

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

AND

THE INTERNATIONAL PROTECTION ACT 2015

BETWEEN:

NNM

APPLICANT

AND

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

RESPONDENTS

JUDGMENT of Ms Justice Burns delivered on the 18th day of November, 2020.

General

1. The Applicant is a citizen of South Africa and was born on 29 November 1998. She left South Africa on 6 March 2018 and arrived in the State on 7 March 2018, whereupon she applied for international protection. The Applicant claimed protection on the grounds that she was the victim of gender-based violence and threats, arising from her efforts to avoid an arranged marriage which her father was forcing her to partake in. It was asserted that her father was a local chief, and that he had arranged this marriage to the head of another family, who was much older than her. The purpose of the arranged marriage was to settle a dispute between the families. She left South Africa to avoid this forced marriage and claimed that she could not return as she would be subjected to severe punishment from her father for having run away. This was the second occasion that she had run away to avoid the proposed marriage.
2. The Applicant's claim for International Protection was refused at first instance by the International Protection Officer. She appealed that refusal to the First Respondent who also refused her application on 9 July 2019.
3. The First Respondent upheld the Applicant's credibility in relation to her protection claim. It accepted that the Applicant "*was chosen to partake in an arranged or forced marriage at the behest of her father who was a tribal leader, that she was subjected to an examination to establish her virginity and that she was subject to physical violence by her father when she expressed her unwillingness to partake in such a union*". The First Respondent also found that there was not adequate state protection in South Africa to assist the Applicant in her circumstances. However, her claim for protection was refused as the First Respondent reached the conclusion that internal relocation in South Africa was an option available to the Applicant.
4. Leave to bring Judicial Review proceedings seeking an order of certiorari quashing the decision of the First Respondent was granted by Humphreys J on 21 October 2019.

Grounds for Judicial Review

5. The grounds of the Applicant's claim relate solely to the First Respondent's decision that internal relocation is available to the Applicant. It is submitted that the First Respondent erred in law in coming to this conclusion; that its decision is unreasonable and irrational; and, that it failed to give adequate reasons for this decision.

Internal Relocation – The Law

6. Section 32 of the International Protection Act 2015 (hereinafter referred to as "the 2015 Act") provides:-

"(1) An international protection officer may recommend or, as the case may be, the Tribunal may decide, that an Applicant is not in need of international protection if in a part of the country of origin the Applicant—

(a) has—

(i) no well-founded fear of being persecuted or is not at real risk of suffering serious harm, or

(ii) access to protection against persecution or serious harm, and

(b) can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.

(2) An international protection officer or, as the case may be, the Tribunal, in examining whether an Applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with subsection (1), shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the Applicant in accordance with section 28.

(3) An international protection officer or, as the case may be, the Tribunal, in complying with this section, shall ensure that precise and up-to-date information is obtained from relevant sources, such as the High Commissioner and the European Asylum Support Office."

7. In *KD (Nigeria) v Refugee Appeals Tribunal* [2013] 1 IR 448, Harding Clarke J., formulated the relevant legal principles applicable to a decision of whether internal relocation is available to an Applicant. At paragraph 28 of its judgment, the Court stated:-

"(4) Localised risk: where it is accepted that an Applicant has a well founded fear of persecution for Convention reasons but that fear is localised and confined to a particular area, it is relevant to consider the possibility of internal relocation as an alternative to refugee status. In such cases, reg. 7(1) of the Protection Regulation requires the protection decision maker to identify (if only in general terms) a place or area within the country of origin where the risk of persecution does not exist and where the Applicant might reasonably be expected to stay. Security from persecution or serious harm and meaningful state protection in the proposed area of relocation are key.

- (5) *Where there is a well-founded fear of persecution and a general area has been identified as an alternative to refugee status then the protection decision maker must pose two questions: (i) is there a risk of persecution/serious harm in the proposed area of relocation? If not, (ii) would it be reasonable to expect the Applicant to stay in that place?*
- (6) *Absence of risk: where the persecution feared is of a general or public character, such as a religious or tribal conflict or oppression by a political regime which controls a particular region or city, it will be necessary to consult appropriate up-to-date COI to determine whether the risk of persecution or harm is genuinely absent from the proposed area of relocation. In such cases the decision maker must engage in a detailed and careful inquiry as to the general circumstances prevailing on the ground in the proposed area, in accordance with regulation 7(2).*
- (7) *If the persecution feared emanates from private or domestic actors, such as a threat from a particular family member, and a Convention nexus has been established, the protection decision maker must make an objective, common sense appraisal of the reality of whether the risk faced by the Applicant could be avoided by moving elsewhere, having regard to the Applicant's own evidence.*
- (8) *Reasonableness: It is not enough for the protection decision maker to determine that the risk of persecution is absent from the proposed area of relocation. He or she must go on to consider whether it would be reasonable to expect the Applicant to stay in that place, having regard to his or her personal circumstances and the general conditions prevailing on the ground, in accordance with reg. 7(2) of the Protection Regulations. The reasonableness assessment is not concerned with assertions such as "I won't know any one", but rather with matters of substance such as whether the Applicant is old, infirm, ill, has many small children or is without family support and other real issues.*
- (9) *The United Nations Rights Commissioner for Refugees' Guidelines on International Protection: Internal Flight or Relocation Alternative (2003) ("the UNHCR Guidelines") indicate that consideration should be accorded to whether the Applicant could lead a relatively normal life in the selected place of relocation without undue hardship, in the context of the country concerned. Unless there is objective evidence that the general circumstances prevailing in the proposed area are harsh - for example if the proposed area is the site of a conflict or a humanitarian crisis - there is in general no obligation to seek out a specific town or detailed information on economic and social conditions in the proposed location. However, if a specific objection is taken by the Applicant to the location, this objection must be examined.*
- (10) *Burden of proof: There is a shared burden of proof. The protection decision maker who accepts a well-founded fear of persecution but determines that refugee status is not appropriate because internal relocation is available must conduct a careful*

inquiry to identify a safe relocation area, having regard to up-to-date objective evidence about that area and also to the Applicant's own evidence in that regard.

- (11) *Fair procedures: As a matter of fair procedures the proposed safe area should be notified to, and discussed with, the Applicant to establish whether he/she could reasonably be expected to stay there. The Applicant is obliged to cooperate, to answer truthfully, to provide all relevant information available to him or her to determine the reasonableness of the relocation area and to provide information on any personal factors which would make it unreasonable or unduly harsh for him or her to relocate rather than being recognised as a refugee;*
- (12) *No State is obliged to consider the internal relocation alternative even when the Convention related persecution feared is confined to a particular part of the Applicant's State. States can recognise an asylum seeker as a refugee solely on the basis of the criteria under s. 2 of the Refugee Act 1996, without ever turning to the relocation alternative.*
- (13) *The threshold to be reached before internal relocation is considered is high. The Applicant would be recognised as a refugee but for the fact that he can safely relocate. The inquiry is commensurately careful."*

8. While the principles identified in KD relate to the regime in place before the 2015 Act, it is accepted by the respondent that they remain the governing principles with respect to s. 32 of the 2015 Act.
9. Applying these principles to the case at hand, there was an onus on the First Respondent to engage in a careful analysis as to whether internal relocation was an option available to the Applicant. This analysis required the First Respondent to determine whether it was reasonable to expect the Applicant to stay at the proposed location, having regard to her personal circumstances and the general conditions prevailing on the ground. A high threshold must be crossed before the First Respondent could be satisfied that this was a reasonable option for the Applicant in her particular circumstances.

The Decision on Internal Relocation

10. The following excerpt from the First Respondent's decision reflects the evidence of the Applicant from her s. 35 interview which the First Respondent took into account:-

"[4.48] The presenting officer put to the Appellant that given the size of South Africa it would be easy for her to relocate and not have her family interfere with her any further. The Appellant replied "in South Africa, how was I going to survive aside from prostitution".

[4.49] The Tribunal asked the Appellant whether she could relocate to Cape Town or Pretoria. The Appellant replied "South Africa has no jobs, I didn't have a CV, I knew if I lived in South Africa, I would be found. I wouldn't survive on my own". The Appellant added "I wouldn't get a job, it's expensive, "I wouldn't survive on the streets if I meet the wrong people, Nigerians (in South Africa) use girls as mules".

The tribunal asked the appellant whether she considered a woman's shelter. The appellant replied "no, I just had to get out of South Africa". In response to the prospect of relocation to Cape Town put to the Appellant by the Presenting Officer, she replied "I didn't have money, I didn't want to do prostitution".

11. The First Respondent raised its own enquiries with the Applicant regarding her employment prospects in Cape Town by letter dated 24 June 2019, which the Applicant responded to. The following is set out in the determination:-

"[4.50] The Tribunal notes that Cape Town has one of the lowest rates of unemployment in South Africa. By way of letter dated the 24th of June 2019, the Tribunal put this observation to the Appellant adding that such statistics would suggest that she would secure employment in that location and asked her whether she wished to comment on that. The appellant replied as follows:

Moving to any part of South Africa wasn't part my plans because I was scared they would find me and I would have no one in the streets, not to mention Cape Town, a city full of thugs and everything, if I were to look for a job I wasn't going to get any job in Cape Town because I have nothing, no experience in anything, the only thing I was going to get myself into was the wrong people, people who are going to influence me to sell my body to make quick money, I have no connections in Cape Town or any other provinces in South Africa. In South Africa if you don't have money then that's it for you. A lot of graduates are unemployed with degrees in South Africa because of lack of jobs in South Africa so how was I going to get the job even if I look for one with secondary school report? With all due respect, I never considered getting a job or staying in South Africa because I was running for my life."

12. As the First Respondent was obliged to do, it considered Country of Origin Information with respect to South Africa. It noted that Cape Town had one of the lowest rates of unemployment in South Africa. It is important to note what the exact Country of Origin information was regarding the unemployment rate in Cape Town. The information article in question, www.capetownetc.com, provides as follows:-

"Cape Town has been declared the city with the lowest unemployment rate in the whole of South Africa. The City of Cape Town announced that the Mother City's unemployment rate sits at 21.7% – a 1.5% decrease from the previous quarter and a 2.2% decrease on a year-on-year basis.

Figures from Statistics South Africa show that the formal sector currently has 1,285,791 employed Capetonians, while the informal sector has 170,089 individuals."

13. It is striking, that while Cape Town is noted as having the lowest unemployment rate in South Africa, the rate of unemployment is significantly high. This is not referred to by the First Respondent.

14. Having considered the Applicant's evidence and the aforementioned Country of Origin Information, the First Respondent determined as follows:-

"[5.18] Firstly, in terms of assessing Section 32(1)(a)(i) as to whether Cape Town would be a suitable location for the Appellant, the Tribunal notes the significant distance between Johannesburg and Cape Town which is 1,398km which would in turn put a substantial distance between the Appellant and her father. The tribunal also notes that Cape Town has a large urban population which would afford the Appellant greater anonymity. The Tribunal considers this substantial distance, the size of the city coupled with the fact that the Appellant mostly fears her father as opposed to larger groups of people of the police or other government agencies, make Cape Town a location where it would be highly unlikely that the Appellant's father would be able to locate her. Accordingly, the Tribunal does not consider the Appellant to be at real risk of suffering serious harm in Cape Town.

[5.19] Secondly, in terms of assessing Section 32(1)(b), the Appellant can safely and legally travel to and gain admittance to Cape Town. In terms of assessing whether or not it would be reasonable to expect the Appellant to settle in Cape Town, the Tribunal notes the Appellant's evidence that she has no money, does not have a CV and does not believe that she will secure work.

[5.20] The Tribunal notes that the Appellant has undergone 13 years of formal education. This level of education will enable her to create a CV and secure basic employment. The tribunal notes that Cape Town has one of the lowest rates of unemployment in South Africa which lends itself to the likelihood of the Appellant securing some form of gainful employment in that location which would obviate any fears she may have of falling into prostitution or exploitation by Nigerians.

[5.21] The presence of an internal relocation alternative means that the Appellant can return to her country of origin and is therefore not entitled to a declaration of refugee status."

15. While the First Respondent was of the view that the Applicant was likely to gain employment in Cape Town, it's determination in that regard was based on the fact that Cape Town has one of the lowest rates of unemployment in South Africa. There is a failure to have any regard or consideration to the very high level of unemployment. It is simply not considered. Having the lowest rate of unemployment is of little importance if the unemployment rate is in itself very high.

16. Further, there is no assessment of what supports would be in place for the Applicant, in terms of monetary state support or residential support, should she return to Cape Town. The Applicant's ability to survive without monetary support, any familial support and

perhaps residential support for even a very limited time, renders her future safe existence precarious and turns the vista of her becoming involved in prostitution into a real possibility.

17. Other Country of Origin information before the First Respondent was not referred to by it, although stated to be considered, when considering the Applicant's claim that she feared being forced into prostitution. The US Department of State 2017 Trafficking in Persons Report: South Africa, provides:-

"As reported over the past five years, South Africa is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking. South African children are recruited from poor rural areas to urban centres, such as Johannesburg, Cape Town, Durban, and Bloemfontein, where girls are subjected to sex trafficking and domestic servitude and boys are forced to work in street vending, food service, begging, criminal activities, and agriculture.... Local criminal rings organize child sex trafficking, while Russian and Bulgarian crime syndicates facilitate trafficking within the Cape Town commercial sex industry, and Thai and Chinese nationals organize the sex trafficking of Asian men and women. Nigerian syndicates dominate the commercial sex industry in several provinces. To a lesser extent, syndicates recruit South African women to Europe and Asia, where some are forced into prostitution, domestic servitude, or drug smuggling. Law enforcement reported traffickers employ forced drug use to coerce sex trafficking victims."

18. In light of the failure by the First Respondent to engage in any kind of analysis regarding State support for the Applicant, I fail to see how it could have come to the conclusion required by *KD* that it was reasonable to expect the Applicant to stay in Cape Town, having regard to her personal circumstances and the general conditions prevailing on the ground.
19. While Counsel for the Respondent submits that the First Respondent was entitled to have regard to the Applicant's resourcefulness in getting to Ireland, there is little connection between that scenario and returning to Cape Town: the Applicant arranged getting to Ireland from the safety of her grandmother's house over a period of time and managed to obtain money from her grandmother for the flight fare by pretending she needed this for school fees. Her situation in Cape Town would be very much different with no familial support to rely on, no family home to live in and nobody to give her any financial support. Aside from that, the First Respondent did not in any event refer to the Applicant's resourcefulness in getting to Ireland when considering whether relocation to Cape Town was reasonable for the Applicant. Accordingly, it is not appropriate that this is now relied upon before this Court in seeking to establish the lawfulness of the First Respondent's decision, as it is mere speculation that this was a factor in the First Respondent's decision.
20. In these circumstances, I am of the view that the First Respondent erred in its analysis of s. 32 of the Act of 2015 in the Applicant's circumstances and failed to correctly apply the

principals identified in *KD (Nigeria) v Refugee Appeals Tribunal* [2013] 1 IR 448. I am further of the view that the First Respondent's decision that internal relocation was available to the Applicant is irrational and unreasonable within the *Keegan* principles and that relevant matters were not considered or taken into account.

21. Accordingly, I will grant the Applicant the relief sought at paragraph 1 of the Notice of Motion and grant an Order of Certiorari quashing paragraphs 5.16 - 5.21 of the decision of the First Respondent. I will remit this portion of the First Respondent's decision back to it for its further determination. While the Applicant had sought an order quashing the entire decision of the First Respondent, I am not minded to do so in light of the fact that earlier significant determinations made in the Applicant's favour are not impugned.
22. In remitting this portion of the First Respondent's determination to it for re-determination, it is apt to note paragraph 13 of the principles enunciated by Harding-Clarke J in *KD* to the effect "*the threshold to be reached before internal relocation is considered is high. The Applicant would be recognised as a refugee but for the fact that he can safely relocate. The inquiry is commensurately careful*"
23. I will make an order for the Applicant's costs to include reserved costs as against the Respondents.