



**THE HIGH COURT**  
**JUDICIAL REVIEW**

[2025] IEHC 51

[Record No. 2023/615JR]

**BETWEEN**

**OM**

**APPLICANT**

**AND**

**INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND**

**THE MINISTER FOR JUSTICE**

**RESPONDENTS**

**JUDGMENT of Ms Justice Miriam O'Regan delivered on 31 January 2025.**

**Background**

1. By statement of grounds of 30 May 2023, and in respect of which leave was afforded on 16 October 2023, the applicant seeks to quash the decision of the first named respondent bearing date 9 May 2023 in which the respondent, in an appeal decision, determined that the applicant was not entitled to international protection in Ireland (whether refugee or subsidiary protection status).

2. The applicant is a native of Botswana born on 9 May 1982 and arrived in Ireland on 1 November 2021. She applied for international protection on 1 December 2021 and in this regard completed a questionnaire bearing date 22 December 2021 in which she asserted that her former boyfriend (“O”) beat her after she asked why he left every weekend to be with his friends. In addition, it is stated that he did not wish her to go to church. She met O in February 2018, and they immediately commenced residing together in the applicant’s rented property which she shared with her son T, born in September 2008. Her son came to Ireland on 13 May 2022.

The applicant asserted that she did not report the violent treatment at the hands of O as he had threatened to kill her if she did. Her son did not wish to stay with O in the house because O was involved in criminality and the sale of drugs.

At para. 4.6(2) of the questionnaire in response to a request to furnish details as to the events which happened that lead to the applicant’s fear of going home it is stated that the applicant was threatened by a group of people and her life would be at risk.

At para. 4.6(4) in response to a query as to details as to why she decided to leave the applicant indicated that she was abused and the person who abused her was indulged in debts all over.

At para. 7.2 in response to the query as to other reasons for fear of returning the applicant indicated that she had not worked since Covid, “we got retrenched” and the applicant remains with so many debts and is afraid of the Sheriffs and other people who she owes money to.

The applicant attended for a s.35 interview on 20 July 2022 and at s.5 thereof in detailing the core elements of her claim as to why she was seeking international protection and couldn’t return to her country of origin, she indicated that she feared her former boyfriend who didn’t want her to go to church or socialise and who was always beating her

with an electric wire every time she was not at home. When she complained to him about his thieving and drug-dealing he beat her. In addition, he had several different passports but did not use his own Nigerian passport. She did not report him because she loved him. She left him on 21 October 2021. She indicated that in September 2020 when O believed she was in her rented property he burned the house to ashes. A week later he took a knife from the kitchen and indicated that he wished to kill her. This question concluded with a statement “that is the end of the story.”

In response to a query as to the name of O the applicant indicated she did not know his surname. She further indicated that O began abusing her in December 2019 saying that she was cheating. He assaulted her every three days or more. When asked if she received medical treatment, she said no but later in response to a further query she indicated that she did take “the medical at the hospital but I did not tell them. I told them I fell.” In response to a query as to the fact that she indicated that she did not report O because she loved him and then indicated that she did not report him because he threatened to kill her, she indicated that both reasons were the basis for non-reporting. In response to the query as to whether she had a medical report, she indicated that she did, but that she did not have it with her but could furnish it within a week. She did not know the date of the medical report or the name of the doctor but did know where the medical report emanated from. Such medical report was never furnished.

In response to a query that the interviewer found it very difficult to understand how she didn't know O's surname the response was that it was a very difficult one for her to pronounce. In response to a query as to why she wrote in her questionnaire that O beat her when she asked him why he went out with his friends for the whole weekend she indicated that she did so because the page was too small.

When asked why she wrote in her questionnaire that she was threatened by a group of people her response was that her boyfriend had a lot of friends who advised him at all times of where she was. When asked why she didn't say that O followed her after she left him on 21 October 2021, she indicated that the space was small and because she wanted to express herself orally, so she just jotted down the main story.

When asked why she did not mention the burning of the house she indicated it was because of the space.

When it was indicated to her that she did a lot of foreign travel according to her passport for a person whose boyfriend did not want her to go anywhere the applicant indicated that she attended church services in South Africa every Sunday a distance of 270km away. The interviewer indicated that some of the dates were not Sundays, and she responded that she sold clothes in South Africa and many visits were for longer than one day. In response to the interviewer indicating he found it difficult to understand how she was able to go away so often and for so long to attend church given her boyfriend's insecurity her response was "I was not doing a sin. He is not a Christian."

The applicant indicated she was seeking international protection because her boyfriend abused her verbally, physically and emotionally. She indicated that her boyfriend did not like her son because of his disability (autism) and because her son was not his son.

**3.** Following a hearing on 3 March 2023 at which the applicant was represented by counsel the impugned decision issues.

**4.** It was indicated at para. 4.7 that the facts to be decided were as to whether the applicant was abused by her boyfriend, whether he attempted to burn her in her rented accommodation in September 2020 and as to whether the applicant attended on a monthly or

bimonthly basis religious ceremonies over 200 kilometres away.

**5.** At para. 4.8 the Tribunal set out the inconsistencies mentioned by the presenting officer namely; -

(i) that it was not credible that the applicant ran out of paper and was unable to obtain same from the reception centre at the Direct Provision Centre;

(ii) that the applicant did not mention the burning down of her house, which went to the core of her case, in her questionnaire;

(iii) that the applicant wished to give a comprehensive account at an oral hearing;

(iv) that the applicant had not gone to hospital or received treatment and that she did attend hospital for treatment;

(v) the applicant stated that she came to Ireland for two reasons namely to escape domestic abuse and because of the disability of her son whereas the presiding officer submitted that it was for economic reasons and that she had amalgamated debts of approximately €20,000 arising from loans to her partner O;

(vi) it was submitted that it was unlikely that O would permit the applicant to visit South Africa on a regular basis;

(v) the applicant stated she did not know her boyfriend's surname because it was a difficult name however it was submitted that she gave different versions at different stages of the process – in this regard the applicant's legal advisers stated that the surname was a difficult surname and O went by different names and had different passports.

**6.** It is recorded that the applicant submitted that in accordance with a recent decision of Simons J in *K v IPAT* [2023] IEHC 6 inconsistencies should be analysed by the relative

weight of the evidence as well as country of origin information affecting the facts. It is recorded that the Tribunal considered country of origin information in the s.39 report.

Reference was made to a decision of Faherty J in *PRT v Refugee Appeals Tribunal & Ors.* [2015] IEHC 447 where it was stated at para. 58 the Court gave an imprimatur that the primacy of the questionnaire and its contents is a starting point for the making of an asylum claim although the Court was not suggesting that inconsistencies and contradictions in the questionnaire and the interview are to be ignored or disregarded but rather each instance where a discrepancy or inconsistency occurs will have to be assessed on its merits giving due regard to the overall context of the claim and noted that the questionnaire was the vehicle in which the applicant was afforded an opportunity to fully set out his or her claim and the factual matters underlying same.

7. The Tribunal was of the view that the inconsistencies were quite weighty and the applicant expected the Tribunal to accept an explanation to defeat the various arguments on credibility that she ran out of paper at the Direct Provision Centre, however, the Tribunal could not accept this explanation as credible on the balance of probabilities.

8. The Tribunal found that the submission that she could escape to South Africa every few weekends could not be accepted as credible and they could not accept the response of “God came first” in relation to the presenting officer’s submission that it was unlikely that O would permit her to visit South Africa on a regular basis. It was indicated that it was not credible on the balance of probabilities that she would have this freedom from O should her life be subject to his control and violence.

At paras. 4.13 and 4.19 of the impugned decision it was indicated that the Tribunal allowed three weeks from 3 March 2023 for the parties to submit further documentation and submissions and counter submissions but none such were received.

It is common case that further documentation was received from the Applicant by the International Protection Office on 20 March 2023, without accompanying submissions, but not referenced in the decision. This is the basis for the claim that the Tribunal breached fair procedures and s.28 of the International Protection Act 2015. It is also common case that there is nothing in the statement of grounds or the grounding affidavit of the applicant identifying the relevance of the documentation produced or the prejudice said to be occasioned to the applicant by omitting same from the decision.

### **Breach of Fair Procedure/Section 28 of the 2015 Act**

9. The applicant submits and the respondent accepts that based on the caselaw hereunder identified where documents have been submitted but not considered judicial review should be granted unless: -

(i) the Court is satisfied beyond a reasonable doubt that the missing documentation could have made no difference to the decision (*SE v Minister for Justice & Equality* [2022] IEHC 138, a judgment of Heslin J in the High Court);

(ii) there is no arguable case that the missing documents are relevant to the matter (*HA v Minister for Justice* [2022] IECA 166 a judgment of Donnelly J in the Court of Appeal);

(iii) the missing documentation does not achieve a minimum level of materiality (*MTTK v The Refugee Appeals Tribunal & Ors.* [2012] IEHC 155 a judgment of Cross J in the High Court).

The respondent refers further to the judgment in *HA* and in particular para. 21 *et seq* thereof where it was held that in assessing whether a document is relevant and material the Court must return to what the decisionmaker was asked to consider and a suggestion by one of the parties that the documentation was relevant merely because it had been referred to and relied on does not in itself make it relevant and material.

Two of the five documents submitted on 20 March 2023 are relied upon by the applicant as being relevant; -

- (i) the medical report received from Botswana in respect of T which identified that he was diagnosed with autism when he was aged 6; and
- (ii) a demand and proceedings against the applicant in respect of a debt due and owing.

The applicant, in oral submissions only, suggests that the autism diagnosis of T supports the contention made by the applicant in this regard and that it was in fact core to the applicant's claim because O did not like T based upon his disability (and the fact that he was not O's son). This argument is made notwithstanding that the argument is not presented in the statement of grounds, the grounding affidavit or written submissions.

Similarly, again in oral submissions only, it is argued that the debt demand is core to the applicant's claim, or otherwise relevant as it could support financial abuse by O against the applicant.

**10.** As is apparent from the various documents identified above the applicant has never made the argument that she was financially abused by O and obliged to take out loans on his behalf nor has she asserted T was abused physically by O because of his disability or indeed that she was abused herself by O because of T's disability.

In *LHC v Refugee Appeals Tribunal* [2014] IEHC 75 Mac Eochaidh J stated that where an applicant has been unfairly denied the opportunity to submit evidence it seemed to the Court that the applicant must describe the substance of the excluded evidence and in addition must describe the prejudice caused by its exclusion. Insofar as this requirement has been dealt with it has only been addressed in oral submissions. As per *HA* the mere fact that it is submitted in oral submissions only that these two documents are relevant does not make it so. Furthermore, in my view, the fact that the presenting officer submitted that the applicant was effectively an economic refugee and the loans which she had to take out were for the benefit of O, does not translate into same being a part of the applicant's claim, namely that of financial abuse against the applicant by O. Financial abuse was not alleged by the applicant in advance of oral submissions.

In all the circumstances it appears to me that the content of the medical report and the debt demand and proceedings are not relevant to the applicant's core claim and they do not achieve even a minimum level of materiality. The Court can be satisfied beyond a reasonable doubt that the missing documentation could have made no difference to the decision and there is not an arguable case that they are relevant.

### **Adverse Credibility Findings**

11. Insofar as it is argued that credibility findings were made against the applicant because it was erroneously stated that further documents were not transmitted to the Tribunal it is noted that this argument is not made in the statement of grounds or the grounding affidavit. The basis for such an argument was that the lack of documentation was recorded twice in the decision. This argument ignores that where the statement is made in the decision reference is made to the fact that both parties were allowed to submit further documentation and submissions or counter submissions, but none were received, and that further

documentation and submissions were not submitted by either side. Insofar as it is suggested that it must have adversely affected the applicant's credibility because the erroneous recording was made under the heading of "credibility assessment", this argument is not pleaded, and it further ignores the fact that if supporting documentation was furnished this would have a bearing on the credibility assessment in favour of the applicant - in other words supporting documentation would be taken into account when making a credibility assessment however as aforesaid, in my view, the documentation that was submitted but not referred to does not advance in any way the core claim made by the applicant for international protection.

**12.** In para. (e) of the statement of grounds it is stated that the first named respondent erred in fact and in law and breached *inter alia* s.28(4)(a) & (b) of the International Protection Act 2015. Thereafter, the manner in which such alleged breaches occurred is set out in paras. (a) to (n) inclusive without any reference to a failure to consider country of origin information. Similarly, in the factual grounds no reference whatsoever is made to country of origin information. A complaint first arises in this regard in written submissions.

**13.** Reference in s.28(4)(b) of the 2015 Act relates to "relevant statements and documentation presented". The lack of relevance of the missing documents has been dealt with above.

The credibility findings sought to be impugned in the within proceedings relate to: -

- (i) the assertion that the applicant did not include matters in her application because she ran out of paper;
- (ii) the negative finding in respect of O burning her house.

It is said that these findings were made;

- (1) without adequate reasons;
- (2) notwithstanding that there was no controverting evidence; and
- (3) based on apparent inconsistencies with less weight being given to the evidence at hearing than in the questionnaire.

As previously indicated the applicant relies on the decision of *Simons J in K* previously mentioned. However, in that case *Simons J* was satisfied that the inconsistencies relied on by the decision maker related to matters concerning the provision of additional details which did not affect the core claim.

In the instant matter there was no reference in the questionnaire to the burning of the house or the threat with a knife to kill the applicant a week later. These episodes are clearly highly significant and do not feature at all in the questionnaire. Furthermore, in the instant case the respondent did engage with the explanation furnished by the applicant, which was, she ran out of paper notwithstanding that the questionnaire identifies in several provisions thereof that if more space is required an applicant is entitled to use additional paper. The applicant does not identify what effort she made to locate any sheet of additional paper.

In my view it is neither irrational nor unreasonable for the Tribunal to find that on the balance of probabilities this explanation is not credible in that the applicant was at a Direct Provision Centre. At no point throughout the process in the within statement of claim or grounding affidavit did the applicant supply details of any effort whatsoever to secure additional paper to conclude her claim.

It was open therefore to the first named respondent to reach the conclusion it did that this on the balance of probabilities was not a credible excuse certainly when one has regard to the seriousness of the assertion of a burning of a house in the belief that the applicant was in the house and a week later was threatened with a knife.

**14.** The finding that it was not credible that the applicant would have the freedom to attend church over 200 miles away on a regular basis when, it appears, the applicant did travel to South Africa was open to the Tribunal to make, in particular, given the response of the applicant to the presenting officer's statement that it was unlikely that O would permit the applicant to visit South Africa on a regular basis, was "God came first". The reason given for this lack of credibility was on the balance of probabilities she would not have had such freedom from O should her life be subject to his control and violence.

In the circumstances I am satisfied that there was not any meaningful engagement by the applicant with the above questions posed in the explanations offered by the applicant, namely, the applicant ran out of paper and "God comes first."

The relevant inconsistencies cannot be said to be additional details which do not affect the core claim.

### **Conclusion**

**15.** I am not satisfied that the applicant has discharged the burden on her to secure the relief claimed which is therefore refused.

### **Costs**

**16.** As this judgment is being delivered electronically, with regards to the issue of costs, as the respondent has been entirely successful, it is my provisional view that she should be entitled to her costs, to be adjudicated in default of agreement. As the parties have not had an opportunity to make submissions as to costs, I shall allow the parties the opportunity to make written submissions of not more than 1,000 words within 10 days of this judgment being delivered should they disagree with the order proposed. In default of such submissions being

filed, the proposed order will be made. The matter will be listed for final orders on Tuesday  
11 February 2025.