



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08190/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23 August 2017

Decision & Reasons Promulgated  
On 04 September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

RAHEMA NAKAJIRI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr G Dolan of Counsel, instructed by Wimbledon Solicitors  
(Balham High Rd)

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Sullivan promulgated on 7 March 2017 in which she dismissed the Appellant's appeal against a decision of the Secretary of State for the Home Department refusing to grant her asylum in the United Kingdom.
2. The Appellant is a citizen of Uganda born on 2 July 1958. She entered the United Kingdom in June 2004 pursuant to a visit visa. She overstayed the period of that visa and did nothing to regularise her immigration status until she made a claim for asylum on 29 January 2016, almost twelve years after her initial entry. She was

interviewed in relation to her asylum claim on 5 July 2016. The Respondent refused the application for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 26 July 2016.

3. The Appellant appealed to the IAC. Her appeal was dismissed by First-tier Tribunal Judge Sullivan for the reasons set out in her Decision and Reasons.
4. The Appellant applied for permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Lambert in respect of two of her three grounds of challenge. In material part the grant of permission to appeal is in these terms:

*"The judge made adverse credibility findings. Ground 1 takes issue with the finding that the Appellant and her witnesses lied about her relationship in the UK and that there had been a 'concerted effort' to mislead the Tribunal. Whilst credibility was clearly in issue in the appeal and there was no obvious procedural error on the part of the judge, as alleged, it is arguable that the reasoning at paragraph 18(c) of the decision is inadequate to support the above finding.*

*Ground 2 may also be arguable. Ground 3 is not: a Judge has no duty to put to the Appellant doubts as to credibility that may emerge from the evidence."*

5. The substance of 'Ground 2' is not identified in the grant of permission to appeal. In the grounds of appeal themselves it carries the heading *"The assumption that a lesbian relationship must be a sexual relationship"*.
6. Before considering the grounds upon which permission to appeal has been granted, I make the following brief observations by way of context.
  - (i) The Appellant was supported in her appeal by three witnesses who are identified in the Judge's decision at paragraph 11 as Mr Sam Kabuye, Mr Edwin Sesange and Ms Mawuda Nakamatte (the latter of whom the Judge has thereafter denoted by the initials MN).
  - (ii) It was said that the Appellant had had a lesbian relationship with Ms Nakamatte.
  - (iii) The other two witnesses were called for contextual support as to the Appellant's sexuality.
  - (iv) Mr Sesange had provided a letter in support (pages C1-C3 of the Respondent's bundle). The letter is dated 1 July 2016 and Mr Sesange wrote in his capacity as the director of an organisation called Out & Proud Diamond Group. Much of that letter rehearses information about the group and the involvement of Mr Sesange and their respective status and standing as a campaigning organisation. The latter part of the letter makes some observations about the risk to homosexuals in Uganda. There are

four short paragraphs within the letter that deal specifically with the Appellant in these terms:

*"I can confirm that the Appellant identifies herself as an out and proud lesbian. She openly shares her journey of feeling attracted to the same sex persons and reconciling her culture and religion with her sexuality.*

*The Appellant has been a member of OPDG since December 2015. She is equality and justice driven, kind, respectful and always willing to help among others. We have supported her to get legal representation; we have supported her with reconciling her religion with her sexuality.*

*She regularly attends our weekly meetings that are held on every Saturday of the week and our social events that take place at G-A-Y.*

*The Appellant has come to understand that LGBTI rights are human rights. She is gaining the tools of campaigning for the equality and justice for LGBTI people."*

(v) Mr Kabuye also provided a letter in support (page C4 of the Respondent's bundle). He writes in a personal capacity in a letter dated 1 July 2016. He expresses amongst other things the opinion *"I believe her to be a homosexual who would be at risk of persecution or worse if she is denied asylum in the UK."*

7. 'Ground 2' of the grounds of challenge was amplified first before me today by Mr Dolan. I also propose to deal with that ground first, and without any further detailed explanation of the First-tier Tribunal Judge's decision, for the simple reason that it seems to me that it can be disposed of with some alacrity as essentially being misconceived.
8. In support of this ground Mr Dolan has provided to me today an extract from published Home Office policy dated 3 August 2016, which in particular states the following: *"An LGBT person's sexual orientation is not solely, or even necessarily partly, defined by their participation in sexual behaviour."*
9. I have no difficulty in accepting the essential premise of the submission that Mr Dolan seeks to mount: it is possible to identify as being homosexual whilst not participating in any sort of sexual conduct.
10. However, Mr Dolan seeks to argue that the Judge in effect misdirected herself in this appeal by failing to recognise such a circumstance. Reliance in this regard is put entirely on the following sentence at the beginning of paragraph 21 of the Judge's decision: *"I am not satisfied that the Appellant and MN were ever in a sexual relationship."* Mr Dolan seeks to argue that the Judge has thereby conflated sexuality with sexual behaviour.

11. I quite simply do not accept that this passage in the Judge's decision is evidence of any such conflation. Rather, it seems to me absolutely transparent that it is a finding on the Appellant's case. It is a rejection of the Appellant's claim to have been in a sexual relationship with Ms Nakamatte.
12. Whilst I note that the witness statements that were filed in support of the appeal were not explicit as to whether or not the Appellant and Ms Nakamatte had enjoyed a sexual relationship, it is absolutely clear that the oral evidence before the First-tier Tribunal Judge was to that effect - and indeed it has not been suggested otherwise in the grounds of challenge. In particular the Judge refers at paragraph 18(c), to which I will come in more detail in due course, to the evidence from both the Appellant and Ms Nakamatte that they had been in a sexual relationship from June 2016 until August 2016.
13. Accordingly I find that the sentence at paragraph 21 upon which Mr Dolan seeks to found his challenge is no more than a finding on the Appellant's case, and is in no way evidence of the Judge misdirecting herself as to law.
14. 'Ground 1' seeks to challenge what Mr Dolan characterises in the heading to that Ground as the Judge's "*finding of a conspiracy to mislead the Tribunal*". In this regard the grounds of appeal rely in particular upon the following sentence, to be found at the beginning of paragraph 18: "*I find that there has been a concerted effort to mislead this Tribunal about the Appellant's circumstances, particularly in the United Kingdom.*" (e.g. see Grounds at paragraph 6).
15. Reliance is also placed on the closing sentence of paragraph 18(c), quoted in the Grounds at paragraph 6 with added emphasis thus: "*... I did not find the Appellant's evidence credible. I find that she and [Ms Nakamatte] have lied about this relationship and that Mr Kabuye and Mr Sesange have repeated those lies to support the Appellant in this asylum claim.*" Paragraph 8 of the Grounds goes on to assert that the Judge "*therefore, alleges a conspiracy involving four people*".
16. The grounds otherwise then express particular concern about the seriousness of such an allegation, particularly in light of Mr Sesange's position as a director of a pressure group and campaigning organisation. It is suggested that there are significant potential repercussions for those involved in the Judge's allegation of conspiracy. The grounds go on to argue that the Judge's decision was in breach of procedural fairness for failing to put the allegation of conspiracy to the witnesses so that they might have the opportunity of addressing it.

17. I reject the substance of this challenge. It seems to me that the grounds are in danger of hyperbolic characterisation of the Judge's findings, and are otherwise misconceived in law, in particular in respect of the procedural unfairness point. In reaching this conclusion I have had particular regard inevitably to the findings of the Judge, and have considered those particular passages that have been alighted upon by Mr Dolan in drafting the grounds of appeal - and in amplification before the Tribunal today - in the context of the particular paragraphs in which they are to be found, and also in the overall context of the decision of the First-tier Tribunal.
18. At paragraph 17 of the decision the Judge makes reference to the evidence of Mr Kabuye and Mr Sesange, and summarises aspects of their evidence in the following phrase: "*In short they give evidence as people in whom the Appellant confided about her sexuality.*" It may be seen that to some extent that echoes the phrase that I have already quoted from Mr Sesange's supporting letter to the effect that the Appellant identifies herself as an out and proud lesbian. In context, it appears that the evidence of Mr Sesange is to the effect that that is how the Appellant has chosen to describe herself to him.
19. Paragraph 18 is the following terms:

*"I find that there has been a concerted effort to mislead this Tribunal about the Appellant's circumstances, particularly in the United Kingdom. There are in my view discrepancies which go to the heart of her claim to be a lesbian.*

- a) *The Appellant claims first to have encountered the organisation 'Out & Proud' in December 2015; Mr Kabuye said that he first met the Appellant at 'Out & Proud' at the beginning of 2015, possibly in January.*
- b) *The Appellant claims to have had a single lesbian relationship in the United Kingdom, that with MN. It was Mr Kabuye's evidence that the Appellant had had a relationship with someone called Madeleine, then saying that Madeleine was the lady outside (a reference to MN). He also said that the Appellant had had a previous relationship in the United Kingdom with a lady who had died but whose name he did not know. He also referred to MN as 'one of her [the Appellant's] ex-fiancées'.*
- c) *Throughout their oral evidence both the Appellant and MN said that they had been in a sexual relationship from June 2016 until August 2016. That accords with the information in their respective witness statements. There was no ambiguity in their evidence or hint of any volatility during the relationship. According to their oral evidence and witness statements this was a sexual relationship lasting 2 - 3 months. I particularly asked MN whether it would be true to say that on 5 July 2016 she and the Appellant were still in sexual relationship; she said that they were, for three months from June to August. Having heard all of the oral evidence I asked the Appellant's representative to*

*recall the Appellant to deal with question 199 asked at the interview on 5 July 2016, namely the Appellant's denial of any relationship in the United Kingdom at that time. It was then the Appellant's evidence that in interview she did not disclose her relationship with MN because she and MN were unsure about the relationship at the time. I did not find the Appellant's evidence credible. I find that she and MN have lied about this relationship and that Mr Kabuye and Mr Sesange have repeated those lies to support the Appellant in this asylum claim."*

20. The Judge then went on at paragraphs 19-21 to consider other aspects of the Appellant's case, concluding at paragraphs 21 and 22 that she did not accept that the Appellant was a lesbian.
21. In my judgment, at the core of the Judge's decision is the matter set out at paragraph 18(c). She clearly indicates that she heard evidence both from the Appellant and MN to the effect that they were in a sexual relationship at the time that the Appellant was interviewed by the Respondent, and the Judge considered this to be - as indeed it obviously was - discrepant with the information imparted at that interview in which the Appellant denied being in a current relationship. The Judge invited explanation for this discrepancy, even going so far as to recall the Appellant, and, in my judgment was perfectly entitled to reject the proffered explanation. Indeed, there is no direct challenge to this aspect of the Judge's analysis and reasoning in the grounds of appeal. Instead, as indicated above, the challenge focuses upon what is said to be the Judge's finding of a conspiracy - or a 'concerted effort' - amongst witnesses to mislead the Tribunal.
22. In the first instance it seems to me that there is some ambiguity in the closing words of paragraph 18(c) - "*I find that she and MN have lied about this relationship and that Mr Kabuye and Mr Sesange have repeated those lies to support the Appellant in this asylum claim.*" This passage may be capable of being construed as indicating that Mr Kabuye and Mr Sesange have knowingly repeated lies, that is to say have themselves also lied. Alternatively, it might also bear the construction that they have simply repeated the lies of the Appellant and MN on the basis that they themselves had been lied to when the Appellant confided in them about her sexuality. However, ultimately it seems to me - as explored below - it matters not which construction is to be placed on that particular sentence. Nonetheless, in deference to the submissions I have heard I make the following observations.
23. Ms Willocks-Briscoe urges upon me the notion that the Judge was saying no more than that the Appellant and MN had lied and that Mr Kabuye and Mr Sesange had, as it were, innocently gone along with those lies because they had taken the comments of the Appellant and MN in good faith. She suggests that such a construction is appropriate given in particular the Judge's observation at paragraph

17 that “*in short [Mr Kabuye and Mr Sesange] give evidence*” as to what “*the Appellant confided about her sexuality*”.

24. Mr Dolan suggests that the Judge was making a finding that all four witnesses had lied and had done so by way of a “*concerted effort*”. In this regard he notes in particular that at paragraph 18(b) the Judge identifies problematic issues in respect of the consistency of Mr Kabuye’s evidence such that it did not appear congruent with the evidence of the Appellant. This would tend to indicate that the Judge thought that Mr Kabuye was in some way at least an unreliable and possibly an incredible witness. Accordingly, when the Judge refers to Mr Kabuye in the closing sentence of paragraph 18(c) she was doing so in a critical manner suggesting that he too was lying; and if that be the case then it is a reasonable inference that in referring to Mr Sesange collectively with the other three in that sentence, the Judge was also indicating that Mr Sesange was telling lies.
25. I acknowledge the ambiguity. I am minded to find Mr Dolan’s construction more persuasive than that of Ms Willocks-Briscoe. However, it must be borne in mind that in looking at passages in a judgment or decision, the Tribunal is not embarked on a process as rigid as that as construing a statute. More particularly in any search for meaning and relevance the Tribunal is not confined to consideration of one clause of one sentence. Accordingly, whilst I am minded to prefer Mr Dolan’s suggested construction, I do not conclude and I am able to say with any confidence that this particular passage in the Judge’s Decision is indicative of finding that Mr Sesange had conspired in an attempt to deceive the Tribunal rather than simply having repeated in good faith what had been told to him. Indeed, absent this particular passage there is no specific criticism of Mr Sesange’s evidence. As such, the ambiguity persists and is not resolved by attempting finely to construe the Judge’s sentence.
26. Whilst ambiguity – or a lack of clarity in reasons and findings – may be problematic in some instances, on the fact here I do not consider that to be so. In my judgement it is immaterial whether this was indeed a concerted effort to mislead the Tribunal on the part of two, three or four persons. The point that Mr Dolan seeks to draw from his contended meaning is that if the Judge were minded to conclude that three or four people were conspiring to mislead the Tribunal then the allegation of such conspiracy should have been put to them. It follows that in substance Mr Dolan is suggesting that in some way the Judge, having reserved her decision, should have upon reflection reconvened the hearing to afford either or both Mr Kabuye and Mr Sesange a further opportunity to explain themselves with a view possibly to putting the Judge’s mind to rest in respect of any such conspiracy.

27. It seems to me that that is a fundamentally misconceived approach and does not properly reflect the nature of decision-making in the Tribunal or the procedures operated by the Tribunal. The words of Judge Lambert in refusing permission to appeal on Ground 3 may usefully be recalled: *“a Judge has no duty to put to the Appellant doubts as to credibility that may emerge from the evidence”*.
28. Moreover it seems to me that in the drafting of the grounds of appeal Mr Dolan has in emphasising the supposed finding of conspiracy of all witnesses perceived the Judge’s reasoning as being first the identification of a conspiracy, and then second, the consequent disbelieving of the Appellant. However, in reality the matter is stated by the Judge the other way around. The Judge has disbelieved the Appellant (primarily because her evidence and that of her claimed lover was discrepant in respect of a core element): that is the primary finding of fact. *If* the Judge has indeed also concluded that Mr Kabuye and Mr Sesange were knowingly complicit in such an attempted deception, such a conclusion is essentially a secondary finding reached as a matter of logical inference from the primary finding. It is inappropriate to put this on the basis that the Judge has impugned the witnesses before making her findings; rather, any impugning of the witnesses arises as a consequence of the findings that the Judge made.
29. In this context, as I say, it is to be emphasised that there is no particular challenge to the Judge’s analysis of the discrepancy between the Appellant and her supposed lover. In many respects it seems to me that that in itself destroys the substance of the Appellant’s claim. The Judge is perfectly entitled to reach such a conclusion. If it be the case - and, as I say above, it remains unclear whether it is the case - the Judge finds as a secondary (rather than a primary) finding that it is to be consequently inferred that there has been a concerted effort amongst more than just the Appellant and Ms Nakawatte, but also involving at least one and perhaps both of the other witnesses, well, so be it. It is quite simply not the case that when a Judge, having reserved a decision, forms an adverse opinion of any particular witness or witnesses that the appropriate procedure is to reconvene the hearing in order to explore matters further. That would make proceedings wholly unwieldy, and is not an example of anything that I have ever personally come across within this jurisdiction. Whilst hearings may be reconvened in some rare cases, for example where in light of new evidence or materials filed with the permission of the Tribunal after the hearing issues arise that require the input of the parties, or where the preparation of a Decision is overtaken by new country guidance or significant relevant events in the country of return, I am not remotely familiar with the notion of an appeal hearing being reconvened in order to explore further the credibility of a witness or witnesses because a Judge is minded to reach an adverse credibility assessment.
30. I have noted the concerns expressed, perhaps more on Mr Sesange’s behalf than on the Appellant’s behalf, of the potential damage to him in the event that he wishes to



appear in further cases as a witness. Bluntly, that is not my concern and nor should it properly have been the concern of the First-tier Tribunal Judge. It seems to me that there is nothing in the potential repercussions of the Judge's finding that means that she should have adopted something different by way of the standard procedures that were applied in determining this case.

31. For all the reasons stated I conclude that the First-tier Tribunal Judge's decision contains no error of law and is not to be set aside.

**Notice of Decision**

32. The decision of the First-tier Tribunal contained no error of law and stands. The Appellant's appeal remains dismissed.

33. No anonymity direction is sought or made.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing*

Signed:

Date: **1 September 2017**

**Deputy Upper Tribunal Judge I A Lewis**