

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

[2010 345 J.R.]

**BETWEEN****P. R.T.****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 10th day of July 2015**

1. This is a telescoped hearing wherein the applicant seeks an order of *certiorari* of the decision of the second named respondent affirming the recommendation of the Refugee Applications Commissioner not to declare her a refugee.

**Background**

2. The applicant is a national of Zimbabwe. She was born on the 5th June 1986 and completed 12 years of formal education including primary school and four years of secondary school. For most of her life she lived at the family home in Harare with her parents and siblings. The applicant claims to have a well-founded fear of persecution in Zimbabwe on grounds of imputed political opinion and also on grounds of membership of a particular social group, and particularly arising from the fact of her having been raped and the that she was at risk of being forced into marriage against her will. According to the applicant's questionnaire, she left her country of origin in the following circumstances:-

*"I grew up from Harare and went to school as a normal child. I used to live a standard life. Everything was ok and rosy. All our problems started in 2005. It all started with Operation Murambatsvina (destroying of houses). They said the cottage we were living in was not on plan so they destroyed our house and we became homeless. This made my family to be apart, me, I had to go with my father and my brother and sister with my mother. I and my father we moved on to Mutoko and in Mutoko life was unbearable because they were saying all people coming from Harare were sell- outs. They wanted to sell the country. We joined my mother who was staying in Mutare. But things became even worse because we were we had to have a party that we will be supporting and both my parents were not into politics. We became homeless and we were treated like we were not the same people. At the beginning of 2008 we all moved in to Murambinda trying to look for a place to call our own. We became slaves in our own country. We moved in with one of my own mother's friends but the place was too small to occupy all of us. So me and my father, we decided to go to Chegutu."*

3. After she moved in 2008 with her father to Chegutu, he procured a job on a farm. At Q. 21 of her questionnaire, the applicant stated:-

*"My father got a job in Chegutu on a farm they called Downs Farm. Things started to change. Things seemed to be ok... Around November 2008 there was a rumour that the manager of GMB (Grain Marketing Board) wanted to take over the farm from Mr Job Taylor...One night when we were sleeping we heard a knock, my father asked who it was and they only answered 'open the door before we break it'. When my father opened the door for [four] men came inside and they started saying so it is you it is you I didn't understand why they were saying that I was just shaking with fear. They tied my eyes with a black cloth and told me to keep shut or scream if I like because no-one is going to hear me. They also started saying tie him tie him as well I didn't know who they were saying because they had tied my own eyes. I could only hear the voices and my father saying leave my daughter out of this they pushed me down and he raped me. It was so painfull [sic]I was just screaming but there was no help and it did not make him stop. After some time there was some quietness only to realize I was all alone when my father came back he was all alone I asked him what is happening he told me to keep out of this and he will find a way through. They men were 4 they came and stayed over did not allow me to go out when I said I wanted to go to toilet they will tell me to use the pot. It was so painful. The next morning they all went. We did not know what to do."*

The applicant claimed that she did not know precisely the reason for the attacks on her and her father in Chegutu. She had repeatedly asked her father to explain the situation to her but he would always say to her that he did not want her involved. It was the applicant's belief that the attacks were as a result of her father's failure to support Zanu-PF. As a result of what had happened, the applicant and her father made arrangements to leave. However on the night prior to their departure the men returned again and began threatening her father. She described her particular ordeal on that occasion as follows: *"..they came the same night. They blindfolded me and raped me."*

4. Following this second attack and rape, she and her father went to the police but failed to obtain any assistance.

5. After they returned home from the police station, the gang of men came again to their home. The applicant described this visit in the following terms:-

*"In the evening the 4 men came again and told my father whilst I was there that there was a Malawian traditional healer who wanted a wife and the wife was me because my father is a sell-out. They told my father that it was an honour for me to be selected as the traditional healer's wife but I had to go for an interview where the snake had to lick all my body and the snake would decide if I can be the traditional healer's wife or not. The next morning my father gave me*

*money and told me to run for my life."*

6. The men had told her that when she went to see the healer she was not to behave in the way she had when they were raping her. It was at this point that her father decided that the applicant should flee. He gave her a sum of money he had obtained from selling diamonds and told her to go and look for her mother. The applicant left Chegutu in or around the end of January 2009.

7. The applicant travelled first to Harare where she hoped to find a friend of her father's. Unable to locate her father's friend she found a place to stay before travelling to Murambinda in an effort to locate her mother. This was in the days of Zimbabwe Prime Minister Morgan Tsvangirai's wife's burial and according to the applicant, *"the Zanu PF were burning houses for people because they had turned out for the burial"*. In her s.11 interview and in the course of the Tribunal hearing, the applicant stated that she returned to her father in Chegutu in March 2009 and claimed that the men had again harassed her. Having then returned to Harare, the applicant was advised to go to South Africa. She travelled by bus to the border region and from there by truck to South Africa. She arrived in South Africa between March and April 2009.

8. She stayed in South Africa for approximately two weeks until in or about mid-April 2009 during which time she experienced harassment from the South African police and anti-Zimbabwean sentiment from native South Africans. She was able to procure a false South African passport for 300 Rand. In April 2009, she made contact with an agent who booked flights for her from South Africa to Ireland via Jordan. She paid the agent US\$500 for the tickets and in or around April 2009 she flew to Jordan. When in Jordan she fell ill and was unable to make her connecting flight to Ireland. When she recovered she contacted the agent back in South Africa, who booked her on a flight to Ireland via Frankfurt. She left Jordan on the 6th May 2009 arriving in Ireland on the 7th May via Frankfurt. Upon arrival at Dublin Airport she was stopped coming through immigration. An immigration officer asked her for her passport and when she showed him the false South African passport he asked her whose it was. The applicant replied that it was not her passport that she wished to apply for asylum. She was asked why she did not apply for asylum in Germany to which she replied that she did not even know Frankfurt was in Germany and knew nothing about claiming asylum there.

#### **Procedural history**

9. The applicant completed an ASY1 form and a section 8 interview on the 8th May 2009. She completed a questionnaire on the 23rd June 2009. She underwent a section 11 interview on 12th August 2009. By this time, the applicant was represented by the Refugee Legal Service who made written submissions in advance of her s.11 interview to ORAC under cover of a letter dated 7th August 2009. A substantial amount of country of origin information was attached to the submissions.

10. The Commissioner's section 13 report duly issued denying the applicant refugee status, largely on credibility grounds. The report concluded, *inter alia*:-

*"At her Section 8 interview, the applicant stated that her father was staying on his farm and that Zanu PF war veterans came to take the farm off him. She states that they said if her family and herself want to stay on the farm she had to marry a traditional healer who was an old man, this happened in November 2008. She states in January she moved to a different part of Zimbabwe but the problems followed her.*

*However, the applicant did not mention this in her questionnaire or in the submission made by the Refugee Legal Service, when asked to explain this, she replied, 'He was working on the farm he was not the owner of the farm', she went to say 'I don't know, maybe I was confused and maybe I didn't read it. I tried to explain how it all happened in the questionnaire'.*

*In view of the fact that the basis of the applicant's claim for asylum changed from when she completed her Section 8 interview and when she completed her questionnaire, it is considered that the credibility of the applicant's claim is seriously undermined".*

11. Addressing the claim made by the applicant in the course of the s.11 interview that she had returned to Chegutu in March 2009, the report stated:

*"The applicant provided a very detailed questionnaire to this office and her solicitor also provided a very detailed submission regarding the applicant's claim, however, her return to Chegutu in March 2009 was not mentioned nor was there any mention of another incident involving the 4 men during this time" when asked why she did not mention this previously: she replied 'Telling the story is different to somebody asking questions'.*

*In view of the fact that the applicant states she returned to Chegutu in March 2009 following the incident in November 2008 it is considered the well-foundedness of her fear is seriously undermined. Furthermore, her failure to mention the incident in March 2009 prior to her interview despite providing a very detailed questionnaire and her solicitor providing a very detailed submission undermines the credibility of the applicant".*

12. It was also considered that *"the applicant's testimony at interview was very vague and contained a number of contradictions and discrepancies"*, in particular with regard to the date and sequence of her and her family's movements in Zimbabwe and the make-up of her family. Furthermore, *"the applicant's failure to apply for asylum in either Egypt, Jordan or Germany seriously undermines the well-foundedness of her stated claim"*. *"The applicant's testimony at interview was considered vague, not credible or plausible and therefore, the benefit of the doubt cannot be afforded to the applicant. Therefore it is concluded that the applicant has failed to establish a well-founded fear of persecution"*.

13. Under the heading "State Protection" the report stated: *"It would appear that state protection was not available to the applicant"*. Under the heading "Internal Relocation", the report made reference to the applicant's movements within Zimbabwe and went on to state *"it is concluded that the applicant has already relocated successfully within Zimbabwe for 3-4 months before leaving the country."*

14. An oral hearing of the applicant's appeal to the Refugee Appeals Tribunal took place on 12th January 2010. The Tribunal's decision issued on the 9th March 2010. The applicant's claim was rejected on credibility grounds. The Tribunal's findings are set out hereunder:

15. The Tribunal Member commenced his assessment by reference to paragraphs 37 and 38 of the UNHCR Handbook and went to state:-

*"On examination of the Applicant's claim a number of inconsistencies and credibility issues which are not properly explained by the Applicant and are such that I do not believe that she ever had any difficulties in her Country of Origin as*

*she alleges or has any fear of returning there as she claims."*

16. With regard to the applicant's claimed experiences in Chegutu, the Tribunal Member opined:-

*"The Applicant made different references at different stages of her claim as to the identity of the persons who called to her home on November of 2008. It was put to the Applicant that in her ASY1 form she claimed that it was ZANU-PF war veterans that called to her home that night. When this was put to the Applicant the Applicant claimed not to know who the people were but to believe that they were the people who wanted her to marry the traditional healer. She says it started with a rumour that the Director of the GMB wanted to take over the farm. She said he supported ZANU PF. She says she wasn't talking to them when they called. She says her father was."*

The first credibility finding

17. The Tribunal Member addressed the ownership of the farm in Chegutu in the following terms:

*"It was put to the applicant that in her ASY1 form she had referred to the farm as her father's farm and stated that 'her father was staying on his farm and the ZANU PF war veterans came to take the farm off him'. The Applicant was asked to explain her reference to the farm belonging to her father and she claimed that it was not her father's farm. She says she didn't say her father owned the farm. She says he was working on the farm. She claimed that this was a mistake in her ASY1 form. The Applicant was asked as to why she agreed to this information at the time in such circumstances and she claimed she didn't read the recorded statement in the form but just signed the form. This is not considered credible. The detail as recorded in the Applicant's ASY1 form is a record of the Applicant's statements at that time and it is not considered credible that any such mistake could have occurred or that the Applicant would agree to any such information without ensuring that the content of the form properly recorded her statements."*

The second credibility finding

18. Addressing the discrepancy between the questionnaire and the s.11 interview as to the farm owner's name, the Tribunal Member stated:

*The Applicant was asked to name the owner of the farm and initially stated that it belonged to a Mr Downs. She claims that it belonged to a Mr Downs Taylor. It was put to the Applicant that in her Questionnaire she had given a different name for the person she claimed owned this farm and had called him a Mr Job Taylor. When this was put to the Applicant, the Applicant claimed that his name was Job Taylor. The Applicant was asked to explain the inconsistency in her account as to the name of the owner of the farm and she claimed that this was because she was trying to forget things. She says she is forgetting things now. She says she is trying to forget it. This is not considered credible and in all the circumstances it is considered that the Applicant has related an inconsistent account as to the ownership of this farm."*

19. The third credibility finding

*"The Applicant was asked at Appeal as to the period of time her father had worked at this farm and she was unwilling to hazard a guess as to whether it was a number of months or years and continued to state that she didn't remember. It was put to the Applicant that at her interview she had claimed that her father had worked at the farm for a period of two months but then stated that he worked part time on the farm after that. When this was put to the Applicant, the Applicant claimed not to remember the period of time. This is not considered credible and it is considered that if the Applicant's father had worked on any such farm that the Applicant would be able to remember the approximate period of time he worked there given the circumstances she alleges."*

The fourth credibility finding

20. In the course of her section 11 interview and at oral hearing, the applicant gave evidence that after leaving Chegutu, she had returned there again in March 2009 This issue was addressed in the section 6 analysis in the following terms:-

*"The Applicant claims to have returned to Chegutu in March of 2009. It was put to the Applicant that in her Questionnaire she had made no reference to returning to Chegutu at this time. When this was put to the Applicant she claimed that she was just writing what she thought was important. She says she had no difficulties writing it but that she didn't think it was important. The Applicant was asked by the Tribunal as to how long she stayed there at this time and she claimed not to remember. The Applicant was asked as to whether it was one week or one month and she claimed not to remember. This is not considered credible and given the nature and amount of detail provided by the Applicant in her Questionnaire it is considered that she would have referred to any such return therein. It is considered that the Applicant would be able to provide some assistance when asked at Appeal as to the length of time she stayed there following her alleged return."*

The fifth credibility finding

21. The applicant's travel to Ireland was addressed as follows:-

*"The Applicant claims to have passed through Frankfurt, Germany on her way to Ireland. She says she changed planes there and boarded another plane to Ireland. The Applicant was asked as to whether she considered applying for asylum in Germany during the time she was there and she claimed not to know that she was in Germany at this time. She claimed not to have known that Frankfurt was in Germany at the time. She claimed not to know she was in a European Country at this time. She says she was there for approximately thirty minutes. This is not considered a credible explanation and it is not considered credible that the Applicant could pass through three international airports on her way to and from Germany and still not know what Country she was in."*

22. The Tribunal Member then stated:-

*"I have considered all of the documentation, Country of Origin information, grounds of appeal, submissions and case law relied on in support of this Applicant's claim. This information does not assist the Applicant in circumstances where her credibility is found wanting to such a degree that the very basis of her claim is not believed. In light of the*

*inconsistencies and credibility issues arising in this Applicant's account I do not believe that she ever experienced any difficulty as she alleges or has any fear of returning to her Country as she claims."*

#### The grounds of challenge

23. Six grounds of challenge were set out in the statement of grounds. In the course of oral submissions, the applicant's counsel distilled the grounds, as follows:-

- (i) The failure to consider the applicant's core claim;
- (ii) The Tribunal's unlawful assessment of the applicant's credibility, in particular the reliance on peripheral issues.
- (iii) The Tribunal's over reliance on what the applicant conveyed to the asylum authorities in her initial engagement with those authorities; and
- (iv) The Tribunal's failure to have regard to country of origin information which was before ORAC and the Tribunal

#### The applicant's submissions

24. There was no dispute but that the applicant was from Zimbabwe which was an important factor in this case. She had presented an identification card and a birth certificate.

25. It was submitted that the Tribunal Member failed to engage with or assess the applicant's core claim, namely that she would be persecuted in Zimbabwe on account of imputed political opinion and that she would be forced into marriage in Zimbabwe. There were three elements to her core claim. Firstly, she and her family were victims of Operation Murambatsvina as a result of which her home in Harare was destroyed and the applicant and her family split up and displaced. The scale of suffering caused by Operation Murambatsvina was well documented in country of origin information and was a cause of concern to the UN and NGOs. Almost every town and city in Zimbabwe had been affected. It had been alluded to in one report as "*a crime against humanity*". Secondly, the applicant's sojourns in Mutoko and Mutare were difficult because of the harassment she and her family experienced from Zanu PF and rural dwellers who accused the family of being "*sell-outs*" because they came from the city and were perceived as not supporting that party. Counsel submitted that those circumstances, namely the applicant's and her family's eviction from their home and the problems they subsequently experienced when they relocated were sufficient to merit consideration for refugee status. This was something that should have been addressed by the Tribunal Member given that the country of origin information which was before him documented and corroborated the applicant's claim. He was obliged to accept it or reject it, as the case may be, since it formed a basis of her claim and was elaborated on in the submission furnished to ORAC. However, the applicant's claim to have been the victim of Operation Murambatsvina was not even dealt with in the section 6 analysis. Thirdly, while in Chegutu, the applicant and her father were targeted by individuals associated with Zanu PF who raped the applicant and threatened her with forced marriage. While it was for the Tribunal Member to accept or reject those claims, the position was that the claims were not considered. There was just a general disbelief expressed by the Tribunal Member, yet everything the applicant had stated was consistent with country of origin information. Counsel emphasised that violent attacks by way of reprisals by Zanu PF against people who were seen as failing to support the party were commonplace in Zimbabwe. This was well documented and such information was contained in a report from Human Rights Watch which was before the Tribunal Member. That report stated, *inter alia*, :-

*"In the capital, Harare, Human Rights Watch documented incidents of reprisals, attacks by ZANU-PF supporters against people who did not go out and vote for Mugabe...several people told Human Rights Watch that in the early hours of June 28, ZANU-PF supporters went door to door, forcing people to show their fingers for signs of the indelible ink that shows that a person voted. ZANU-PF supporters took those who did not have ink on their fingers to ZANU-PF bases in the areas, and beat them with batons and thick sticks. Others were targeted because their names did not appear on a list compiled by ZANU-PF that showed who had voted in particular polling stations.*

*Zimbabweans told Human Rights Watch that at several polling stations in Harare they were forced to pass through unofficial stations set up by ZANU-PF outside polling booths, submit their names and details to ZANU-PF officials. They were given cards and ordered to write down the serial numbers on their ballot papers so that ZANU-PF officials could trace those who had voted for Mugabe and those who had not".*

26. An article from the Independent newspaper in June 2008 stated:-

*"A source inside the national electoral commission told the Independent that full details of polling patterns throughout the country had been handed to the ruling Zanu-PF party, allowing them to target ward by ward those who failed to vote for Robert Mugabe...With hundreds of torture victims already filling hospitals in Harare, Bulawayo and the rural areas, there is a two- to three- week lag between the officially documented toll and the real number of casualties.*

*'What we are seeing is probably 10 per cent of what has actually happened' said the doctor, who described the violence as the 'worst the country has witnessed', worse even than the atrocities committed during the war for liberation in the 1970s..."*

27. Counsel referred to a 2008 report from Amnesty International which stated, *inter alia*, :-

*"Supporters - or perceived supporters - of the MDC have been arbitrarily arrested and detained. The MDC claims that about 2000 of its members are in custody... 'War veterans' have set up informal 'bases' in rural and urban areas where they plan attacks against perceived MDC supporters. They conduct 're-education' sessions that include severely assaulting people suspected to be MDC supporters as a 'lesson' to others. Victims include women, children and the elderly."*

28. Counsel argued that the applicant's experiences in Chegutu, namely the rapes perpetrated against her and the threat to marry her off to a faith healer, were also capable of being supported by available country of origin information. In this regard, counsel referred to a report on political violence from IRIN News in July 2008, which stated, *inter alia*:-

*"Rape was being used as a 'deplorable' weapon against those perceived as not supporting ZANU-PF, and 'In many instances, the victims cannot remember the number of people who raped them but it is usually more than 20, and that increases the chances of infecting the victims with HIV/AIDS'.... 'the siege' by government supporters was an attempt to*

*change the political culture in rural areas, and rather than being dismantled, 'more labour camps were being established.'"*

Furthermore, a 2006 Report from the Immigration and Refugee Board of Canada documented incidences of forced marriage of young girls.

29. The submissions made to the Refugee Applications Commissioner on the applicant's behalf had requested the Commissioner to consider the applicant's claim in light of what she had experienced and the available objective country of origin information. Those submissions and the country information attached thereto had pointed to the existence of Operation Murambatsvina and the consequences for the victims thereof, the existence and prevalence of mistreatment and violence perpetrated by Zanu PF supporters towards people who are opposed to or who are otherwise not aligned to the party; the effectiveness of state protection in Zimbabwe, in particular the existence of corruption in the police force having regard to the specific facts and circumstances outlined by the applicant; the existence and prevalence of the forced marriage of young girls and women in Zimbabwe and the difficulties faced by Zimbabwean refugees in South Africa. The Commissioner (and the Tribunal) had been referred to a copious amount of country of origin information.

30. Counsel contended that none of the reasons given by the Tribunal Member for rejecting the applicant went to the crux of any of her claims. Counsel relied on the principles of Cooke J. in *I.R. v. The Minister for Justice, Equality and Law Reform* [2009] IEHC 353. The manner in which the Tribunal Member addressed the applicant's claim did not accord to the principles in *I.R.* or those set by MacEochaidh J. in *R.O. v. Min. for Justice & Ors* [2012] IEHC 573.

31. As far as the first credibility finding was concerned, it was not fair of the Tribunal Member to rely on minor inconsistencies, which may in fact not be inconsistencies. For the Tribunal Member to have placed such reliance on the ASY1 form/section 8 interview (a form filled out by officials) when it did not obviously contradict the applicant was wrong. The Tribunal Member was obliged to have regard to the contents of the questionnaire. Moreover, the Tribunal Member wrongly relied on the ASY1 form/section 8 interview over and above the extensive detail regarding the applicant's claim which had been furnished by her legal advisors. The court was referred to the judgment of MacEochaidh J. in *P.D. v. The Minister for Justice* (Unreported, High Court, 20th February 2015). In this regard also, particular reliance was placed on principles three and four of *I.R.* in the context of the Tribunal Member's failure to address the claim in the round and it was argued that the Tribunal Member did not adhere to principle five of *I.R.* in that the reasons the Tribunal Member drew from the facts of the applicant's case were not cogent reasons to reject her asylum claim.

32. With regard to the second credibility finding, the differences highlighted and relied on by the Tribunal Member vis a vis the name of the owner of the Chegutu farm were small, inconsequential differences regarding a first name and were at best peripheral and not relevant to the applicant's core claim yet no credence was given to this. The applicant had furnished an explanation for the mix-up in the name. Concerning this finding and indeed the third credibility finding, there was no reference in the analysis to the applicant's core claim to have been raped, the threat of forced marriage, to her father had been targeted by Zanu PF in connection with plans to take over the farm or to her claim to have been a victim of Operation Murambatsvina.

33. With regard to the fourth credibility finding, while acknowledging that the applicant had not referred in her questionnaire to the fact that she had returned to Chegutu in March 2009, counsel stated that it was difficult to see how this omission could be regarded as a basis for rejecting her core claim of having been evicted from her home in Harare and later the victim of rape and the threat of forced marriage.

34. With regard to the finding made in relation to the applicant's travel to Ireland (the fifth credibility finding), counsel relied on the dictum of Eagar J. in *B.A. (Nigeria). V. Refugee Appeals Tribunal* [2015] IEHC 76.

35. It was submitted that the reasons given by the Tribunal Member in the decision did not support his conclusion to reject the applicant's claim, as required by *Meadows v Minister for Justice Equality & Law Reform* [2010] IESC. None of the reasons given to reject the claim could sustain the Tribunal Member's conclusions even by standards set out in *O'Keefe v. An Bord Pleanala* [1993] IR. The jurisprudence of this court has repeatedly set out that the Tribunal Member has to have regard to the full picture and country of origin information and it was submitted that the Tribunal Member was obliged to start on the premises that an applicant was telling the truth.

#### The respondents' submissions

36. Counsel for the respondents argued that the Tribunal's decision rested entirely on the applicant's credibility and this was assessed by reference to paragraphs 38 and 47 of the UNHCR Handbook. Having conducted his analysis, the Tribunal Member found the applicant's credibility to be seriously wanting. Counsel submitted that the assessment of credibility was done in accordance with the principles set out in *I.R.* and conformed to the standard set out in *Meadows*.

37. The fact that the Refugee Legal Service had intervened at an early stage on the applicant's behalf represented no more than that the Refugee Legal Service started on the premise that the applicant was truthful. On the other hand, the Tribunal Member found her story to be incredible. It was submitted that as a well educated woman, the applicant would be aware of events documented in country of origin reports; therefore it would not be surprising that an asylum claim would be consistent with such reports. Counsel argued that this was not a case where the Tribunal Member failed to deal with the applicant's core claim.

38. It was submitted that the Tribunal Member lawfully arrived at a number of conclusions. The applicant's account of her father's status vis-à-vis the land was found to be wanting, yet the land issue was claimed by her as a basis of the treatment meted out to her. There were not just inconsistencies between what was set out in the ASY1/ section 8 interview and the applicant's questionnaire, inconsistencies were apparent throughout her section 11 interview as evidenced by Q. 129 thereof. Furthermore, the applicant had given a contradictory account of her and her family's movements, as evidenced by Qs. 87 – 89 and Q. 92 – 97 of the section 11 interview.

39. While the applicant's counsel requested this court to take note of the preparatory work done by the Refugee Legal Service prior to the section 11 interview and the information made available to the asylum authorities, it was surprising that there was no medical evidence to support the applicant's medical difficulties and the fact that she was under psychiatric care in Ireland. No psychiatric report was furnished. There was no evidence that the applicant was HIV positive as a result of the claimed rapes.

40. While acknowledging that he was largely confined to the Tribunal Member's analysis of the claim, counsel referred the court to the credibility findings which had been made by the Commissioner notwithstanding the detailed preparatory work undertaken by the RLS on the applicant's behalf. It was argued that what the Tribunal Member did in the present case was to look at the applicant's

credibility and then set out his reasons for his rejection of her credibility. There was no argument made that the Tribunal Member did not read the material which was placed before him or that he made material errors of fact. The argument advanced was that the Tribunal Member placed too much weight on the findings he made with regard to the applicant's credibility in order to reject her asylum claim. However, in accordance with the principles set out in *Meadows* and *O'Keefe*, if there was evidence on which the Tribunal Member could rely to reach the conclusion he did, this court cannot interfere with the decision. Notwithstanding the voluminous country of origin information documenting the situation in Zimbabwe, the Tribunal Member disputed the account given by the applicant. It was submitted that he was perfectly entitled to attach weight to her credibility in accordance with *O'Keefe* and *Meadows*. Even if this court disagreed with the credibility findings made by the Tribunal Member, it was precluded from interfering therewith, having regard to the law as set out in *O'Keefe* and *Meadows*.

41. It was submitted that the applicant's claim was properly assessed in accordance with principles 1, 2, 3, 4, 5, 6 and 8 of *I.R.*, in the context of the Tribunal Member having assessed the applicant at oral hearing. Counsel placed particular reliance on principle 8.

42. The Tribunal Member's analysis was directly connected to material aspects of the applicant's claim. The first and second reasons given by the Tribunal Member related to discrepancies in the applicant's account of the ownership of the land, a matter at the heart of her claim. As there was a material connection between the farm and the claim, the Tribunal Member was entitled to view the inconsistencies (including those at oral hearing) in her account as relevant. The Tribunal was entitled to find that no aspect of the claim supported the applicant's account either on a subjective or objective basis. It was not the law that country of origin information of itself can be sufficient, otherwise all asylum claims could simply rely on country of origin information.

43. The third credibility finding centered on the applicant's claimed inability to recall the period of time her father worked on the farm. Again, it was submitted that the Tribunal Member was entitled to come to the decision he did, the burden was on the applicant to prove her claim and there was no medical evidence adduced by her at the appeal stage (or before this court) to give credence to her inability to recall matters that had occurred as she claimed.

44. The fourth credibility finding arose because of the applicant's failure, prior to the section 11 stage, to say that she had returned to Chegutu in March 2009. This failure was addressed at interview and in the course of the oral hearing – the applicant was given an opportunity to respond. Thus, there was no breach of fair procedures. Accordingly, the Tribunal Member was entitled to draw the conclusion he did.

45. With regard to the fifth credibility finding, counsel submitted that the Tribunal Member was entitled to rely on his own common sense, in assessing the applicant's account of her travel to Ireland. This was an approach which has been endorsed by the High Court. It was entirely rational for the Tribunal Member to find that the applicant was not forthcoming in her explanations.

#### Considerations

##### *The credibility findings*

46. In *I.R.*, Cooke J. set the bar for the assessment of credibility, in articulating the following principles: :

*"1) The determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision-makers.*

*2) On judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice.*

*3) There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded.*

*4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.*

*5) A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.*

*6) The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.*

*7) A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.*

*8) When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person.*

*9) Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated.*

*10) Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached.*

47. In the view of this court, the starting point for review of the Tribunal Member's rejection of the applicant's credibility is to

consider that rejection having regard, in particular, to principles 4, 5 and 6 of *IR*, and of course bearing in mind principle 1, that it is not the function of this court to substitute its views on credibility for that of the Tribunal Member.

48. Apart altogether from the question whether the applicant's claim mandated an analysis of the copious country of origin information on file, the dictates of fairness required that the Tribunal Member consider the "full picture" when assessing the applicant's subjective credibility. The question to be determined is whether this was done in the present case.

49. Of the five credibility findings which led to a rejection of the applicant's claim for refugee status, two related directly to the ownership of the farm in Chegutu where the applicant claims she and her father took up residence in mid 2008 after her father secured a job there. The Tribunal Member deemed it not credible that a mistake could have occurred regarding the ownership of the farm as set out in the s.8 interview/ ASY1 Form, or that the applicant would have agreed to the s.8/ASY1 Form process attributing ownership of the farm to her father without correcting the record and ensuring that the ASY1 Form properly recorded her statement. It is a given that the applicant duly signed the ASY1 Form which, inter alia, provides that by signing an applicant confirms that the information provided "is correct". In the present case, the applicant's ASY1 Form recorded the s. 8 interview conducted with the applicant, as follows:

*"Applicant states she came to Ireland on a south Africa passport. Applicant states she bought it. Applicant states an immigration officer in Ireland took her passport.*

*Applicant states she was in south Africa while on her travel to Ireland. Applicant states she was trying to get a passport.*

*Subsidiary protection notice issued. Applicant states that she has never applied for asylum here or in any other country before.*

*Applicant states that the police and the Zanupf are after her. Applicant states that her father was staying on his farm and the zanupf war veterans came to take the farm off him. Applicant states that the zanupf said that her father was with the MDC.*

*Applicant states that her father wasn't a political man. Applicant states that the Zanupf war veterans burnet(sic) her home and raped her in front of her father. Applicant states that they said if her family and herself wanted to stay on the farm she had to marry traditional healer who was an old man. Applicant states that this man would of (sic) used her for rituals. Applicant states this all started around November of last year.*

*Applicant states in January she moved to a different part of Zimbabwe but the problem just followed her. Applicant states she moved to south Africa at the end of march but the place she was in didn't like Zimbabwe and she wasn't allowed to go out.*

*Applicant states she doesn't know what is happening to her family now.*

*Applicant would like a female caseworker at her section 11 interview."*

50. In the course of the s.11 interview, after, inter alia, being asked about her movements in Zimbabwe, the applicant was questioned as follows:

*"Q 92 Before your Dad began working on the farm did he live in Chegutu?*

*A Yes, from about April 2008.*

*Q 93 What did he do there?*

*A He was buying diamonds to sell.*

*Q 94 So when did he start working on the farm?*

*A Around July or August 2008.*

*Q 95 When did he stop working there?*

*A He worked there for about 2 months. He stopped working there around September.*

*Q 96 When did he start working on the farm again?*

*A After September he was just working part time.*

*Q 97 What was his job on the farm?*

*A He didn't have an exact job-he was like a labourer-everyday he would be told what he was going to do.*

*Q 98 What did your father work at when he lived in Harare?*

*A He owned an electronics business.*

*Q Between July or August and November did your father have any problems from anybody while he was on the farm?*

*A My father is a type of person who doesn't discuss anything. So he didn't tell me anything."*

51. Later in the interview, the contents of the ASY1 Form were raised with the applicant:

*"Q 110 At your Section 8 interview you stated your father was staying on his farm and the Zanu PF war veterans came to take the farm off him and that if you didn't marry the elderly man they would take the farm from him -however, this is not mentioned anywhere in your questionnaire or today- can you explain this?*

*A He was working on the farm he was not the owner of the farm.*

*Q111 So why did you say at your Section 8 interview that they wanted to take the farm from him. This is a different story than the one you gave in your questionnaire and today.*

*A I don't know, maybe I was confused and maybe I didn't read it. I tried to explain how it all happened in the questionnaire."*

The court notes that after providing her explanation for the discrepancy, there was no further engagement in the s. 11 interview as to who in fact owned the farm.

In her questionnaire, the applicant described how after the family's displacement from Harare and her and her father's various moves to Mukoto, Mutare, Murambinda and Chegutu, "[her] father got a job in Chegutu on a farm they called Downs farm."

The applicant went on to refer to the farm in the following terms: "Around November 2008 there was a rumour that the manager of the GMB (Grain Marketing Board wanted to take over the farm from Mr. Job Taylor..."

52. The summary of the applicant's evidence before the Tribunal recorded the applicant as stating, inter alia, : "She says she moved to Chegutu in 2008. She says she moved there with her father. She says her father was working on a farm there. She says she heard rumours that the directing manager of the Grain Marketing Board (GMB) wanted to take over the farm her father was working on", evidence which accorded with the applicant's questionnaire but which differed from what was recited in the ASY1 Form vis a vis ownership of the farm. The summary of the evidence given at the Tribunal hearing also recorded the applicant's claim to have been displaced by Operation Murambatsvina and her claim to have been raped in the presence of her father and threatened with forced marriage, claims which largely replicated what she had set out in her questionnaire and which had been maintained on her behalf by her legal advisers prior to the s.11 interview. The rapes and threat of forced marriage was also referred to in the ASY1 Form. In the submission furnished on 7 August 2009, her solicitor advised that "[t]he applicant instructs that, following her family's displacement as a result of Operation Murambatsvina, the difficulties they experienced in Mutare forced them to move again to Murambinda, in and around the beginning of 2008, shortly after which time she moved with her father to Chegutu, where he had procured a job on a farm," (emphasis added)The submission then went on to outline the applicant's claims of persecution in like terms to what she herself set out in the questionnaire.

53. It is the case that the discrepancy between the ASY1 Form and the applicant's later statements as to ownership of the farm exercised the mind of the Tribunal Member, as the referred to credibility findings demonstrate. The Tribunal decision records that during the hearing the applicant was asked to name the owner of the farm whom she initially named as a "Mr. Downs", "Mr. Downs Taylor". When it was put to her that in her questionnaire she had named the owner of the farm as "Mr. Job Taylor", she went on to claim that that was his name. She explained the inconsistency on the basis that "she was trying to forget things".

54. Of note to this court, with regard to the applicant's sequence of answers before the Tribunal is that she had previously mentioned the name "Downs" in her questionnaire when describing the farm where her father had obtained employment as "a farm they called Downs farm", before going on to refer to the Grain Marketing Board wanting to "take over the farm from Mr. Job Taylor."

55. In the first instance, I am satisfied that the Tribunal Member placed undue weight on the contents of the ASY1 Form in circumstances where in the manuscript which attached to her questionnaire the applicant ascribed ownership of the farm to a named individual and moreover clearly referenced her father's connection to the farm on the basis of his having obtained employment there after the series of movements from place to place which followed the family's claimed eviction from their home in Harare. In this circumstance the inconsistency with what was recorded in the ASY1 Form was unfairly weighted against the applicant. Taken as a whole, the applicant's questionnaire and the sequence of questions in the s. 11 interview, covering as they did claimed events from the time the applicant left Harare with her father and her and her father's sojourns in Mukoto, Mutare and Murambinda and eventual travel to Chegutu, were on the face of it at least largely inconsistent with the idea that her father could have been the owner of the farm. This should, as a matter of fairness, have caused the Tribunal Member not to place undue weight on these particular inconsistencies which in the view of this court related to a peripheral matter (the ownership of the land), absent any other compelling facet of incredibility inherent in the applicant's claim to have been persecuted. I do not agree with the respondent's counsel's submission that ownership of this land was at the heart of her claim. This contention was never advanced by the applicant, nor did the Tribunal Member, notwithstanding his erroneous reliance on the inconsistencies regarding the ownership of the farm, state as much. The heart of the applicant's claim related to her allegations of rape and the threat of forced marriage against a background of the applicant and her family having been forcibly displaced as a result of Operation Murambatsvina.

Over and above the foregoing, I accept the applicant's counsel's argument that primacy should have been afforded to the contents of the applicant's questionnaire over the s.8 interview/ASY1 given that the Refugee Act, 1996 (as amended) provides for a questionnaire to be completed by a protection applicant which, as the statute provides, constitutes the "basis of the investigation" at interview.

56. In the course of his judgment in *PD v Min. for Justice*, Maceodhaidh J states:

*"The section13 report states that "Details of the applicant's asylum application are set out in the ASY1 form, Questionnaire and section 11 interview record." Though this phrase appears in most if not all section 13 Reports it is not strictly accurate. The questionnaire may be described as the asylum application. The section 11 interview is not, strictly speaking, part of the asylum application. It forms part of the investigation of the application. The authorised officer directs the investigation and the interview under section 11. The reason I refer to this otherwise irrelevant inaccuracy is that the respondent places some emphasis on the difference between what the applicant said on the questionnaire and what was said at interview. The respondent seeks to argue that the applicant's true asylum claim was based on a fear of his family and the interview, it is said, reflects this fact. The applicant argues that the asylum claim was based on a fear of being prosecuted and jailed by state authorities as well as fear of his family as indicated in writing on the questionnaire. My view is that the claim for asylum is that which is expressed in the questionnaire. Elements of the claim may also come to light from the section 8 interview and from the section11 interview and from any other investigation carried out. The fact that part of a claim expressed in the questionnaire (which, it is recalled, is the prescribed form for the purposes of s.8(4) of the Act) finds no expression in the section 11 interview does not mean that it is not pursued by the applicant."*

57. Later in that judgment, he states:-

*"A review of the section 11 interview, which was conducted by the same authorised officer who wrote the section 13*



*report, indicates that the questions asked and the answers given dealt primarily with the circumstances in which he allegedly suffered from his family and sought to escape their negative attentions. However, the questionnaire, the statutory prescribed form by which one applies for asylum and in which an applicant is required by law to state why asylum is sought, indicates that the applicant seeks protection because criminal sanction allegedly applies to homosexuals in Malawi and Zimbabwe. There are references in the questionnaire (and in answers to questions posed in the s.11 interview) to persons being jailed for lengthy periods of time owing to their homosexuality and to the applicant's personal fear of being jailed. I have no hesitation in finding that the applicant's claim for refugee status was based upon a stated fear of being jailed and being sought by the police because he was gay. It must be recalled that he completed his questionnaire without legal assistance. It is hardly surprising that he did not mention the particular statutes (if they exist) which criminalise homosexuality in Zimbabwe and Malawi. It is perfectly clear that he said that persons were being jailed because they were gay and that the police were hunting down gay people. This can only mean that the applicant was saying that there is a legal regime in Zimbabwe and Malawi which creates criminal sanctions for gay people. In my view, the failure to acknowledge and investigate this aspect of the applicant's claim for asylum was unlawful. In order to assess the nature and consequences of the error, it is necessary to consider the rules governing the duty of investigation of asylum claims."*

58. While the present case is not on all fours with the particular issue that exercised MacEodhaigh J. in *PD*, I nevertheless concur with the view expressed by my learned colleague as to the primacy of the questionnaire and its contents as the starting point for the making of an asylum claim. Having said that, this court does not suggest that inconsistencies and or contradictions between what might be recorded in the s.8 interview/ASY1 Form and what is set out in the questionnaire are to be ignored or disregarded by a decision maker, rather each instance where a discrepancy or inconsistency occurs will have to be assessed on its merits, giving due regard to the nature of the particular inconsistency or contradiction in the overall context of the claim for asylum and giving due regard to the primacy of the questionnaire as the vehicle through which the protection applicant is afforded the opportunity to fully set out his or her claim for refugee status and the factual matters underlying that claim.

In all the circumstances, I am satisfied that the Tribunal Member in relying on the two aforementioned credibility findings as a basis to reject the applicant's claim for refugee status erred in law and acted unfairly such as to affect the decision in this case.

59. With regard to the third credibility finding, I am of the view that this particular finding was open to the Tribunal Member on the evidence. It was within the realm of reasonableness for him to contrast the detail the applicant was able to give in her questionnaire regarding the length of time her father spent on the farm with her lethargy in answering questions on this issue at the hearing.

60. The fourth credibility finding arose in circumstances where the applicant had apprised the s.11 interviewer that she last saw her father in March 2009 in Chegutu. Later in the interview, the following exchange took place:

*"Q129 If all your problems were in Chegutu why did you return there in March?*

*A Because I thought it was going to be all over. I had nowhere to live and nowhere to stay. I thought if I went there everything would be okay.*

*Q130 When you went back to Chegutu in March did anything happen to you?*

*A Those 4 men continued to harass me-they came to the house again.*

*Q131 Why is this not in your questionnaire or in your solicitor's letter?*

*A Telling the story is different to somebody asking questions."*

61. In the view of the court, it was not unreasonable for the Tribunal Member to conclude that given the level of detail she provided in her questionnaire that the applicant would have been expected to refer therein to having returned to Chegutu in March 2009 and that she would have some idea of the approximate amount of time she spent there in March 2009.

62. Similarly, the fifth credibility finding was open to the Tribunal Member on the evidence before him. While the applicant's counsel urged the court to adopt the approach of Eager J. in *B.A. (Nigeria) v. Refugee Appeals Tribunal*, [2015] IEHC 76, the court notes that the case was not made by the applicant that in her travel from South Africa to Ireland she was accompanied by an agent whom she relied on, which appears to have been the case in *B.A. (Nigeria)*. Thus, the Tribunal Member was entitled to take a common sense approach to the matter and conclude, effectively, and not unreasonably, that it was not credible that the applicant could have passed through three international airports on her way to and from Germany and not know what country she was in. That being said however, I concur with the opinion of Eager J. that the finding on the applicant's travel was at best a peripheral issue which of itself would not be sufficient to reject the applicant's claim for asylum status.

63. While the above three findings cannot be impugned, the issue is whether they served to undermine the applicant's credibility "to such degree that the very basis of her claim is not believed", as determined by the decision maker here. Even if one were to add back into the equation the two findings which this court has impugned for the reasons already stated, it remains the case that the Tribunal Member rejected the applicant's claim of having been raped and threatened with forced marriage on a relatively narrow and in part peripheral basis, and without embarking on an assessment of those claims in the context of the country of origin information which was before him. I now turn to this issue.

#### *Country of origin information*

64. A vast array of country of origin information was furnished by the applicant's solicitor in advance of the applicant's s.11 interview. The s.13 report did not however refer to any aspect of the country information. Much the same can be said for the approach adopted by the Tribunal. Yet, ground 2 of the Notice of Appeal referred the Tribunal, inter alia, to the Commissioner's alleged failings in this regard and to the country information which was attached to the submission made to ORAC on 7th August 2009.

65. The question to be addressed is whether there was information relevant to the applicant's claim which the decision maker should have considered in the context of the protection claim before him.

66. The first observation to be made is that none of the five credibility issues which exercised the mind of the Tribunal Member could be said to go to the crux of the applicant's claim, namely that she was a displaced person as a result of Operation Murambatsvina and later an alleged victim of persecution by persons she believed to be Zanu PF supporters, who she alleged perpetrated two rapes upon

her and subjected her to a threat of forced marriage.

67. In the view of the court there was relevant country of origin information put before the Tribunal Member which, at a minimum, had the potential to inform his thinking in the context of his consideration of the applicant's claim for refugee status and the credibility of that claim.

68. There was a considerable body of information documenting the use of Operation Murambatsvina and the plight of those affected as a result thereof. At the very least, this gave context to the applicant's account of her and her family's peripatetic lifestyle, quite apart altogether from the question whether the applicant could be entitled to refugee status having allegedly been a victim of this scheme. More importantly, in the context of the applicant's claim to have been persecuted through rape and the threat of forced marriage, the country of origin information clearly documented that such incidents were prevalent in Zimbabwe, as evidenced by the extracts already quoted in this Judgment where rape was referred to as a "*deplorable*" weapon used against those perceived as not supporting Zanu PF. Of note to this court was the 2008 Human Rights Report on Zimbabwe under the heading "*Women*" where, inter alia, it is stated that "*Police acted on reported rape cases not associated with political violence*" (emphasis added)

69. In her questionnaire, in the s.11 interview and in the course of her appeal hearing, the applicant referred to the negative response from the police when she reported the rapes. The applicant's claim in this regard was summed up in submission furnished to ORAC in August 2009:

*"The Applicant claims that the authorities in Zimbabwe were unwilling or unable to provide her with effective State protection..... stating...at question 25b [of the questionnaire] 'The police told me and my father to comply and to do whatever they were asking us or else we will lose[sic] our lives and the place were[sic] we call home. They warned us not to come to the police again.'*

Elsewhere on her Questionnaire the Applicant stated:

*'In the next morning we went to the police and reported but the police only told my father u know what they want. The police told us that we must comply and they told us if I want to live I had to give them what they wanted or else I will of which I did not understand wat [sic] it is they want. The police warned us not to come back to the station again only them will come after us if we don't comply.'*

70. According to the submission, the applicant claimed that the police flatly refused to assist telling her father "*Do you think you are above the law? Do you think you can change things? Do you know who you are dealing with?*" The police had also stated that "*my father had to comply with the requests*" and "*If you want you and your daughter to live, give them what they want.*"

71. The US department of State Report from 2008 stated that the "*Police were poorly trained and equipped, underpaid and corrupt... Security forces were rarely held accountable for abuses.*"

72. The Human Rights Watch Report of 14 January 2009 stated, inter alia, that "*Law enforcement agencies have subverted the rule of law. The police are responsible for widespread violations, including harassment, threats and violence against opposition supporters and human rights activists, as well as torture and other mistreatment. Police have routinely refused to take action against ZANU- PF supporters and militia implicated in political violence.*"

73. The court notes that the applicant claimed to have a well founded fear of persecution on the ground, inter alia, of imputed political opinion.

74. Other than the assertion that he "*considered*", inter alia, the country of origin information and that it "*[did] not assist the Applicant in circumstances where her credibility [was] found wanting..*", there is no indication on the face of the decision as to how the applicant's account of events was measured against the country information on file. At the very least, that information was capable of having an effect on the credibility assessment of the applicant, even taking into account the five frailties in her account, as identified by the Tribunal Member (two of which have in any event been impugned by this court). To my mind, the adverse credibility findings were not of so fundamental a nature that they negated the obligation on the Tribunal Member pursuant to reg. 5(1) of the European Communities (Eligibility for Protection) Regulations 2006 to take account of "*all relevant facts as they relate to the country of origin at the time of taking a decision...*" Thus, the content of the country information was required to be addressed by the Tribunal Member and to be weighed accordingly and to be seen to be done. There is however no such evidence on the face of the decision. While acknowledging that the determination of the protection applicant's credibility was entirely a matter for the Tribunal Member, the failure to properly assess her claim in the context of available country of origin information is such that it affects the Tribunal Member's conclusion that the applicant had not discharged the burden on her to establish that she was a refugee.

#### *Conclusion*

75. For all of the reasons set out above, and bearing in mind the cumulative nature of the findings to reject the applicant's claim, I find that the Tribunal Member rejection of the applicant's core claim is flawed to such extent as warrants intervention by this court.

76. I am satisfied to grant leave in this case. This being a telescoped hearing, I will grant an order of *certiorari* quashing the decision and make an order remitting the matter to the second named respondent for a *de novo* hearing before a different Tribunal Member.