



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

Appeal Number: IA/16895/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27 November 2017**

**Determination Promulgated
On 13 December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**MR MARTIN MULUMBA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J L Blair, Counsel, instructed by Haringey Migrant Support Centre

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of the DRC, appeals against a decision of Judge of the First-tier Tribunal Devittie, who in a determination promulgated on 17 October 2016 dismissed his claim for leave to remain on human rights grounds. The appellant did not appear before Judge Devittie and it is argued in the grounds of appeal that is because of a mistake of the solicitors whom he instructed to represent him.
2. When granting permission to appeal Judge Kamara stated:-

“A detailed, candid explanation was provided by a voluntary organisation who continue to assist the appellant and I accept that the appellant was unaware that his hearing would proceed after his previous solicitors ceased acting very shortly before the hearing owing to the absence of legal aid for Article 8 cases.”

3. The reality is that the appellant has been in Britain for some considerable time and it appears that he has four children who have been born here who may all, or some of them may well be, British. It also appears that the Secretary of State was only aware of the first two children when making the decision. I cannot find on the papers any clear statement from the appellant regarding his various relationships and the children which he has had.
4. Nevertheless, the issue of the relationship between a father and his children is one of particular importance and one which requires anxious scrutiny, not only because of the terms of Section 55 but also those in Section 117B of the 2002 Act - this is highlighted in the decision of Judge Kamara.
5. In taking into account all these factors I consider that the appropriate course of action, given the potential procedural unfairness in what has happened, is for me to set aside the decision of Judge Devittie and to remit this appeal for a hearing afresh in the First-tier. Ms Blair, who now represents the appellant, will be well aware that it will be important to prepare, immediately, a detailed statement regarding the appellant's various relationships here and full details of the children, their ages and nationality and the involvement which the appellant may or may not have with the children. The appellant must appear at the hearing and be prepared to give further evidence regarding his relationship with the children.

Decision

I therefore have set aside the decision of the First-tier Tribunal having found that there has been procedural unfairness in this case.

This appeal is remitted to the First-tier Tribunal on all grounds.

No anonymity direction is made.



Signed

Date: 11 December 2017

Deputy Upper Tribunal Judge McGeachy