



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

Appeal Number: IA/17738/2015

THE IMMIGRATION ACTS

Heard at Field House

On 12 January 2018

**Decision & Reasons
Promulgated
On 21 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MR SUNNY ONAJITE JAKPOR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Simpson, Counsel.

For the Respondent: Ms A Everett, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria who appealed against a decision of the Respondent to refuse him leave to remain with his alleged partner and child. That hearing took place at Taylor House on 10 April 2017. It was heard by Judge of the First-tier Tribunal Ruth who, in a decision promulgated on 27 April 2017, dismissed it.
2. At that hearing there was no appearance from either the Appellant or his representatives. The appeal was put back in the Judge's list until 11:00am to give opportunity for attendance. The notice of hearing had been sent

out by the Tribunal utilizing First Class mail on 15 December 2016 to addresses that they both had given to the Tribunal. In fact the addresses given were the same in that they were that of the Appellant's solicitors. The address was 97 High Street Thornton Heath CR7 8RY.

3. The Appellant sought permission to appeal. His reasons for appealing were:-

“The Appellant had not received notification nor his legal representatives had received any. Direction for the hearing that was made on 10 April 2017. This is an interference of his Article 6 ECHR and as such an error in law”.

4. Permission to appeal was granted by Judge of the First-tier Tribunal Macdonald on 20 November 2017. His reasons for so doing were:-

“The appellant is a citizen of Nigeria whose appeal was dismissed by First-Tier Tribunal Judge Ruth in a decision promulgated on 27th April 2017. I shall extend time in this case on the basis of the principles set out in *Onowu -v First Tier Tribunal IJR* [2016] UKUT 000185 (IAC).

The grounds of application state that neither the appellant nor his representative received notice of the hearing and as such this was an error in law.

The Judge noted that Notice of hearing had been sent to the appellant; there was no request for an adjournment and the judge went on to hear the appeal.

It does appear that the Notice was sent to both the appellant and his representatives at the same address (97 High Street) which appears to be the address of the representatives – accordingly there may be merit in the grounds which therefore do disclose an arguable error in law in terms of procedural unfairness”.

5. Thus, the appeal came before me today.
6. Ms Simpson initially sought to address me in relation to the outcome of Judicial Review Proceedings but was unable to furnish me with any documentation in relation thereto. I explained that that Judicial Review was not a matter for me today as I was seised only of resolving the matters in the grant of permission to appeal. She indicated that she had no other documentation and accordingly I gave her a copy of the Tribunal's core bundle and stood the matter down to enable her the opportunity not only of reading it but also contacting her solicitors to see if further information could be elicited in relation to the Judicial Review that she indicated had been pending. No further information was obtained by her and accordingly we proceeded on the basis of considering whether there was here a material error of law consequent upon the Judge proceeding with this appeal in the absence of the Appellant and his representative.

7. Ms Simpson submitted that there was a procedural unfairness and a breach of the Appellant's Article 6 rights because of the absence of a fair trial. Neither he nor his representatives had received the notice of hearing. She submitted that the Appellant was in a genuine marriage and that the decision of Judge Ruth should be set aside and a fresh hearing afforded.
8. I asked if there was any witness statement from the Appellant's representatives, or any other evidence, to support the suggestion that the notice of hearing had not been received by them. I was told there was nothing.
9. Ms Everett submitted that this was a discrete issue and whilst appreciating the difficulty to prove "non-service" the address that the Tribunal had used was the one that the Appellant had throughout provided not only to the Tribunal but also to the Respondent. Accordingly, she urged me to find that there was here no material error.
10. In response Ms Simpson urged me to accept that on occasion "mail goes missing" and that I should take account of the fact that the Appellant had attended interview on two occasions and today's hearing.
11. I find that there is here no material error of law. The Tribunal's file confirms that both the Appellant and his representatives were notified of the hearing. It was sent to the address that each had consistently provided to the Tribunal and there is no suggestion on the Tribunal's file that any other address should be used. This is another example of an Appellant using the address of solicitors, instead of a residential address, which is both inappropriate and unsatisfactory. Nonetheless it was the address at which the Tribunal served the Appellant with notice of hearing. There was no appearance at the hearing and it was therefore open to the Judge, being satisfied that notice of hearing had been served to proceed in absence. This issue is dealt with at paragraphs 13 to 15 of the Judge's decision. In those circumstances there is no procedural unfairness and it cannot be said that the Appellant has been denied a fair trial. There is no more before me other than a bare assertion of non-service. I consider the absence of any supporting witness statement from those representing the Appellant, or indeed any other evidence, to give weight to this bare assertion that neither the Appellant nor his representatives were made aware of the hearing detracts from the Appellant case.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The First-tier Tribunal did not make an order in relation to anonymity and I find there is no reason why one should be made today.

No anonymity direction is made.

Signed

Date 14 February 2018.

Deputy Upper Tribunal Judge Appleyard