



[2026] IEHC 469

THE HIGH COURT

JUDICIAL REVIEW

[2024/1247 JR]

IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS

(TRAFFICKING) ACT 2000

IN THE MATTER OF THE INTERNATIONAL PROTECTION ACT 2015

BETWEEN

A.H.O.

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND

THE MINISTER FOR JUSTICE

RESPONDENTS

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 14th day of July, 2026

INTRODUCTION

1. This judgment arises from an application for judicial review seeking to quash a decision (*the Decision*) of the first respondent (*the Tribunal*) made on the 2 September 2024 refusing the applicant international protection. In accordance with the provisions of section 26(1) of the International Protection Act 2015, the identity of the applicant has been anonymised and any information that may identify the applicant has been presented in a manner which minimises the risk of identification.

2. The applicant is a national of Somalia who sought international protection on the basis that he fears persecution and / or serious harm if he were to be returned to Somalia. The applicant set out two incidents which he relied upon in his claim, each of which was claimed to involve the group ‘Al-Shabaab’. That group has been described by the European Asylum Support Office (*EASO*) as an Islamist Sunni Salafi jihadist group based in Somalia. First, the applicant claimed that his father was murdered by Al-Shabaab; this occurred when gunmen boarded the bus which the applicant’s father was driving and when he refused to surrender the bus to the gunmen he was killed. Second, members of Al-Shabaab demanded the applicant work as an informant and when he refused to do so, he was fired upon by two gunmen wielding pistols.

3. The Tribunal considered the applicant’s claims not to be credible for reasons set out later in this judgment. Having found the applicant’s claim to lack credibility, the Tribunal upheld the decision of the IPO to refuse international protection. The applicant challenged the decision of the Tribunal. The case concerned three main issues, all of which connected with the treatment of the applicant’s credibility and which related to his accounts of events leading to

his departure from Somalia in July 2022, being (a) the treatment of country of origin information, (b) the approach adopted to documentary evidence, and (c) whether the Tribunal's findings were the product of improper speculation or conjecture. As the case concerned the approach to the findings that the applicant's account lacked credibility, it will be necessary to describe the factual accounts that have been given by the applicant and their treatment by the Tribunal in some detail.

4. For the reasons set out in this judgment, I have concluded that the Decision ought to be quashed and the matter remitted to a differently constituted tribunal.

THE GENERAL THRUST OF THE COI

5. Before setting out the factual claims and the background to the proceedings it may be helpful at this stage to set out certain material matters that were addressed in the country of origin information (COI) that was before the Tribunal. The Tribunal had a number of reports drawn to its attention. Certain of those emanated from government bodies concerning travel warnings. These all highlighted the volatile and unpredictable social and political situation that obtained in Somalia at the relevant times. The attention of potential visitors was drawn to a high level of threat from terrorism.

6. In addition, and of particular relevance to this case there was a detailed report: "*Somalia, Targeted Profiles*" which was published in September 2021 by the EASO (which is now renamed as the European Union Agency for Asylum – the EUAA).

7. The EASO report, *inter alia*, addressed recruitment tactics utilised by Al-Shabaab. It recorded that “*Recruitment into Al-Shabaab (AS) can occur in a variety of forms and settings. It is a complex process that can vary ‘based on location, the individual, and the needs of Al-Shabaab at a particular time.’*” The report goes on to note at pg. 18 to observe:

“As mentioned above, young men are the main target for recruitment. However, AS recruits persons of all age groups including women ... In many cases, persons in areas not in Al-Shabaab’s hands are used as informants, because of their knowledge of their local area. It has been reported that recruitment of informants – who are not necessarily members of AS – may occur through bribery, intimidation, threats and the use of violence, e.g. local employees of international organisations were pressured to cooperate with AS in this regard.”

8. The report noted that Al-Shabaab has carried out attacks and assassinations on Somali government or Somali National Army officials and others who are perceived by Al-Shabaab to have links to the government. In addition, as set out at pg. 86 of the report, Al-Shabaab has been reported as threatening persons who are in any way associated with the government. The report explained that whether something or someone is associated with government is treated by Al-Shabaab as a very broad category. There also are detailed reports of indiscriminate violence and attacks targeting civilians and civilian infrastructure. At pg. 88, the authors stated that “[a]s the group lacks the capacity to exert control all the time and everywhere, punishments are carried out in an exemplary manner to instil fear in the population.” It would be fair to say that the COI paints a picture of high intensity, random and unpredictable terrorism.

9. The EUAA report from February 2023 involves some matters that post-dated the applicant’s departure, however it noted that the UN Secretary General’s situation reports for

May 2021 to August 2022 described the security situation as remaining volatile with an average of 265 security incidents per month in 2021, and 236 such incidents in the first four months of 2022. The report noted that Al-Shabaab continued to maintain the capacity to conduct operations throughout most of Somalia including the area in which the applicant lived. The report cited a report from the Africa Centre for Strategic Studies that in the course of 2021 Somalia experienced a 17% increase in violent activity involving Al-Shabaab. The report noted continued indiscriminate attacks on civilians and civilian infrastructure. The area that the applicant was from was one of the focus areas of Al-Shabaab – the area was not under Al-Shabaab control – and attacks targeted military and civilian targets. The report noted attacks carried out by small covert groups of Al-Shabaab operatives, and intimidation directed to civilians.

10. In the 2023 EUAA Country Guidance on Somalia, the EUAA identified persons fearing recruitment by Al-Shabaab as a potential category of refugee. It noted at pg. 22 of the report that in “*the case of Al-Shabaab, recruitment is for a wide range of purposes, such as fighting, providing administrative support, collecting taxes, propelling outreach, intelligence gathering etc*”. [emphasis added] The report notes that young men are at risk. The report noted that informants were recruited by Al-Shabaab in areas not under its control. It noted that persons who refuse requests for recruitment have been threatened, and some have been killed as a warning to others. In terms of the risk of indiscriminate violence in the area in which the applicant resided, the report noted that ‘*mere presence*’ in the area would not be sufficient to establish a real risk of serious harm, “*but where, however, indiscriminate violence reaches a high level and, accordingly, a lower level of individual elements is required to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm ...*”.

FACTUAL BACKGROUND

11. The factual background underpinning the proceedings was set out in detail in the statement of grounds. The applicant left Somalia on the 5 July 2022 and travelled through Ethiopia, South Africa and Qatar before arriving in the State on the 11 July 2022 and he applied for international protection on the same date. The applicant's place of birth was set out and it was explained that the applicant moved to another identified region of Somalia while he was an infant. The applicant is married, and his wife is currently in Somalia.

12. The applicant's nationality was accepted by the Tribunal, however the remainder of the factual background set out below was not accepted by the Tribunal, which found the applicant's claim to be lacking credibility. For the purposes of this judgment, the claims of the applicant as they appear in the statement of claim are set out below for the sake of context, while the pertinent issues in dispute will be addressed as they arise later in the judgment. Hence, the applicant's account was as follows.

13. The first incident of relevance to the applicant's claim is said to have occurred on the 15 July 2020. The applicant's father was a city bus driver and the bus which he was driving was boarded by members of Al-Shabaab. When the applicant's father refused to hand over the bus he was killed.

14. As a result of his father's death, the applicant opened a shop to support his family. The shop was situated near a construction site which employed Turkish employees who were protected by the Somali army. The applicant set out that on the 20 June 2022 members of Al-Shabaab entered the shop and sought to procure the applicant's assistance. According to the

applicant, Al-Shabaab were seeking information as to when the soldiers (referred to on some occasions simply as “security personnel”) who were guarding the construction workers would take their break. The applicant refused to cooperate.

15. The members of Al-Shabaab returned on the 28 June 2022 and began shooting at the applicant with pistols from a distance of 15 steps away. When the shooting started, the applicant fled the area and decided at that point to flee Somalia.

16. Upon arriving in the State on the 11 July 2022, the applicant applied for international protection. As part of this application process, the applicant completed the IPO Questionnaire in Somali. The applicant’s responses to this questionnaire were considered in some detail by the Tribunal in the impugned decision and as such it will be necessary to consider the responses in some detail.

IPO Questionnaire

17. After setting out his personal and family circumstances, the applicant was required to respond to the prompt: “*On what grounds (reasons) do you... claim to have a well-founded fear of persecution*”. The reasons provided by the applicant were as follows:-

“My father was a city bus driver. On the night of 15/07/2020, the bus was boarded by masked men and they tried to take the bus, my father refused, then they killed him and took the bus away. After that I opened a shop of my own to support my family.

One night on 20/06/2022, while I was at my shop, some Al-Shabaab men came to me and said, “We want you to work with us to bring us information from the government.” I refused and told them that I couldn’t work with them. They said

it was must to work with them. I insisted not work for them because they had already killed my father.

After a week later, on 28/06/2022, they came back to me again while I was standing outside my shop and when I saw them I ran away. They fired at me but luckily nothing hit me. [A]fter a while, the government forces came to the place and questioned the people who were there. They were told that Al-Shabaab attacked me and then I ran away and that's why they shot at me.

The government forces came to my house to question me about what happened. I told them what al-Shabaab did to me. When I described what happened, they told me that they could not do anything about it. After that my family asked me to close the shop and leave the place..."

- 18.** The applicant further noted on his IPO questionnaire that he feared serious harm if he were to be returned to Somalia for the same reasons.

IPO Interview

- 19.** The applicant was interviewed on the 3 May 2023. After a series of formalities, procedural questions and questions concerning the applicant's personal and family background, the applicant was asked, "*Can you tell me from the beginning why you are applying for international protection?*"

- 20.** The applicant is recorded as setting out the incident involving his father in the following terms:-

Al Shabaab contacted my father. They phoned him several times...They called him and wanted him to bring the bus to a small village...and he refused...[O]ne

day they got on his bus and he did not know they were Al Shabaab. They told him to give them the vehicle and he refused as it was his livelihood. They killed him and took the vehicle. The police investigated and it took them two days... The police said that Al Shabaab had killed him and there was nothing they could do.

21. In relation to the incident at his shop, the applicant explained:

...We had that shop for about two years. Near the shop at the junction there is a road. There was construction on that road, a Turkish company was building and Somali soldiers were securing the area. That is when the three men approached. They came to the shop. I did not know they were Al Shabaab until they stopped me. They told me that they wanted me to work for them, and when the soldiers were not present, they wanted me to tell them. I told them I was working for my family and could not do that. They told me I had to do it.

One day I was closing my shop and I saw two men approaching. I saw that they had pistols and I ran. They shot at me twice but they did not hit me. I ran until I got home. I was tired and breathing heavily and told my mum. Usually when this kind of thing happened and there is a gunshot people run and the people attend. When the police came this time and spoke to the nearby people they were told I was the one who was shot at and these people had approached me several times and asked me to work for them. The police came to our house...I told them the men approached me several times. They said they would investigate but there was not much they could do and I should save myself if I could.

22. The IPO interviewer asked a series of questions in order to clarify some of the details of the incidents described. The applicant was asked to provide a timeline of the events outlined above. After which, the interviewer asked, *“Did they say anything else about the job, your role, what they wanted?”* To which the applicant replied that, *“they wanted me to watch the construction site and tell them when the soldiers were away”*.

23. The interviewer asked if the security left regularly to which the applicant noted they left around 1pm every day. The interviewer at a later stage asked, *“If this was known why did they need you?”* To which the applicant replied that he had stated that he thought the security did not take their break at the same time every day.

24. The applicant was asked at three instances why he would be recruited by Al-Shabaab. First, the applicant was asked why the organisation would attempt to recruit the applicant considering his family history with the organisation; the applicant noted that Al-Shabaab will approach every family in Somalia if they need something and his family was no different. Second, the applicant was asked about incentives for working for Al-Shabaab, the interviewer suggested that Al-Shabaab usually incentivised their informants and asked the applicant on his failure to disclose any incentive offered by Al-Shabaab. The applicant stated that no incentive was offered but rather he will *“be rewarded in the next life”*. Toward the end of the questioning the interviewer revisited the issue and asked why Al-Shabaab would need to threaten and harm the applicant when there are plenty of people who will happily help them, to which the applicant stated he did not know. In relation to why in particular the applicant was approached, the interviewer asked why other shops in the area were not targeted, the applicant was not sure but suggested that his shop was close to the road and the construction site.

25. The applicant was asked if he had any evidence of either his incident or his father's incident with Al-Shabaab to which the applicant stated he did not and that written death certificates are not provided in Somalia; the interviewer stated that he found that claim "*very difficult to accept*", and allowed two weeks for the submission of any evidence.

IPO Decision

26. The first-instance decision of the IPO issued on the 24 July 2023. While the IPO decision is not impugned in these proceedings, the findings of the IPO will provide contextual assistance in the discussion of the Tribunal's decision.

27. The IPO accepted for reasons set out within its decision that the applicant was a Somali national of a specified age, is married and lived in an identified region of Somalia. The IPO did not accept any of the applicant's assertions concerning the incidents described. The credibility findings of the IPO can be summarised as follows:

- i. The applicant was not a viable informant for Al-Shabaab. The IPO considered the applicant's assertions not credible owing to his family's history with Al-Shabaab, particularly in circumstances where other recruits were available.
- ii. It was not accepted that an informant would be required for the task described by the applicant in circumstances where it was expressly stated that the guards left at the same time every day. In this respect the IPO highlighted an inconsistency where the applicant at one instance suggests the soldiers leave at the same time each day (at 1pm) but at a later stage suggested they leave at different times each day.

- iii. The overall claim regarding the applicant's attempted recruiting was considered not credible on the basis that the applicant did not suggest any incentive – financial or otherwise – when first describing the incident but later remarked that Al-Shabaab suggested he will be rewarded in the next life, when he was later asked specifically about incentives. In reaching this credibility finding the IPO drew on available but unspecified COI to note the prevalence of financial incentives in the practices of Al-Shabaab.

28. For the reasons set out above, the IPO found that the incidents described by the applicant were not credible. There was no express finding made in relation to the applicant's claim that his father was killed by Al-Shabaab. It appears from the overall decision that the IPO did not consider this material to the applicant's claim for international protection.

29. The claim for international protection proceeded on the basis of the facts accepted by the IPO: that the applicant was a male Somali national of a particular age and from a particular region of Somalia. On the basis of these facts and the analysis conducted thereafter, the IPO recommended refugee status and subsidiary protection be refused.

THE TRIBUNAL'S DECISION

30. The applicant filed a notice of appeal against the decision of the IPO on the 30 August 2023, the notice of appeal was accompanied by grounds of appeal and submissions. The applicant's oral hearing was heard virtually on the 7 June 2024 with the assistance of an interpreter.

31. The IPAT decision issued on the 2 September 2024. The Decision began by setting out the pertinent sections of the applicant's IPO questionnaire, which I have set out previously in this judgment. Similarly, the Decision laid out the relevant assertions provided by the applicant in the s. 35 interview. A narrative summary of the factual background provided by the applicant at the oral hearing was provided by the Tribunal, the pertinent paragraphs of the summary are as follows:-

The appellant stated to the Tribunal that there was construction taking place on the road by a Turkish company within close proximity to his shop. This construction was being secured by the Somali army. He stated that two men posing as customers came into his shop and asked him to help them by alerting them when the troops securing the building were not there, but he refused, telling the men that he was just working for his family. He states that at this point the men threatened him and then they left. He had never seen the men before.

He states that after one week, the same two men returned with pistols, firing shots at the Appellant, but he managed to run away. He went to his home and the police arrived later as a friend of his in a shop nearby had explained to the police what had happened. The police informed the Appellant they could do nothing about it as the men were Al-Shabaab. The Appellant then decided to leave the country and uncle gave him money to avail of the assistance of smugglers to help him leave Somalia.

32. The Tribunal set out the COI intended to be relied upon in the Decision and noted the intention to rely on the COI identified by the solicitor for the applicant and the following additional documents:

- EUAA – Country Guidance: Somalia (August 2023)

- US Department of State: 2023 Country Reports on Human Rights Practices: Somalia

33. The Tribunal identified the core of the applicant's claim as being that "*two men from Al-Shabaab attempted to coerce the Appellant into providing information about the Somali military's movement in order to carry out an attack on Turkish road workers.*" The Tribunal set out a broad overview of the events which are alleged to have occurred and then considers each specific element of the claim in more detail. From my reading of the Decision, the Tribunal can be seen to have made five findings in relation to the applicant's incident with Al-Shabaab at his shop. Each finding will be considered in turn but can be summarised in the following terms:-

- i. No compelling reason was offered as to why any other person could not have provided the same information to Al-Shabaab and, *a fortiori*, no compelling reason as to why the applicant was targeted.
- ii. No satisfactory reply was offered as to why the s. 35 interview was inconsistent with the narrative account provided in the IPO questionnaire.
- iii. No adequate explanation was given for the inconsistency relating to the timing at which the security personnel took their break and why Al-Shabaab would therefore need information. This finding arises across two paragraphs which appear on my reading to be concerned with the same issue.
- iv. No credible or compelling explanation was offered as to how the applicant escaped his "*assassination attempt*" from Al-Shabaab if he only attempted to flee after the shots were fired.

- v. Ultimately, the “*vague, lacking in detail and entirely uncorroborated*” claim in relation to the incident was not credible.

Why the applicant?

34. The Tribunal notes that the applicant was asked if “*he had any explanation as to why Al-Shabaab chose him, and could not have simply used anybody, or somebody loyal to them as a lookout...*”. The Tribunal set out the applicant’s reply as “*it was because of the proximity of my shop. I was the closest to the works.*” The Tribunal subsequently finds that the applicant provided, “*no compelling reason as to why any individual could not have provided the exact same information to Al-Shabaab, simply stating that they chose him because his shop was the closest to the construction.*”

Inconsistencies between the IPO questionnaire and the s. 35 Interview

35. The Tribunal explained that it was put to the applicant that his IPO questionnaire did not mention anything about construction workers or acting as a lookout. Rather, the narrative provided, “*We want you to work with us to bring us information from the government*”. The explanation provided by the applicant was that “*I just put a very short explanation of my problem. The Turkish are working for the Somali government. That is what I meant.*”. The Tribunal did not accept this explanation and found that the applicant did not provide any satisfactory reply as to why his questionnaire is different to his s. 35 hearing and the oral hearing on appeal.

Why Al-Shabaab would need the information alleged to be sought

36. It was put to the applicant that in his s. 35 interview, he explained that the soldiers left the construction site at around 1pm every day and it therefore was not clear why Al-Shabaab

would need an informer to tell them when the soldiers left. In reply the applicant stated: *“When the building was going on, the troops were protecting the people building the roads. On the questionnaire, I just said when the troops leave.”*

37. The Tribunal further put the issue to the applicant, *“You said at one point that the security detail left every day at 1pm, and then at another point you said they left at different times?”*. The applicant stated, *“I mentioned during the lunchtime when the troops leave, that is when Al Shebab would want me to report to them”*.

38. The explanation proffered by the applicant was not considered sufficient and on a third occasion the Tribunal asked, *“if they left every day at 1pm, then this was generally known information. Why would al Shebab need you?”*. In reply, the applicant said, *“During the lunch time the troop numbers were very few. That is when they wanted me to report to them.”*

39. Having set out the narrative from the s. 35 interview and the subsequent oral hearing before the Tribunal, the Decision set out a terse conclusion on this issue *“Despite being given several opportunities to reply, the Appellant failed to provide any explanation for this inconsistency in his claim”*.

40. The discussion concerning the necessity for information around the soldiers’ break time continued in respect of the precise element of the claim that two members of Al-Shabaab came into his shop and asking him to provide information. The Tribunal considered there to be no compelling reason why Al-Shabaab would need the applicant in these circumstances where it was *“generally known information”* that *“the Somali Army left at 1pm lunchtime each day”*.

41. The conclusion was reached that, *“These issues were all put to the Appellant for clarification, yet he failed to provide any credible explanation to these points. It is further noted that the Appellants claim [sic] is not consistent with what was claimed within his questionnaire”*.

The shooting by Al-Shabaab

42. In respect of the element of the claim that the two members of Al-Shabaab returned to the applicant’s shop, the Tribunal noted, *“The Appellant further stated at his oral hearing that the same two men returned to his shop on the 28/06/2024 and attempted to murder him”*. It can be noted that the date identified by the Tribunal is incorrect, however this can in the circumstances properly be considered as immaterial.

43. An issue was put to the applicant in respect of the precise terminology used to refer to the number of incidents which he had with Al-Shabaab. The Tribunal put it to the applicant that in his s. 35 interview he stated he was approached *“several times”*, whereas he later claimed that they only approached him twice. The explanation offered by the applicant was that this was a translation issue.

44. The Tribunal then asked the applicant about the details of the shooting: *“You say the two men returned on the 28 June, both carrying pistols. You said they both shot at you. Can you explain in detail what happened on the 28 June? How did you manage to get away from two gunmen?”* The applicant answered, *“I was standing in front of my shop. It was about time to close the shop. The two men took out their pistols. They were firing to everyone. I managed to get away. They were not firing just at me. I ran away and that is how I escaped.”*

45. In respect of whether this was a targeted attack, the Tribunal asked, *“Were they targeting everyone or just you?”* To which the applicant answered, *“The target was me, but they did not care who else they would kill.”* In relation to the distance of the applicant from the members of Al-Shabaab, the applicant when asked replied that they were at a distance of *“about 15 steps”*.

46. The applicant in response to a question explained that he began to run after he heard the gunshot. The Tribunal followed this up asking was it not surprising that the gunmen did not choose to get closer before starting to shoot. The applicant stated, *“I don’t know why they started shooting before they got close to me. I don’t know. They started shooting from 15 steps which is not far”*. The Tribunal noted that the applicant does not have any documentation to corroborate this shooting.

Final conclusion

47. The final paragraph in this section of the Tribunal’s analysis was an overall conclusion on the applicant’s claim as it related to the incident with Al-Shabaab. As this conclusion is central to the credibility finding it is helpful to set it out in full:-

“The Appellants claim with regards to his escape from an assassination attempt at the hands of Al-Shabaab is vague, lacking in detail and entirely uncorroborated. Credibility issues were put to the Appellant at his oral hearing, yet he failed to provide any credible or compelling explanation as to how he managed to escape two gunmen, especially given the fact he did not run away until after shots were fired. This coupled with the fact that the Appellant has not corroborated this aspect of his claim in any way leads the tribunal to affirm the decision of the IPO in holding that the Appellants core claim that hat [sic] two men from Al-Shabaab entered his shop in [identified area] and attempted to

coerce him into providing information about the Somali military's movement in order to carry out an attack on Turkish road workers is not credible."

EXTENSION OF TIME

48. The applicant accepted that an extension of time is required in circumstances where the proceedings were filed 35 days after the issuing of the impugned decision. The applicant was therefore out of time by a period of seven days.

49. The applicant addressed the issue in his written submissions. He argued that there is good and sufficient reason to grant an extension of time owing to the fact it was necessary to obtain translation and interpretation services in order to have the proceedings filed and further noted that the grounding affidavit was sworn two days out of time.

50. In relation to this issue, the respondent did not object strongly to the granting of an extension of time, but stated that such an extension of time should only be granted if the court is satisfied there is good and sufficient reason to do so.

51. The approach to be adopted to an application for an extension of time under s. 5 of the Illegal Immigrants (Trafficking) Act 2000, as amended, is that set out in the judgment of Simons J. in *P. (Zimbabwe) v. IPAT* [2025] IEHC 403.

52. The judgment highlights the distinction between the test to be applied in other statutes and the RSC, to "*show good and sufficient reason to make the application within*" the

prescribed period, and the 2000 Act, whether there is “*good and sufficient reason*” for extending the period.

53. While mindful that the threshold under O. 84 appears slightly higher, the court should have regard to the analogous principles for an extension of time under O. 84 r. 21 RSC. I have previously summarised the relevant factors in *S.G. (Albania) v. IPAT* [2025] IEHC 739, to include the nature of the orders under challenge, the conduct of the parties, the effect of the decision under challenge, steps taken by the parties subsequent to the decision under challenge, and the public policy consideration that public law challenges should be prosecuted promptly.

54. In *P. (Zimbabwe)*, Simons J. identified that an important policy consideration underpinning s. 5 of the 2000 Act was to ensure that the proceedings would be determined with expedition and delay in commencing proceedings could hinder the achievement of that policy.

55. Considering the factors I have outlined above and having regard to the manner in which the extension of time application was approached in *P. (Zimbabwe)* I am satisfied that the applicant has established good and sufficient reasons for an extension of time for the following reasons:

- i. The delay was for a reasonably short period (seven days).
- ii. This delay did not contribute in any material manner to a delay in the resolution of the proceedings.
- iii. No prejudice was identified or argued by the respondent. In fact, the approach of the respondent, while not acceding to the application, was not one of substantive objection.

- iv. The extension of time application was heard in tandem with the hearing of the substantive application.
- v. The delay was caused by the logistical difficulties in ensuring the proceedings could be properly filed. In circumstances where the applicant required translation and interpreter services it is clear the application was progressed expediently.
- vi. This was evidently not a case in which the applicant's case was very weak or bound to fail.

GENERAL PRINCIPLES

56. At the outset, the general principles which apply to judicial review applications of this type are well-established. I consider the following matters appear to be applicable in this case:

- a. The role of the High Court is to consider the lawfulness of the decision and to determine whether the decision made was one that was lawfully open to the decision maker.
- b. The Oireachtas has tasked the IPO and Tribunal with determining the factual issues.
- c. The High Court should not substitute its views for those found by the Tribunal; so long as this is done properly, it is a matter for the Tribunal to weigh credibility.
- d. In carrying out that task, the court should view matters in the round and avoid over-parsing or over-analysing a decision.

57. The standard of review to be applied in judicial review applications concerning international protection is a heightened scrutiny to that which ordinarily applies. This heightened scrutiny was described by Charleton J. in *AAA v Minister for Justice* [2017] IESC 80:

“26. In NM, Hogan J. held that post-Meadows, judicial review was sufficiently flexible to accommodate the “thorough review” requirements of Diouf, even if the earlier “no evidence” standard required by O’Keeffe would not. ...”

58. The Court is therefore required to adopt a standard of *thorough review*. As explained by the CJEU in *X. v. IPAT* C-756/21, there is a need for “*vigilance and care*” when assessing individual circumstances in a claim where the applicant has a fear of persecution, because “*what are at issue are issues relating to the integrity of the person and to individual liberties, issues which relate to the fundamental values of the European Union...*”

59. While significant aspects of the Decision were impugned by the applicant, the approach taken by the parties to the breakdown of the issues and the manner in which they were presented throughout the pleadings and submissions was of great assistance in determining this application for judicial review.

60. In reviewing the Decision of the Tribunal, I am satisfied that the judgment of Cooke J. in *I.R. v. Minister for Justice* [2009] IEHC 353 remains an accurate guide as to the principles relevant in applications of this type. I have set out the principles which I consider relevant in this instance:

1) ...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.

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.

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.

61. The parties helpfully distilled the issues arising in these proceedings to the following three questions:

- a. Whether there was a failure to have regard to COI when assessing credibility.
- b. Whether the Tribunal acted lawfully in its approach to documentary evidence when assessing credibility.
- c. Whether the Tribunal engaged in unlawful speculation and conjecture and / or acted irrationally and unreasonably in rejecting the applicant's credibility and engaged in irrationality/unreasonableness in finding some aspects of the applicant's claim to be inconsistent, vague and lacking in detail.

FAILURE TO HAVE REGARD TO COI

The applicant's arguments

62. The applicant notes that the requirement to have adequate regard to COI arises from s. 28(4) of the 2015 Act:

The assessment, by the international protection officer of an application, and by the Tribunal of an appeal under section 41, shall be carried out on an individual basis and shall include taking into account the following:

- (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;*
- (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;*
- (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;*
- (d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities will expose the applicant to persecution or serious harm if returned to that country;*
- (e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship;*
- (f) the general credibility of the applicant.*

63. The applicant stressed the observations of Simons J. in *K. (Zimbabwe) v. International Protection Appeals Tribunal* [2023] IEHC 6 and of Hogan J. in *R.A. v. Refugee Appeals Tribunal* [2017] IECA 297. Both judgments provide a helpful articulation of the role COI plays

in the consideration of a claim by the Tribunal. In *K. (Zimbabwe)*, Simons J. explained at para. 40:

In most cases, however, country of origin information will be of use in ascertaining whether the social, political and other conditions in the country of origin are such that the events recounted, or the mistreatment claimed to have been suffered, may or may not have taken place.

64. Para. 48 of the court's judgment is also relevant:

...[S]aying that regard should have been had to the country of origin information does not amount to saying that the specific allegations made by any particular applicant for international protection will be found to be credible. The point is, rather, that in order to properly assess those allegations and to reach a reasoned view in relation to credibility, it is important to understand the political context.

65. In *R.A.*, the question before the Court was whether the decision maker is obliged to engage in a narrative discussion of COI where the credibility of the applicant is being rejected generally, and where the Tribunal is not positively rejecting the information (that is to say, where the Tribunal is not, having considered the information, rejecting the information and making a conclusion which is inconsistent with the information considered).

66. The decision maker in that case considered the applicant to be vague and evasive, finding that the manner in which the applicant answered questions was a deliberate attempt to confuse the evidence.

67. In respect of the manner in which the decision maker approached the applicant's claim, the applicant in the instant case draws the court's attention to the following paragraphs:

"40. The Tribunal did not, however, refer to the COI at all in considering whether the applicant's account might be true. The applicant's claim, after all, was that he had discovered that his own house had been burnt down by Ouattramilitiamen on 11th April 2011 and that he had gone into hiding on that day. The veracity of that claim was central to the entire credibility assessment, yet it could not be dismissed without at least some reference to the COI, As Peart J. put it in Imafu, this was precisely the kind of "unusual matter which would have to be checked out before one could assert with any reliability that the applicant was not being truthful."

41. Although there is no finding as to the origin of the applicant in the decision of the Tribunal, it seems at least generally implicit in that decision that the ORAC's finding to the effect that he was an Ivorian national who came from Adobo was accepted. In view, however, of the approach taken in cases such as Camara and AMT and the specific requirements of the Article 5(1)(a) of the 2006 Regulations, the failure of the Tribunal to consider the credibility of his claim in the context of relevant COI in itself rendered the decision invalid."

68. The applicant argues his case is one in which he cannot be said to have been "caught out", where reliance on COI would be futile in the face of a catastrophic finding undermining his entire claim. Documentary evidence showing an applicant to be in a different country during the events relied upon is put forth as an example of being "caught out" in such a manner. Rather, the applicant considers that COI was available (and explicitly relied upon by his solicitors in appeal submissions) which went directly to the issues raised by the Tribunal.

69. An illustration of this failure to have regard to COI is set out in the applicant's written submissions. At para. 21 of the Decision it was stated:

"The core of the Appellant's claim is that two men from Al-Shabaab attempted to coerce the Appellant into providing information about the Somali military's movement in order to carry out an attack on Turkish road workers."

70. This paragraph should be read with para. 25 which stated, *"The Appellant was asked by the Tribunal if he had any explanation as to why Al Shabaab chose him, and could they not simply have used anybody, or somebody loyal to them as a lookout to inform them regarding the movement of Somali troops when by his own account it was a busy intersection with many people about the place?"*

71. The applicant asserts that his solicitor explicitly referenced COI in his leave submissions which went to the crux of this issue. The COI relied upon in particular is the 2021 EASO report, with the following extract emphasised:

In many cases, persons in areas not in Al-Shabaab's hands are used as informants because of their knowledge of their local area. It has been reported that recruitment of informants – who are not necessarily members of AS – may occur through bribery, intimidation, threats and the use of violence, e.g. local employees of international organisations were pressured to cooperate with AS in this regard.

72. Further pertinent COI was emphasised insofar as it related to Al-Shabaab targeting civilians:

Though the government offensive has weakened Al-Shabaab's hold on territory, it has not stopped the group's attacks. In 2022, there was a 41 percent increase in al-Shabaab violence targeting civilians.

73. The applicant disputed the Tribunal's argument that the credibility findings were made on the basis of the applicant's internal inconsistencies / vagueness / incoherence and that the Tribunal did not make any finding that the events claimed by the applicant were not events likely to occur in Somalia / the applicant's local area. The applicant relies on the following extracts of the Decision for this purpose:

- a. *When asked, the Appellant provided no compelling reason as to why any individual could not have provided the exact same information to Al-Shabaab, simply stating that they chose him because his shop was the closest to the construction.*
- b. *The Appellant has provided no compelling explanation as to why Al-Shabaab would have needed him for this information, especially in circumstances where the Appellant has also claimed that it was generally known information that the Somali Army left at 1pm lunchtime each day.*
- c. *The Appellants claim with regards to his escape from an assassination attempt at the hands of Al-Shabaab is vague, lacking in detail and entirely uncorroborated.*

74. The argument therefore is advanced that the Tribunal clearly failed to consider the applicant's evidence having regard to the COI which was available before it.

The respondent's argument

75. For its part, the respondent agrees that the requirement to have regard to COI arises from s. 28(4) of the 2015 Act. In respect of the applicant's reliance on *K. (Zimbabwe)*, the respondent emphasises that Simons J. in the same judgment held in the paragraphs preceding those relied upon by the applicant that the decision maker is not required to apply COI in a "*ritualised or mechanistic fashion*", similarly the requirement is to have regard to "*only the relevant COI*".

76. In *K. (Zimbabwe)*, Simons J. considered it crucial to a proper assessment of the applicant's claim to understand the nature of the political system in Zimbabwe and in particular the documented instances of violence being perpetrated by the ruling party against opposition parties. The respondent argues that this is a highly fact-specific finding and *K. (Zimbabwe)* does not prescribe that COI is always necessary to the assessment of credibility.

77. The crux of the respondent's argument in this regard is that the findings of the Tribunal were made on the basis of inconsistencies in the applicant's account, vagueness, incoherence, or a lack of detail. Of the examples relied upon by the applicant in an effort to refute this argument, the respondent contends that:

- a) the finding in relation to why the applicant would be required to give information about something that was common knowledge (the lunchtime of the soldiers) was a finding reached by the Tribunal on the basis of the applicant's own account (i.e. it was internally inconsistent), and
- b) there was no corroborating evidence of the particular incident advanced by the applicant and the reference to COI to suggest this *could* happen does not address the internal incoherence of the applicant's claim. In

particular, that two men got within 15 steps before firing and the applicant successfully escaping despite not fleeing until they began to fire.

Failure to have regard to COI

78. The requirement to have regard to relevant COI arises from s. 28(4) of the 2015 Act. In particular s. 28(4)(a):

The assessment, by the international protection officer of an application, and by the Tribunal of an appeal under section 41, shall be carried out on an individual basis and shall include taking into account the following:

(a) *all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;* [emphasis added]

...

79. The extent of this obligation was considered by Simons J. in *K. (Zimbabwe)*. At para. 48 of his judgment, Simons J held:

...Saying that regard should have been had to the country of origin information does not amount to saying that the specific allegations made by any particular applicant for international protection will be found to be credible. The point is, rather, that in order to properly assess those allegations and to reach a reasoned view in relation to credibility, it is important to understand the political context.
[emphasis added]

80. The principle outlined above is illustrated at para. 46 of the judgment where Simons J. considered:

Country of origin information might also have corroborated other aspects of the applicant's narrative. For example, the applicant asserts that most of the people in [name of region redacted] were members of, and would want to vote for, MDC, and that there had been rioting following the success of ZANU PF in the election. If this had been confirmed by country of origin information, then it might be thought to support the applicant's narrative of the tension between the parties in the local area and the attempts by ZANU PF to recruit members of MDC.

81. In *K. (Zimbabwe)*, Simons J. considered that the COI available would be evidently of assistance to the Tribunal in contextualising the claim advanced by the applicant with the political reality presenting in the region in which the applicant resided.

82. The judgment of Hogan J. in *R.A.* is similarly of relevance. In *R.A.*, the veracity of the claim that the applicant's house was burnt down was central to the general credibility of the applicant and Hogan J. considered that the claim could not be dismissed without at least some reference to COI.

83. It is helpful to characterise the precise dispute on this issue in the instant proceedings. The applicant considers that reference to COI would shine light on the general matters the Tribunal put at issue in the oral hearing. The respondent considers that the determinations as to credibility were reached on the basis of internal inconsistencies and that reference to COI is of no assistance in those circumstances; it is not the likelihood of the events potentially occurring

which the Tribunal rejects, but rather the coherence of the applicant's claim that they happened to him.

84. I consider that the observations made by Simons J. of assistance in the resolution of this issue. While it may be correct to observe that the respondent's argument that internal inconsistencies would not be resolved by reference to COI in some circumstances, I do not consider it is applicable here. This is primarily on the basis that the internal inconsistencies identified by the Tribunal were matters which inherently went to the political and humanitarian realities of Somalia.

85. The Tribunal made a finding at para. 27 that the applicant failed to provide an explanation for why Al-Shabaab would require the applicant to provide them with information when it was "common knowledge" that the soldiers took their break at 1pm each day. I do not accept that this determination could lawfully be reached in total absence of a consideration of COI. First, the applicant explicitly argued in his appeal submissions that the region in which the applicant resided was not an area controlled by Al-Shabaab, and as such they were reliant on informants procured by way of bribery or intimidation. This, as *per* Simons J. in *K. (Zimbabwe)* is important context for the reality of life faced by the applicant in Somalia. What may be common knowledge for the applicant and local residents in relation to the soldiers and their break times, may not be common knowledge for Al-Shabaab in a region they do not control. It is not for the court to make a determination as to whether in the applicant's circumstances this claim was in fact credible. However, I am satisfied that the assessment of the applicant's claim necessarily required analysis of the control exercised by Al-Shabaab in the area, analysis which ought to have been completed by reference to the available COI.

86. In reviewing the legality of the Decision on this ground, I am cognisant of the importance not to “*deconstruct an overall conclusion by subjecting its individual parts to isolated examination*”. (Principle 8 of *I.R.*). However, I consider the inconsistency finding made by the Tribunal was central to the overall conclusion as to credibility, and crucially, for reasons below I am satisfied that other elements of the Decision suffer from unlawfulness.

87. In this case, there was very compelling COI which showed the violence perpetrated by Al-Shabaab in the applicant’s area targeted what that organisation perceived as entities associated with the government. In principle this shed light on the targeting of the Turkish workers and their Somali military protection. In addition the COI set out that in areas that were not under Al-Shabaab control – which was the case here – the organisation used local civilians as informants, and sought to recruit young men. In that regard, the applicant’s account resonated with the COI. Finally, over and above the high risk of indiscriminate violence from Al-Shabaab, the COI made clear that persons who did not cooperate with Al-Shabaab were at risk for targeted attacks and, in some cases, killings.

88. In the circumstances I am satisfied that the decision of the Tribunal was unlawful due to failure to have regard to relevant contextual COI.

APPROACH TO DOCUMENTARY EVIDENCE

89. This argument was concerned with the manner in which the Tribunal weighed the documentary evidence / lack of documentary evidence in its assessment of the applicant’s claim. The applicant argues that the approach of the respondent was, *inter alia*, in breach of s. 28(7) of the 2015 Act.

90. The full text of s. 28(7) of the 2015 Act is as follows:

Where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the international protection officer or, as the case may be, the Tribunal, is satisfied that—

(a) the applicant has made a genuine effort to substantiate his or her application,

(b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given,

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case,

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so, and

(e) the general credibility of the applicant has been established.

91. The applicant relies on the *dicta* of the court in *O.P. v. Minister for Justice* [2019] IEHC 298 and seeks to distinguish *A.H. v. International Protection Appeals Tribunal* [2022] IEHC 84 on this issue. In *O.P.*, Keane J. considered the failure of the tribunal in that case to engage with the terms of the European Communities (Eligibility for Protection) Regulations 2006. These regulations have since been repealed, however the *dicta* of Keane J. maintain relevance, it is argued, by virtue of the fact that s. 28(7) of the 2015 Act is identical in its terms. Of particular relevance to the applicant's argument is para. 26 of the *O.P.* judgment:

For that reason, it is a matter of immediate concern that neither in the section of the IPAT decision headed 'Analysis of Credibility' nor anywhere else in it are the requirements of Reg. 5(3) of the 2006 Regulations addressed in terms. Further, instead of accepting those aspects of the first applicant's unsupported statements that have not been confirmed (presumably, by other evidence available to the tribunal), the IPAT decision rejects various aspects of those statements as lacking credibility. This means that the applicants and, by extension, the court must attempt to infer which of the necessary conditions for the acceptance of the first applicant's statements without confirmation under Reg. 5(3) the tribunal concluded had not been met. Had the tribunal concluded that the applicants had not made a genuine effort to substantiate their application? Or that they had failed to provide a satisfactory explanation for the lack of a relevant element of their claim and, if so, which? Had the tribunal found that the first applicant's statements were not coherent or plausible or that they ran counter to available information and, if so, how? Had the tribunal concluded that the first applicant had failed to establish her general credibility? If so, in what way? Or had the tribunal decided that some combination of those conditions had not been met?

92. The applicant argues that the requirement for supporting documentation is a separate consideration to the assessment of an applicant's claims for credibility.

93. In *A.H.*, Ferriter J. distinguished *O.P.* on the facts in circumstances where in *O.P.*, the tribunal neither set out why it was accepting or rejecting the applicant's credibility, whereas in *A.H.*, it was clear that the tribunal rejected the applicant's credibility and, in those circumstances, "*was not accepting core aspects of the applicant's claims which were unsupported by documentation*".

94. Para. 17 of the judgment in *A.H.* is of particular assistance and has been subsequently relied upon by Bolger J. in *A.C. v IPAT* [2022] IEHC 430:

"In short, it is clear that before the benefit of the doubt can be given in relation to undocumented aspects of an applicant's claims, the applicant's general credibility must be established (see s.28 (7)(e)). Once the applicant's general credibility has been established, undocumented aspects of the applicant's case do not need to be confirmed i.e. can get the benefit of the doubt where, but only where, the four other factors in s. 28 (7)(a) to (d) are satisfied"

95. The applicant considers the instant proceedings as one falling within the realm of cases addressed by Keane J. in *O.P.* This is on the basis that the Tribunal failed to engage or refer to s. 28(7) despite repeatedly criticising the applicant for failing to provide documentary evidence.

96. The applicant sets out a series of findings within the Decision which are concerned with corroboration and which the applicant argue illustrate the unlawful approach taken by the Tribunal:

- i. That Al-Shabaab came to his shop and asked him to provide information.
- ii. The applicant has no documentation to corroborate the shooting incident.
- iii. The assassination attempt by Al-Shabaab is entirely uncorroborated.
- iv. No documentation was provided to corroborate the claim that the applicant's father was killed, no police report was provided and the incident itself is entirely uncorroborated.
- v. Overall, the applicant's claim is entirely uncorroborated.

97. In essence, the above-mentioned findings illustrate the weight afforded by the Tribunal to the issue of corroboration in making negative findings of credibility against the applicant.

98. The respondent's position is that the issue of corroboration was not relied upon when assessing general credibility. Rather, having concluded that the applicant's account is internally incoherent and therefore not credible, the Tribunal makes the further finding that there is no corroborating evidence which could support the applicant's claim notwithstanding the finding of the lack of general credibility.

99. The respondent refers to the provisions of s. 28(7) and emphasise that uncorroborated events do not need confirmation only where the cumulative conditions of s. 28(7)(a-e) are satisfied. The respondent emphasises s. 28(7)(c) and (e):

...

c) *the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case,*

...

e) *the general credibility of the applicant has been established.* [emphasis of the respondent]

100. In the circumstances where the Tribunal has found the applicant not to be credible and his claim internally incoherent, he clearly does not satisfy the cumulative requirements within s. 28(7) for uncorroborated elements of his claim not to require confirmation.

101. The respondent rejects the applicant's reliance on *O.P.* and considers this case to be one which falls to be determined by reference to *A.H.* In *A.H.*, the rejection of the applicant's general credibility meant that the cumulative requirements of s. 28(7) could therefore not be satisfied.

102. The culmination of this argument is therefore: if the respondent acted lawfully in reaching the credibility findings and the findings as to the internal incoherence of the applicant's claim, then the ground must fail and the Tribunal is therefore not required to accept uncorroborated elements of the applicant's claim.

Approach to documentary evidence

103. The issue for resolution here is whether the Tribunal relied on a lack of corroboration in reaching its credibility assessment and if so, whether this was unlawful. The applicant identifies the cases of *O.P. and A.H.* While I am satisfied these authorities are of assistance to the resolution of this issue, I do not accept the applicant's contention that this case falls to be resolved by reference to *O.P.*

104. In the first instance, I do not accept the argument that the Tribunal relied on a lack of corroboration in reaching its finding as to credibility. The manner in which the Tribunal approached the Decision was to make determinations in relation to each element of the claim on essentially a chronological basis as to how the events are claimed to have unfolded.

105. At para. 30 of the Decision, the Decision notes that the applicant has "*no documentation to corroborate this event*" in reference to the shooting incident. Whereas at para. 31, the Decision considers the issue of whether the applicant's account of the events is credible. In which case the Decision notes "*...he failed to provide any credible or compelling explanation as to how he managed to escape...*". The argument evidently arises from the sentence immediately following, "*This coupled with the fact that the Appellant has not corroborated this aspect of his claim in any way leads the tribunal to affirm the decision of the IPO in holding that the appellant's core claim...is not credible.*"

106. The applicant contends that the coupling of the findings implies that the Tribunal erred in failing to first consider the issue of general credibility before considering whether the claim has been corroborated. I am satisfied that the Decision treats the issues distinctly and that the Tribunal first determines the issue of credibility and finding the applicant not to be generally

credible, and, subsequently, notes that there is no corroborating evidence that could support the claim despite the lack of credibility. It can be observed that the Decision could be clearer in this respect, however, the Decision must be read in context, and from my overall reading of the Decision I am satisfied that the Tribunal did not err in this respect.

SPECULATION AND CONJECTURE

107. The arguments raised in relation to this question appear to cover a broad spectrum of arguments. From the submissions it appears that the arguments can be separated in the following way:

- i. The Tribunal speculated unlawfully as to the operational methods of Al-Shabaab when determining that they would not need the surveillance information of the applicant.
- ii. The finding that there was an inconsistency between what was stated in his questionnaire and what was said in his interview was irrational and unreasonable.
- iii. There was an unreasonable and / or irrational reliance on perceived inconsistencies.
- iv. The finding that the applicant's escape from the shooting was vague and lacking in detail was unreasonable and irrational.

108. The applicant drew on the *dicta* of Cooke J. in *I.R. v Minister for Justice*. In *I.R.*, the court set out a series of principles which act as a guide on the manner in which evidence going to credibility as well as the conclusions on credibility ought to be treated. At the hearing of the

application, the respondent agreed that the principles articulated by Cooke J. remain the cornerstone for considering issues of credibility.

109. The applicant put particular emphasis on the guiding principle 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*”. The Tribunal finding that Al-Shabaab would not need the information from the applicant as to when the Somali soldiers take their break offends this principle, according to the applicant.

110. The respondent asserted that the finding of the Tribunal was far more narrow than that contended by the applicant. Rather than speculating as to the operational methods of Al-Shabaab, the Decision only found that the applicant failed to account for why Al-Shabaab would require the information from the applicant and that this failure to explain was in the context of the facts as recounted by the applicant (i.e. internal incoherence).

111. In relation to the supposed discrepancies arising between the IPO questionnaire and the subsequent interview, the applicant suggested that the questionnaire is merely more terse in its description and that it is often the case (and indeed by design) that applicants will provide further detail and clarity at the interview to the claims made in the questionnaire.

112. Reference was made to the UNHCR report *Beyond Proof, Credibility Assessment in EU Asylum Systems* (May 2013). The following extract was identified as particularly relevant:

Insufficiency of detail in an applicant's account may also simply be a reflection of a lack of awareness on the part of the applicant that specific details are

relevant and would support the application. This lack of awareness may be due to something as simple as a lack of space on an application form suggesting that only a brief outline of facts is required. Or it may be due to a lack of or inadequate guidance provided to the applicant regarding the significance and desirability of detail. It may result from a problem of miscommunication. For example, in one case reviewed the decision-maker recognized that the applicant's vague responses may have been due to her failure to understand the questions clearly."

113. The applicant suggested that a further explanation provided by the applicant at the interview as to why there was two dates of birth on file illustrate the point that insufficient guidance was provided. The applicant noted that the international protection office was busy and as a result, the mistake arose when a man who was assisting in the filling out of the form was helping two people at the same time.

114. This issue was addressed in *P. (Zimbabwe) v. IPAT* [2025] IEHC 403. In his judgment Simons J. drew a distinction between an inconsistency between answers at different stages of the process and the disclosure of additional evidence subsequent to an earlier answer provided. Para. 66 is of particular assistance:

There is a qualitative difference between an inconsistency in an individual's evidence, on the one hand, and the disclosure of additional evidence subsequently, on the other. It is, in principle, open to the IPAT to rely on an inconsistency in relation to material matters to ground a finding of lack of credibility. It is also, in principle, open to do so by reference to the belated disclosure of additional information. The decision-maker must, however, be

alive to the fact that the disclosure of additional information may simply be as a result of an applicant having been asked more specific questions at a different stage of the immigration process or of an applicant having been afforded more time and space within which to describe the circumstances of their claim for international protection. For example, the initial form which is completed by an intending applicant is short and the mere fact that additional information is subsequently provided in the context of the more detailed questionnaire or the formal interview may not necessarily support an inference of lack of credibility.

115. The applicant argued that the Tribunal's finding that the failure to mention construction workers or acting as a lookout in the questionnaire amounted to an inconsistency is a clear matter which amounts to further detail being provided at a later more discursive stage than an inconsistency. The applicant also argued that the approach taken by the respondent in its statement of grounds is not aligned with the actual Decision impugned. The respondent argued that the inconsistency arises from the mention of providing information "from the government" in the questionnaire and the failure to adequately explain this discrepancy at the interview stage. The applicant contended that this did not form the reasoning of the Tribunal and it was not open to the Tribunal to retrospectively formulate this reasoning in the pleadings.

116. The respondent rejected the argument that the explanation of the applicant amounted to more descriptive information in line with *P. (Zimbabwe)* but rather amounted to an inconsistency and that the Tribunal were entitled to identify this inconsistency. The respondent also noted that reference to "from the government" was in fact made in the Decision and as such properly formed part of their case.

117. The respondent further considered the approach taken by the applicant in this argument to be inconsistent itself. According to the respondent, it was not open to the applicant to suggest that mistakes were made due to the busy nature of the international protection office and simultaneously suggest the questionnaire answers were expanded upon at interview. First, because no leave was granted in relation to an assertion that a mistake was made and secondly because it cannot be said that the applicant expanded upon a point which was mistakenly made at an early stage, and that this necessarily amounts to an inconsistency.

118. The inconsistency relied upon in relation to when the soldiers left for lunch is argued to be clarified by virtue of the fact the applicant explained that the soldiers left at different times but that it was “*during the lunchtime*” that the soldiers would leave.

119. In respect of the argument that the Decision was unreasonable and / or irrational due to perceived inconsistencies at five specified points, the applicant did not put this argument any further and I do not consider that it truly goes further than the other arguments advanced here.

120. The manner in which the Tribunal approached the shooting at the applicant is the issue to be considered here. The applicant considered the claim is clearly adequately detailed and this evidently flows from the Tribunal’s reliance on precise elements of the description, such as the gunmen being 15 steps away.

121. The respondent suggested this argument was implicitly conceded by virtue of the fact it was not further substantiated. A further argument was relied upon such that the particular element considered vague and implausible was “*how he managed to escape two gunmen, especially given the fact he did not run away until after shots were fired.*”

Speculation and conjecture

122. The arguments advanced by the applicant on this basis, as noted above, were quite broad. In the interest of clarity, I summarised these arguments in the following terms previously in the judgment:

- i. The Tribunal speculated unlawfully as to the operational methods of Al-Shabaab when determining that they would not need the surveillance information of the applicant.
- ii. The finding that there was an inconsistency between what was stated in his questionnaire and what was said in his interview was irrational and unreasonable.
- iii. There was an unreasonable and / or irrational reliance on perceived inconsistencies.
- iv. The finding that the applicant's escape from the shooting was vague and lacking in detail was unreasonable and irrational.

123. I have already found that the approach of the Tribunal to the issue of whether the applicant would be required as an informant to be unlawful on the basis of the failure to consider relevant COI. I consider the failure to consider COI to be closely related to the issue of speculation in this instance. The Tribunal did not apprise itself of the true reality of the identified region in Somalia by virtue of the failure to consider the relevant COI. The Tribunal also must be considered to have speculated as to the operational methods of Al-Shabaab.

124. The *dicta* of Cooke J. in *I.R.* remains the touchstone for issues of this type. As set out in the principles outlined in that case:

“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...”

125. The applicant in submissions made the argument that as a shopkeeper, he was well placed to observe the surrounding area and was well apprised of any local common knowledge. The operational practices of Al-Shabaab, according to the COI available before the Tribunal, differ depending on the level of control which Al-Shabaab possesses over a region. As such, the Tribunal’s failure to contextualise the applicant’s precise claim as a shopkeeper near Al-Shabaab’s target in conjunction with the relative strength of Al-Shabaab in the region amounts to speculation, particularly in circumstances where the Tribunal’s reasoning was absent any informed context which could have been found by reference to the COI.

126. I find it very difficult to understand the Tribunal’s concern as to why the applicant and not someone else would be approached for information. It seems to me that this concern misses the point. If it is accepted for the sake of argument that Al-Shabaab was seeking the information in question relating to Turkish workers and their military protection there was always going to be some level of randomness in their choice of potential informant. Where the applicant was a young man managing a nearby shop one could equally ask why he would not be approached in that regard.

127. Turning to the issue of whether the Decision was lawful in finding the applicant inconsistent between his IPO questionnaire and his s. 35 interview, in the round I am not satisfied that this decision was reached unlawfully.

128. This point was argued extensively in the submissions provided to the court. While the applicant's criticism of the Decision in this respect is not without its merit, I am not satisfied that the criticism rises to the level necessary for this court to intervene in a judicial review application. The court must be mindful not to substitute its views for that of the Tribunal.

129. The judgment of Simons J. in *K. (Zimbabwe)* is helpful in this respect. Para. 66 which was opened to the court addresses the substance of the issue:

There is a qualitative difference between an inconsistency in an individual's evidence, on the one hand, and the disclosure of additional evidence subsequently, on the other. It is, in principle, open to the IPAT to rely on an inconsistency in relation to material matters to ground a finding of lack of credibility. It is also, in principle, open to do so by reference to the belated disclosure of additional information. The decision-maker must, however, be alive to the fact that the disclosure of additional information may simply be as a result of an applicant having been asked more specific questions at a different stage of the immigration process or of an applicant having been afforded more time and space within which to describe the circumstances of their claim for international protection. For example, the initial form which is completed by an intending applicant is short and the mere fact that additional information is subsequently provided in the context of the more detailed questionnaire or the

formal interview may not necessarily support an inference of lack of credibility.

[emphasis added]

130. The applicant argued that the short-form answers in the IPO questionnaire and the more substantive explanations provided at the s. 35 interview is exactly the situation Simons J. references in *K. (Zimbabwe)*. This issue is quite finely balanced. While I accept the argument that reference to acting as a lookout and the precise reference to the construction site which was Al-Shabaab's target are details which would reasonably be added at the interview stage, the finding must be viewed in the round. The Tribunal also took issue with the discrepancy between the applicant referring to Al-Shabaab demanding information "*from the government*" and the subsequent description of requiring information relating to the construction site. This issue was put to the applicant and the Tribunal was not satisfied with the explanation.

131. The court should avoid dissecting individual elements of a Tribunal's decision and examining each segment for legality, as addressed in *I.R.* When this determination is viewed in its entirety, I am satisfied that the determination reached by the Tribunal was one reached in a lawful manner.

132. I do not intend to address the third issue here raised in detail, relating to the cumulative effect of perceived inconsistencies. As explained previously, I am not convinced this argument advances the applicant's claim any further than the arguments already considered.

133. The final issue to be considered here is the argument that the Decision was irrational and unreasonable in the manner in which it approached the applicant's fleeing from the shooting incident.

134. I do not accept the respondent's submission that the relative weight attached to the applicant's escape from the gunmen being less than the weight attached to other issues necessarily amounts to an implicit concession by the applicant. While the respondent is correct in asserting that less argument has been dedicated to this particular determination, the point is clearly pleaded and raised in sufficient detail in the written submissions provided in order for the court to make a determination on the issue.

135. The primary difficulty in this respect is the characterisation of this attack as an "*assassination attempt*". This language arises for the first time in the Decision. The applicant made clear, in his response to the question of whether he was the target, that Al-Shabaab were quite indifferent to the harm caused to others. That appears inescapable in light of the COI; part of the organisation's modus operandi was to create a climate of fear of indiscriminate violence. It was open to the Tribunal at this instance to seek to further clarify as to whether the applicant understood the motives of the Al-Shabaab members to be directly targeting the applicant personally or whether they were totally indifferent to the damage caused.

136. I consider it was unhelpful for the Tribunal to recharacterise the shooting incident as an assassination attempt with no effort made to put this to the applicant. I consider this reformulation to be more than a semantic difference or the use of synonyms. This error is problematic in circumstances where the Tribunal also failed to have any regard to the COI on this issue. As explained in relation to previous determinations, the operational practices of Al-Shabaab, as set out in the COI, differ from region to region. In fact, it was expressly relied upon by the applicant that Al-Shabaab use intimidation to secure the services of informants. In those circumstances, the reckless discharging of pistols 15 steps from the applicant with indifference

to the injury caused to the applicant or others cannot be treated as inconsistent with the applicant's claim.

137. The Tribunal, in effect, sought to put itself in the shoes of Al-Shabaab when finding the applicant's claim not credible amounts to unwarranted speculation or conjecture. The Tribunal, no more than the court, has no way of knowing if the intention was to kill the applicant or instil fear and force his cooperation. The Tribunal has no way of knowing if the assailants were experienced or competent gunmen. The court does not accept that it is reasonable to conclude that the applicant was not telling the truth simply because his assailants did not succeed in killing or injuring him when they opened fire in the market. The Tribunal's finding that the applicant was vague and lacking detail in the explanation of his escape from the "assassination attempt" is troubling as the applicant was never asked how he escaped from an "assassination".

SUMMARY AND CONCLUSION

138. In the circumstances I am satisfied that the applicant must succeed in his application and that the decision of the Tribunal should be quashed and remitted for further hearing. In summary this was a case in which there was a wealth of relevant COI, and the COI provided potentially important context to the applicant's account. At the very least it suggests that his account in many respects was not in any sense an aberration or something unlikely to occur in the area where he resided. I do not accept the applicant's approach to the treatment of or approach to documentary evidence, where in truth he produced no relevant documentary evidence. Likewise, with some reluctance I accept that the Tribunal was entitled to find that there were some inconsistencies in the applicant's account, although it is important to caution that the structures used to elicit information from an applicant need to be approached very

carefully to ensure that what might seem to be an inconsistency in fact may simply be more detailed information emerging from more focused questioning. Finally, I consider that the dismissal of the applicant's account involved a considerable degree of speculation and conjecture in which, on my reading, the Tribunal effectively sought to step into the shoes of the applicant's assailants and assumed a level of competence and intentionality that did not seem warranted.

139. In those premises, I will make orders quashing the decision and remitting the matter to a differently constituted tribunal. My provisional view is that the applicant should be entitled to his costs on the basis that he has succeeded in obtaining the relief sought, with those costs to be adjudicated in default of agreement, but I will list the matter before me for final orders at 10.30am on Wednesday, the 29 July 2026 to allow the parties to address the issue of costs.