CIVIL COURT – FIRST HALL

THE HON. MADAME JUSTICE MIRIAM HAYMAN

Sitting of today, Monday fourteen (14) of July, 2025

Application Number: 10/2016/2 MH

Number: 6

Clement Okoro
vs
Refugee Appeals Board

The Court;

Having seen **the application by Clement Okoro dated 11th February 2016** in front of the Administrative Review Tribunal by virtue of which he requested the said Tribunal to declare the decision by the Refugee Appeals Board dated 28th July 2015 - by means of which his request to be granted asylum was rejected - ultra vires, in the sense that it does not respect the principles of natural justice. The reason was that in his opinion, the Board adopted the line of least resistance in his regard with the consequence that a great injustice has been perpetrated

against him in a situation which is essentially a life-or-death situation. Consequently, Okoro requested the Tribunal-

(i) to order the Refugee Appeals Board to re-hear, in his presence duly assisted and in conformity with the principles of natural justice, the appeal lodged by him from the decision by the Refugee Commissioner regarding the granting of asylum;

(ii) grant him asylum or in default, subsidiary protection;

(iii) alternatively, apply the principle of non refoulement which prohibits Member States signatories to the European Convention from resending a refugee, including a failed asylum seeker, to his country of origin when the refugee does not want to go back because of a clear and founded fear of persecution, torture, inhuman treatment and/or physical violence towards him, or

(iv) if the Tribunal deems it appropriate in terms of justice and equity and in line with the right to a fair hearing in terms of Section 3(2)(a) of the Administrative Justice Act, uphold ope legis his appeal filed on the 10th July 2014 by either granting him asylum in terms of the Law or in

default, subsidiary protection and/or alternatively apply the principle of non refoulement.

With costs against the Refugee Appeals Board.

Having seen **the reply by the Refugee Appeals Board dated 7th March 2016** by virtue of which it raised the following pleas -

(i) the Tribunal must order the Applicant to declare in terms of which provisions of the Law he is filing these proceedings;

(ii) the Tribunal is not competent to decide and determine the requests put forth by the Applicant since the competent forum in this case is the Civil Court, First Hall;

(iii) if the Applicant is founding his requests on Section 469A of Chapter 12 of the Laws of Malta, then the Tribunal is most definitely not competent to decide and determine these proceedings since proceedings for judicial review in terms of the above-mentioned provision of the Law fall within the competence of the Civil Court, First Hall;

(iv) should it result that the Applicant is founding his requests on Section 469A of Chapter 12 of the Laws of Malta and should the Tribunal declare that it is competent to decide and determine the requests put forth by the Applicant, the Applicant's proceedings are time-barred since he submitted the same after the lapse of six months provided for in Section 496A of Chapter 12 of the Laws of Malta;

(v) the proceedings as put forth by the Applicant against the Refugee Appeals Board cannot so be put forth since the remedy in this case definitely does not involve suing the adjudicating authority; and

(vi) on the merits, the decision by the Refugee Appeals Board bearing number 3644A/14 is just and has been given in terms of Law and therefore must be upheld and confirmed.

Having seen **the decree of the Administrative Review Tribunal dated 14th July 2016** by virtue of which it decided that-

> *"For the above reasons the Tribunal, whilst reiterating that it is the Civil Court, First Hall in its ordinary jurisdiction which has the necessary jurisdiction to decide and determine the requests put forth by the Applicant, upholds the preliminary plea raised by the Refugee Appeals Board with regard to the lack of competence of the Tribunal to decide and determine the requests put forth by the Applicant and orders*

that the records of these proceedings be forthwith transmitted to the Secretary of the Administrative Review Tribunal so that the same can be transferred to the Civil Court, First Hall in its ordinary jurisdiction in terms of Law."

Having seen **the judgement by this Court dated 7th February 2020** by virtue of which it decided to uphold the preliminary pleas raised by defendant Refugee Appeals Board that the case instituted by applicant Clement Okoro is based on the provisions of Article 469A of Chapter 12 of the Laws of Malta and that the action is time-barred by the 6 month period imposed by that section. It abstained from taking cognisance of the remaining pleas and proceeded to reject the claims raised by applicant who also had to bear the costs of the case.

Having seen that applicant filed an appeal and by virtue of **judgement dated 30th April 2024**, the Court of Appeal revoked the said judgement and stated as follows-

"45. Ġialadarba l-azzjoni attriċi kellha titqies bħala azzjoni li taqa' taħt il kompetenza residwali tal-Qorti Ċivili u mhux bħala azzjoni taħt Artikolu 469A, jikkonsegwi illi l-azzjoni attriċi ma hix perenta.

46. Tilqa' għalhekk l-aggravji mressqa mill-Appellant.

Decide.

Għar-raġunijiet fuq mogħtija, din il-Qorti qiegħda tilqa' dan l-appell, tħassar is-sentenza appellata, u tibgħat l-atti lura quddiem l-Ewwel Qorti sabiex jitkompla s-smigħ tal-kawża mill-istadju li kienet meta ngħatat is sentenza appellata.

Fiċ-ċirkostanzi partikolari ta' dan il-każ l-ispejjeż ta' dan l-appell jibqgħu bla taxxa bejn il-partijiet."

Having seen all the evidence brought forward by the parties and the submissions made by their lawyers.

Having seen the acts of the proceedings of the Administrative Review Tribunal and the proceedings of the Court of Appeal.

Having seen that the case was adjourned for judgement for today.

Having seen all the other acts of the case.

Considered:

Following the rejection of his asylum application by the Refugee Appeals Board on the 28th July 2015, applicant is challenging it in a number of grounds as outlined in his application.

On the other hand, respondent Board is rejecting all claims as unfounded in fact and at law.

From the acts of the case, it transpires that:

1. Clement Okoro is a Nigerian who arrived in Malta via Libya in 2008. He requested refugee status. He claims that he was compelled to flee his country because he and his family were members of Massob, a political movement in Nigeria which was in conflict with the government. He recounted events which eventually led him to Malta;

2. By virtue of decision dated 28th July 2009 the Commissioner for Refugees rejected his application for refugee status. The motivation was that Okoro was deemed not to have provided *"evidence of a well founded fear of persecution according to the 1951 Geneva Convention";*

3. Okoro filed an appeal in front of the Refugee Appeals Board. His appeal was rejected by a decision dated 30th May 2011 which stated that the said Board *"has viewed your appeal, the written submissions by your appointed legal aid, as well as all documents found in your file. The Board of Appeal ... rejects your appeal on the basis that you have failed to provide convincing evidence that you ever faced or risk facing a well-founded fear of persecution according to the refugee definition in your alleged country of origin as well as your country of habitual residence.";*

4. On the 10th September 2013, Okoro filed a "Subsequent Application" for refugee status in terms of article 7A of Chapter 420. By virtue of decision dated 21st June 2014, the Commissioner for Refugees rejected this application stating as follows–

> *"This refers to your reapplication for recognition of refugee status in Malta because you claim that in Nigeria you were a member of the Massob. You provided the Office with new evidence. These consisted of a tee shirt, three books, two newspapers, copies of two documents (A police warrent for IC's arrest, and a Massob reference letter), and a maltese police report stating that IC walet and documents were stolen from your car on the 20th Mary 2013. The Office of the Refugee Commissioner is of the opinion that you failed to support the above mentioned claim with convincing evidence, there is no reason to believe that this claim of yours (a) qualifies you for refugee status according to the 1951 Geneva Convention; (b) would lead to you risking facing a real risk of suffering serious harm as defined in the Refugee Act Chapter 420 and the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationas or stateless persons as refugees or as persons who otherwise need international protection. The Office of the Refugee Commissioner is of the opinion that you did not provide evidence of a well-founded fear of persecution in your country of origin according to the 1951 Geneva Convention. Considering the above, it is the opinion of the Office of the Refugee Commissioner that you do not fulfil the criteria for recognition of refugee status. The Office of the Refugee Commissioner is also of the opinion that you do not qualify to be recommended for subsidiary protection according to the Refugees Act."*

5. Applicant appealed this decision on the 11th July 2014 in front of the Refugee Appeals Board. By virtue of decision dated 28th July 2015, the said Board rejected the appeal stating that -

"At appellate stage, appellant filed an affidavit and several documents along with his appeal to show his affiliations with the Massob, and to prove that he's a wanted person in Nigeria. It appears that the documents attached with the affidavit had already been filed when the Refugee Commissioner made his recommendation, because there's reference to them in such recommendation. Indeed the recommendation was based on an analysis of such documents, in that it rejected their veracity, because the documents were not in original copy, and because of a number of other reservations enlisted at the end of paragraph three (3) of the recommendation, with which this Board fully concurs.

The Board is of the opinion therefore that through the documents presented in the subsequent application, appellant did not adequately prove that he faces a real risk of persecution in terms of the law."

6. As a result of this refusal, Okoro filed a case against the Board on the 11th February 2016 in front of the Administrative Review Tribunal. The details of the application and the subsequent developments have already been outlined above.

Considered:

That this judgement was intended by parties to be a final judgement concerning the very roots and merits of the case. This is well addressed in their final note of submissions.

However, the Court is obliged to refer to the preliminary plea raised by the defendant Board which states that–

"Illi in linea peliminari wkoll, din il-kawża hija mproponibbli fil-konfront tal-Bord tal-Appelli dwar ir-Rifuġjati stante li r-rimedju tal-parti li tħossha aggravata żgur mhuwhiex li tħarrek lill-awtorita'."

The Court makes reference to the case **Sadek Mussa Abdalla vs Bord tal-Appelli dwar ir-Rifuġjati u l-Avukat Ġenerali decided on the 22nd October 2013** wherein a similar plea was raised, namely that the defendant Board has no legal standing as defendant. The following was stated-

"Regarding the first preliminary plea as to whether the Board is a proper defendant to the plaintiff's action, the main drift of the defendants' argument relies on the fact that, in an action for review, the adjudicating tribunal or board which pronounce or hand down a decision is not itself either actionable nor is it a proper defendant. Defendants rely on case-law to buttress their argument;

Plaintiff counters by stating that the remedy he is seeking makes it imperative that he cites the quasi-judicial organ which handed down the very decision which he now seeks to have this Court review. He furthermore argues that the law of procedure has not been rendered any clearer by the introduction of the special provisions on representation of the Government and organs of State in 1995 as to who shall be deemed to be representative of the State as regards boards or other quasi-judicial organs. He, therefore, holds that the Board is indeed a proper defendant and supplements his argument by quoting English judgments;

The Court understands that the plea under review does not purport to deny its competence in reviewing any decision of the defendant Board: what the plea raises in the issue of whether the Board itself can be sued in an action of review of this kind, in other words, whether it is a proper defendant in the type of action filed by the plaintiff. As to the former, the Court would not hesitate to state that such a plea is unfounded; as to the latter, it is very arguable. In this present case, the plaintiff would be excused to argue that, unlike the situation in the vast majority of cases, the proceedings before the Board are not "adversarial", in the sense that the issue or matter is not a contention between two or more

parties to the case. In proceedings before the Board, there is no "adversary" to the applicant for refugee status or any other subsidiary status. But this should not be a criterion on the correctness or legitimacy of suing an adjudicating or quasi-judicial tribunal directly in an action of review;

The Court finds that the plea is well-founded, in so far as the Board's locus standi is concerned. Although plaintiff is impugning the defendant Board's decision, the Board itself cannot be cited as defendant in such an action. The Board – in its function as a quasi-judicial tribunal – enjoys the same protection accorded to ordinary courts in accounting for the exercise of their judicial functions, unless it can be shown that such tribunal or board has acted in a fraudulent manner. This is not to say that the exercise of those functions is not subject to judicial scrutiny: it means that those tribunals themselves may not be cited in proceedings. This protection is extended to the persons who sit on such tribunals, although in certain cases this immunity is lifted where it transpires that they have acted in breach of the procedures set up at law for that particular tribunal, or where such person has acted in a discriminatory manner or where the actions of such person amount to a breach of the aggrieved party's fundamental rights. The reasoning behind such an immunity lies in guaranteeing the independence they require to exercise their judicial functions, rather than in providing them with a preferential privilege. This means that for an action of judicial review relating to a decision of such an administrative tribunal or quasi-judicial board, the action has to be filed against the proper person whom the State has ordained to stand in its name in judgment in similar cases. This person is, in terms of Maltese Law, the other defendant in this case, namely the Attorney General;

This position has persisted even after the introduction in 1995 of the procedural provisions relating to judicial representation in matters of judicial review of quasi judicial tribunals and the application of this principle has received consistent judicial backing without fail;

The Court is not convinced of plaintiff's argument in this regard, and the fact that in some cases involving refugees the plea was not raised by and cases proceeded against the defendant Board does not overrule a procedural rule that has to date stood the test of time. This is so because the issue of the proper defendant in litigation is a matter of public policy and is a plea peremptory of the action, may be raised at any stage of the proceedings (even at an appellate stage) and could be raised by the Court of its own motion (ex ufficio);

However, the fact that plaintiff's action cannot proceed against the Board shall in no way impair its validity against the Attorney General as the other defendant. As a matter of fact, in no part of the submissions did the Attorney General raise the argument that he, too, was non-suited. The provisions of article 181B of the Code of Organisation and Civil Procedure would, in any case, have made short shrift of any such argument, had it been raised;

For the above-mentioned reasons, the Court upholds the defendant Board's first plea and declares the said Board to be non-suited to stand as defendant in plaintiff's action. But holds that the action for review may proceed against the other defendant the Attorney General as a proper defendant;"

Moreover, in the case **Wasim Rakib vs Bord tal-Appelli dwar ir-Rifugjati et decided on the 28th February 2017** the Court said the following in connection with the Board in question-

"Ghandu jinghad mal-ewwel, li kif gustament osservat mill-attur permezz tan-nota tieghu, tal-10 ta' Marzu, 2016, huwa meqjus li l-Avukat Generali huwa legittimu kontradittur f'din il-kawza. Jigi rilevat illi l-Bord li ddecieda l-applikazzjoni ghall-azil tal-attur, fil-funzjonijiet tieghu ta' tribunal kwazi gudizzjarju, igawdi mill-istess protezzjoni bhall-qrati ordinarji fl-ezercizzju tal-qadi taghhom. Dan ma jfissirx illi l istess Bord ma jistax ikun suggett ghal stharrig gudizzjarju ghall-imgieba jew id-decizjoni tieghu, izda li l-Bord innifsu, ma jistax jigi citat fi proceduri gudizzjarji. Il-fatt illi l-kawza m'hijiex proponibbli fil-konfront tal-Bord ifisser, li din ghandha ssir fil konfront tal-konvenut Avukat Generali, u dan proprju in vista ta' dak li jipprovdi l artikolu 181B tal-Kodici ta' Organizzazzjoni u Procedura Civili, li fis-subartikolu (2) tieghu jipprovdi illi:

L-Avukat Generali jirrapprezenta lill-Gvern f'dawk l-atti u l-azzjonijiet gudizzjarji li minhabba n-natura tat-talba ma jkunux jistghu jigu diretti kontra xi wiehed jew aktar mill-kapijiet tad-dipartimenti l-ohra tal-Gvern."

In the light of the above the Court concludes that the preliminary plea raised by defendants that the Refugee Appeals Board is non-suited in the present case is justified and it will therefore be upheld.

Having said that, notwithstanding the fact that the said Board is the only defendant in this case, it does not mean that the case will be thrown out by the Court. **Article 961 of Chapter 12 of the Laws of Malta** states that-

> *"A third party may also, by decree of the court, at any stage of the proceedings before the judgment, be joined in any suit pending between other parties in a court of first instance, whether upon the demand of either of such parties, or without any such demand."*

The Court at this stage however cannot but express its disappointment as to the inertia shown by applicant in this respect. Notwithstanding the fact that this preliminary plea was raised in the reply of the Board of the 7th March 2016, applicant never took any action to remedy the situation in the light of the crystal clear jurisprudence. As was stated in the case **Zammit & Cachia Limited vs Hix Limited decided on the 17th February 2003**–

> *"Ghax kif ragunat ghalkemm "hu veru li l-Qorti ghandha d-dritt sua sponte tordna l-kjamata izda tali dritt ma jistax jitqies xi obbligu fuqha li thares hi l-interessi tal-kontendenti". ("Emanuel Abela –vs- Perit Arkitett Fred Valentino et ", Appell, 4 ta' Dicembru 1998)."*

Having said that and in the best interest of justice and economy of the proceedings, the Court will proceed to apply its powers to order the joinder of a third party as defendant in the case.

Article 181B of Chapter 12 of the Laws of Malta states that-

> *"(1) The judicial representation of the Government in judicial acts and actions shall vest in the head of the government department in whose charge the matter in dispute falls:Provided that, without prejudice to the provisions of this article:*
>
> *(a) actions for the collection of amounts due to Government may in all cases be instituted by the Accountant General;*
>
> *(b) actions involving questions relating to Government employment or to obligations to serve Government may in all cases be instituted by the Principal Permanent Secretary;*
>
> *c) actions relating to contracts of supplies or of works with Government may in all cases be instituted by the Director of Contracts.*
>
> *(2) The State Advocate shall represent Government in all judicial acts and actions which owing to the nature of the claim may not be directed against one or more heads of other government departments."*

By virtue of article 181B (2) of the said Act, the Court deems that the State Advocate should join the case as defendant instead.

For the above reasons the Court decides–

1. **To uphold the preliminary plea of defendant Refugee Appeals Board and declare that it is non-suited to stand as defendant in the case.**

2. **To order that the State Advocate joins the case as defendant instead.**

3. **The costs for the said joinder shall be borne by applicant.**

Hon. Miriam Hayman LL.D.
Judge

Rita Falzon
Deputy Registrar