

**THE HIGH COURT  
JUDICIAL REVIEW**

[2021] IEHC 604  
**RECORD NO. 2020/150JR**

**BETWEEN**

**OIO, JKO (A PERSON OF UNSOUND MIND NOT SO FOUND) SUING BY HER HUSBAND AND NEXT FRIEND, OIO, EI (A MINOR) SUING BY HER FATHER AND NEXT FRIEND, OIO, EI (A MINOR) SUING BY HIS FATHER AND NEXT FRIEND, OIO, FOI (A MINOR) SUING BY HER FATHER AND NEXT FRIEND, OIO, AND BPCI (A MINOR) SUING BY HER FATHER AND NEXT FRIEND, OIO**

**APPLICANTS**

**-AND-**

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

**RESPONDENTS**

**JUDGMENT of Ms. Justice Tara Burns delivered on 23 September 2021**

**General**

1. The First and Second Applicants are the parents of the Third, Fourth, Fifth and Sixth Applicants. They are nationals of Nigeria who have sought international protection in the State. The First, Second, Third and Fourth Applicants arrived on tourist visas into the State on 22 September 2015. They overstayed their permission and subsequently claimed international protection on 14 October 2015. The Fourth and Fifth Applicants were born in this jurisdiction.
2. The Applicants' claim for asylum was based on an assertion that they feared persecution in Nigeria on the grounds of race and political opinion in circumstances where the Second Applicant had allegedly escaped baby smugglers, when she was pregnant with the Fifth Applicant, who were now pursuing the family.
3. The Applicants' application was made to and processed by the Office of the Refugee Applications Commissioner which, having found that the Applicants' claim lacked credibility, made a recommendation in December 2016 that they be refused refugee status.
4. The Applicants' subsidiary protection claim was assessed pursuant to the International Protection Act 2015 (hereinafter referred to as "the 2015 Act"). A hearing before an International Protection Officer (hereinafter referred to as an "IPO") had to be rescheduled arising from the murder of the Second Applicant's brother and her psychological reaction to his killing. In October 2017, an IPO also found that the Applicants' claim lacked credibility and made a recommendation that they be refused subsidiary protection.
5. An appeal of the Applicants' negative international protection recommendations was made to the First Respondent in November 2018.
6. As noted by the First Respondent in its decision, the Second Applicant presented before it, on 12 March 2018, in an apprehensive and disassociated state, such that she was unable to interact with or respond to questions put to her. The hearing before the First Respondent was adjourned on this occasion, and numerous further occasions, because of

the Second Applicant's inability to attend due to ongoing mental health difficulties. A medical report on behalf of the Second Applicant dated September 2018 indicated that she was "acutely unwell due to depression and PTSD." A Spirasi medical report dated July 2019 was forwarded to the First Respondent detailing her ongoing issues and the treatment she was receiving. It stated:-

"[The Applicant] is a severely traumatized woman who will need long term specialized support in order to recover from her experiences. It is the professional belief of Ms. Ogah's psychotherapists that the future of this woman's mental health currently is hanging in the balance."

7. Submissions made to the First Respondent prior to the oral hearing in respect of the First Applicant's appeal did not include representations regarding the mental health of the Second Applicant. A warning that the First Respondent was of the opinion that the Applicants were failing to co-operate with it had been issued in April 2019. An oral hearing relating to the First Applicant took place in October 2019, however the Second Applicant remained unable to engage with that process. Post hearing, submissions were made on behalf of the Applicants in December 2019 which related to the Second Applicant's mental health condition and referred to country of origin information (hereinafter referred to as "COI") regarding the treatment of persons with mental health illness in Nigeria.
8. On 21 January 2020, the First Respondent affirmed the first instance decisions and also recommended that the Applicants should be granted neither a refugee nor subsidiary protection declaration.
9. The Second Respondent refused the Applicants permission to remain following a s. 49(7) review on 27 February 2020.
10. Leave to apply by way of Judicial Review seeking an order of *Certiorari* of the decision of the First Respondent and the s. 49(4) decision following a s. 49(7) review was granted by the High Court on 27 May 2020 on the grounds that the First Respondent made material errors of fact; came to an irrational decision; and failed to give reasons for its decision with respect to the Second Applicant's claim regarding her mental health.

**Decision of the First Respondent Regarding the Second Applicant's Mental Health Representations**

11. In its decision, the First Respondent, having noted that the Second Applicant presented to it in March 2018, in an apprehensive and disassociated state, referred to the clinical assessment of the Second Applicant's mental health condition in the following manner:-

"From the overall clinical assessment submitted to the Tribunal it is clear that the Appellant presents with symptoms of PTSD, depression and anxiety, which may have affected her ability to provide coherent testimony throughout the process. The Tribunal notes however that in her interaction with these professionals the Appellant does not discuss or provide any information about any past events in Nigeria that related to her core claim, mentioning only, the death of her brother. In

the circumstances, the SPIRASI report does not say and is incapable of saying what the causes of this Appellant's psychological problems are."

12. Having considered the COI relating to the treatment of persons suffering from mental illness in Nigeria, the First Respondent made the following finding:-

"The COI indicates that there is considerable neglect of mental health issues and that treatment in Nigeria for those suffering with a mental illness is limited, that many Nigerians have misconceptions and misbeliefs about mental illness, and therefore stigmatize people with mental illness."

13. With respect to the asserted claim on the part of the Second Applicant that she was at a real risk of suffering discrimination and/or violence in Nigeria amounting to persecution because of her mental illness and/or of suffering persecution/serious harm by way of the denial to her of treatment for her condition, the First Respondent stated at paragraphs 122 to 126:-

"Denial of Medical Treatment

122. The Appellant did not provide any objective evidence to substantiate the claim made on her behalf that she would suffer a persecutory denial of medical treatment in Nigeria nor was it specified on what persecutory basis the said denial would occur. The COI submitted, paints a grim picture of conditions for those suffering severe mental illness in Nigeria, reporting how patients, *'are chained and locked up in various facilities where they face terrible abuse' where, 'in some cases, police arrest people with actual or perceived mental health conditions and send them to government-run rehabilitation centres. Once there, many are shackled with iron chains, around one or both ankles, to heavy objects or to other detainees, in some cases for months or years. They cannot leave, are often confined in overcrowded, unhygienic conditions, and are sometimes forced to sleep, eat, and defecate within the same confined place. Many are physically and emotionally abused as well as forced to take treatments.*

123. While such treatment is deplorable, the COI does not suggest that this form of treatment emanates from the State or that it is attributable to any policy taken by the Nigerian government, nor does the COI suggest that the Appellant would be denied medical treatment on a discriminatory basis at the hands of the government.

....

Discrimination – Non-State Actors

125. The Tribunal accepts that societal discrimination and stigma exists in Nigeria against those with mental health disabilities, whether it originates from fear, ignorance or prejudice. Unfortunately, that is also the case in many western societies. While persons with mental or physical disabilities often suffer from social

stigma, exploitation, and discrimination, not all persons with disabilities would face the level of risk required to establish well-founded fear of persecution.

126. Having carefully considered the medical evidence on file and the personal circumstances of the Appellant in particular, that she does not present with a noticeable mental disability and that she has the strong support of her husband, the Tribunal is satisfied that there is no reasonable degree of likelihood that she would suffer societal discrimination to such a level as to amount to persecution.”

14. In summary the First Respondent determined that the Second Applicant presented with symptoms of PTSD, depression and anxiety; that treatment in Nigeria for those suffering with mental illness is limited; that there is neglect of mental health issues in Nigeria; and that societal views regarding mental illness are poor. However, the First Respondent was of the opinion that the Applicant had failed to establish that she faced a real risk of persecution on the basis of suffering discrimination and/or violence because of her mental illness as she did not present as someone suffering from mental illness and she had the strong support of her husband. It also found that she had failed to establish a real risk of persecution by way of the denial to her of treatment.

#### **Respondents' Case**

15. The Respondents argue that regard must be had to the original baby stealing claim which had been made by the Applicants when they claimed international protection and the fact that that claim was fervently dismissed by the international protection bodies as incredible and completely lacking in credibility with glaring discrepancies between the Applicants' accounts. With respect to the Second Applicant's mental health claim, emphasis is placed by the Respondents on the fact that this claim only came to be pursued after the oral hearing. It is asserted that more recent substantiated evidence should have been produced before the First Respondent to be successful in this regard.
16. The difficulty with these arguments are that the First Respondent accepts that the Second Applicant suffers from mental health issues. Accordingly, criticisms of the Second Applicant's engagement with proposed treatment, or the failure to procure further updated medical evidence, or the fact that this claim was made late in the day is misplaced, as is reliance on the First Respondent's dismissal of the original baby stealing claim.
17. Having accepted that the Second Applicant suffers from mental health issues, the question of relevance for the First Respondent was whether the Second Applicant will face a real risk of persecution because she will be discriminated against or will suffer violence arising from her mental illness or whether she will suffer persecution by way of denial to her of treatment for her condition.
18. With respect to the question of denial of treatment to the Second Applicant in respect of her mental health condition, the First Respondent's decision in this regard has not been challenged. Furthermore, it's determination with respect to this issue was open to it to make.

19. However, with respect to the other claim made in relation to mental health, the First Respondent determined that because the Second Applicant does not present as someone with a mental illness, the possibility of discrimination or violence does not arise. However, that presupposes appropriate treatment being available to the Second Applicant to address her mental illness having regard to the fact that she previously presented before the First Respondent in a dissociated state. In determining that the Second Applicant has not established a real risk of a persecutory denial of medical treatment, the First Respondent has failed to have regard to the consequences of a lack of treatment for her in light of her accepted mental health condition, which is quite a different matter. The First Respondent has not properly considered the issues arising with respect to this part of the Second Applicant's claim regarding her mental health and has based its findings on an irrational conclusion in relation to her presentation which was not open to it to make.
20. Accordingly, I will make a partial order of *Certiorari* of the First Respondent's decision regarding the mental health issues of the Second Applicant and remit the matter to the First Respondent for further consideration. I will also make an order for the Applicants costs as against the Respondent.