01/1983, Female, Married, Admission file No. OHC/09/98076, registered on 17 May 2019. She was treated, counselled and been monitored on recurring injury, infections and mental health issues as a result of her subjection to Female Genital Mutilation in the early years of her life.

From the various medical test, examinations, diagnosis and follow up appointments done by the hospital medical professionals; it's confirmed that the injuries and aftermath of the FGM resulted in her lack of self confidence, low self-esteem, depression of some degrees, reduction in fertility level. painful menstruation, loss of sexual pleasure and been vulnerable to infection."

34. BBA was in Ireland on 17 May 2019. The Tribunal was provided with this document by the solicitors for the applicants which did not explain this obvious discrepancy. The Tribunal pointed out twice in para. [4.3.6] of its determination that BBA was in Ireland on the date of registration her Lagos hospital admission. The Tribunal declined to "rely" on "the alleged medical report as it was not able to prove the veracity and authenticity of same. Furthermore, it refers to registering the first named Appellant to the Clinic in Lagos at a time when she was in Ireland."
35. The applicant asserts that the Tribunal erred in refusing to consider the Lagos medical report. A number of authorities were cited. These authorities are not relevant. They consider probative value of medical evidence and not the issue of whether an applicant has satisfied the Tribunal that the document tendered is a reliable record of a medical examination.
36. The requirement in s.28(4)(b) of the International Protection Act 2015 (the 2015 Act) that the Tribunal "...shall include taking into account ...the relevant statements and documentation presented by the applicant including information on whether an applicant has been or may be subject to persecution or serious harm;" does not oblige the Tribunal to accept as genuine every document tendered by an applicant.
37. The Tribunal is obliged to consider any document on behalf of an applicant. If a document contains within itself an obvious contradiction which points to unreliability, the Tribunal can decide on whether or not to accept it as genuine.
38. Normally, any potential issue as to authenticity of a document or of what a document purports to record can be explored in the course of the hearing before the Tribunal. The appellant gets an opportunity to address concerns on these matters, which may or may not be assuaged. It must often happen that a document relied on by an applicant for international protection is of uncertain provenance. It is for the applicant to show on the low standard of proof applicable that any document tendered can be relied on.
39. Documents are sometimes false in the sense of not genuine and are sometimes false in the sense that their content exaggerates or misrepresents. It is necessary for a deciding body to make an evaluation of the weight to be given to any suspect document.

40. A difficulty will arise where a document is first presented to the deciding body after a hearing. At that stage there may be no input on any issue of genuineness of the proffered document from officials charged with examining the validity of the claim for international protection. These officials may not have had an opportunity to carry out any enquiries. It is necessary for a deciding body to take care when engaging in this type of evaluation. It will usually be necessary to engage with the parties to the hearing for this purpose.
41. In this case authenticity of the questioned medical report could not be canvassed at the oral hearing because it was presented after that hearing had concluded. It was for BBA to satisfy the Tribunal according to the applicable standard that it could be relied on as evidence that she had been admitted to hospital and medically diagnosed as a victim of FGM prior to her departure from Nigeria.
42. This report was a last-minute document tendered without any effort to explain how BBA could be in both Nigeria and Ireland at the same time. There was ample opportunity to explain the obvious discrepancy. It is necessary to ensure that information provided to the Tribunal is correct and fully explained. This is particularly important when the Tribunal is being asked to accept documentation after a hearing. This should have been attended to in the covering letter from the applicants' solicitors.
43. The Tribunal was obliged to set out its reason for any decision not to accept this report. While the wording of the determination refers to both the "veracity and authenticity" of the medical report and the inconsistency about the recorded admission date of BBA to hospital, it is clear that the Tribunal decided to exclude the medical report from consideration because the identified inconsistency undermined any value of the contents.
44. The Tribunal disregarded this document without making any finding that its production had an adverse bearing on the credibility of BBA's account of being a victim of FGM or on other issues. The report was treated as of no evidential value.
45. This medical report was tendered in support of BBA's statement to the Tribunal that she had been subjected to FGM when she was nine years of age. The Tribunal did not state that it did not accept BBA's statement that she had been subjected to FGM. This was not a contested issue before the Tribunal. The content of the medical report did not add anything to the evidence of BBA that she had been subjected to FGM when she was a child. BBA suffered no disadvantage because the Tribunal did not consider the content of the report.
46. The applicants criticise the Tribunal for not making a formal finding on whether it accepted BBA's evidence that she was herself the victim of FGM at the age of 9 years. The applicants submit that this was relevant to an assessment of whether BBA had a well-founded fear of persecution or whether there was a real risk that she would suffer serious harm and that it should have been taken into account by the Tribunal.

47. The applicants refer to s.28(6) of the 2015 Act which provides as follows: "The fact that an applicant has already been subject to persecution or serious harm, or direct threats of such persecution or such serious harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."
48. The purpose of this provision is clear. The fact a person seeking international protection has already been subjected to serious harm, or direct threats of serious harm, is considered by law to be indicative of a real risk that that person will be seriously harmed if returned.
49. Section 28(6) of the 2015 Act has no relevance to these applications for international protection. The incident where BBA was subjected to FGM when she was 9 years old has no bearing on risk that her daughters will be subjected to FGM now. Any current risk is that BBA's daughters will be subjected to FGM. Any risk of harm to BBA can only arise as a result of her position as mother and protector of TBA and EAA. This has no causal connection with her FGM experience many years ago.
50. The next submission made by the applicants was that the Tribunal fell into legal error in evaluating the solicitor's letter dated 19 November 2018 and the report from the Commissioner of Police dated 15 January 2020.
51. Some of the information in the solicitors' letter and the report of the Commissioner of Police was at serious variance with the accounts given by the applicants to the Tribunal at the hearing. The covering letter from the applicants' solicitors did not address these issues. There was no request to reopen the hearing.
52. The solicitors' letter and the police report were introduced to show that BBA was correct when she stated in evidence to the Tribunal that her brother had made a complaint to the Nigerian police and that the Nigerian police had produced a report.
53. The police report was not available to put before the Tribunal at the hearing. A copy was sent over by BBA's brother subsequently, along with a copy of the solicitor's letter. These documents were tendered to address concerns voiced by the Tribunal about the veracity of BBA's evidence that her brother had complained to the police.
54. The Tribunal did not consider whether the police report could be evidence confirming that BBA's brother had made a complaint to the police. Instead, the document was considered by reference to whether it could shed any light on the result of the police investigation.
55. The solicitors' letter and the police report could not establish matters which the applicants did not advance to the Tribunal. However, the content of the police report might have been considered if it revealed matters which confirmed allegations advanced by the appellants to the Tribunal. An example would be if an interviewee admitted making threats.



56. If the Tribunal was to apply rules of the law of evidence, it would ignore what the police report disclosed about what BBA allegedly told police. The report could not prove that BBA said anything to the police. This material had not been advanced at the oral hearing and the presenting officer had no opportunity to take a view on it or cross examine BBA. BBA had no opportunity to respond to the contents of the documents. It was impossible for the Tribunal to give any weight to unexplained contradictory material.
57. The Tribunal did not accept that the letter from the solicitors to the police in Abuja and the police report were genuine. They were described in the determination as "alleged". The Tribunal also referred to the "veracity" of the police report. It is clear from the totality of the passage quoted that the Tribunal regarded both documents as suspect and treated them as inauthentic in the same way as it treated the medical report as inauthentic.
58. The Tribunal went on to reason that even if authentic, the police report should not be considered as its content was at odds with the evidence at the Tribunal on lack of contact between the appellants and the Nigerian police.
59. The Tribunal concluded that either BBA and OAA requested her brother to make a complaint to the police after the family arrived in Ireland, which the Tribunal found to be unreasonable, or that the solicitor's letter was not authentic.
60. Either way, the Tribunal did not treat the documents as supportive of evidence of BBA that a complaint had been made by her brother to the police before she departed from Nigeria. There was no evidence that BBA or OAA had instigated her brother to make a complaint to the Nigerian police on her behalf.
61. The Tribunal was heavily influenced by evidence touching on existence or absence of any report to police on the alleged actions of members the Offin clan while the appellants were in Nigeria. This was an important issue. The findings made by the Tribunal on this had a significant impact on assessment by the Tribunal of credibility of BBA's evidence.
62. The Tribunal did not make clear why it was rejecting the two documents. The copy letter from the Solicitors includes the author's authenticating stamp and seal of membership of the Nigerian Bar Association. The date on the stamp and seal is illegible.
63. There is nothing within the copy of the police report which pointed to it being a fake. There is always a possibility that a document of this sort might be a fake or a document from a genuine source which misrepresents facts. Whatever be the position, suspicion does not amount to proof. If there was concern about authenticity of these documents, this should have been canvassed so that those involved in the proceedings before the Tribunal had an opportunity to comment.

64. A first stage in the enquiry was to decide whether to accept or reject the two documents as evidence of a complaint made by BBA's brother to the police relating to her allegation that she and her family were being subjected to wrongful threats and pressure from the clan. The Tribunal erred in not considering this issue and giving a reasoned decision.
65. Once that decision was made, the Tribunal could also look at the content of the documents for the purpose of deciding whether and to what extent they supported or undermined any proposition relevant to its decision. The Tribunal was obliged to consider the documents rationally.
66. If the Tribunal decided to treat the letter from the solicitors and the police report as authentic, then they were admissible to show that police had received a complaint from BBA's brother on her behalf before the family departed for Ireland. They did not disclose that BBA and OAA had instigated a complaint to police via her brother after she arrived in Ireland. There was no rational basis for these adverse conclusions by the Tribunal.
67. The report and the letter from the solicitors were not receivable to show that BBA's brother had conversations with members of the Offin clan or the fact or terms of any complaint which she made to the Nigerian police, because that case had not been advanced at the hearing before the Tribunal.
68. However, if the hearing before the Tribunal was reconvened, BBA might be cross examined on whether she had conversations with Nigerian police and on any inconsistencies between her evidence and any statements allegedly made by her to her brother or Nigerian police. Any evidence on this would come from her answers. She could not be responsible for hearsay claims of others. She could also be cross-examined on the authenticity of the documents.
69. It might well happen that a document, if acceptable for consideration, contains information inconsistent with parts of a case made by the applicants for international protection. A party tendering a document as evidential support for one purpose may find that its contents are unfavourable for some other reason.
70. In general, the Tribunal should not draw adverse inferences on provenance of documents tendered for consideration without giving an appellant and the presenting officer an opportunity to address relevant concerns. However, introduction after a hearing of material which should have been made available before that hearing cannot be allowed to become an instrument of ambush. Those who provide such material are on risk that it will be rejected or will have a probative effect other than that intended if they do not provide sufficient accompanying proofs and explanations. This is especially so if material tendered discloses on its face a good reason why the Tribunal should reject it immediately.
71. Finally, it is important that mere suspicions about authenticity of documents are not used to cast doubt on the general credibility of an applicant for international protection. It is also noted that in this appeal the Tribunal was careful in deciding this matter to

not rely on the Nigerian police report as material undermining evidence of BBA and OAA that they had not personally been in contact with police. The Tribunal acted correctly in this aspect of its treatment of the content of the police report.

72. It is unnecessary to express any concluded view on the legal merits of the other grounds advanced by the applicants. Many of the points raised appear to be challenges to conclusions of fact which went against the applicants. This type of challenge may not be maintained in judicial review proceedings.