Neutral Citation [2015] IEHC 341

THE HIGH COURT

[2010 No. 757 JR]

BETWEEN

T. I. (A MINOR SUING BY HER MOTHER AND NEXT FRIEND P. I.)

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM,

THE REFUGEE APPEALS TRIBUNAL,

IRELAND AND

THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 19thday of May 2015

1. This is a telescoped application where the applicant seeks an order of *certiorari* quashing the decision of the second named respondent affirming the recommendation of the Refugee Applications Commissioner that she not be declared a refugee.

Background

2. The infant applicant is of Nigerian origin. Her mother was born in Anambra State, Nigeria. According to the applicant's mother, the applicant's father hailed from Imo State. He was a Christian whose father was a pagan chief priest of a named shrine in Akokwa, Imo State. The applicant's father's eldest brother, who was due to succeed their father as chief priest, was killed in a car accident. The applicant's mother claimed that pressure was then put on the applicant's father to marry his sister in-law but he refused, choosing instead to marry the applicant's mother on the 28th February 2004. Additionally, he refused to take over his role as successor to the chief priest of the shrine. At the time of their marriage, the applicant's mother had completed her law degree after five years of university education. The applicant's mother became pregnant with the applicant in 2004. On the 1st December 2004, the applicant's paternal grandfather died suddenly. The applicant's mother claimed that his family had consulted "the oracle" who decreed that the applicant's father's refusal to take on the role of chief priest was the reason for his father's death. Accordingly, "the oracle" had demanded that the applicant's mother's unborn child be sacrificed to the land *"to appease the curse and give the chief priest a successful death"*. On hearing of this decree the applicant's mother had run away *"to save the life of [her] child"*. She left Akokwa and travelled to Enugu where she stayed for one month and from there moved to Lagos where she remained for three months. From there she travelled to Ireland in March 2005. At the time of her departure, the applicant's father remained living in Lagos.

3. The applicant's mother's asylum process commenced in 2005. The section 13 report which issued in respect of her claim recorded that her fear of persecution was based on the demand by "the oracle" that her unborn child was to be sacrificed to appease the death of her father- in-law. The Commissioner found the applicant's mother's account *"not credible"*, stating, *inter alia*:-

> *"Her husband as a Christian was not involved in his father's pagan ways. He refused to do his father's bidding in the case of his brother's wife, he had married the applicant in spite of his father's objections and as the applicant herself stated he was unlikely to allow his child to be sacrificed. He did not have any problems over his refusals in the past and has not had any problems since the applicant left Nigeria in March 2005. It is not unreasonable to suggest that the applicant could have continued to live in Nigeria in Enugu where she went to college, in Onitsha with her parents or in Lagos with her husband. In the three months from her father in-law's death until she left for Ireland he did not encounter any problems in Nigeria."*

4. The infant applicant was born in this State on the 23rd March 2005. Her asylum process commenced on the 15th October 2007. A section 8 interview was conducted with the applicant's mother on her behalf on the same date. It recorded the following:-

> *"Applicant's mother claims that her daughter cannot return to Nigeria because the applicant's grandfather is a native doctor who died.*
>
> *Applicant's mother claims that the child was to be sacrificed to appease the grandfather's ghost as the reason for his death was seen to be his dislike for the child's mother.*
>
> *Applicant's mother claims that female mutilation through circumcision is also popular in the community back in Nigeria and she fears that her daughter would be circumcised if she returns to Nigeria."*

The claims set out in the s.8 interview were replicated in the questionnaire completed on the 22nd October 2007, which also recorded fears that the applicant would be subject to ritual killings and trafficking. The claimed fear of persecution was stated to be on grounds of religion and membership of a particular social group.

In the course of the section 11 interview, the applicant's mother stated:-

> *"I fear that my in-laws will sacrifice my daughter to the shrine and that she will die. I also fear that they may perform FGM on her because it is a tradition there. My own brother went missing and he was kidnapped. I fear my daughter may be kidnapped and trafficked."*

5. The RAC rejected the applicant's claim and the section 13 report stated, *inter alia* :-

"The applicant's mother fears that her daughter will be sacrificed by her husband's family following the death of her father-in-law…[She] claims that FGM is another tradition in her in-laws community and her daughter would be subjected to FGM if she went to live in Nigeria …The applicant fears that she would be located in Nigeria because of the Oracle. The applicant was asked to explain this Oracle and she replied 'They have a piece of wood that they carved into the shape of a human. They worship this.' The applicant claims that she could be located anywhere in Nigeria because of the Oracle. When asked how she has not been effected (sic) by the oracle since leaving Nigeria, she replied 'If I was in Nigeria it could locate me. Because I am not in Nigeria the Oracle cannot locate me'. The applicant's fears in this regard are subjective and are not supported by any objective element. The applicant's fears of being located by an Oracle are not accepted.."

6. Under the heading *"State Protection"*, the following was stated:-

"It is considered that the applicant and her mother could return to Nigeria and locate away from Akokwa, Imo State where she would not be in danger from her in-laws. Her claims that she could be located anywhere in Nigeria are not accepted….Country of origin information indicated that there are various NGOs who would be willing to offer the applicant and her mother assistance if they were to return to Nigeria….Given her mother's age and level of education it is not considered unduly harsh for the applicant and her mother to return to Nigeria. As Nigeria is a country with a population of over 140 million…it is not accepted that the applicant and her mother could be located by her in-laws as she claims."

7. The Tribunal's decision issued to the applicant on the 17th May 2010. As the section 6 analysis is short, it is quoted herein in its entirety:-

"The claim of this Applicant…is identical in virtually all aspects to that of her mother. As the claim of [her mother] has been dismissed, then so also is the claim of this applicant. However, there is the issue of female genital mutilation which does not constitute a part of [her mother's] claim.

There is a growing number of women NGOs in Nigeria.

The report of the joint Danish-UK Fact Finding Mission to Nigeria has a section concentrating on internal relocation for women. The purpose of the document is to indicate the facilities and means available to women who wish to internally relocate within Nigeria to escape FGM and other gender problems. What is immediately apparent is the proliferation of women's NGOs in Nigeria.

The US State Department Human Rights Report 2007 states that the National Democratic and Health Survey estimated that about 19% of the female population had been subjected to FGM although the incidence has declined steadily in recent years. The NHDS 2003 data has indicated a high level of support for the abandonment of the practice. 66% of women aged between 15 and 49 who have heard of FGM-C believe the practice should be discontinued. However, better educated women are more likely to oppose the practice than rural and less educated women.

Finally, the UK Danish Report states that the Nigeria Human Rights Commission has expressed surprise if somebody actually had to leave Nigeria in order to avoid FGM instead of taking up residence elsewhere within the country. The NHRC held that it might de difficult for a woman residing in the southern part of Nigeria who wishes to avoid FGM to take up residence in the northern part of the country whereas all Nigerians have the possibility of taking up residence in Lagos due to the ethnic diversity and size of the city.

There are two other matters. Firstly, the applicant's mother is a highly educated young woman. She passed her law exams during her four years of study and it is implausible for her to suggest that she would not know to whom to turn should she wish to keep her daughter safe from those who might insist on FGM. Finally, as Ms Caden has pointed out, how can [the applicant's mother] fear FGM if the real fear is to avoid a ritual human sacrifice. The Handbook on Procedures and Criteria for Determining Refugee Status states at Paragraph 201 that the benefit of the doubt should only be given when the Tribunal is satisfied as to the Applicant's general credibility. The Applicant's statements must be coherent and plausible and must not run counter to generally known facts. The Tribunal is satisfied that [the applicant's mother's] statements are neither coherent nor plausible and they do run counter to generally known facts.

Conclusion

The Tribunal is satisfied that this applicant does not have a well-founded fear of persecution for a Convention reason. She is not a refugee. The appeal is dismissed and the recommendation of the Commissioner is affirmed."

8. The grounds of challenge to the decision were distilled in the applicant's written submissions as follows:-

"The Tribunal Member did not:

1. Lawfully assess the issue of credibility.

2. Afford the claim individual or objective assessment.

3. Properly apply the applicable test in respect of internal relocation.

4. Give reasons for the decision or consider medical evidence."

The applicant's submissions

9. Counsel for the applicant noted that unusually the Tribunal Member commenced his analysis with the issue of internal relocation. It was argued that the Tribunal Member did not lawfully consider this issue in the manner required by Regulation 7 of the European Communities (Eligibility for Protection) Regulations 2006 which provide that the Tribunal Member, as the proposer for internal relocation as a solution to persecution, should verify by reference to appropriate country of origin information that the general circumstances prevailing in the proposed site of relocation removed the specific risk of persecution and, further, that the personal circumstances of the applicant are not such that relocation is not in fact practical. In the present case the Tribunal Member did not

engage in any way in the process of assessing whether internal relocation to another area of Nigeria would in fact be possible for the applicant. Lagos was identified as a relocation option without the Tribunal Member having given consideration to the issue of security from harm, as required by Regulation 7(1) and principle 4 of the test set out by Clark J. in the case of *K.D. (Nigeria) v. Refugee Appeals Tribunal & Ors* [2013] IEHC 481. Nor was the issue of relocation addressed from the point of view of the reasonableness of the decision, as mandated by Regulation 7 (2) and principles 5 and 7 of *K.D. (Nigeria)*.In the context of the applicant's personal circumstances, issues of primary importance were not addressed. Firstly, the infant applicant had never been to Nigeria. Secondly, she presented with significant medical problems and had fairly significant special needs, as evidenced by the numerous medical reports which were before the Tribunal. Moreover, the applicant's medical difficulties had been specifically adverted to in the course of the oral submissions on her behalf to the Tribunal Member. Thus, on any reading of the principles set out in *K.D. (Nigeria)*, as adopted in *E.I. v. Minister for Justice & Ors* [2014] IEHC 27, the applicant's medical needs should have been considered in the context of internal relocation. As authority that the medical reports should have been considered, counsel cited the judgment of McDermott J. in *A.M.N. v. Refugee Appeals Tribunal* [2012] IEHC 393. While in that case the protection decision was deemed unlawful because of the failure of the decision-maker to deal with a SPIRASI report in the context of assessing credibility, counsel submitted the principle underlying that decision was applicable to the present case: the Tribunal Member was obliged to state why, in light of the medical reports, internal relocation was still a reasonable option for the applicant. Counsel rejected any suggestion that the applicant's legal representative had not addressed the medical issues in the context of internal relocation. Irrespective of how the issue of the applicant's disability arose in the course of the Tribunal hearing, the Tribunal Member was alerted to the applicant's medical difficulties and thus himself obliged to consider same pursuant to the mandatory requirements of Regulation 7(2).

10. Insofar as it might be argued by the respondents the Tribunal Member's finding was not a relocation finding but rather fell within the realm of credibility, counsel relied on the approach adopted by MacEochaidh J. in *E.I*, who, while adopting Clark J.'s principles as set out in *K.D. (Nigeria)*, took issue with principle 3 thereof.

11. Counsel contended that insofar as the penultimate paragraph of the decision purported to deal with the applicant's mother's credibility, it remained unclear whether the implausibility finding regarding her statement that *"she would not know to whom to turn should she wish to keep her daughter safe from those who might insist on FGM"* pertained to the applicant's mother's credibility or to the issue of her objection to internal relocation within Nigeria.

12. As to the statement in the decision "how can [the applicant's mother] *fear FGM if the real fear is to avoid ritual human sacrifice"*, counsel contended that it was not clear how this conclusion was arrived at in circumstances where the applicant's mother expressly stated that she was fearful that the applicant would be circumcised. Counsel argued that even if the Tribunal Member was correct in rejecting as incredible the applicant's mother's fear of ritual human sacrifice, it remained the position that she advanced a fear of FGM on the applicant's behalf, which was not assessed by the Tribunal Member. Nowhere in the section 6 analysis had the Tribunal Member stated that he deemed it a relevant factor that the applicant's mother had not undergone FGM. Counsel emphasized that the claim made on behalf of the applicant was that her father's family would subject her to FGM. The claim advanced on behalf of the applicant therefore merited independent evaluation.

13. Insofar as the Tribunal Member found the applicant's mother's statements *"neither coherent nor plausible"* and that they ran *"counter to generally known facts"*, counsel submitted that no discernible reasons were given for such findings. Counsel queried as to how, in view of the Tribunal Member's apparent acceptance that the applicant was Nigerian and that 19% of females in Nigeria had been subjected to FGM, it could be stated that the applicant's mother's fear of FGM ran counter to generally known facts. The Tribunal Member's assessment of credibility failed to adhere to the standards contained in the judgment of Cooke J. in *I.R. v. Minister for Justice & Ors* [2009] IEHC 353 and to the standards expressed in the judgment of MacEochaidh J. in *R.O. v. Minister for Justice & Ors* [2012] IEHC 573. Thus, insofar as it might be suggested that the entire decision was a decision on credibility, it could not be allowed to stand because of the referred -to defects.

14. Counsel contended that it was not clear from looking at the decision what was the actual finding made by the Tribunal Member. Was it that nothing that the applicant's mother stated was believed and that she could go back to Nigeria and continue as she was before, or was it that she was believed but even if what she said was true, she could relocate within Nigeria? It could only be one or the other. Whichever it was, it cannot, counsel submitted, be sustained: the credibility findings were not reasoned and the internal relocation finding was not made in accordance with the required minimum standards.

The respondents' submissions

15. At the outset, counsel acknowledged that the Tribunal decision was "succinct" and not very detailed, but argued that the decision affirmed a bifurcated process in which the applicant's mother participated on behalf of the applicant. While the section 6 analysis was "sparse" and "not elegant" that did not necessarily render it unlawful.

16. It was well settled law that Tribunal decisions must be assessed in the round. Counsel submitted that it was lawful for the Tribunal Member not to find credible the applicant's mother's claims regarding voodoo and witchcraft given her level of education as a law graduate. The applicant's mother, when making the asylum claim on behalf of the applicant, knew that her credibility regarding the issues of the oracle and human sacrifice/witchcraft had been found wanting. As those fears were repeated in the applicant's claim for asylum, it followed that a significant part of that claim immediately lacked credibility. That credibility factor, counsel argued, spilled over into the FGM claim advanced on behalf of the applicant. The applicant's mother did not herself undergo FGM.

17. Relocation was considered in the context of credibility. It had been teased out with the applicant's mother why Lagos was an option for her and the fact she remained unaccosted while living in Enugu and Lagos had been canvassed with her. Her explanation (the oracle and witchcraft) as the basis of her objection to relocation was not regarded as credible. It was she who rejected internal relocation on the basis that she could be located by the oracle anywhere in Nigeria. When asked if she could be so located in Ireland, she had stated that the oracle did not work in Ireland. It was put to the applicant's mother both during the section 11 interview and at oral hearing that her fears regarding the oracle were lacking in credibility. Given her acknowledgment that she had moved within Nigeria unharmed and unthreatened, the consideration of internal relocation in the decision was not an alternative to the applicant having been at serious risk but rather as an issue which went to her mother's credibility. These credibility factors therefore put the matter within the parameters of principle 3 as enunciated by Clark J in *K.D. (Nigeria).* It was thus not incumbent on the Tribunal Member to embark on an internal relocation consideration.

18. Counsel refuted any suggestion that the case had been made before the Tribunal Member that relocation was not an option because of the applicant's medical difficulties. While there was a reference to the applicant's disability in the course of the hearing, no such claim was made in the context of internally relocating. Insofar as such a claim was now being advanced, counsel submitted that it was an argument more appropriate in an application for leave to remain on humanitarian grounds to be advanced before the Minister.

19. Without prejudice to the respondents' contention that the applicant's claim was rejected on credibility grounds with the consequence that the question of internal relocation did not fall to be considered in the manner contended for by the applicant's counsel, the applicant's argument on internal relocation was without merit. Even if one were to apply the approach adopted by MacEochaidh J. in *E.I.* , i.e. that there remained an onus on the Tribunal Member to embark on an internal relocation consideration where the claim was not unequivocally rejected for credibility reasons, the issue of internal relocation insofar as it was looked at was sufficiently explored. Lagos was identified as a place of relocation and the reasons why it would be appropriate were identified. At no stage during the hearing had the applicant's mother stated that she would be hindered by relocating.

20. The applicant's counsel's reliance on the judgment of McDermott J. in *A.M.N* was misguided and, the respondents submitted, inapplicable to the present case. That judgment concerned a person whose very claim to asylum was supported by medical evidence. While McDermott J. had upheld the Tribunal's dismissal of the claim due to correct credibility findings, he went on to say that the medical report should have been looked as it related to the very basis of the asylum claim and accordingly quashed the decision. That was not the case here, counsel argued. Having failed to make an argument before the Tribunal Member that internal relocation was not reasonable because of the applicant's medical difficulties, it was not now permissible to make such arguments a central part of the applicant's claim before this court as this deprived the Tribunal of giving consideration to such argument. Without prejudice to the respondent's contention that the applicant's medical difficulties were more appropriate to an application for humanitarian leave to remain, counsel submitted that the reports did not disclose developmental delays or disabilities at such level that it would impede the applicant's relocation within Nigeria. Furthermore, the duration of the applicant's stay in Ireland was not relevant to the Tribunal's determination on refugee status and, again, that factor was relevant only in the context of an application for leave to remain to be made to the Minister.

21. Counsel argued that the dictum of MacEochaidh J. in *P.D. v. Minister for Justice* (20th February 2015) (relied on by the applicant) had no applicability in the present case. The ratio in *P.D.* concerned an applicant's entitlement to know why his or her claim was rejected. In the present case, the applicant's mother, whose own asylum claim had been rejected and who repeated that claim in the applicant's asylum application with the additional FGM claim, had been expressly challenged during the course of the Tribunal hearing as to why she was referring to FGM if in fact the applicant was going to be killed by the village elders. Counsel submitted that that exchange sustained the Tribunal Member's overall conclusions. The contradictory nature of her claimed fears was also addressed with the applicant's mother in the section 11 interview, as follows:-

> *"Q46. Why would your in-laws threaten to perform FGM on your daughter if they have already threatened to sacrifice her?*
>
> *[A]It's another tradition in that community.*
>
> *Q.47 But my question is if they plan to sacrifice her, why would they perform FGM on her?*
>
> *[A]I just want to say it is another tradition in that community that every female should be circumcised."*

That exchange, counsel argued went to the credibility of the expressed fear of FGM. Counsel submitted that the inconsistency in the applicant's mother's claim for the applicant was apparent: either the applicant was required for sacrifice at the shrine or alternatively the villagers were not going to kill the applicant but rather perform FGM. Moreover, it was not permissible for the applicant's mother to make a different case on behalf of her daughter based on fears of voodoo and witchcraft which had already been rejected in her own asylum application and in circumstances where her objections to relocation within Nigeria were deemed not credible. While it may well be the case that the applicant's mother had such subjective fears, these fears were not objectively well-founded.

There was no lack of clarity in the decision. The applicant's mother's evidence had been twice rejected, firstly in the context of her own application for asylum and laterally in the context of the applicant's application. Therefore, there was no situation in which it could credibly be said that the applicant's mother did not understand why the applicant's claim was rejected by the Tribunal.

22. Counsel argued, in reliance on the principles enunciated by Cooke J. in *I.R.* that the Tribunal Member's decision should not be parsed or analysed and that it must be read as a whole and that not every mistake will vitiate a decision.

23. With regard to the applicant's counsel's argument that the context of the applicant's claim was not looked at, that was not the case. The applicant did not dispute the facts as recorded in the decision. While FGM is seen as a serious issue in Nigeria, in relation to this particular applicant, she did not come within the group of people identified, for example, by Hogan J. in *O.A.Y.A v. RAT* [2012] IEHC 373 (a case relied on by the applicant) by reason of her mother's level of education and because there was no-one targeting the applicant. The applicant's mother had advanced fears in relation to the oracle, FGM, ritual killings, trafficking and kidnapping – effectively all the fears that anyone could raise – in relation to the applicant; the question that had to be answered was whether they were credibly raised. The Tribunal decision had answered this in the negative and correctly so, counsel submitted.

Consideration

24. It seems to me that the essential question to be determined in this case is what was the approach adopted by the Tribunal Member to the fear of FGM advanced on the applicant's behalf by her mother. Counsel in the case advanced polar opposite arguments: the respondent's primary position was that the Tribunal Member disposed of the claim on credibility grounds, whereas the applicant's counsel contended that the decision lacked clarity and, at best, insofar as the rationale could be gleaned, it related to the adequacy of internal relocation, with an addendum relating to credibility issues.

What then was the primary rationale for rejecting the claim? The law is clear; the rationale should be patent or capable of being inferred. In *Meadows v. Minister for Justice, Equality and Law Reform* [2010] 2 IR 701, Murray J. said as follows:-

> *"An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context. Unless that is so then the constitutional right of access to the Courts to have the legality of an administrative decision judicially reviewed could be rendered pointless or so circumscribed as to be unacceptably ineffective. In my view the decision of the Minister in the terms couched is so vague and indeed opaque that its underlying rationale cannot be properly or reasonably deduced."*

25. The necessity for clearly expressed and reasoned decisions was reinforced in the judgment of MacEochaidh J. in *P.D. v. Refugee Applications Commissioner* [2015] IEHC 111 (High Court, 20th February 2015) in the following terms:-

> *"It is an over simplification ...to say that a decision maker must decide on the truth of each element of a claim for*

asylum. The common thread in the judgments is the need for clearly expressed decisions in relation to the core claim. The extent to which the elements of a claim are required to be formally decided depends on the circumstances of each case. As asylum claims require the establishment of a number of elements, for example: membership of a social group or race or religion or nationality and a well founded fear of persecution - it may be possible to dispose of the application where proof of one of the necessary elements fails. Where, for example, an applicant claims to be a Nigerian who suffered religious persecution and it emerged that persons of that faith suffer no persecution in Nigeria, the decision maker could lawfully decide that the applicant did not have a well founded fear of persecution without the necessity of deciding whether or not she was a member of the particular religious faith claimed. In my view, no illegality would attach to such decision. Ideally it should be clearly stated that no decision is needed on this aspect of the claim and that, in my view, would comply with the Meadows inspired comments quoted above as to the need for clarity in administrative decisions. The difficulty which frequently arises is that it is unclear to applicants what is believed and what is not believed or whether any decision has been taken in respect of an important part of a claim and this may be of some consequence for the purposes of an administrative appeal."

26. The Tribunal Member's decision, to my mind, falls short of the standard set out in the above quoted jurisprudence, as it is open to question whether it is a credibility decision pure and simple or a decision on internal relocation or a mixture of both. This alone is sufficient to vitiate the decision. My conclusion in this regard was assisted by the dictum of Birmingham J. in *V.F.A.A. v. The Minister for Justice* [2010] IEHC 117:-

"Counsel for the respondent authorities has made the point that it is necessary to view the decision in the round and he warns against any approach that would involve deconstructing the decision as a whole, and submitting individual parts to an isolated examination referring to the decision of Cooke J. in I.R. v. The Minister for Justice, Equality and Law Reform [2009] IEHC 353. With that observation I find myself in complete agreement and indeed in a number of cases I have cautioned against the tendency to over dissect decisions. Indeed, I am conscious that at a post leave hearing stage that the risk is heightened, as there will be a tendency for attention to focus exclusively on the areas where leave has been granted, and which are to that extent areas of controversy to the exclusion of ones where the view was taken that there was no substantial ground for challenging the decision or where there was never any element of controversy in the first place. That causes me to ask, with what impression is one left, if one stands back and looks at the decision in the round?"

Standing back and looking at this decision in the round, one could be left with the impression that the Tribunal Member commences his analysis on the premise that the alleged fear of being subjected to FGM advanced on behalf of the infant applicant was well founded but that the availability of an internal relocation option meant that there was no basis to declare the applicant a refugee. To me that is an interpretation capable of being extracted from the decision, from the commencement of the s.6 analysis up to and including the point where the Tribunal Member opines: *"Firstly, the Applicant's mother is a highly educated young woman. She passed her law exams during her 4 years of study and it is implausible for her to suggest that she would not know to whom to turn should she wish to keep her daughter safe from those who might insist on FGM."* However, the Tribunal Member then states: *"Finally, as Ms Cadden has pointed out, how can [the applicant's mother] fear FGM if the real fear is to avoid a ritual human sacrifice".* Is one then to take it that this statement is sufficient to translate what went before into an assessment of the credibility of the FGM fear advanced on behalf of the applicant?

The respondents' counsel put great emphasis on the Tribunal Member's above quoted latter statement as encompassing the inconsistency of the applicant's mother's fears for her child (raised with her in the course of the s.11 interview and the hearing) and counsel contended that this was evidence that the decision was a credibility decision first and foremost. It seems to me however that the flaw in that argument is that the Tribunal Member in the very first paragraph of his s.6 analysis referred to *"the issue of female genital mutilation"* as part of the applicant's claim and proceeded to have a discourse on the incidence of FGM in Nigeria and the how it could be avoided by relocating and the assistance available for those in threat of FGM, having regard to country of origin information.

27. Furthermore, even if the decision purported to be first and foremost a credibility decision, I am not convinced that the referred to inconsistency in the applicant's mother's claims (FGM versus ritual human sacrifice) was a sufficient basis to dismiss the fear of FGM expressed on behalf of the infant applicant. FGM was a fact of life for 19% of the female population of Nigeria at the time of the Tribunal Member's consideration of the claim. This stark statistic alone behoved him to give due consideration to the claim. It could not be readily dismissed solely on the basis that the applicant's mother claimed more than one fear for the child, particularly when she asserted that FGM was a tradition in her husband's family. Whether this was or was not the case was for the Tribunal Member to assess and weigh accordingly but there is no indication, if this decision is to be read as a pure credibility decision, that this was done.

28. The applicant's counsel referred the court to the dictum of Hogan J. in *O.O.Y.A. v. Refugee Appeals Tribunal* [2011] IEHC 373. Counsel for the respondent argued that the applicant's circumstances were distinguishable on the facts in *O.A.Y.A* given the level of education of the applicant's mother and the fact that no threat of circumcision for the applicant had emanated from her in-laws.

While I agree that the factual matrix in *O.O.Y.A.* was different to the applicant's circumstances, I nevertheless adopt the following paragraphs in the judgment of Hogan J. as encompassing the spirit in which the fear that the applicant might be subjected to FGM should have been considered:

"14. The issue here is the gravity of the threat that this young girl might be subjected to FGM if she were to be returned to Nigeria. Even if the allegations made by Ms. A. in relation to the Imam are entirely discounted as implausible, the stark and uncomfortable fact remains that this young applicant is from the Yoruba tribe. While she is no longer in her very early infancy, she would nonetheless be still distinctly vulnerable - all other matters being equal - to the risk of FGM given that, as we have already noted, the country of origin information shows that the risk posed to young Yoruba females is, in practice, extremely high, even if it is acknowledged that the fact that her mother is opposed to the practice would mitigate the risk somewhat.

15. The applicant is plainly entitled to be protected against a serious threat to her constitutional rights which would undoubtedly occur were she to be subjected to FGM following deportation to Nigeria: see, e.g., by analogy the comments of McCarthy J. in Finucane v. McMahon [1990] 1 I.R. 165, 226 and those of Gilligan J. in OO. v. Minister for Justice, Equality and Law Reform [2004] 4 I.R. 426, 432. The subjection of any female to FGM is an open assault on her person, the very right which by Article 40.3.2 of the Constitution the State expressly undertakes to defend and vindicate in so far as it is practicable to do so. By the same token FGM can be regarded as a form of torture and inhuman and degrading treatment, contrary to Article 3 ECHR.

16. Given the nature of these risks and the potential grave impact on the constitutional rights (and, for that matter, the Convention rights) which the subjection of the applicant to FGM would entail, it behoves any decision-maker clearly to identify and assess the nature of such risks and to weigh them fairly and properly. As Murray C.J. observed in Meadows [2010] 2 I.R. 701, 724:-

"It is inherent in the principle of proportionality that where there are grave or serious limitations on the rights and, in particular, the fundamental rights of individuals as a consequence of an administrative decision the more substantial must be the countervailing considerations that justify it."

17. While these comments were made in the context of a challenge to the validity of an administrative decision which impinges on constitutional rights, they are certainly applicable by analogy to the present case.

18. Can it therefore be said that the Tribunal member has sufficiently identified the risk to this young female in view of her vulnerable age and tribal membership? With great respect, I do not think that one can. The country of origin information clearly shows that young Yoruba females constitute a very high risk group. Nor can it realistically be said that such young girls enjoy any effective police protection in this regard given that, as the British-Danish report clearly found, the Nigerian federal police rarely intervene in these types of cases.

19. It likewise cannot be said that the Tribunal member acknowledged the existence of the risk that the applicant would be subjected to FGM independently of the threats allegedly posed by the Imam. The very fact that the applicant is a young vulnerable girl from the Yoruba tribe in itself poses a very serious risk which the Tribunal member is clearly obliged to assess and consider."

If one proceeds on the assumption that the decision in the present case purported to be one on credibility solely, I am in agreement with the argument advanced by the applicant's counsel that the Tribunal Member's finding, in so far as it related to the FGM claim, that the applicant's mother's statements ran *"counter to generally known facts"* does not meet the tests of rationality or cogency set out in *IR v. Min. for Justice* and *RO v. Min. for Justice*, given that FGM was, regrettably, a fact of life for a significant percentage of the female population in Nigeria when this finding was made. This was something which was known to the Tribunal Member since he quoted it in the decision.

In view of the findings I have made as set out above, there is thus a sufficient basis upon which to grant the relief sought by the applicant in these proceedings.

However, the issue of internal relocation as discussed in the decision also merits comment. Even allowing for the possibility that the Tribunal Member's mindset was focused on dismissing the claim on credibility grounds, I find that there is a sufficient basis in the decision, namely a degree of equivocation in the s.6 analysis with its emphasis at the outset on the assistance available for those *"who wish to internally relocate within Nigeria to escape FGM"* rather than on the applicant's mother's credibility (which is only adverted to latterly), to adopt the approach set out by MacEochaidh J. in *E.I.v. Min. for Justice*.

At paragraph 9 of his judgment, he states::- *"I am not convinced that any assessment of internal relocation should escape full blooded scrutiny in judicial review, nor am I convinced that the provisions of Regulation 7 should apply to some but not all internal relocation assessments. In any event, in my experience, most internal relocation assessments which follow negative credibility findings rarely follow clearly expressed comprehensive rejections of credibility. They are usually credibility findings such as those which appear in this case. In other words, they are equivocal. The Tribunal Member has doubts as to the credibility of the applicant but does not appear to be in a position to reject fully the applicant's narrative because of weaknesses observed. In those circumstances, the decision maker, quite naturally, feels compelled to examine the question of internal relocation, if the facts and circumstances justify such a consideration."*

To my mind, the sequence in which the applicant's claim was dealt with by the Tribunal Member puts this case into the category discussed by the learned judge in *EI*. I should add that my adoption of the above passage does not preclude the possibility that there will be situations where a decision maker's reference to internal relocation in a protection decision may be no more than a facet of the assessment of credibility but whether that is the situation or not falls to be determined on a case by case basis.

The seminal judgment of Clark J. in *KD Nigeria* sets out how the provisions of reg.7 of the 2006 Regulations should be applied. The approach followed in the present case, in my view, fell short of the necessary *"careful"* enquiry which Clark J. stated was mandated by the provisions of reg. 7, particularly with regard to the applicant's developmental difficulties. The applicant's personal circumstances merited detailed consideration before a decision was made on internal relocation, particularly in light of the medical reports that were before the Tribunal. I do not accept the respondents' arguments that the applicant's medical difficulties were not effectively pursued at the hearing in the context of internal relocation: the decision records as follows: *"The issue of* [the applicant's] *health was then discussed. The tribunal was told that [she] had a speech disability and her hearing has not developed properly.* [The applicant's mother] *said that in Nigeria, a disabled child is discriminated against. Her daughter needs more care than is the case with a normal child…."* This evidence, together with the medical reports, was sufficient to put the Tribunal Member on enquiry as to the applicant's particular circumstances. Principle 7 of the test set out in *KD Nigeria*, provides:- *"It is not enough for the protection decision maker to determine that the risk of persecution is absent from the proposed area of relocation. He or she must go on to consider whether it would be reasonable to expect the applicant to stay in that place, having regard to his/her personal circumstances and the general conditions prevailing on the ground, in accordance with Regulation 7(2) of the Protection Regulations. The reasonableness test is not concerned with assertions such as 'I won't know anyone', but rather with matters of substance such as whether the applicant is old , infirm ,ill, has many small children or is without family support and other real issues."*

A *"real issue"* in the present case was the applicant's developmental difficulties and the alleged difficulties she would face in Nigeria: it was thus incumbent on the Tribunal Member, once Lagos was proposed as the area of relocation, to analyse and consider whether the medical reports disclosed developmental delays or disabilities at such level that it would impede the applicant's relocation within Nigeria. That exercise was required to be carried out and the evidence weighed in accordance with the benchmark set out in the 2006 Regulations. The failure of the Tribunal Member to do so renders the manner in which internal relocation was considered unlawful.

For the reasons set out in this Judgment, leave is granted and since these are telescoped proceedings I will make an order quashing the decision and remitting the matter to the second named respondent for a de novo hearing before a different member of the Tribunal.