

**HIGH COURT  
JUDICIAL REVIEW  
IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS (TRAFFICKING) ACT  
2000 (AS AMENDED)**

[2020] IEHC 589  
**RECORD NO. 2019/764/JR**

**BETWEEN:**

**BA**

**APPLICANT**

**AND**

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

**RESPONDENTS**

**JUDGMENT of Ms Justice Tara Burns delivered on 20th day of November, 2020.**

**General**

1. The Applicant is a national of Nigeria. She asserts that she came to Ireland from the United Kingdom in 2014. She made a claim for international protection, within this jurisdiction, on 26 April 2016, on the basis of her fear that she would be killed by her ex-partner if she returned to Nigeria. She also asserted that she had been the victim of various sexual offences in Nigeria and she feared future attacks from her assailants.
2. The Applicant's application for international protection was denied by the IPO. She appealed to the First Respondent on 11 June 2018. A hearing was scheduled for 18 September 2018 but was adjourned as the Applicant required an interpreter and was distressed. A rescheduled hearing on 31 January 2019 was adjourned after the Applicant became unwell and an ambulance was called. Her appeal proceeded on a papers-only basis.
3. The First Respondent determined on 1 July 2019 that the Applicant should not be given refugee status or a subsidiary protection declaration.
4. Leave to apply for Judicial Review seeking an order of certiorari of the First Respondent's decision was granted by Humphreys J on 9 December 2019.

**The Protection Claim**

5. The Applicant claimed that, as a teenager, she had been raped by a group of men, and on a further two occasions, sexually assaulted by two different men. Her claim for asylum with respect to these claims was that she feared further attacks by her assailants, if she was returned to Nigeria.
6. While the First Respondent accepted that the Applicant had been the victim of rape and sexual assaults, it did not accept that she had a well-founded fear that, if returned to Nigeria, she would be subjected to harm from her assailants, in light of the time that had elapsed since these events had occurred without further incident taking place.
7. With respect to her claim regarding her ex-partner, the Applicant asserted that she had been in a relationship with a man who was a member of a fanatic extremist movement. When she became pregnant in 2010, her then partner organised for her to go on a

holiday to the United Kingdom. On entry, she was detained in the United Kingdom and had a miscarriage. Her ex-partner did not accept this story and believed that she had had an abortion. He threatened to kill her if she returned to Nigeria. The Applicant remained in the United Kingdom until 2014. During this time, her ex-partner threatened her over the phone. On one occasion he told her that he was in the United Kingdom and knew her location. The Applicant came to Ireland in 2014. She asserted that she had received more threatening phone calls from her ex-partner whilst in Ireland. She changed her phone number, but despite this, she had continued to receive calls from him. She came to the conclusion that he had obtained her number from her family, arising from which she cut off contact with them.

8. The First Respondent carefully considered the Applicant's evidence, noting some difficulties which arose. However, it ultimately accepted that the Applicant had received threats from her ex-partner arising from his belief that she had aborted their child. It further found that this ex-partner appeared "*intent on causing her harm as he has continued to threaten her in the years after her miscarriage in 2010*". The First Respondent found that there was a reasonable chance that if she were returned to Nigeria, she would face a well-founded fear of persecution from her ex-partner.
9. The First Respondent, then proceeded to determine whether the Applicant could rely on State protection from her ex-partner. It stated:-

*"[5.11] The Tribunal notes that a number of laws exist in Nigeria to protect women against violence and have been strengthened by the Violence Against Persons (Prohibition) Act 2015. However, COI indicates that the provisions of the VAPP Act are only applicable to the Federal Capital Territory. The Tribunal notes that the Appellant is located outside the Federal Capital Territory in Oyo State. According to COI, no laws of nationwide applicability criminalise gender-based violence and only the States of Cross, River, Ebonyl, Jigawa, and Lorgos had enacted domestic violence laws [See United States Department of State, 2016 Country Reports on Human Rights Practices – Nigeria]. The Tribunal notes that where such laws do exist they were often not effectively implemented in practice and there is widespread under reporting. COI also indicates that there is a reluctance amongst women to report abuse to the authorities. This is because the police are perceived as being reluctant to take violence against women seriously and pursue allegations.*

*[5.12] The Tribunal has considered the submitted COI, researched and compiled by the Refugee Documentation Centre of Ireland on 23 & 24 November 2017, entitled, information on the police in 2017 including; corruption; effectiveness; & training. The Tribunal accepts that the Nigerian police force has been criticised for corruption and human rights abuses, however in general, the Tribunal finds that the relevant COI listed at 2.21 and 2.22, indicates that the Nigerian authorities are willing and able to provide protection from non-state agents, albeit that women face greater difficulties in seeking and obtaining protection than men particularly for gender-based violence."*

10. Having regard to *GOB v. Minister for Justice, Equality and Law Reform* [2008] IEHC 229 and *DK v. Refugee Appeals Tribunal* [2006] 3 IR 368, the First Respondent proceeded at paragraph 5.15 of its decision:-

*"The Tribunal finds on the evidence before it, that state protection, while less than perfect, is available to the Appellant in respect of her asserted fear from her ex-partner, and that Nigeria as a whole does not lack a reasonably functioning police and criminal justice protection such that the Appellant requires international protection. On the evidence before it, and for the reasons given above, the Tribunal finds that state protection is available to the Appellant."*

And at paragraph 7.4 and 7.5

*"[7.4] Adopting the analysis of the facts and COI at section 5 above, the Tribunal finds that substantial grounds have been shown that the Appellant faces a real risk of torture or inhuman or degrading treatment or punishment in Nigeria from her ex partner.*

*[7.5] Adopting the analysis...above, the Tribunal finds state protection exists for the Appellant in relation to the real risk to her of torture or inhuman or degrading treatment or punishment in Nigeria."*

#### **Grounds for Judicial Review**

11. The Applicant submits that the First Respondent erred in its assessment that state protection was available to the Applicant and that it erred in its assessment of the Country of Origin Information.

#### **Well Founded Fear Finding**

12. At paragraph 5.8 of the First Respondent's decision it found *"that there is a reasonable chance that if she were to be returned to her country of origin she would face a well-founded fear of persecution from her ex-partner."* The First Respondent then proceeded to consider whether state protection was available to her.
13. Counsel for the Applicant submits that this was a finding of the First Respondent which necessitated a declaration of refugee status being granted to the Applicant. A convoluted argument was made that this finding, by the First Respondent, encapsulated an objective finding that the Applicant feared her ex-partner because state protection was not available to her and that accordingly, the sole determination to be made by the First Respondent was whether she was unwilling, because of this objectively justified fear, to return to Nigeria.
14. I cannot accept that interpretation of this finding of the First Respondent and do not follow the logic of the argument. Considering the decision as a whole, it is clear that what the First Respondent meant to convey is that in the absence of a finding by the First Respondent that state protection was available to her, the Applicant had a well-founded fear of persecution from her ex-partner. The First Respondent ordered its decision-making process in a logical fashion: initially determining whether a well-founded fear of

the Applicant being subjected to serious harm by her ex-partner existed, and then determining, on foot of the positive finding that it did exist, the question of whether state protection was available.

15. The impugned sentence cannot be interpreted as a finding that refugee status should be declared to the Applicant.

**State Protection**

16. Section 31 of the International Protection Act 2015 (hereinafter referred to as "the 2015 Act") states:-

*"(1) For the purposes of this Act, protection against persecution or serious harm can only be provided by-*

*(a) a state, ...*

*provided that they are willing and able to offer protection in accordance with subsection (2).*

- (2) Protection against persecution or serious harm-*

*(a) must be effective and of a non-temporary nature, and*

*(b) shall be regarded as being generally provided where-*

*(i) the actors referred to in paragraph (a)... of subsection (1) take reasonable steps to prevent the persecution or suffering of serious harm, and*

*(ii) the Applicant has access to such protection.*

- (4) The steps referred to in subsection (2)(b)(i) shall include the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm."*

17. In *GOB v. Minister for Justice, Equality and Law Reform* [2008] IEHC 229, Birmingham J stated at paragraph 28 of his judgment:-

*"I feel I must also have regard to the principle, accepted both domestically and internationally, that absent clear and convincing proof to the contrary, a state is to be presumed capable of protecting its citizens... There must be few police forces in the world against which some criticism could not be laid and in respect of which a trawl through the internet would fail to produce documents critical of their effectiveness and sceptical of their capacity to respond."*

18. *DK v. Refugee Appeals Tribunal* [2006] 3 IR 368, Herbert J stated at paragraph 19 of his judgment:-

*"[T]hat subject to such exceptional cases, the fact that the power of the State to provide protection to its national is a fundamental feature of sovereignty and, the*

*fact that the protection afforded by refugee status is "a surrogate coming into play where no alternative remains to the claimant, renders it both rational and just for a requested state to presume, unless the contrary is demonstrated by "clear and convincing proof" on the part of the Applicant for refugee status, that the state of origin is able and willing to provide protection to the Applicant from persecution, even if at a lesser level than the requested state."*

19. The First Respondent summarised the Country of Origin information before it, relating to state protection for women subjected to gender-based violence, as follows:-

*"[N]o laws of nationwide applicability criminalise gender-based violence and only [specified states] had enacted domestic violence laws. [W]here such laws do exist they were often not effectively implemented in practice and there is widespread under reporting. [T]here is a reluctance amongst women to report abuse to the authorities. This is because the police are perceived as being reluctant to take violence against women seriously and pursue allegations."*

20. The First Respondent then determined, on foot of that summary, that the *"Nigerian authorities are willing and able to provide protection from non-state agents, albeit that women face greater difficulties in seeking and obtaining protection than men particularly for gender-based violence."*

21. It is appropriate to set out the terms of the Country of Origin information which was considered and summarised by the First Respondent.

22. The *"United States Department of State, 2016 Country Reports on Human Rights Practices – Nigeria, 3 March 2017"* stated with respect to domestic violence:-

*"that there is no comprehensive law for combatting violence against women, and as a result, victims and survivors had little or no recourse to justice". It was also noted "Police often refuse to intervene in domestic disputes or blamed the victim for provoking the abuse. In rural areas courts and police were reluctant to intervene to protect women who formally accused their husbands of abuse if the level of alleged abuse did not exceed local customary norms."*

23. The *"Human Rights Watch, World Report 2017"*, stated:-

*"When reviewing Nigeria in July, the UN Committee on the Elimination of Discrimination against Woman expressed concerns regarding access to justice..., [and] gender based violence, including domestic violence."*

24. 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 appropriate manner, taking into account correct considerations and coming to a rational and reasonable decision on the material before the decision maker.

25. This court has difficulty with comprehending how the First Respondent determined that s. 31(1) and (2) of the 2015 Act have been met. On the basis of the Country of Origin Information material before the First Respondent, it is difficult to see how the First Respondent was satisfied that the Applicant could avail of effective state protection (s.31(2)(a)); that such protection was generally available (s.31(2)(b)); that the Nigerian state had taken reasonable steps to prevent serious harm from gender-based violence to women to include an effective legal system for the detection and prosecution of such gender-based violence (s. 31(2)(b)(i) and s.31(4)); and that the Applicant had access to such protection (s. 31(2)(b)(ii)). If matters ended there, it could be argued that I have simply come to a different conclusion to the First Respondent on the Country of Origin material and that I should not interfere by way of Judicial Review with the First Respondent's decision as I am simply transposing my view for that of the First Respondent.
26. However, I am of the view that the First Respondent erred in its assessment of the Country of Origin information before it as the finding it makes regarding state protection is not reflective of the summary of the Country of Origin Information which it had itself compiled. The Court fails to see how the First Respondent's summary of the Country of Origin information, which is negative regarding the existence of domestic protection laws in the Applicant's region, negative regarding the implementation of such laws, where they exist; and negative of police investigation into allegations of domestic violence, is reflected in a positive finding that the Nigerian authorities are willing to provide protection to women facing gender-based violence, although women may face greater difficulties seeking and obtaining protection. In light of its summary of the Country of Origin material, which is negative regarding state protection, it is irrational that it has come to the positive conclusion that state protection is available to the Applicant.
27. Counsel for the Respondent submitted that it cannot be the case but that the Nigerian authorities would take seriously a threat to kill the Applicant by her ex-partner. She sought to differentiate between a threat to kill and domestic violence and argued that the Country of Origin Information was only relevant with respect to domestic violence.
28. That argument does not find favour with the Court. Firstly, a threat to kill was not what the First Respondent was considering in relation to the question of whether state protection was available to the Applicant. While this is what the Applicant based her claim for protection on, the First Respondent considered whether the State authorities would protect her from serious harm. This was a correct approach, as violence against a women, particularly in a relationship setting, can encompass minor assaults to vicious fatal attacks. The appropriate question was whether the Applicant could rely on state protection against all serious physical attacks on her from her ex-partner rather than simply a threat to kill her.
29. While the First Respondent applied the presumption in favour of state protection being available to a country's citizens, it failed to consider whether the Country of Origin information before it comprised "*clear and convincing*" proof that the presumption was

rebutted. This, perhaps, is of no surprise in light of the irrational finding that it had made regarding the Country of Origin information. It seems to me that the summary of the Country of Origin information which it compiled should have been considered by it in terms of whether that material constituted clear and convincing proof that state protection was not available to the Applicant. The First Respondent never considered that material in the context of the presumption.

30. Accordingly, I am of the view that the First Respondent came to an irrational conclusion regarding the import of the Country of Origin material and having done that, it failed to measure the Country of Origin information against the presumption of state protection.
31. I therefore will grant the Applicant an order of certiorari in terms of paragraph 1 of the Notice of Motion and make an order for the Applicant's costs as against the Respondents.