

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

[2025] IEHC 89

Record No. 2023/79JR

BETWEEN/

**A.S., B.S. (A MINOR SUING THROUGH HIS MOTHER AND NEXT FRIEND A.S.),
C.S. (A MINOR SUING THROUGH HER MOTHER AND NEXT FRIEND A.S.), D.S.
(A MINOR SUING THROUGH HER MOTHER AND NEXT FRIEND A.S.) AND E.S.
(A MINOR SUING THROUGH HIS MOTHER AND NEXT FRIEND A.S.)**

APPLICANTS

AND

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

RESPONDENTS

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 13th day of February 2025

INTRODUCTION

1. By order dated 6th March 2023, the High Court (Meenan J.) granted the applicants leave to apply, by way of judicial review, for an order of *certiorari* quashing the decision of the International Protection Appeals Tribunal (“the IPAT”) dated 4th January 2023 affirming the recommendations of the International Protection Officer (“the IPO”) that the applicants not be granted international protection.
2. By order dated 13th October 2023, the High Court (Hyland J.) granted the applicants liberty to file an amended Statement of Grounds.
3. The applicants’ amended Statement of Grounds were date stamped on 18th October 2023. Mr. Stephen Kirwan’s affidavit in compliance with Practice Direction HC81 was sworn on 31st January 2023. The first named applicant’s verifying affidavit was sworn on 11th July 2024. The State respondent’s amended Statement of Opposition is dated 7th September 2023.

Background

4. The applicants are Nigerian citizens who have applied for international protection and/or subsidiary protection in Ireland. The second to fifth named applicants are minors and are seeking relief through their mother and next friend, the first named applicant.
5. The following are matters which are alleged by the first named applicant in setting out the grounds and reliefs claimed in the amended Statement of Grounds:

- (a) The first named applicant was born on 21st January 1985 and converted to Islam, and is ethnically Yoruba. The applicant and her husband married on 30th May 2009 and had three children born in Nigeria on 23rd June 2009, 10th November 2011 and 13th January 2016, *i.e.*, the second, third and fourth named applicants;
- (b) On 20th October 2020, the first named applicant's husband left the family home at an address which is set out, and attended the Lekki Toll Gates protest. During that demonstration, it is alleged that State forces opened fire on unarmed demonstrators. The first named applicant's husband recorded these events on his mobile telephone;
- (c) The first named applicant's husband did not return home that evening and, two days later, on 22nd October 2020, soldiers came to their dwelling searching for her husband and seeking to secure the footage which he had recorded. It is alleged that soldiers pushed the children around, put guns to the children's heads, threatened the family and searched the property;
- (d) The first named applicant fled to a friend's house and arranged with her husband for her and their three children to leave the country, fearing further persecution and death for her and her children if they remained. Her husband remained, in hiding, on the African continent. The first named applicant has had no contact from her husband since shortly after her arrival in Ireland;
- (e) The first named applicant arrived in Ireland on 11th December 2020. On 1st March 2021, she gave birth to their fourth child (the fifth named applicant) in Dublin.

6. As just set out, the first named applicant's verifying affidavit was sworn on 11th July 2024. She is a Muslim and Yoruba lady, born in Nigeria on 21st January 1985. She says she was educated to secondary school level and worked as a clerical officer in a local government office in Lagos, Nigeria from November 2006 to November 2020. She said she married her husband on 30th May 2009 in a court wedding, and that she had converted to Islam from Christianity in the same month.
7. She avers as to the birth of their children and sets out their dates of birth.
8. She states, as set out in the course of her protection claim before the IPO and the IPAT, that on 20th October 2020, her husband left the family home (with the address given) and attended the Lekki Toll Gates protest. She says that, during the course of that demonstration, the State forces opened fire on unarmed demonstrators and her husband recorded these events on his phone.
9. She states that her husband did not return home that evening and that he called her the next day to inform her of what happened at the protest and that the police and/or army were pursuing him for the footage that he had recorded. She was pregnant at the time and gives more details of the search of their home by soldiers on 22nd October 2020 and following this she states that she stayed with a friend until she left the country on 27th November 2020 with her children and eventually arrived in Dublin on 11th December 2020 via Manchester and Belfast (during the Covid-19 pandemic). She gave birth to their fourth child, a boy, in Ireland on 1st March 2021.

10. In her affidavit, the first named applicant states that she has had limited contact with her husband and her last contact with him was in a call over 'Messenger' in May 2021. She states that during this call he informed her that he no longer had the videos of the incident on his telephone and that she no longer knew how to contact him as his old contact details no longer worked. (These matters are addressed in more detail later in this judgment).

11. On foot of the first named applicant's initial application for international protection on 10th March 2021 (completed section 13(2) interview on 10th March 2021, submitted Protection Questionnaire with supporting documentation on 9th June 2021, interview by the IPO on 30th May 2022), the IPO recommended in a report pursuant to section 39(3)(c) of the International Protection Act 2015 ("the IPA 2015") dated 6th July 2022 that the first named applicant should not be given either a refugee declaration or, in the alternative, a subsidiary protection declaration on the basis that she was not believed and did not meet the threshold for serious harm from indiscriminate violence; the IPO issued notice pursuant to section 40 of the IPA 2015 on 11th August 2022 refusing the first named applicant refugee status, subsidiary protection, and permission for her and their children to remain in Ireland.

12. A notice of appeal from KOD Lyons was lodged in respect of the first named applicant's refugee and/or subsidiary protection claim dated 5th August 2022 for her and her four children.

13. On 2nd September 2022, KOD Lyons Solicitors, on the applicants' behalf, notified the IPO of their intention to appeal and written submissions were furnished to the IPAT.

14. An oral hearing took place before the IPAT on 24th November 2022.

15. The member of the IPAT delivered his decision and report of that oral hearing on 4th January 2023.

THE ISSUE

16. The gravamen of this application for judicial review takes issue with the manner in which the hearing took place before the IPAT (the first named respondent) on 24th November 2022, and the subsequent report and decision dated 4th January 2023.

17. In summary, it is contended by Michael Lynn SC, on behalf of the applicants, that the first named applicant has set out on affidavit her experience of the unfairness of the hearing and that this account has not been contradicted.

18. Secondly, by reference to section 4 of the IPAT's report and decision dated 4th January 2023 – paragraph [4] the “*Assessment of Facts and Circumstances*”¹ and, in particular the sub-headings which address the following matters, the “*Husband's attendance and recording of video at Lekki Toll Gate*” at paragraph [4.5], “*the Soldiers' raid of the appellant's home*” at paragraph [4.6], the “*Travel to Ireland and contact with husband*” at paragraph [4.7], culminating in the IPAT's “*Conclusion on Credibility*” at paragraph [4.8] and consequent findings at paragraph [4.9] – it is submitted that rhetorical questions/assertions were put by the IPAT to the first named

¹ The references to “appellant” and “first named applicant” are used interchangeably.

applicant which did not have any evidential basis (which, it is argued was in itself, irrational and unreasonable), for example in paragraphs [4.5] to [4.7], which lead to the IPAT making adverse findings against the first named applicant, for example at paragraphs [4.8] to [4.9] of the report and decision dated 4th January 2023, and that this was also irrational, unreasonable and unfair.

19. In addition (or in the alternative, separately), it is contended on behalf of the applicants that the practice of the IPAT of “*putting*” these rhetorical propositions “*to*” the first named applicant through an interpreter amounted to a form of proxy “*cross-examination*” of the first named applicant which was itself unfair, or which exacerbated the unfairness/irrationality which was already taking place by referring to propositions which, it is said, had no evidential basis, especially when it could not be certain how the interpreter was translating the IPAT’s specific questions.

20. Thus, reference is made, in the first instance to paragraphs 21 to 27 of the first named applicant’s affidavit sworn on 11th July 2024, which stated as follows:

“(21) My hearing before the first respondent took place on 24 November 2022. During the course of that hearing, I was cross-examined by the presenting officer, and the Tribunal member then asked me extensive questions which re-examined and required me to repeat the evidence I had given to my counsel and to the presenting officer.

(22) The Tribunal member’s questioning was twice as long as the Presenting Officers and during it he asked me questions I had already answered, and been cross-examined on. The Tribunal member also asked me the same

question several times in a row or at different points in his questioning. I was confused about why he was doing this and I felt as though he was not listening to the answers I had already given, and did not understand if I was supposed to repeat everything again but try to answer the best I could.

(23) Toward the end of this questioning the Tribunal member said that he “put it to me” and then made various statements. I did not know how to respond to these statements, or if they were questions, but I reiterated the answers I had given before when it seemed like that was what the Tribunal member wanted.

(24) When I did not know how to answer some of the questions, or when the Tribunal member made statements that reiterated what I had said before and I did not think an answer was required, I stayed quiet. When I did this the Tribunal member said he noted I was not answering. I did not know what to do and now I fear that staying quiet is now being used against me.

(25) I feel the way I was questioned was unfair, and that the Tribunal member had already made his mind up that I was not credible and not telling the truth when he was questioning me.

(26) A negative decision of the first respondent dated 4 January 2023 was received by my solicitors on 6 January 2023 in respect of me and my children....

(27) I was very upset and unhappy with the negative decision of the first respondent and [wish] [sic.] to challenge it if possible. I say, and believe and am so advised that I have not delayed in seeking to challenge the decision”.

21. The point is made that these averments are not taken issue with by the State respondents.

22. On behalf of the applicants, Mr. Lynn SC then went through the report and decision of the IPAT dated 4th January 2023, citing what was contended to be examples of the irrational, unreasonable and unfair approach being adopted by the IPAT member of “putting” matters “to” the first named applicant which had no evidential basis but which resulted in the making of adverse findings. By way of example, these included the following:

- it was contended that the reference in paragraph 4.5 to “[w]hen it was put to her that it was a three hour drive from their home in Oyo State, she then introduced new evidence that her husband also had an electronic shop in Lagos which he frequently attended and had on that day” was not ‘new evidence’ but was, rather, *clarification* of something which had been raised. It was submitted that the earlier report pursuant to section 35(12) of the IPA 2015 referred to two addresses, where in answer to Question 2 – “*did you live anywhere else in your country of origin ?*” – the answer given was “*I live at [address of the first named applicant] over 5 hours away My husband from Ajah.*”, which, it was argued, suggested an equivalent 3-5 hour journey and it was pointed out, in that context, the first named appellant was not asked about an ‘electrical shop’ in the question from the IPAT member, but it was rather, an inquiry about *how far away* her husband was in Lagos. This, it was submitted, could not be described as ‘*new evidence*’. Further, it was submitted that it was unfair and/or unreasonable “*to put to*” the first named applicant that this was ‘new evidence’;
- it was submitted that the finding that the first named applicant’s response to the suggestion that the reference to the ‘electronics shop’ was ‘new evidence’,

namely that “*she had a lot on her mind at interview because her father had just died that day*” contradicted her evidence at interview on 30th May 2022, at Question 5, where she stated her father’s date of birth but not his death, can be explained as being a “terse record” in response to the question asked, *i.e.*, “*I would like you to tell me about your family. Are your parents still in your country of origin?*”. It is submitted on behalf of the first named applicant that, in such circumstances, it was wrong “*to put to*” her that she had given contradictory evidence as to do so unreasonably and unfairly impinged on her credibility and the first named applicant stated that her father died on the day of the interview;

- it was submitted that there was no contradiction between the first named applicant’s initial response that she was “*not sure*” or “*did not know*” if her husband had uploaded the video of soldiers shooting and killing protesters, and then later stating that her husband had told her that he had “*lost everything*” and “*did not have access to the video anymore*” because she thought the video was with her husband. It is submitted this did not warrant a finding by the IPAT member that the first named applicant’s evidence was “*vague, evasive and confusing*” throughout the process and at the hearing or that it was undermining of her general credibility. It was submitted that it was both unfair and irrational “*to put to*” the first named applicant that her responses were contradictory and that it was the finding of the IPAT that was inconsistent;
- it was submitted that there was no basis for putting certain propositions to the first named applicant including whether it was soldiers and police who called to her house or just soldiers or whether or not the first named applicant and their children stayed with a friend after the search of her house before leaving Nigeria

or that the electronics shops in Lagos and in Oyo state must have had an online presence and an email address that could be looked up and that these were further examples of matters being put to the first named applicant with no evidential basis, particularly having regard to the fact that her husband had also, but separately, fled Nigeria, and all of which resulted in adverse findings being made in relation to the first named applicant's credibility, particularly at paragraphs [4.8] and [4.9], including that her evidence was given in a "*vague and evasive manner*" and that she had "*failed to cooperate with the process*" and had "*not made a genuine effort to substantiate her claim.*"

23. In similar fashion to the detailed written Legal Submissions from Róisín Á. Costello BL and Michael Lynn SC dated 14th December 2023 on behalf of the applicants (and summarised above in the comprehensive oral submissions of Mr. Lynn SC), Maeve Brennan BL on behalf of the State respondents replied with detailed Legal Submissions dated 16th February 2024 and concisely spoke to those submissions at the hearing before me.

24. In summary, it was argued on behalf of the State respondents that the first named applicant's evidence introduced new or inconsistent evidence and that the IPAT's decision on credibility was made arising from what was a 'vague, evasive and confusing' approach by the first named applicant.

25. It was further submitted that existence or not of video footage taken by the first named applicant's husband of the massacre at Lekki Toll Gate went to the core of her claim because this was the reason behind her and her (then) three children having to

flee Nigeria and that the first named applicant's evidence in relation to these matters was contradictory. It was further submitted that the IPAT considered all relevant matters and evidence in the round in order to have a complete understanding of the entire picture and this included express references to Country of Origin Information ("COI") and, having regard to Mr. Lynn SC's extrinsic or additional point in relation to rhetorical questions being "put to" the first named applicant without an evidential basis through the use of an interpreter, it was pointed out that at paragraph [4.8] of the report and decision dated 4th January 2023, the IPAT member makes express reference at the outset to having "*made allowance for possible translation issues that may have occurred throughout the process and has thus considered much of the evidence in the round*".

26. It is further submitted that the IPAT did not exceed the inquisitorial role and both the applicants' and State respondents' Legal Submissions quote extracts from, and refer to, the settled case law in relation to the assessment of credibility.

DISCUSSION & DECISION

27. Section 42(6) of the IPA 2015 provides that in conducting an oral hearing, the IPAT member shall: (a) permit the applicant to be present at the hearing and present his or her case to the Tribunal in person or through a legal representative; (b) permit an officer of the Minister for Justice or another person who is ministerially nominated to be present at and participate in the hearing and, in person or through a legal representative, explain to the IPAT the recommendation of the IPO that is the subject of the appeal; (c) where necessary for the purpose of ensuring appropriate

communication during the hearing, provide the applicant with the services of an interpreter; (d) conduct the oral hearing as informally as is practicable, and consistent with fairness and transparency; (e) ensure that the oral hearing proceeds with due expedition; and (f) allow for the examination and cross-examination of the applicant and any witnesses.

28. As reflected in the structure of report of the member of the IPAT, dated 4th January 2023, the oral hearing was conducted on 24th November 2022 in compliance with section 42(6) of the IPA 2015.

29. The report of 4th January 2023 of the oral hearing carried out on 24th November 2002 *inter alia* set out the name, nationality and language of the applicant and her dependants; the solicitors for the applicant, the name of the IPAT member, the date of the hearing and the IPAP number and Person ID. It then sets out the names of those who were present at the hearing, including the name of the first named applicant, her solicitor, counsel for the applicant, the presenting officer, the IPAT member and the interpreter.

30. The report then sets out the introduction and, in summary, states that the applicant is a married Muslim woman and mother of four children from Nigeria who made a claim for protection on her behalf and her four children to the Minister for Justice on 10th March 2021 on the basis that, on return to Nigeria, she and her children would face persecution based upon political opinion or a real risk of suffering serious harm on the same basis.

31. The report refers to the IPO recommendation in a report pursuant to section 39(3)(c) of the IPA 2015 dated 6th July 2022 that the applicant should be given neither a refugee declaration nor, in the alternative, subsidiary protection declaration on the basis that the first named applicant was not believed, nor did she meet the threshold for serious harm from indiscriminate violence. This was appealed on 5th August 2022.
32. The report refers to the jurisdiction of the IPAT to consider both refugee and subsidiary protection status in its decision and that an oral hearing was held on 24 November 2022 where the first named applicant gave evidence under oath (through Yoruba) with the assistance of an interpreter. It points out that the conclusions reached in relation to the first named applicant also applied to her children, unless otherwise stated.
33. Whilst these matters are discussed later in this judgment, the report then addresses the following matters: at paragraph [2] the ‘Case Facts & Documents’ and addresses these matters between paragraphs [2.1] to [2.6], at paragraph [3] a sub-heading ‘Nationality/Statelessness’ and addresses these matter from paragraphs [3.1] to [3.2], at paragraph [4] the ‘Assessment of Facts and Circumstances’ at paragraph [4.1] and ‘Individual Position and Personal Circumstances at paragraph [4.2], ‘Documentation’ at paragraph [4.3], ‘Country of Origin Information (COI)’ at paragraph [4.4], ‘Husband’s attendance and recording of video at Lekki Toll Gate’ at paragraph [4.5], ‘the Soldiers’ raid of the appellant’s home’ at paragraph [4.6], the ‘Travel to Ireland and contact with husband’ at paragraph [4.7], the IPAT’s ‘Conclusion on Credibility’ at paragraph [4.8] and consequent findings at paragraph [4.9], paragraphs [5] and [5.1] address the ‘Analysis of Well Founded Fear, the ‘Conclusion on Qualification

for Refugee Status’ is set out at paragraphs [6] and [6.1], the ‘Analysis of Serious Harm’ is set out at paragraphs [7] and [7.1] and the ‘Grounds for Subsidiary Protection’ begin at paragraph [7.2] and continue in the following paragraphs: [7.3] Article 15(a), Death penalty or execution; [7.4] Article 15(b), Torture or inhuman or degrading treatment or punishment; [7.5] Article 15(c), Indiscriminate violence in the situation of international or internal armed conflict [7.6] recent Country of Origin Information. Finally, paragraphs [8] and [8.1] set out the IPAT member’s conclusions on ‘Qualification for Subsidiary Protection and Overall Conclusion’.

34. The reason why the first named applicant and her young family left Nigeria is the central feature of this judicial review challenge.

35. In this regard, the first named applicant claims that her husband attended the END SARs protest at the Lekki Toll Gate on 20th October 2020 and took a video recording on his phone of the shooting of protestors, that soldiers subsequently raided their home – looking for her husband and the phone with the video coverage - and that she (and their three children) left their home and stayed in a friend’s house before coming to Ireland via Manchester and Belfast and that their fourth born child was born in Ireland. It is alleged that her husband also fled Nigeria after the protest. At the heart of this challenge, is the first named applicant’s account of the contact she had with her husband since the Lekki Toll Gate protest on 20th October 2020 and her understanding of what happened with the video which was allegedly taken of the shooting.

36. In my view, the hearing carried out by the IPAT in this case on 24th November 2022 and the subsequent decision and report dated 4th January 2023 complied with the

following principles identified by the High Court (Cooke J.) in *I.R. v The Minister for Justice, Equality & Law Reform & The R.A.T.* [2009] IEHC 353 at paragraph 11:

“1) The determination as to whether a claim to a well founded fear of persecution is credible falls to be made under the Refugee Act 1996 by the administrative decision-maker and not by the Court. The High Court on judicial review must not succumb to the temptation or fall into the trap of substituting its own view for that of the primary decision-makers.

2) On judicial review the function and jurisdiction of the High Court is confined to ensuring that the process by which the determination is made is legally sound and is not vitiated by any material error of law, infringement of any applicable statutory provision or of any principle of natural or constitutional justice.

3) There are two facets to the issue of credibility, one subjective and the other objective. An applicant must first show that he or she has a genuine fear of persecution for a Convention reason. The second element involves assessing whether that subjective fear is objectively justified or reasonable and thus well founded.

4) The assessment of credibility must be made by reference to the full picture that emerges from the available evidence and information taken as a whole, when rationally analysed and fairly weighed. It must not be based on a perceived, correct instinct or gut feeling as to whether the truth is or is not being told.

5) *A finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.*

6) *The reasons must relate to the substantive basis of the claim made and not to minor matters or to facts which are merely incidental in the account given.*

7) *A mistake as to one or even more facts will not necessarily vitiate a conclusion as to lack of credibility provided the conclusion is tenably sustained by other correct facts. Nevertheless, an adverse finding based on a single fact will not necessarily justify a denial of credibility generally to the claim.*

8) *When subjected to judicial review, a decision on credibility must be read as a whole and the Court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person.*

9) *Where an adverse finding involves discounting or rejecting documentary evidence or information relied upon in support of a claim and which is prima facie relevant to a fact or event pertinent to a material aspect of the credibility issue, the reasons for that rejection should be stated.*

10) Nevertheless, there is no general obligation in all cases to refer in a decision on credibility to every item of evidence and to every argument advanced, provided the reasons stated enable the applicant as addressee, and the Court in exercise of its judicial review function, to understand the substantive basis for the conclusion on credibility and the process of analysis or evaluation by which it has been reached”.

37. At the outset at paragraph [4.4] Country of Origin Information (COI) of the report and decision dated 4th January 2023, the IPAT was satisfied that the events described by the first named applicant of the shooting of protesters supporting the END SARS movement that happened at the Lekki Toll Gate on 20th October 2020 were consistent with reputable Country of Origin Information and a reference was made to a BBC News report ‘*Nigerian Army shot and killed END SARS protesters*’ dated 15th November 2021 available on its world news website.

38. When considering the applicant’s arguments as set out above, the various matters which were considered and determined by the IPAT under paragraph [4] “*Assessment of Facts and Circumstances*” from paragraphs [4.1] to [4.7] which led to its Conclusion on Credibility at paragraphs [4.8] and [4.9] are particularly important in this case and comply with the requirement that a “*finding of lack of credibility must be based on correct facts, untainted by conjecture or speculation and the reasons drawn from such facts must be cogent and bear a legitimate connection to the adverse finding.*”

39. This is borne out when the following parts of the IPAT report and decision dated 4th January 2023 are considered.

40. The report records the “*Case Facts & Documents*” as follows:

“[2.1]The appellant is Muslim and after making an oath on the Koran advanced the following claim to the International Protection Appeals Tribunal (hereinafter referred to as the Tribunal):- The appellant stated that on 20 October 2020, in Lagos, Nigeria, where she lived with her husband, aged 40 years, and children that her husband attended the Anti SARS Lekki Toll Gate protest with many young Nigerians. She stayed at home with the three children she had at the time and was pregnant with her fourth.

[2.2]The police opened fire on the protesters and her husband made a video on his phone of what took place as well as other protesters who also took videos. She only heard from him the next day by phone that the police were looking for him. He then said he would arrange for her and the children to leave the country.

[2.3]Six soldiers came to their house on the second day after the protest namely 22 October 2020 looking for her husband. They searched the house and pushed the children around. They searched her phone and returned it to her. They took nothing when they left. She then left the house with the children to go to a friend’s house where she hid for more than a week. It was then that she spoke to her husband and said he would look for a way out for them but did not

say where he was. He paid an agent named Tungi, who took by plane to Manchester where they stayed for 14 days in a hotel whilst the appellant was sick, then to Belfast and finally to the IPO where she made her application for protection on the 11th December 2020. She had not spoken to her husband since leaving as she lost contact with him and has not heard anything.

[2.4] She fears that if she returns she and her husband will be kidnapped and killed by security on behalf of government.

[2.5] In support of her claim the appellant relied on the following documents. Submissions from counsel dated 22 October 2022; Book of authorities and Country of Origin Information (COI) received on 3 November 2022; copy Nigerian birth certificates for dependent children with appellant in Ireland, and an Irish birth certificate for another dependent child also with her in Ireland; letter of appointment from Ido State Local Government to clerical position; All of the documentation provided has been fully considered.

[2.6] All of the information and documentation provided has been fully considered. Additionally, the Tribunal informed the appellant and the Minister that it will rely on all the documentation on file or updated versions of same where applicable.”

41. The report then sets out a sub-heading “Nationality/Statelessness” as follows:

“[3.1] The appellant claims to be a national of Nigeria. In support of her claim in this regard, she has submitted three copies of Nigerian

birth certificates for dependent children that are with the appellant in Ireland and an Irish birth certificate for another dependent child here. She also spoke Yoruba, a language of Nigeria, throughout the process and has displayed knowledge of Nigeria throughout the process. On the basis of the documentation and information provided by the appellant, the Tribunal accepts on the balance of probabilities that the appellant is a national Nigeria.

[3.2] Having accepted that the appellant is a national of Nigeria the Tribunal will now assess the facts in the claim along with the representations of the parties on these issues.”

42. The majority of the IPAT’s report dated 4th January 2023 addresses the “Assessment of Facts and Circumstances” in paragraph 4 which is then broken down to a number of subparagraphs, as follows:

“[4] Assessment of Facts and Circumstances:-

[4.1] Pursuant to section 28 of the International Protection Act 2015, the Tribunal has assessed the facts and circumstances of the appellant’s claim, in particular the material facts are:- That her husband took part in an Anti SARS demonstration at Lekki Toll Gates in Lagos on 20 October 2020 and filmed soldiers shooting protesters dead, resulting in a search by soldiers of her home and threats made against her family with her then fleeing Nigeria as a consequence with her children.

[4.2] Individual Position and Personal Circumstances:

The appellant is a Nigerian Muslim married mother of four children from Lagos, Nigeria who is ethnic Yoruba and whose mother is alive and she has five siblings living in Nigeria. She completed secondary education and was employed as a clerical officer in a local government office. She has no diagnosed illnesses.

[4.3] Documentation

The Nigerian documents whilst corroborative of nationality cannot be verified by the tribunal. There is no issue on the appellant's nationality.

[4.4] Country of Origin Information (COI):

The tribunal is satisfied that the events described by the appellant of the shooting of protesters supporting the END SARS movement that happened at the Lekki Toll Gate on 20 October 2020 are consistent with reputable COI. [A footnote reference refers, for example, to BBC News 'Nigerian Army shot and killed END SARS protesters' dated 15 November 2021 and sets out the website address is].

[4.5] Husband's attendance and recording of video at Lekki Toll Gate:-

The appellant claimed that her husband attended this protest on 20 October 2020 along with other Nigerian youths. When it was put to her that it was a three hour drive from their home in Oyo State, she then introduced new evidence that her husband also had an electronic shop in Lagos which he frequently attended and had on that day. It was then put to her that evidence of the shop was new evidence to which she explained that she had a lot on her mind at interview

because her father had just died that day. It is noted that contrary to this her evidence at interview was that her father was alive since she gave his date of birth but did not mention he had died. [Interview, 30th May 2022, at Question 5, the appellant stated her father's date of birth but not his death].

The appellant was asked if her husband had uploaded the video of soldiers shooting and killing protesters to which she replied she was not sure. Later when she revealed she had spoken to her husband since arriving, she was asked if she had asked him to send the videos in support of her claim to which she stated he 'had replied that he had lost everything and didn't have access to the video anymore'. When it was put to her that this contradicted her earlier evidence that she 'didn't know' whether he had been able to put the video up on the internet she stated that she said that because she thought the video was with him. The Tribunal is of the view that the appellant's evidence of this matter was vague, evasive and confusing throughout the process and at the hearing. The Tribunal rejects on the balance of probabilities the reason given by the appellant for this contradictory evidence. This undermines her general credibility.

[4.6] Soldiers' raid of appellant's home:-

It was put to the appellant that at the hearing she stated only soldiers came and searched her house whereas in interview she stated that police and soldiers came to her house [Interview, 30th May 2022 at Question 16 on page 7].

He reiterated that she only said the soldiers at the interview. She was asked if the soldiers asked to call her husband on her phone to which she replied, that they did not but only checked her phone looking for videos and then returned it to her. It was clarified while they were looking for her husband as well to which she replied they were. She was asked if she was threatened to reveal his location to which she stated that they threatened her children by pointing the gun at their heads and asking them the location of her father. It was put to her that if they were eager to locate her husband why didn't they phone him on the appellant's phone to which she replied that she did not know. The appellant was asked what she was told by her husband in a phone call from him prior to this raid by soldiers. She said that he told her soldiers were looking for him and he was going to make arrangements for the family to leave the country. It was put to her that he did not tell her to leave the family home despite thinking they were in danger to which she replied that he called them at night and they left the next day and when further pressed that this did not answer the question she stated that she was sick and not settled and that she didn't know where to go. The Tribunal notes this is different from her earlier evidence that once the soldiers left they went to stay with a friend of hers. This evidence will be considered in the round when assessing whether the appellant has established her general credibility.

[4.7] Travel to Ireland and contact with husband:-

The appellant was asked why she did not apply for protection in the UK since she spent a number of weeks there and was over five months pregnant at the time to which she replied that she was told by the agent that they were going to Ireland. She was asked in detail about efforts she had made since arrival to contact her husband via social media and email to which she initially denied having access and that she did not know if he had email. It was put to her that her evidence at the hearing was that he had a large electronic shop in Lagos and another in Oyo State, which must have an online presence and an email address that could be looked up. She stated she did not look up this email address. It was then put to her that she had failed to make a genuine effort to substantiate her claim. In response, she gave new evidence that she had received a phone call from her husband via messenger since arrival in Ireland and as part of that call he had stated that he no longer had the video of the shootings to send her. It was put to her that she had contact with her husband to which she replied that she did not as he had blocked everything since that call. It was put to her that she had stated that she did not have contact with her husband since arriving in Ireland throughout the process. She stated that she was not herself at the interview because she had lost her dad. This is rejected on the balance of probabilities since the appellant gave the same denial of contact with her husband under oath at the hearing in her evidence to her legal representative. The evidence concerning the availability of video footage is material to her claim. This evidence undermines the appellant's credibility and

will be considered in assessing whether she has established her general credibility.

[4.8] Conclusion on credibility:-

The Tribunal has made allowance for possible translation issues that may have occurred throughout the process and has thus considered much of the evidence in the round. It is noted that as a mitigating factor that the appellant completed the Questionnaire without any assistance. Overall, the Tribunal considers that the appellant's evidence was given largely in a vague and evasive manner at the hearing which was also lacking in detail and she was not forthcoming with material information she had without repeated question. Specifically, she gave evidence on oath at the hearing and throughout the process that she had no contact with her husband since arriving in Ireland and then under detailed questioning from the Tribunal in relation to her efforts to contact him, that she had received a phone call from him whilst here. The explanation for this contradictory evidence has been rejected. Also, her contradictory account of whether her husband still has the video footage has been rejected. Her evidence of soldiers raiding her home, asking her where her husband was and checking her phone which they then returned to her, having also threatened her children at gunpoint to reveal the location of her husband before leaving with nothing will be considered in the round. From the foregoing, the Tribunal is of the view that the appellant has failed to cooperate with the process and has not made a genuine effort to substantiate her claim. Having considered all the

evidence in the round as well as the matters that have been already rejected, the Tribunal rejects on the balance of probabilities the appellant's claim that her husband attended the END SARS Lekki Gate protest on 20 October 2020 at which protesters were shot dead by the Nigerian army and that subsequently soldiers came to her home looking for him. Therefore, the appellant has failed to establish her general credibility and will not be afforded the benefit of the doubt.

[4.9] Based on its considerations of the reasons set out above, the Tribunal finds that the following core facts of the appellant's claim have been accepted:- The appellant is a Nigerian Muslim, married mother of four children from Lagos, Nigeria who is ethnic Yoruba and whose mother is alive and she has five siblings living in Nigeria. She completed secondary education and was employed as a clerical officer in a local government office. She has no diagnosed [sic]."

43. In the report dated 4th January 2023, the member of the IPAT sets out, at paragraph [5], his "Analysis of Well Founded Fear" as follows:

"[5.1] Having determined which material facts of the appellant's claim are accepted at paragraph [4.9] above, namely the appellant's personal circumstances, the Tribunal will now proceed to analyse whether these facts provide a basis for finding that the appellant's fears are well founded. Her personal circumstances are not considered to raise an

objective fear of persecution and the Tribunal notes that there were no submissions on such a basis. The Tribunal has considered reputable up-to-date COI in arriving at this conclusion (US Department of State Country Reports on Human Rights Practices (website given)) The Tribunal has rejected the appellant's claim that her husband is being sought by the army on account of attending the Lekki Toll Gate protest on 20 October 2020 against SARS and having video footage of the killings persecuted by the army of unarmed protesters and that soldiers thereafter raided his home. The analysis of the appellant's refugee claim ends here."

44. At paragraph [6], the "Conclusion on Qualification for Refugee Status" of the IPAT member is set out and that for the reasons given, the Tribunal affirmed the recommendation of the IPO that the appellant not be given a refugee declaration.

45. The IPAT member then continues in the report to consider the appeal against the recommendation that the appellant not be given a subsidiary protection declaration.

46. At paragraph 7.2 of the report, under the subheading "*Grounds for Subsidiary Protection*", the IPAT member states that considering the applicant's evidence which had been accepted, namely her personal circumstances, and the Country of Origin Information relevant to this analysis (the US Department of State Country Reports on Human Rights Practices), the IPAT found that there were no substantial grounds for

believing that if the applicant were to be returned to her country of origin, she would face a real risk of suffering serious harm in the form of:

“[7.3] Article 15(a), Death penalty or execution...

[7.4] Article 15(b), Torture or inhuman or degrading treatment or punishment...

[7.5] Article 15(c), Indiscriminate violence in the situation of international or internal armed conflict...

- [7.6] in so finding, the tribunal has considered recent country of origin information”.

47. The IPAT, at paragraph [8], then sets out its “Conclusion on Qualification for Subsidiary Protection and Overall Conclusion” as follows:

“[8.1] For the reasons given, the tribunal finds that the appellant is not entitled to subsidiary protection. Therefore, the tribunal affirms the recommendation made by the IPO pursuant to section 39(3)(c) of the International Protection Act 2015, that the appellant should be given neither a refugee declaration nor a subsidiary protection declaration. This decision applies to her four dependent children that were included in her appeal.”

48. In summary, therefore, the gravamen of this judicial review challenge focuses on the first named applicant’s account of contact with her husband and her understanding of what happened with the video which was allegedly taken by her husband of the

shooting at the Lekki Toll Gate on 20th October 2020 given their paramountcy in relation to the claim of the first named applicant and that of their children to international protection in Ireland.

49. As set out above, in terms of credibility (which was also considered in the round), the IPAT accepted that the protest march took place but did not accept the first named applicant's account of contact with her husband was credible. Initially, the first named applicant's position was that she had no contact with her husband. This position changed to her having limited contact with her husband. As stated, this is a central feature of this judicial review challenge because the first named applicant's entire claim is based around what is said to have happened consequent upon her husband's alleged attendance at the protest march.

50. In terms of assessing credibility, the first named applicant changed her evidence from having stated initially that she had had no contact with her husband to having limited contact with him since his departure from their home in October 2020. That limited contact was described by the IPAT as "new evidence" in that that the first named applicant "*had received a phone call from her husband via Messenger since arriving in Ireland and a part of that call he had stated that he no longer had the video of the shootings to send to her.*"

51. This is also connected to the next central aspect of this case going to credibility which is the relationship between the first named applicant's contact with her husband and the alleged existence of a video of the shootings allegedly taken by her husband.

52. For example, the first named applicant said that she knew nothing about the video and then said that her husband had possession of it and then, after limited contact with her husband, stated that he did not have access to the video recording anymore. In answer to Question 49 of the Report pursuant to section 35(12) of the IPA 2015 – “[w]hat did your husband say about the videos when you rang him and where are they now”, the answer given is that “[h]e has the videos but I don’t know anything about the videos any more.” In answer to Question 52 of the Report pursuant to section 35(12) of the IPA 2015– “[s]o how do we know these videos exist – we only have your word for it”, the first named applicant answers “[h]e still has them.”

53. However, at paragraphs 12 and 13 of her affidavit sworn on 11th July 2024, the first named applicant avers that “(12) I have had only limited contact with my husband since his departure to attend the protest at the Lekki Toll Gates, and my last contact with him was in a call over Messenger in May 2021. (13) During this call he informed me he no longer had the videos of the incident on his phone. I no longer know how to contact him as his old contact details no longer work.”

54. In considering these matters, the approach adopted by the IPAT at the hearing on 24th November 2022 which culminated in the report and decision dated 4th January 2023 satisfied the requirements identified by Cooke J. in *I.R. v The Minister for Justice, Equality & Law Reform & The R.A.T.* [2009] IEHC 353 at paragraph 11 of his judgment. In particular, the conclusions on credibility at paragraph [4.8] were based on correct facts, untainted by conjecture or speculation, and provided a cogent rationale which bore a legitimate connection to the adverse findings reached by the IPAT member in this case.

55. In assessing this matter, I have had regard to the general injunction in *I.R. v The Minister for Justice, Equality & Law Reform & The R.A.T.* [2009] IEHC 353 (at paragraph 11) that when reviewing findings of credibility, the IPAT decision must be read as a whole and a court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision-maker.² I also consider that the assessment of credibility carried out by the IPAT member in this case was based on a correct understanding of the facts: see the observations of the High Court (Simons J.) in *K. (Zimbabwe) v IPAT & Minister for Justice & Equality* [2023] IEHC 6 at paragraphs 24 to 27 and at paragraph 49.

56. In this regard, whilst, on behalf of the applicant, particular criticism is levelled at the conclusions on credibility set out in paragraph [4.8] of the IPAT's report and decision dated 4th January 2023, and in particular the IPAT's finding that overall the first named applicant's evidence was given largely in "*a vague and evasive manner*" and that the IPAT was of the view that the first named applicant had failed to cooperate with the process and had not made a genuine effort to substantiate her claim, these findings were not made in isolation but were carefully contextualised after assessing documentary and oral evidence.

57. In addition to his argument (which I have not accepted) that rhetorical propositions were put to the first named applicant by the IPAT member without any evidential basis leading to adverse findings and that this was – in and of itself – irrational,

² The quotation continues "*especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person*".

unreasonable and unfair, Mr. Lynn SC also submits that the IPAT member's practice of "putting" certain matters "to" the applicant which, it is contended, was done without any evidential basis and approximated to a form of "cross-examination" or "questioning" of the first named applicant and resulted in the making of adverse findings, went beyond the adoption of an inquisitorial approach and as such was irrational/unreasonable and unfair, whether viewed separately or cumulatively with the first argument.

58. For the reasons which I have set out above, there was, in my view a clear evidential basis for the approach adopted by the IPAT member, in particular, in relation to his conclusions on credibility. Further, Mr. Lynn SC referred to the authority of *Idiakheua v The Minister for Justice* and acknowledged that it was an authority (whilst accepting that it dealt with a leave application) which supports the proposition that in determining appeals the IPAT, as a matter of principle, carries out an inquisitorial function. He argued that the IPAT's process, which was sought to be impugned in this judicial review challenge, went further than that contemplated by Clarke J. in *Idiakheua v The Minister for Justice*.

59. I do not believe that to be the case. In *Idiakheua v The Minister for Justice* [2005] IEHC 150, the High Court (Clarke J., as he then was) stated that he could *not* agree with the suggestion that it would be inappropriate for the Tribunal (the IPAT was then known as the Refugee Appeals Tribunal (R.A.T.)) either to direct the line of questioning which should be adopted on behalf of the Commissioner or to engage in questioning itself. Earlier in his judgment, Clarke J. observed as follows:

*“It should be recalled that the process before the R.A.T. is an inquisitorial one in which a joint obligation is placed on the applicant and the decision maker to discover the true facts. It seems to me that an inquisitorial body is under an obligation to bring to the attention of any person whose rights may be affected by a decision of such a body any matter of substance or importance which that inquisitorial body may regard as having the potential to affect its judgment. In that regard an inquisitorial body may, in many cases, be in a different position to a body which is simply required to adjudicate upon the contending positions of two competing parties in an adversarial process. In the latter case the adjudicator simply decides the issues on the basis of the case made whether by evidence or argument by the competing parties. However the principles which have been developed by the courts since the decision of the Supreme Court in *Re Haughey* [1971] I.R. 217 are equally applicable, in principle, to inquisitorial bodies. The precise way in which those principles may be applied, of course, differ. However the substantial obligation to afford a party whose rights may be affected an opportunity to know the case against them remains. In those circumstances it seems to me that whatever process or procedures may be engaged in by an inquisitorial body, they must be such as afford any person who may be affected by the decision of such body a reasonable opportunity to know the matters which may be likely to affect the judgment of that body against their interest. In the course of argument in this case it was suggested on behalf of the RAT that it would be inappropriate for*

the Tribunal either to direct the line of questioning which should be adopted on behalf of the Commissioner or to engage in questioning itself (on the grounds that such questioning might give rise to an appearance of bias). I am afraid I cannot agree”.

60. Notwithstanding that it was a decision on a leave application, the decision in *Idiakheua v The Minister for Justice* establishes that the IPAT’s function is inquisitorial.

61. In this case, the IPAT member, as the decision and report of 4th January confirms, carried a comprehensive inquisitorial process and I do not consider that the adoption of the style of questioning – “*putting to*” the witness certain propositions – through an interpreter was an extra dimension to the case which adds to, or was in and of itself, irrational.

62. Accordingly, for the reasons set out in this judgment, I refuse this application for relief by way of judicial review.

PROPOSED ORDER

63. I shall make an order refusing the applicants’ application for reliefs by way of judicial review.

64. I shall list the matter for Thursday 27th February 2025 at 10:30 to deal with final orders, including the question of costs.