



IAC-AH-CJ-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/01999/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25<sup>th</sup> February 2016**

**Decision & Reasons  
Promulgated  
On 23<sup>rd</sup> March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**OFA  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Mullins of Counsel

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appealed against a decision of Judge Pacey of the First-tier Tribunal (the FtT) promulgated on 27<sup>th</sup> April 2015.

2. The Appellant is a male Nigerian citizen born in 1961 who arrived in the United Kingdom on 20<sup>th</sup> February 2013. The Appellant had been granted a medical visa valid between 12<sup>th</sup> February 2013 and 12<sup>th</sup> August 2013. This visa was subsequently extended until 31<sup>st</sup> December 2013.
3. The Appellant made a humanitarian protection claim on 8<sup>th</sup> March 2014. He underwent a screening interview on that date, and a substantive interview on 22<sup>nd</sup> December 2014.
4. The Respondent refused his application on 21<sup>st</sup> January 2015. The appeal was heard by the FtT on 22<sup>nd</sup> April 2015 and dismissed.
5. The Appellant applied for permission to appeal to the Upper Tribunal, and permission to appeal was granted on the basis that it was arguable that the FtT had failed to have regard to material evidence in relation to the shooting of the Appellant and therefore may have erred in concluding that the Appellant was a victim of armed robbery, rather than an attempt to kill him.

### **Error of Law**

6. On 15<sup>th</sup> January 2016 I heard submissions from both parties in relation to error of law, and concluded that the FtT decision must be set aside. Full details of the application for permission, the grant of permission, the submissions made by both parties, and my conclusions, are contained in my decision dated 18<sup>th</sup> January 2016. I set out below paragraphs 15–20 which contain my conclusions and reasons for setting aside the FtT decision;

- “15. Mr Mullins was entirely correct not to pursue the argument that the Tribunal had applied an ‘excessively high standard of proof’, and in any event Judge Bruce did not grant permission on that point.
16. My initial view is that Judge Bruce did not grant permission on the contention that the FtT had gone behind the concession made by the Presenting Officer. However, in the alternative, if permission was granted on that point, I find no error of law. This is because I conclude that the concession made by the Presenting Officer amounted to an acceptance that the Appellant was a lawyer in Nigeria, and that he had been shot. The FtT did not go behind the concession made.
17. The Record of Proceedings indicates that the Presenting Officer opened his submissions by relying upon the reasons for refusal letter dated 21<sup>st</sup> January 2015. In paragraph 37 of Annex A of that letter, the Respondent considers that delay in making a humanitarian protection claim was damaging to the Appellant’s credibility. My view is that the Presenting Officer was therefore maintaining that point, and on that basis the FtT was entitled to conclude at paragraph 44, that no satisfactory explanation had been given for the Appellant not making a claim earlier.
18. The main issue, and the point upon which permission to appeal was granted, is whether or not the FtT failed to have regard to material evidence. I find that the FtT erred on this issue, and that the error is material. At paragraph 45 the FtT noted that no property was taken in

the attack, and found that since armed robbery is commonplace in Nigeria, it was reasonable to consider that the Appellant 'might have been yet another victim of armed robbery', and therefore concluded robbery was the intention of the attackers, rather than an assassination attempt.

19. The FtT did not make findings on the Appellant's evidence contained in his witness statement dated 28<sup>th</sup> December 2013 at paragraph 2 in which he explained that he thought the three men who approached him were going to steal his car, and he therefore threw the key on the ground and told them that they could have the car, and he attempted to run away and was shot while trying to escape. In addition, the FtT failed to make findings on the evidence of a witness, OO, whose affidavit is contained in the Appellant's bundle which was before the FtT, at pages 47-48. This witness explained that the attackers arrived on commercial motorcycles as passengers, an escape vehicle was waiting, and the Appellant's car, although open with the keys on the ground was not taken, neither was the Appellant's mobile telephone.
  20. The failure of the FtT to demonstrate that this evidence had been considered and findings made thereon, amounts to a failure to consider material evidence, which is an error of law."
7. The decision of the FtT was set aside, but the unchallenged findings that the Appellant was a lawyer in Nigeria, who was shot and subsequently required hospital treatment, were preserved.
  8. I granted an application made by Mr Mullins, which was made without objection, to amend the Grounds of Appeal to permit reliance upon the 1951 Refugee Convention, so that it could be argued that the Appellant is entitled to a grant of asylum due to his imputed political opinion.
  9. I also granted an application made pursuant to rule 15(2A) of The Tribunal Procedure (Upper Tribunal) Rules 2008, admitting a further bundle of evidence comprising 23 pages, which had not been before the FtT. Again, this application was made without objection.

## **Re-Making the Decision**

### **The Law**

10. The Appellant is entitled to asylum if he is outside his country of nationality and is recognised as a refugee as defined in regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 as a person who falls within Article 1A of the 1951 Geneva Convention. The onus is on him to prove that he has a well-founded fear of persecution for a Convention reason (race, religion, nationality, membership of a particular social group or political opinion), and is unable or, owing to such fear, unwilling to avail himself of the protection of the country of his nationality.
11. The Appellant would be eligible for humanitarian protection under paragraph 339C of the Immigration Rules if he does not qualify as a refugee, and establishes substantial grounds for believing that if he was

removed from the United Kingdom, he would face a real risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail himself of the protection of the country of return.

12. The Appellant claims that to remove him from the United Kingdom would breach Articles 2 and 3 of the 1950 European Convention on Human Rights (the 1950 Convention). The Appellant must therefore establish that there are substantial grounds for believing that returning him to Nigeria would create a real risk that he would be killed, or subjected to torture or inhuman or degrading treatment or punishment.
13. In relation to risk on return, the burden of proof is on the Appellant and can be described as a reasonable degree of likelihood which is a lower standard than the normal civil standard of the balance of probabilities. The Tribunal must consider the circumstances as at the date of hearing.

### **The Appellant's Claim**

14. The Appellant's claim as initially presented to the Respondent is set out in his screening and substantive interview records, and his witness statement dated 28<sup>th</sup> December 2013 and may be briefly summarised as follows.
15. The Appellant worked as a lawyer, living and working in an area of Lagos. He arrived home at about 7.30pm on Friday 21<sup>st</sup> September 2012. When he got out of his car he was approached by three men. He thought that he was being robbed and threw his car keys on the ground, telling the men that they could have the car.
16. No attempt was made to take any property but he was shot several times and his attackers then fled.
17. The Appellant was treated at a local clinic and then taken to hospital. He had two bullet wounds in his back, a wound to his foot, and bullet wounds in his thighs and groin. His left elbow was fractured as was his left femur.
18. The Appellant remained in hospital in Nigeria until he left Nigeria on 20<sup>th</sup> February 2013, having obtained a medical visa so that he could receive treatment in the United Kingdom.
19. The Appellant has undergone medical treatment in this country, and had a further bullet removed from his thigh, which was discovered to be from an AK47 weapon.
20. The Appellant feared that if returned to Nigeria he would be killed, and therefore applied for humanitarian protection.
21. The Appellant believed that the attack upon him was an attempt to kill him rather than rob him. He obtained an affidavit from an eye witness, who confirmed that the attackers had arrived as passengers on commercial motorcycles, and that they fled in a car that had been waiting. Another

witness confirmed that a plainclothes policeman came into the clinic where the Appellant was initially being treated, stating that he had picked up some spent shells at the scene of the shooting and insisted on seeing the Appellant to see if he was still alive.

22. The police officers who were normally on patrol in that area because of nearby beer parlours were absent during that evening which was unusual.
23. The police did not investigate the shooting.
24. The Appellant believed that it was his work as a campaigning lawyer that had caused the attempt upon his life. He gave details of some cases that he had been involved in that may have led to the attack upon him.
25. One case involved the pastor of a church who the Appellant described as a cult leader. A member of the church instructed the Appellant, and the pastor was subsequently charged with murder, convicted, and sentenced to death. The Appellant believed that some of his followers may have been responsible for his attempted murder.
26. Another case involved an attempt upon his life in 2004 by two brothers, one of whom is a serving police officer, which arose out of a land dispute. There was an ambush but the Appellant had not attended the meeting, and an associate of his was attacked in his place. One of the brothers was subsequently charged with attempted murder although the police attempted to frustrate the prosecution. There was no conviction. The Appellant had consistently submitted petitions in this case and was still awaiting the outcome when he was shot.
27. The Appellant had also acted in opposition to the interests of the local government chairman who had closed down businesses for no lawful reason. The Appellant was instructed by individuals, and petitioned on their behalf.
28. The Appellant had also made complaints against the local police commander, and he feared that the police were behind the attempt to murder him.

### **The Refusal**

29. The Respondent issued a reasons for refusal letter dated 21<sup>st</sup> January 2015 which may be briefly summarised as follows.
30. The Appellant's nationality and identity were accepted and it was also accepted that he was a lawyer in Nigeria and that he had been shot.
31. It was not accepted that there was an attempt to kill him in 2004, and it was not accepted that the shooting on 21<sup>st</sup> September 2012, had been an attempt to kill him, but it was believed that this had been an armed robbery.

32. The Respondent noted that the Appellant had not claimed international protection immediately upon arrival in the United Kingdom, and that he had been able to leave Nigeria using his own passport without any difficulty.
33. The Respondent noted that the Appellant had not claimed asylum and therefore there was no Convention reason for his claim.
34. The Respondent considered that in any event there would be a sufficiency of protection in Nigeria, and the Appellant had a reasonable option of internal relocation.

### **The Appellant's Response to Refusal**

35. The Appellant prepared a witness statement dated 13<sup>th</sup> April 2015 commenting upon the reasons for refusal, and the statement may be briefly summarised as follows.
36. In relation to the attempt to kill the Appellant in 2004, he contended that the police had frustrated the prosecution and he had been complaining about it ever since.
37. The Appellant also maintained that he had orchestrated a number of cases against the local government chairman, who could have been responsible for the attempt to kill him, and that the pastor who had been sentenced to death for murder, operated a cult, and that could also have been the cause of the attack.
38. The Appellant had applied for humanitarian protection because he did not consider himself to be a refugee, he only wanted protection.
39. The Appellant contended that the evidence did not support the assertion that he was the victim of an armed robbery, as his attackers showed no interest in stealing anything from him, and there was an absence of police officers who were usually at the scene, and no attempt to properly investigate the shooting.
40. The shooting had been reported to the police so that a permit could be issued to enable the Appellant to be treated at hospital.
41. The Appellant came to the United Kingdom primarily for medical treatment that was not available in Nigeria, as well as to escape from danger. When he arrived he was more concerned with receiving medical treatment than in making an application to remain in the United Kingdom long term.

### **The Hearing**

#### **Preliminary Issues**

42. I ascertained that I had received all documentation upon which the parties intended to rely and that each party had served the other with any

documentation upon which reliance was to be placed. I had the Respondent's bundle with Annexes A-S which had been before the FtT, together with the Grounds of Appeal, and the Appellant's bundle comprising 527 pages.

43. I also had an Index of Fresh Evidence comprising 23 pages, and a case law index comprising 48 pages. Mr Mullins submitted a photograph of the scene of the shooting, and a skeleton argument dated 25<sup>th</sup> February 2016.
44. Mr Mullins confirmed that the Appellant claimed asylum on the basis of his imputed political opinion, as he would be considered to be opposed to the state by reason of his activities and his opposition to corruption. In the alternative humanitarian protection was claimed, and the Appellant relied upon Articles 2 and 3 of the 1950 Convention.
45. Mr Duffy acknowledged that there did not seem to be any basis for arguing that the attack upon the Appellant was an armed robbery. In relation to the Appellant's delay in claiming humanitarian protection, Mr Duffy acknowledged that given his medical condition, some delay was to be expected.
46. Mr Duffy also acknowledged that the Appellant's activities as a lawyer in Nigeria were not contested. Mr Duffy indicated that the Respondent's position was that there was a sufficiency of protection available to the Appellant, he had a reasonable internal relocation option, and he would still be able to practise as a lawyer.

### **Oral Evidence**

47. Both the Appellant and his wife gave oral evidence and were questioned by both representatives. I have recorded all questions and answers in my Record of Proceedings and it is not necessary to reiterate them in full here.
48. The Appellant adopted as his evidence his three witness statements dated 28<sup>th</sup> December 2013, 13<sup>th</sup> April 2015, and 4<sup>th</sup> January 2015. The contents of the first two statements have already been summarised. In brief, the contents of the statement dated 4<sup>th</sup> January 2016 are summarised below.
49. The Appellant repeated that he had given details of four cases that could have caused the attempt on his life in September 2012. These related to the pastor of the church, the case of the two brothers who attempted to kill the Appellant in 2004, and cases that had been raised by the Appellant against the chairman of the local government, and commander of the local police. The Appellant confirmed that he had confronted the police commander about corrupt practices and in particular in a case involving a kidnap and murder.
50. The Appellant repeated his belief that the police had been involved in the shooting. He pointed out that the area police commander who he had opposed was very influential, having at one time being an assistant of the Inspector General of police. The Appellant had a petition made on his

behalf by lawyers, to the Inspector General of police at Abuja, which resulted in two police officers coming from Oyo State to Lagos to arrest him and take him back to Oyo. The arrest did not happen because the police went to the Appellant's previous office, not realising that he had moved offices. The Appellant feels sure that he would have been killed had he been arrested at that time.

51. The Appellant gave details of several petitions that he had made to the police making complaints. The Appellant pointed out that AK47 weapons are used by the police and there is objective evidence to prove this.
52. The Appellant pointed out that he had submitted newspaper articles proving that he is a prominent lawyer in Nigeria, and it would be extremely difficult for him to relocate to another area without this becoming known. He contended that there would be no sufficiency of protection or reasonable option of relocation open to him in Nigeria.
53. The Appellant's wife when giving evidence, adopted her witness statement dated 13<sup>th</sup> April 2015, which supports the Appellant's case.

### **The Respondent's Submissions**

54. Mr Duffy did not doubt the Appellant's subjective belief that he was in danger, but submitted that the Appellant did not know who had tried to kill him and did not know the motivation behind the attack. It could not be said that it was due to the Appellant's political opinion.
55. If the Tribunal found there was a risk to the Appellant in his home area, Mr Duffy submitted that there was a sufficiency of protection available for the reasons given in paragraphs 40-54 of the reasons for refusal letter dated 21<sup>st</sup> January 2015, and there was a reasonable option of internal relocation for the reasons given in paragraphs 55 - 69 of that letter.
56. Although crimes may have been committed, Mr Duffy submitted that there was no conspiracy, and the Appellant could move away from Lagos and internally relocate. The Appellant could continue his profession as a lawyer.

### **The Appellant's Submissions**

57. Mr Mullins relied upon his skeleton argument dated 25<sup>th</sup> February 2016 which I will not reiterate here.
58. Mr Mullins argued that taking into account the lower standard of proof, there was a real risk of the Appellant being shot again if returned to Nigeria. It was clear that he had been the victim of an assassination attempt and not an armed robbery.
59. The Appellant is entitled to asylum on the basis of his imputed political opinion because he had made a stand against corruption and injustice.



60. The background evidence in the Respondent's own Nigeria OGN dated December 2013 supported the Appellant's case that the police are complicit in corruption and do not offer a sufficiency of protection. There would be no internal relocation option as the Appellant is a prominent lawyer and if he resumed practice, his activities would become known, and the police are present throughout Nigeria.
61. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

62. I have taken into account all the oral and documentary evidence placed before me, together with the oral submissions made by both representatives. I take into account the lower standard of proof that applies, which can be described as a reasonable degree of likelihood, and I accept that it is important that I view the Appellant's account in the context of conditions in Nigeria.
63. I have considered the evidence in the round, and with anxious scrutiny, and have considered this appeal in the light of the provisions of paragraph 339L of the Immigration Rules which for ease of reference I set out below;

339L It is the duty of the person to substantiate the asylum claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

- (i) the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim;
  - (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
  - (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
  - (iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
  - (v) the general credibility of the person has been established.
64. I will now set out facts that are agreed by the parties. The Appellant was shot several times on 21<sup>st</sup> September 2012. It was conceded by Mr Duffy that there was no basis for arguing that this was an armed robbery and I

so find. It is therefore accepted that this was an attempt to kill the Appellant.

65. The Appellant required hospital treatment in Nigeria until he departed for the United Kingdom on 20<sup>th</sup> February 2013. He was granted a medical visa entitling him to have treatment in this country. During the course of the treatment here, a bullet was removed from his thigh.
66. The Appellant claimed humanitarian protection on 8<sup>th</sup> March 2014. Mr Duffy accepted that some delay was to be expected given the Appellant's serious medical condition when he arrived in this country.
67. It was accepted that the Appellant was a lawyer in Nigeria and that he was an active human rights lawyer. Mr Duffy acknowledged that no issue was taken with the Appellant's activities as a lawyer.
68. I now make findings on issues upon which the parties do not agree.
69. Initially, in the reasons for refusal letter, it was not accepted that there had been an attempt upon the Appellant's life in 2004, although Mr Duffy appeared in his submissions to indicate that this was accepted. For the avoidance of doubt, I find that there was an attempt upon the Appellant's life in 2004. I am satisfied that this arose because of a land dispute involving the Appellant and two brothers, one of whom was a serving police officer. I am satisfied that it is reasonably likely, that there was an ambush set for the Appellant, but that he was not involved in the attack, as one of his associates had attended in his place. As a result of this, one of the brothers was charged with attempted murder, although there was no conviction.
70. I am also satisfied that the Appellant was involved in a high profile case, in which the pastor of a church was subsequently found guilty of murder and sentenced to death.
71. I also accept that the Appellant made complaints and issued petitions against the local police commander, and the local government chairman. In relation to the local government chairman, the Appellant was involved in opposing the closing of businesses, which the Appellant contended was unlawful. In relation to the police commander, the Appellant had criticised practices said to be corrupt.
72. My reasons for making these findings are that I accept as credible, to the lower standard of proof, the evidence that the Appellant has given. He has given consistent evidence, when the contents of his interview records, witness statements, and his oral testimony are considered. In addition, I am satisfied that there is documentary evidence that supports the Appellant's account. Much of this documentary evidence has been obtained from Nigeria. There are numerous letters and petitions contained within the Appellant's initial bundle of documents, at pages 68-509. These are addressed to the police, the chief judge at the Lagos High

Court, the director of public prosecutions, the attorney general, and the chairman of the local government council. There are also newspaper articles.

73. I am therefore satisfied that the Appellant has made every effort to obtain evidence to support his case, and I find that the evidence, considered in the round, does support the findings that I have made above.
74. I must consider whether the Appellant would be at risk if returned to Nigeria. I have to consider this taking into account my findings that there was an attempt upon his life in 2004, and a very serious attempt to kill him on 21<sup>st</sup> September 2012. It is relevant to consider paragraph 339K of the Immigration Rules which I set out below;

339K The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

75. I do not ascertain that any good reason has been given why such persecution or serious harm will not be repeated. If returned to Nigeria the Appellant can realistically only support himself by practising as a lawyer. The evidence indicates that he is a campaigning lawyer which has brought him to the attention of the authorities. He has also attracted some attention in the press.
76. The Appellant could not be expected to refrain from carrying on with his activities because of a fear of the consequences, and in reaching this conclusion I have applied the principles in HJ (Iran) [2010] UKSC 3.
77. I find, to the lower standard of proof, that some police officers were involved in the attack upon the Appellant. I find persuasive the reasons set out in the Appellant's skeleton argument, those being the absence of police officers at the scene, which was unusual given that it was a Friday evening and the adjacent beer parlours. A witness identified a plainclothes policeman as coming into the clinic with spent shells, wanting to see the Appellant, and no official investigation was opened by the police. A colleague of the Appellant has given a statement that a police officer demanded that money be paid before an investigation was commenced.
78. My view of the medical evidence is that the Appellant is fortunate to be alive following the several gunshot wounds that he received on 21<sup>st</sup> September 2012. In the absence of robbery as a motive, I am satisfied that it is the Appellant's activities as a lawyer that caused the attack upon him to be made. I find no good reason to consider that such an attack would not be repeated if the Appellant returned to his home.

79. I therefore do not accept that there would be a sufficiency of protection for the Appellant. I accept that the leading authority on the issue of state protection is Horvath [2000] UKHL 37 in which the Supreme Court upheld what was stated by Stuart-Smith LJ in the Court of Appeal;

“In my judgment there must be in force in the country in question a criminal law which makes the violent attacks by the persecutors punishable by sentences commensurate with the gravity of the crimes. The victims as a class must not be exempt from the protection of the law. There must be a reasonable willingness by the law enforcement agencies, that is to say the police and courts to detect, prosecute and punish offenders.”

80. Mr Mullins on behalf of the Appellant has referred to the Respondent’s own Operational Guidance Note on Nigeria dated December 2013 on the existence of corruption within the police force, and the inability of government to control this, and I set out below paragraph 2.2.5;

2.2.5 The NPF, SSS, and military report to civilian authorities; however, these security services periodically act outside of civilian control. The government lack effective mechanisms to investigate and punish abuse and corruption. The NPF remain susceptible to corruption, commit human rights abuses, and generally operate with impunity in the apprehension, illegal detention, and sometimes execution of criminal suspects. The SSS also commit human rights abuses, particularly in restricting freedom of speech and press. In some cases private citizens or the government brought charges against perpetrators of human rights abuses in these units. However most cases lingered in court or went unresolved after initial investigation.

81. In the same report, at 2.2.9 there is reference to the police force in Nigeria being implicated in frequent human rights violations, including extrajudicial killings, torture, arbitrary arrests and extortion related abuses. Corruption remains a serious problem despite promising public statements by the new Inspector General of police. The police routinely solicit bribes from victims to investigate crimes, and from suspects to drop investigations. Senior police officials embezzle or mismanage police funds. Police corruption is described as remaining rampant.
82. Again, in the same report, at 2.2.12 it is stated that the office of the Inspector General of police attempted to strengthen the police monitoring unit, which was charged with visiting police stations to search officers for signs of accepting bribes, but the unit is described as remaining ineffective. Citizens could report incidents of police corruption to the National Human Rights Commission, but the report indicates that the NHRC did not act on such complaints and no other mechanism existed to investigate security force abuse.
83. I do not find that there would be a reasonable option of internal relocation within Nigeria. The Respondent in the refusal letter suggested relocating from Lagos to Abuja. However if the Appellant returned, he would have to earn a living as a lawyer, which applying the lower standard of proof, I find

would mean that he would attract the attention of the authorities. The police are present in Abuja just as they are in Lagos. Indeed, the police have a presence throughout Nigeria. For that reason, I do not find that there is a reasonable internal relocation option open to the Appellant.

84. I am satisfied that the attack upon the Appellant was as a result of an imputed political opinion, in that he is perceived to be an individual who has taken a stand against corruption and abuse within local government in Lagos, and the police force. I therefore conclude the Appellant has demonstrated a well-founded fear of persecution for a Convention reason, and he is entitled to asylum.
85. If I was wrong in concluding that the Appellant had a well-founded fear of persecution by reason of imputed political opinion, I would find that the Appellant would be entitled to a grant of humanitarian protection pursuant to paragraph 339C(iii) on the basis that the Appellant has shown substantial grounds for believing that if returned he would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of Nigeria. Serious harm includes unlawful killing, according to the definition in paragraph 339C.
86. My primary finding therefore is that the Appellant is entitled to a grant of asylum. I do not find that the evidence reaches the high threshold of Article 2, in that it must be proved a near certainty of death in order for Article 2 to apply but I do find the evidence demonstrates a real risk of treatment prohibited by Article 3. For these reasons the Appellant's appeal is allowed.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

I allow the appeal on asylum grounds.

The Appellant is therefore not entitled to humanitarian protection.

I allow the appeal on human rights grounds in relation to Article 3 of the 1950 Convention.

### **Anonymity**

The First-tier Tribunal made an anonymity direction. I continue that direction pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 4<sup>th</sup> March 2016

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

No fee is paid or payable and therefore there is no fee award.

Signed

Date 4<sup>th</sup> March 2016

Deputy Upper Tribunal Judge M A Hall