



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/03363/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 17th November 2017**

**Decision & Reasons
Promulgated
On 5th December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MISS NATASH TARIRO MUBAIWA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Azmi (Counsel)
For the Respondent: Mr C Bates (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Heatherington, promulgated on 17th May 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Zimbabwe, who was born on 13th February 1983. She appealed against the decision of the Respondent dated 22nd March 2017, refusing her claim for asylum and humanitarian protection.

The Appellant's Claim

3. The essence of the Appellant's claim is that she has supported the MDC, opposition party in Zimbabwe, fundraising for them from 2013. She became a member of the MDC in 2015. She had an arrest warrant issued against her, but she did not think that the first arrest warrant was serious. She had participated in demonstrations and protests. She claimed now that her life was in danger from the Zimbabwean Police, which she said was a ZANU-PF political force.
4. The Appellant's claim was against the background of her having entered the UK in September 2012 on a student visa, then returning back to Zimbabwe from September 2014 until August 2015, following which she returned back to the UK on 29th September 2015. A further grant of a student visa expired on 31st July 2016. A residence permit was then issued on 10th May 2016, which was valid until 13th September 2016.

This Application

5. The essence of this application arises from the fact that, before Judge Heatherington, there was an application for an adjournment, which was rejected by the judge, and it is alleged that, in so doing, the judge reached the Rules of fairness set out in the decision in **Nwaigwe (adjournment: fairness) [2014] UKUT 00418**. The basis of the application was the early listing of the appeal, the lack of time to obtain an expert report, and the absence of a witness, by the name of Jaison Matewu.
6. In refusing the adjournment application, the judge gave full consideration to the Upper Tribunal's decision in **Nwaigwe**, together with the principle that a refusal of an adjournment which deprives an effective party of his right to a fair hearing, is unlawful (see paragraph 2.3), and that the "dominant consideration" was that of "the common law right of every litigant to a fair hearing" (paragraph 2.4).
7. However, the judge also had regard to the fact that adjournments waste Tribunal's time and resources, impact upon the time taken to hear other appeals, and cost to the public at large, and that there is a responsibility on all Appellants to make sure that the appeal therefore can be heard when it is listed (see paragraph 2.4).
8. It was in this context, that the judge had regard to the adjournment request by the Appellant's legal representatives, namely, on the basis that the shorter the time allocated, from the making of an appeal to the listing of it, deprived the Appellant from all the rights to locate an expert to verify the documents submitted (see paragraph 2.5). The judge also had regard

to the fact that the application for an adjournment, made by Counsel appearing on that day, “has not been made at the first opportunity” and that this was “the first intimation that extra time is needed”, even though the Appellant had throughout been assisted by specialist immigration solicitors.

9. Moreover, the Appellant’s representatives “were notified of the dates of the pre-hearing review and today’s hearing”. The solicitors had actually stated that there will be “no witnesses” and under the box headed “expert witnesses” they had stated that none was needed. The judge concluded of the solicitor’s representing the Appellant that they were “experienced solicitors and did not consider that an adjournment for any reason was needed and in particular that an expert was essential” (paragraph 2.6).
10. The judge then proceeded to hear the appeal. He observed how the arrest warrants were “unverified” and that the Appellant had in cross-examination had said that, “her father could not post the arrest warrants to her, fearing action by the authorities”, which the judge regarded as “inconsistent”, because “either the warrants point to a risk or they do not” (see paragraph 10.8). The judge went on to conclude that, “the Appellant has provided no plausible explanation as to how the authorities identified her, but did not arrest her and then later identified her and sought to pursue charges” (paragraph 10.8).
11. The appeal was dismissed.
12. Following Counsel’s Grounds of Appeal, dated 29th May 2017, permission to appeal was granted by the Tribunal on 19th September 2017 on the basis that, although both sides had made a reference to **Nwaigwe** there was an arguable claim that the Appellant’s case should have been adjourned in the interests of fairness. This was despite the fact that “the judge pointed out in the reply notice for the pre-hearing review the solicitors stated there were to be no witnesses and no expert. That factor goes against the Appellant ...”, although it was the case that the absence of a key witness, by the name of Jaison Matewu, and possible other witnesses, (see paragraph 12 of the grounds) was clearly detrimental to the Appellant’s claim.
13. A Rule 24 response dated 28th September 2017 stated that the judge had directed himself appropriately.

The Hearing

14. At the hearing before me on 17th November 2017, Mr Azmi, appearing on behalf of the Appellant relied upon the Grounds of Appeal. He made the following three submissions. First, that the adjournment application, made by Counsel on the day of the hearing, was for the purposes of procuring an expert report, and enabling witnesses to attend. Although the judge dealt with the expert report, not having been highlighted earlier, the judge did not deal with the question that key witnesses, such as Jaison Matewu, were unable to attend, because he had a family holiday booked and was going to be away. Page 3 of the Appellant’s bundle sees a statement by

Jaison Matewu to this effect. Second, at paragraph 2.5, the judge had stated that the Appellant's legal representatives had been unable to find an expert, but the witness statement (at page 2 of the Appellant's bundle), is more nuanced to the effect that, "my solicitors had been trying to locate an expert", but that "given the shortage of time had been unable to do so". It was, submitted Mr Azmi, the "shortage of time" that had led to an expert not being located. Third, with respect to the arrest warrants, the judge had stated at paragraph 10.7 and 10.8, that these had not been verified, but this was surely the entire purpose of procuring an expert, and the Appellant had been deprived the right to do so, by the refusal of an adjournment.

15. Insofar as the judge did go on to deal with the appeal substantively, Mr Azmi submitted that the judge erred here in law again because he did not address the question of "risk on return", as set out at paragraphs 15 to 17 of the Grounds of Appeal.
16. For his part, Mr Bates submitted that the application today was unsustainable.
17. First, even if an expert report and witnesses had been able to attend, it would have made no material difference, because, as the judge pointed out, what he was having to deal with in terms of his concern that, "the arrest warrants are unverified" was that the Appellant's father had not been able to "post the arrest warrants to her, fearing action by the authorities", but this the judge found to have been "inconsistent" evidence, because "either the warrants point to a risk or they do not" (see paragraph 10.8). Mr Bates submitted that if the original arrest warrants have not been submitted, it would not have been possible for any expert to have conclusively demonstrated that these were arrest warrants that were genuine because they could be so verified. The judge was not satisfied why the originals had not been posted.
18. Second, there had been a Case Management Review and it was never suggested during this review that there was a need for an adjournment. Thereafter, courtroom time had been set a set aside, the appeal had been listed, and Presenting Officers had prepared the appeal, and at the eleventh hour the judge was confronted with an application for an adjournment on grounds which, he had concluded were unsustainable in any event even if the witness, in the name of Jaison Matewu, had not been able to attend, because he had a holiday booked, ultimately it was a credibility of the Appellant, which the judge found to be wanting, and even if he had given the evidence that was set out in the witness statement, the judge was still not persuaded that the Appellant was a credible witness. The judge had found the Appellant to be lacking in credibility (see paragraphs 10.13 and 10.12). Quite simply, the error was not a material error on the part of the judge, assuming that there had been an error.
19. Finally, the facts of **Nwaigwe** were very different, and the judge's meticulous approach to this question was such that he had highlighted the facts there pointing out that that case involved the Appellant who did not

attend the hearing and was not represented (see paragraph 2.8). In these circumstances, the Appellant had reputable legal representatives acting for her all along.

20. In reply, Mr Azmi submitted that if one looks at the Respondent's bundle (at D1 and D2) there are copies of two arrest warrants and it is clear that verification of these arrest warrants would not have had to depend upon the original being provided because they carried the CRB numbers, stamps, and the names of the issuing authority. It would have been possible for an expert to come to a firm view about these arrest warrants.
21. Second, the witness, Jaison Matewu, needed to attend, because he held a position of Treasurer General in an MDC province in Zimbabwe, and would have been reliably able to state what the involvement of the Appellant was on the risk of attaching to her if she were to be returned.
22. Finally, although a file application for an adjournment ought to have been made, on the basis of the need for an expert report, the plain fact was that a witness was not today able to attend and the judge ought to have granted an adjournment for this reason.

No Error of Law

23. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
24. First, in what is a careful, sensitive, and well compiled determination, the judge has had regard to all the relevant case law, its impact, and the duties upon legal representatives (see paragraph 2.4) ensuring that the overriding objective is adhered to, such that there is fairness, not just to one side, but to both sides appearing before the Tribunal.
25. Second, the judge properly deals with the requirement for an expert to verify documents. He states that,

“an expert to verify documents is speculative. There is no evidence that funds for legal aid is available for such an expert. The adjournment application does not show that evident material would be achieved by the delay” (paragraph 2.5).

The judge also states that the Appellant had been unable to produce original arrest warrants to enable proper verification to take place. In any event, on the substantive issue, the judge is clear that “no plausible explanation as to how the report has identified her” was ever provided, and then “did not arrest her” and then “later identified her and so to pursue charges” (paragraph 10.8).

26. Third, the judge rejects any suggestion that there was a “shortage of time”, stating, “there has been enough time to collect the information needed” (paragraph 2.7).

27. Fourth, the vulnerability of Jaison Matewu, a witness who had a holiday booked at the time, and could not attend, is not something that goes to the materiality of any error. This is because of the Appellant's signal failure to make out any plausible case showing that she was aligned to the MDC as claimed. As the judge pointed out, the Respondent had drawn attention "to the inability of the Appellant to provide consistent information about the core values of the MDC-T, specific dates or detail about the events she claimed ..." (paragraph 10.10). The judge's own conclusions were that "the Appellant has had scant political activities in the United Kingdom and she seems focused on activities which support her asylum claim" (paragraph 10.11).
28. He referred to "the Appellant's inability to answer questions in detail pertaining to her claimed activities and worked for the MDC-T in Zimbabwe" (paragraph 10.12).
29. He did not accept that the Appellant had shown "a reasonable degree of likelihood that she is such an activist".
30. As far as the arrest warrants were concerned, the judge's view was that these "had been provided to bolster an otherwise an unmeritorious account" (paragraph 10.12). In short, "the Appellant has no significant MDC profile in Zimbabwe/or in the United Kingdom" (paragraph 10.12).
31. For all these reasons, the judge did not err in law.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

This appeal is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

1st December 2017