

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

[2010 No. 1157 JR]

**BETWEEN****S.O.****APPLICANT****AND****REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE AND LAW REFORM, ATTORNEY GENERAL, IRELAND****RESPONDENTS****JUDGMENT of Mr. Justice Mac Eochaidh delivered on the 11th day of May 2015**

1. The applicant in this "telescoped" application for leave to seek judicial review is a Nigerian national who seeks, *inter alia*, *certiorari* of a decision of the Refugee Appeals Tribunal dated 7th July, 2010, affirming the decision of the Refugee Applications Commissioner refusing him refugee status.

**Background**

2. The applicant was born in November 1978 in Lagos State, Nigeria and came to Ireland in February 2010. He travelled here by air, transiting through Amsterdam before arriving in the State. He states that he was a lance corporal in the Nigerian army for some years and that his problems began when he, along with three of his colleagues, were ordered by their garrison commander to remove arms and ammunition from the armoury and to load them onto a truck. He says that he was aware that the arms were being misappropriated but that he was obliged to follow the orders of the colonel who was in command. He claims he was paid NGN 25,000 for his involvement in the removal of the arms. The alarm was raised in the barracks when it was realised that stores were missing from the armoury and as a result of his involvement in this incident the applicant was imprisoned for eleven months while an investigation took place.

3. The applicant claims that whilst in prison the four soldiers were visited by the colonel. Two of the soldiers told the colonel that they would confess the crime and his involvement unless he did something to arrange their release. The applicant claims that within five days these two soldiers were found dead and were rumoured to have been poisoned. The applicant claims he managed to escape from prison when he and the other remaining accomplice were woken in the middle of the night by an unknown soldier, taken outside where the gate of the prison was opened for them and where a vehicle was waiting which brought them to an unknown place. The applicant states that his escape was organised by the colonel who visited him and informed him that his unit and the entire Nigerian army had been notified that he had absconded from prison. The colonel then made arrangements for the applicant and the other soldier to have their photographs taken in order to arrange passports to enable them to travel. The colonel organised a British passport for the applicant which he states he used to enable his travel to get to the State. The applicant submitted his army I.D. to the Office of the Refugee Applications Commissioner but states that the passport was taken off him when he arrived in Ireland.

4. The applicant's stated fear of persecution is that he would face court martial and imprisonment for 21 years if apprehended by the army and/or assassination by the colonel if he were to return to Nigeria.

**Tribunal Decision**

5. In addressing the military I.D. card submitted by the applicant, while the tribunal member appears to have doubts as to why the applicant's rank is stated to be that of 'private' as opposed to that of 'lance corporal', the tribunal member accepted that the applicant was familiar with military terms, weapons and ranks and was satisfied that he had a military background. However, the tribunal member made an adverse credibility finding with regard to the applicant's use of a false passport for travel from Lagos via Amsterdam to Dublin. The tribunal member makes a finding pursuant to s. 11B(a) Refugee Act 1996 on this point.

6. The second adverse finding reached by the tribunal member is that he did not accept that an agent would accompany the applicant all the way from Nigeria to Ireland via the Netherlands and risk being detected travelling with a person who had a false passport. Furthermore, it is not accepted that the trafficker then collected the false passport in Dublin airport before disappearing. Crucially, the tribunal member did not accept it was credible that the colonel would have gone to the risk and expense of procuring tickets and false documentation in order to get the applicant out of Nigeria. It is doubted that the colonel would go to these lengths given the mysterious deaths of two of the applicant's colleagues whilst in prison. As such, the Tribunal did not consider that the applicant gave a full and true explanation of how he travelled to and arrived in the State and refers to s. 11B(c) Refugee Act 1996 in this regard.

7. The failure of the applicant to apply for asylum at the frontiers of the State is also counted against the applicant in the assessment of his credibility by the tribunal member. The applicant's claims with regard to how he managed to escape from the prison, of being woken in the middle of the night and escorted out to a waiting vehicle, are also not accepted as credible by the Tribunal. In this regard, it is not accepted that the series of events described by the applicant and which would have involved significant effort and coordination by the colonel, could have occurred.

8. The tribunal member rejected the applicant's account of his escape from prison with the assistance of the Colonel who had ordered him to move arms.

9. The tribunal member rejected the applicant's narrative as to his involuntary participation in the arms theft.

10. The applicant's evidence that he was involved in the illegal removal of arms from a military base because he was following orders is also not accepted as credible by the tribunal member. In this regard the tribunal member makes reference to the applicant's twelve

years of army experience, his knowledge that ordinance checks are routinely carried out and therefore the almost certainty that the theft of arms would be discovered. In any event, the tribunal member did not find that the applicant had established a convention nexus to his claimed persecution which it found was, in effect, a fear of prosecution for a criminal offence.

11. With regard to the claim that the applicant faced persecution in respect of the duration of the punishment of life imprisonment for the offence, the tribunal member noted that the U.N.H.C.R. Handbook requires a reference to the particular laws of the country of origin in order to make out such a claim. Further, the tribunal member noted that in country of origin information submitted by the applicant regarding another case, specific reference was made to relevant provisions of the Nigerian penal and military codes under which those soldiers were to be prosecuted. It is noted by the Tribunal that the applicant has failed to provide any such evidence to substantiate the claim that he would face a punishment of life imprisonment or to identify the relevant provisions of the penal code referable to the offence in this case.

12. Finally, the Tribunal finds that the applicant has failed to discharge the burden of proof that he is a refugee and further that he has not presented as a generally credible witness.

### **Submissions**

13. In the first instance, counsel for the applicant, Mr. Colm O'Dwyer S.C., submits that the tribunal findings in respect of the manner in which the applicant travelled to and arrived in the State are peripheral to his core claim. In this respect, counsel made the oral submission at hearing that the applicant was carrying a British passport and that it was perfectly possible for a person to pass through an airport without their passport being scanned, nor was there any evidence before the tribunal member in respect of the levels of checks which are carried out on passengers transiting through Schiphol airport in Amsterdam. Counsel also submitted at hearing that the tribunal member's finding with regard to the agent accompanying the applicant to Dublin airport and collecting the passport was not so unbelievable to warrant the making of an adverse credibility finding against the applicant. Counsel refers the court to the cases of *M.E. v. Refugee Appeals Tribunal* [2014] IEHC 145 and *F.T. v. Refugee Appeals Tribunal* [2013] IEHC 167 with regard to the findings made pursuant to s. 11B Refugee Act 1996.

14. Counsel submits that the nature of the findings made by the tribunal member is unclear and that a fuller explanation is required. In this regard, it is said that there does not appear to be a finding by the Tribunal as to whether the incident referred to by the applicant has occurred or not. As such, it is claimed that the Tribunal findings in respect of the applicant's escape from detention and his involvement in the misappropriation of arms are based on conjecture. Counsel refers to the decisions of Peart J. in *Sango v. Refugee Appeals Tribunal* (Unreported, High Court, Peart J., 24th November 2005) and the decision of McDermott J. in *C.C. v. Refugee Appeals Tribunal* [2014] IEHC 491 in this regard.

15. It is said that the comment of the tribunal member that "There was nothing to suggest that he had any valuable information, or that there was any other reason why the colonel would go to the trouble, effort and risk of procuring the applicant's release from prison" is irrational and serves to undermine central elements of the claim made by the applicant, including the killing of the soldiers who had threatened to confess to the crime. In this regard, counsel submitted that it was incumbent on the tribunal member to make a finding in respect of the killing of the two men it being a facet of the core claim made by the applicant as to where his fear of persecution emanated.

16. Counsel also makes complaint that the treatment of country of origin information is unsatisfactory, particularly a failure to have regard to reports of corruption in the army. In this connection it is submitted that the credibility findings made do not have a strong basis of support in the country of origin information provided. Counsel contends that the credibility findings of the tribunal member are more akin to those made on gut-feeling and resorting to conjecture rather than with an express reference to country of origin information to back up the findings. The judgments of Cooke J. in *I.R. v. Minister for Justice* [2009] IEHC 353, Edwards J. in *D.V.T.S. v. Minister for Justice* [2007] IEHC 305 and Barr J. in *L.R.C. v. Refugee Appeals Tribunal* [2014] IEHC 500 are cited by counsel in respect of this argument.

17. Finally, it is said that the Tribunal erred in failing to consider whether the applicant could be exposed to future persecution by reason of his army history and his escape from prison. Counsel refers to the decisions of Cooke J. in *A. v. Refugee Appeals Tribunal* [2011] IEHC 147 and Mac Eochaidh J. in *M.M.A. v. Refugee Appeals Tribunal* (Unreported, High Court, Mac Eochaidh J., 13th February 2013) in this regard.

18. My view is that the tribunal member was entitled to conclude as he did with respect to the applicant's account of his travel. The basis for the adverse finding is fully explained and whilst I might not have reached the same conclusion, irrationality is required to be established if I am to interfere with this finding. There was nothing irrational in deciding that moving across borders with a passport which does not contain a photograph of the traveller is not easy

19. As a general comment, I read the Tribunal decision as rejecting every aspect of the applicant's narrative based on its inherent impassability and also a finding that the claim as presented does not reveal a convention nexus

20. I agree with Counsel for the respondent, Ms. Ellis Brennan B.L., who said that that the applicant fears related prosecution for the commission of the offence of stealing munitions and not persecution for a Convention reason. In that regard she notes that the tribunal member specifically drew the attention of the applicant's legal advisors to the relevant provisions of the U.N.H.C.R. Handbook in respect of the obligation to refer to the laws of Nigeria in order to show that any potential punishment was excessive to the point of amounting to persecution. Counsel notes that the applicant failed to identify any such law.

21. The country of origin information provided by the applicant, in particular the article "Nigeria: Army of illegal arms dealers", showed that members of the Nigerian military had been charged under specific legal provisions and these provisions of the penal code were recited to the applicant. The respondent noted that the applicant simply asserted that the provisions under which he faced prosecution were not publicly available. Further, when the applicant was requested to identify country of origin information to support this claim, he failed to do so. It seems to me that the only possible finding which could be and was made by the tribunal member was that the applicant did not satisfy the general definition of a refugee as set out in the Convention.

22. Counsel for the respondent refutes the claim that tribunal member failed to assess the applicant's core claim and submits that the Tribunal made a number of careful findings in this regard. First, it is said that the tribunal member found that it was not credible that the colonel would assassinate two of the applicant's accomplices and yet go to great expense and effort of paying and organising for the applicant and his associate to escape from prison and go abroad. The applicant's account of his escape was also found implausible in that the applicant claimed to have simply walked from the prison through an open gate. Further adverse credibility findings were made with regard to the taking of the munitions and the applicant's motivation for doing same. At hearing, counsel referred to the "Examination by the Presenting Officer" as recorded in the Tribunal decision and highlighted the inability of the

applicant to explain why he would be treated any differently to the army generals who were identified in the country of origin information which was submitted on his behalf. In this regard, the respondent notes that the tribunal member put it to the applicant that the evidence from the country of origin information was to the effect that all ranks within the army were being charged with similar offences. The Tribunal decision records that the applicant simply stated that "I'm just a Lance Corporal".

23. Finally, the respondents submit that the Tribunal assessment of the credibility of the applicant's travel to the State is in compliance with the obligations placed on him by s. 11B Refugee Act 1996 and that the principles for assessing credibility outlined by Cooke J. in *I.R. v. Minister for Justice* [2009] IEHC 353 were also complied with.

24. I do not accept that it was incumbent on the tribunal member to say whether he believed the narrative concerning the death of the applicant's colleagues in prison. The applicant's credibility was rejected as to his travel to Ireland, as to his involvement in the arms theft episode, as to his escape from prison and as to the colonel's involvement with the arrangements for the escape and the travel from Nigeria to Ireland. I have not been able to detect an error in these findings which would justify court intervention. In any event my view is that this decision is capable of being sustained by reference to the decision that no Convention nexus was established by the applicant. It seems to me that the tribunal member took considerable care with this aspect of the decision and correctly identified the principles involved.

25. I refuse application for leave to seek judicial review.