

**THE HIGH COURT
JUDICIAL REVIEW**

[2021] IEHC 290

RECORD NO.: 2020/296JR

BETWEEN:

**RS AND BIS (A MINOR SUING BY HIS MOTHER
AND NEXT FRIEND RS)**

APPLICANTS

AND

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

RESPONDENTS

JUDGMENT of Ms Justice Tara Burns delivered on the 23rd April 2021.

General

1. The First Applicant is a national of Sierra Leone and the mother of the Second Applicant, who was born in Ireland. She is 28 years old. The First Applicant made an application within the State for international protection on 20 October 2016. She made an application for international protection on behalf of the Second Applicant, her son, on 21 December 2018. An International Protection Officer made a recommendation that the Applicants should not be granted a refugee or subsidiary protection declaration on 7 August 2019. The First Applicant appealed the negative recommendations to the First Respondent on 16 August 2019 who affirmed that negative recommendation.

The Protection Claim

2. The First Applicant claimed that her mother held a leadership role in the Bondo Womens' Society. Female genital mutilation (hereinafter referred to as "FGM") is promoted and practised by this Society. The First Applicant has not been subjected to this mutilation. She claimed that her mother had carried out this act on her older sister when she was a young child and that she had died as a result. Whilst her mother also wanted the Applicant to undergo this procedure, she did not impose her will upon her when she was a child because of the death of her other daughter.
3. The First Applicant married in 2013 and now has two children, one of whom is the Second Applicant. She opposes FGM, as does her husband.
4. The First Applicant's mother died in 2016. The First Applicant returned to her village to attend the traditional 40th day memorial service in respect of her mother. In her affidavit grounding these proceedings she avers that "following the death of my mother, tradition required the daughter to assume the mother's role in the society." The First Applicant further avers that having returned to her village for the memorial service she "was informed of her duty to both assume my mother's role and undergo FGM."
5. However, her application for international protection records a slightly different version of events which is of significance in terms of an argument aired before the Court.
6. In the application for international protection application, filed on her own behalf in December 2016, she sets out that the night after the 40th day ceremony, her mother's cousin, who also was a leader in the society, came to her lodgings and "explained that

before my mother passed away she told the society women that they should circumsize me and that I should take her place in their traditional Bondo Society". In another application for international protection questionnaire, filed by the First Applicant after the commencement of the International Protection Act 2015, she sets out a similar narrative of events, namely that on the night after the ceremony, her mother's cousin came to her lodgings and "explained that before my mother passed away she told the society women that they should circumsize me and that I should take her position in the traditional Bondo Society."

7. The First Applicant's narrative continues that she expressed her vehement opposition to this suggestion. Thereupon, the First Applicant was held against her will by these women in a remote location where it was intended that FGM would be carried out on her. However, she managed to escape with the assistance of her husband.
8. The Applicant feared that if she was returned to Sierra Leone, she would be killed by members of the Society in retaliation for her actions of refusing to undergo FGM and to take her Mother's position in the Bondo Society and/or that she would be subjected to FGM.

Country of Origin Information

9. In summary, the COI reveals that the practice of FGM is extensive in Sierra Leone. It is performed by Bondo societies "as part of ancient rituals designed to protect against evil spirits and regulate the passage of adolescents to womanhood". The practice of FGM forms part of the initiation ritual into a Bondo society.
10. The Respondent quoted a figure from the country of origin information before it to the effect that "[t]he World Health Organisation estimates that 88% of women in Sierra Leone between the ages of 15 and 49 have undergone FGM". Other Country of origin information from UNICEF indicates that nine in ten women and adolescent girls are subject to FGM. Whereas other COI (28 TOO MANY) referred to the following figures:-

"In Sierra Leone, the prevalence of FGM in women aged 15-49 is 89.6%. The Northern region has the highest prevalence, at 96.3%, and the Western the lowest at 75.6%. 40.2% of women aged 15-49 who have undergone FGM were cut between the ages of 10 and 14. 69.2% of women and 46.3% of men aged between 15-49 believe the practice should continue."

The COI emanating from this source also noted that "civil society expresses ongoing concern that the political focus remains on girls under 18 years of age, yet women of all ages continued to be at risk of FGM in Sierra Leone. Community pressure to be cut and conform to tradition remains deeply entrenched and it is argued that it is not a question of women giving consent to be cut; rather, they do not have a choice and face stigmatisation from society if they do not have FGM"

11. FGM is a legal practise in Sierra Leone, however a memorandum of agreement between the Soweis who practise FGM and the government requires that girls under eighteen

should not be initiated and that women eighteen and over should consent to the practise before initiation. The Bondo Societies are very hierarchical. Leadership is often hereditary and handed down from generation to generation.

12. A report in the Guardian newspaper from September 2016, recounts the story of a twenty eight year old women with a twelve year old son who was subjected to this procedure against her will.

Challenge to First Respondent's Decision

13. Leave to apply by way of Judicial Review for an order of certiorari of the decision of the First Respondent was granted by the High Court on 3 June 2020. The grounds of challenge to the decision, which have been argued before this Court, were that the decision on the individualised aspect of the Applicant's claim was made without cogent reasoning and failed to have proper regard to the COI. In the alternative it was argued that the determination that the Applicant was not at risk of being subjected to FGM, separate to her individualised claim, was irrational and failed to have regard to the COI.

The First Respondent's determination on the individualised aspect of the Applicant's claim

14. The First Respondent did not accept the Applicant's individualised claim: it did not accept that her mother was a leader in a Bondo Society and dismissed the other aspects of her story arising from that assertion. It stated:-

"42. The Tribunal finds the Appellant's claims that even though her mother was a leader in the Bondo group she did not insist on her undergoing FGM but instead had expressed her wish to her fellow leaders that FGM would be carried out on her daughter after her death is not credible. The Appellant stated that her mother's reluctance to insist/force the Appellant to undergo FGM was because her other (older) daughter had died as a young child from injuries she sustained from FGM. The Tribunal does not accept as credible that the Appellant's mother as a leader of the Bondo society would have allowed the Appellant to refuse to undergo FGM without significant opposition and argument from her and/or other leaders of the Bondo group and that her reluctance to insist on the Appellant undergoing FGM was out of a sense of loss/regret owing to the loss of her other daughter. The Tribunal finds that these claims are not credible.

43. The Tribunal does not accept as credible that the Appellant living in Sierra Leone, as a Christian, who has not undergone FGM and who professes to be opposed to FGM and the aims of the Bondo society would be selected by the Bondo society as a potential leader. The Appellant claims that her late mother in essence nominated her to succeed her as leader and that she wanted the other leaders to perform FGM on the Appellant as part of the initiation into the group. The Tribunal does not accept that the Appellant would be considered as a potential leader of the group as she has not undergone FGM (see report from Dr. Cotter) and she claims she was opposed to FGM. The Tribunal notes that COI supports the view that FGM is most usually carried out on children and younger women. The Tribunal does not accept

that the Appellant was therefore selected as a suitable potential leader of the Bondo group.”

44. As the Tribunal has already made a determination on the Appellant’s claims that her mother was a leader in the Bondo Society and that she was selected to succeed her as leader as not credible, the Tribunal accordingly finds there was no such motivation for an attack on the Appellant in the manner claimed by her or at all. The Appellant claims she was approached by a leader of the Bondo Society and told that she was to become a leader of the Bondo group and when she expressed her refusal she was then captured and held captive with the intention of performing FGM on her.

The Appellant claims she woke early the following morning but still had a bath even in the knowledge that the Bondo women would return to detain her. The Tribunal does not accept as credible that if the Appellant had a genuine and real fear of harm being carried out on her she would have taken a bath rather than make her get away/escape/hide from the Bondo group. The Tribunal finds the Appellant’s account of the claimed events lack motivation and cause and are not credible and are far-fetched.”

15. The Applicant challenges these findings on the basis that they are made without any cogent reasoning and without regard to the COI.
16. In an application for Judicial Review, it is not for this Court to substitute its view on the evidence for that of the First Respondent. Rather, this Court must determine whether the decision was arrived at in a lawful and proper manner, taking into account relevant considerations, discounting irrelevant considerations and coming to a rational and reasonable decision on the material before the decision maker.
17. As a starting point to a consideration of the other complaints which Counsel for the Applicants raise, it is asserted that the First Respondent erred in a material fact by stating that the First Applicant’s claim was that “her late mother in essence nominated her to succeed her as leader and that she wanted the other leaders to perform FGM on the [First Applicant] as part of the initiation into the group.” However, I fail to see how this can be asserted to be an error by the First Respondent in light of the First Applicant’s written account of her claim as contained in both of her application for refugee status questionnaires, which have been referred to earlier by the Court. While her affidavit for these proceedings asserts a different factual scenario regarding her becoming a leader of the Bondo Society, her narrative in the questionnaires accords with what the First Respondent states her claim to be.
18. It is correct, as submitted by Counsel for the Applicant, that the COI supports the contention that leadership of Bondo societies can be hereditary, which is not referred to by the First Respondent and it is also the case that having FGM performed is an act of initiation into the Society rather than a requirement of holding a leadership role. Nonetheless, in light of the Applicant’s claim as set out in her questionnaires, the

reasoning of the First Respondent in discounting the Applicant's particularised claim is not irrational and its findings on this issue were open to it to make.

Whether the Applicant was at risk of FGM aside from her individualised claim

19. Under the heading "Persecution", the First Respondent stated the following:-
- "52. Considering the Appellant is married Christian woman from Sierra Leone and having regard to COI, the Tribunal finds that there is no reasonable chance that if the Appellant was to return to Sierra Leone she would have a well-founded fear of persecution.
53. As to the Appellant's specific fear of FGM; the Tribunal finds that the Appellant is a married woman and has two children and is 26 years of age and COI does not support the claim that the Appellant would be targeted for FGM."
20. No further analysis is conducted by the First Respondent regarding the COI and the information emanating from it to the effect that FGM is an extremely widespread practise in Sierra Leone which is perpetrated on a vast amount of females, including adult women.
21. While assessment of the material before the First Respondent is a matter for the First Respondent alone to consider and weigh, the Court does not understand how the First Respondent came to this finding in light of the COI. Perhaps, it is a reasonable finding to make, but if so, the reasons for the finding have not been set out so that a pathway to the conclusion can be seen. Perhaps, it is an irrational finding to have made, but the Court is not a position to make that finding in lack of the failure by the First Respondent to explain the reasons for its terse finding.
22. At the hearing of this matter, the unhappy situation arose where Counsel for the Respondent was placed in the position of providing reasons for the decision and filling in what clearly were blanks in the reasoning process. In itself, this is an indication of insufficient reasons being provided by the First Respondent in respect of its findings at paragraph 52 and 53.
23. The COI clearly establishes that FGM is not confined to underage girls, nor to childless women, nor to women who consent to it and that its practise is extensive and can be forced. While a decision maker is not required to exhaustively discuss an applicant's claim or the evidence before it, no acknowledgement is made of this information. Accordingly, at a very minimum, a lack of reasons is established regarding these findings and perhaps an irrationality is established, although this is not possible to determine because of the lack of reasons.
24. Accordingly, while the Applicants' individualised claim has been dismissed as not credible, the issue of whether the First Applicant would face a well-founded fear or a real risk of serious harm if returned to Sierra Leone is tainted by the lack of reasons regarding the findings at paragraph 52 and 53.

25. I do not agree that I am bound by the judgment in *FU (Nigeria) v. Minister for Justice* [2016] IEHC 339, as submitted by Counsel of the Respondents. That case dealt with an applicant who accepted that she had told falsehoods regarding the basis of the international protection claim brought on behalf of her daughter. In the instant case, the Applicant's individualised claim was rejected by the First Respondent. However, there was no admission by the First Applicant that she told falsehoods. Furthermore, the determination in *FU* was based on an *ex tempore* judgment of the Supreme Court in *OAYA v. RAT*. However, *OAYA* determined that once the applicant's individualised claim was dismissed by the *RAT*, there was no other evidence in the case which raised the prospect of a real risk of harm for that applicant. Accordingly, there was no obligation on the *RAT* to consider this issue. Hardiman J delivering the *ex tempore* ruling of the Supreme Court stated:-

"What the country information from various sources does establish is that in parts of Nigeria a custom or practice of genitally mutilating female children. The nature of this custom is that it is "tribal and familial". There is no evidence, none whatever, in any of the international documents referred to which have considered the position in Nigeria, that a child or baby, Youruba or otherwise, is at risk of having FGM inflicted upon her by outsiders.

There is no evidence of any authority, state or non state, inflicting FGM on children whose families are opposed to the practise. That is a significant feature of the evidence and the information available to the court. That is an extremely important matter because if there were evidence that a child, regardless of her families' attitude was liable to have strangers inflict this on her well, then evidence of the prevalence of FGM might be a bar on returning any such child. But the evidence does not go that far and in fact goes in quite the opposite direction.

...

The court does not find it necessary to say that where a case is limited to a particular kind of allegation or source of fear and that is rejected it can never be necessary to go further especially in the case of a child."

26. The COI in the instant case establishes a far wider application of FGM in Sierra Leone. It establishes a very real and concerning situation for a woman in the First Applicant's age group, that she would be subjected to FGM, even if that woman has a child. In that scenario, it was incumbent on the First Respondent to properly assess whether the risk of serious harm arose for the Applicant on the basis of a full consideration of the COI. That did not occur in this case.
27. Accordingly, I will grant an order of Certiorari in respect of that aspect of the First Respondent's decision and remit the matter to another member of the First Respondent so that this issue can be reconsidered. I will make an order for costs in the Applicants favour as against the Respondents.