



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

**Appeal Number IA/01003/2020
PA/51397/2020**

THE IMMIGRATION ACTS

**Heard at Field House, London
On the 29 November 2022**

**Decision & Reasons Promulgated
On the 06 December 2022**

Before

UT JUDGE MACLEMAN

Between

N R O

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Grutters, instructed by Duncan Lewis, Solicitors
For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Mehta dismissed the appellant's appeal by a decision dated 11 May 2021.
2. By a decision dated 25 May and promulgated on 10 June 2022, which should be read as if incorporated herein, UT Judge Kamara set aside the decision of Judge Mehta for failing to deal with an issue which was not advanced in the current appeal or in two previous appeals but was obvious. There was no challenge to negative findings on the appellant's claimed sexual orientation or to findings that "her involvement in LGBT events and activities are a ploy to bolster her asylum claim", but the FtT

had not addressed the issue of risk arising from the appellant's activism in the UK. Judge Kamara declined to remit to the FtT in light of "the extent of undisturbed negative credibility findings set out over 3 determinations from 2017 until 2021" and retained the appeal in the UT for remaking of the decision.

3. On 28 November 2022 a transfer order was made to enable decision-making to be completed by a differently constituted tribunal.
4. The appellant has filed a bundle which includes statements from her and from 6 supporting witnesses; item 14, a country expert report by Dr I Amundsen; 15, a psychiatric expert report by Dr N Galappathie; 16, an expert report on availability and adequacy of treatment by Dr A Ahmed; 17, GP's report; and letters of support.
5. In a skeleton argument the appellant asks the UT to decide whether she has a well-founded fear of persecution for "(1) her perceived lesbian sexuality and (2) her activism for LGBT rights". She also seeks the consent of the respondent to raise a "new matter": whether her rights under article 3 of the ECHR would be breached through either "(a) a significant, meaning substantial, reduction in her life expectancy arising from a completed act of suicide; or (b) serious, rapid and irreversible decline in her state of mental health resulting in intense suffering falling short of suicide".
6. At the outset of the hearing Mr Grutters sought to add to the appellant's bundle a statement from Mr O (whose identity, it was agreed, would remain anonymous) and a further letter of support from a Nigerian journalist. Ms Ahmed did not oppose these items being admitted in evidence, along with other items which had been tendered around the time of an adjourned hearing on 20 October 2022. She also said that, on reflection, the respondent does not consider the article 3 case to be a "new matter". It is therefore sufficient to record that this is a current live issue.
7. The 6 witnesses listed and Mr O were all present. All statements on the file were taken as adopted as evidence-in-chief. Mr Grutters explained that the evidence of the first 6 was to establish the extent of the appellant's ongoing activism, while the evidence of Mr O went both to that matter and to the consequences which might follow in Nigeria. There was cross-examination only as summarised below.
8. The appellant was accompanied by friends and supporters. It was agreed she should be treated as a vulnerable witness. Mr Grutters had discussed with her how best to proceed. The number of persons in the hearing room while she gave evidence was adjusted while she gave evidence. She confirmed she was comfortable with the arrangements. Questions in cross-examination were kept clear and to the point, although, in the nature of the case, they were directly challenging. She showed emotion in response to various questions (legitimately put by the presenting officer)

but she declined the offer of a break and was soon able to answer everything she was asked. It was not suggested there had been any avoidable difficulty.

9. The appellant said she was aware of the history of negative findings against her, but she did not agree with and could not understand them. She denied being an LGBTI activist only to perpetuate her stay in the UK. She denied that she would cease such activities if returned to Nigeria. Although she would be terrified, and in hiding, she would find a way to connect to the LGBTI community, the family which understands her. She had not promoted LGBTI rights when she was in Nigeria because it was illegal. "We live in fear, and we can't." She believes the Nigerian government would be interested in her because she has spoken out for years in Peckham, known as "little Lagos", and at the Nigerian High Commission. She does not believe the authorities would consider that she was active only as a ruse. People in Nigeria would know of her activism because she "posts a lot on Facebook". She has campaigned since 2018 for her organisation "Free to Fly". She has protested also against deportations from the UK because she is a fighter who believes in justice. She has no contact with her brother in Nigeria, but she was in touch with a relative who told her mother about her. She has had little contact with her mother because she is very old.
10. It was put to the appellant that in October 2020 she told a doctor she had started to speak to her mother again, and her mother forgave her and wanted to help her. Mr Grutters objected that the question was unfair, as there was no inconsistency, and was upsetting the appellant unnecessarily. I expressed the view that the matter was one which could be left to submissions. Ms Ahmed did not seek to press the point.
11. In resumed cross-examination, the appellant said that she could not remember whether she operated "Free to Fly" through Facebook or a website. She did not recall her evidence on previous occasions about that. She had known the witness Mr O since 2015. He told her in 2016 about his uncle in Nigeria warning him that he was identifiable in Nigeria from taking part in a Pride march in Peckham. She could not explain why he made his statement only on 21 November 2022. She has been taking medication for depression for years. She recalled some mention of other treatments being available, and that some organisations had been in touch with her, but no more than that. She is Christian. She does not attend her Church often as she is "not mentally ok" but she does all she can to help. She has a relationship with God. She believes God would not approve of her harming herself. She could not say whether that would help if she did experience such thoughts.
12. Mr O's statement says how prominent the appellant was at the march in Peckham and in press publicity. Soon afterwards, his "uncle" (actually a cousin), a senior former politician, called to tell him that he had seen one of those reports, and was concerned for his safety because "the Nigerian state was actively monitoring the Nigerian diaspora in the UK for LGBT+

campaigners and ... I should not return to Nigeria ... although I have a British passport I would be treated as Nigerian and ... at great risk ... I have not visited Nigeria since then". He explains his belief that the appellant would not be safe. It has taken him time to make the statement because he was weighing in the balance the problem it would cause to his family, especially his uncle who has always been kind to him. Eventually "it came down to a matter of saving someone's life".

13. In cross-examination, Mr O confirmed that he has known the appellant as "part of the movement" since 2015 and personally since 2016. He denied that their acquaintance was only recent, and that the appellant had just asked him to say what was in his statement. He had been reluctant to give evidence previously because hearings are public and the matter might get back to Nigeria. His uncle was the only family member sympathetic to his sexuality. All others were hostile.
14. In re-examination, he said that his uncle had been the Attorney-General in their home state. Being unable to return had been hard. His mother died 5 years ago. As her oldest son, it was his responsibility to return her ashes to her home village, but he could not risk the trip.
15. In her submissions, Ms Ahmed relied firstly on the respondent's refusal letter dated 16 June 2020. This begins by explaining why the appellant's fresh claim has been found to be fabricated. That issue has been resolved against the appellant and the scope of this decision does not extend to revisiting it. Her persistent fraudulence, however, does feed into the assessment of her state of mind by experts and by the tribunal. Some major features should briefly be recorded again:
 - (i) The appellant has been found with false documents including a passport with counterfeit indefinite leave to remain and landing stamps and a counterfeit national insurance card.
 - (ii) She delayed in making any asylum claim until caught by the respondent.
 - (iii) She claimed to fear her ex-husband in Nigeria. She said that a man living with her on 13 August 2015 was not her husband but someone she bumped into and invited to stay, who by coincidence shares her husband's name and date (although not year) of birth. Judge Burns, in her first appeal, in 2017, found that she was not in fear as claimed, but was living with her husband in the UK. She did not establish her claimed relationships with women in Nigeria and in the UK. She had duped her witnesses.
 - (iv) In her second appeal, in 2019, Judge Grimmett found no reason to depart from previous findings. The appellant had further duped friends into believing that she is gay and had undertaken activities with LGBT groups to promote her deceit.

(v) In this appeal, her third, heard on 5 May 2021, Judge Mehta reached similar findings.

16. On the asylum claim, based on risk of the appellant being perceived in Nigeria as an LGBTI+ activist, Ms Ahmed referred firstly to the respondent's Asylum Policy Instruction (API), sexual orientation in asylum claims, version 6.0, 3 August 2016, which accepts that there may be cases which qualify on a perception of being LGB when that is not so. The API also says :

Bad faith claims

Internal relocation is an option ... in certain situations ... when a claimant engineers the risk by self-advertisement, by intentionally putting their claim into local media to create the perception that they are LGB. Such cases need to be considered on their merits and on a case-by-case basis [if] such actions would result in serious harm by perception, irrespective of their lifestyle, this could justify protection.

17. That approach is common ground.

18. Ms Ahmed referred also to the respondent's Country Policy and Information Note (CPIN) Nigeria: Sexual orientation, gender identity and expression, version 3.0, February 2022. There is hostile legislation in Nigeria but Ms Ahmed pointed to evidence that there is little enforcement. There are instances of persecution of LGBTI+ persons, and particularly of activists, by both state and non-state actors. There was also evidence of "gay groups" operating without government interference; 2.4.9.

19. The CPIN says at 2.4.21:

... LGB persons who are open about their orientation or ... perceived to be LGBTI are likely to face stigma, discrimination, violence and mistreatment from family members and the wider community which, by its nature and frequency, amounts to persecution.

20. Ms Ahmed drew attention to the CPIN on separatist groups in the south-east of the country, version 3.0, March 2022, for the proposition that it was for the appellant to show likely interest, and that there is little evidence of government monitoring of activities in the diaspora. The CIPN goes to separatism, not to LGBTI concerns, but Ms Ahmed said that it tended to suggest general lack of interest in what goes on abroad.

21. The overarching argument for the respondent on asylum was that the appellant would not engage in risky activity in Nigeria; it was for her to show that there was any monitoring of activists abroad; and there was no evidence of any such interest.

22. The statement of the witness Ms A B at [25] links to a statement of President Buhari (still in office) on 5 February 2016, "rubbishing" asylum claims by Nigerians and saying they should return. Ms Ahmed asked me to draw from this that Nigerians understand that claims by returnees are

spurious and therefore even if her history emerged, the appellant would not be seen as genuinely lesbian or activist. She would be seen as no more than an asylum-seeking nuisance.

23. Ms Ahmed said that evidence of Mr O should not be found credible, because if genuinely acquainted with the appellant for as long as claimed, it would have emerged much earlier. It came too conveniently out of the blue just before the resumed hearing. The explanation of concern over publicity was weak because the witness could always have asked for anonymity. It was adverse that there was no statement from the uncle.
24. In response to my query, Ms Ahmed was neutral on whether the witness was truthful about his reluctance to return with his late mother's ashes. In any event, she submitted, his evidence did not establish a general risk based on identification through the internet.
25. Ms Ahmed advanced criticisms of the expert reports. Her main theme was that all are based on accepting the appellant's account, which stands as thoroughly rejected. This undermined the conclusions in all three reports.
26. On the health case, it was argued that the evidence did not reach the first stage, in terms of *AM (Zimbabwe)* [2020] UKSC 17, of demonstrating that the appellant is "a seriously ill person"; fell even further short of showing absence of appropriate treatment or lack of access to such treatment such as to expose her to "a serious, rapid and irreversible decline" in her health "resulting in intense suffering or to a significant decrease in life expectancy"; and showed no risk of self-harm in terms of *J* [2005] Imm AR 409 and *Y* [2009] [2010] INLR 178, as analysed in the refusal letter. Her diagnosis of PTSD was based on discredited information. Her account of herself to the psychiatrist was spurious. The anti-depressant medication she needs is available in Nigeria. If she did experience thoughts of self-harm, her faith, by her own evidence, should help her.
27. Finally, I was asked to find that the appellant's displays of emotion while giving evidence were exaggerated.
28. Mr Grutters relied firstly upon his skeleton argument. The asylum claim is advanced clearly on the basis of reported activism, which would result in the perception in Nigeria of "promoting homosexuality". It is said to be perverse to suggest that persecutory actors would contextualise that as a ploy to bolster and asylum claim.
29. Risk is said to arise through two mechanisms: firstly, significant media attention, with reports in such as the Guardian, Morning Star, Huffington Post, and BBC (East Midlands), all vouched in the appellant's bundle, including photos and videos of her.
30. Dr Amundsen's report is cited for her opinion that it is possible that the Nigerian authorities monitor and record such activities in the UK. In her

addendum, she also notes the ease in Nigeria of accessing British media news.

31. The second mechanism is of persecutory actors through "ordinary (off and online) interactions" with the appellant. She has an online presence, including Facebook, which puts her at risk of exposure and consequently of extortion, blackmail, and other ill-treatment, against which state protection cannot be sought.
32. In his oral submissions on asylum, Mr Grutters developed those points. He submitted that it was reasonably likely that the appellant's activities might become known, and irrational to consider that such disclosure might be approached in a fair-minded way, distinguishing between genuine activism and a false claim, within the bounds of toleration. Homophobic persecutors would not care for that distinction.
33. I was invited to find all the witnesses credible, including Mr O. Mr Grutters said that the only matter adverse to his evidence was his lateness in coming forward, for which he gave a readily understandable explanation. His evidence further confirmed that adverse official attention was likely in a case on sexual orientation. The appellant is of higher profile than Mr O.
34. I was invited to accept that there is a risk of discovery, along the lines of a significant Nigerian community in the UK, around 179,000, centred on Peckham; regular travel between that community and Nigeria; interest in the activities of the community, a good example of which was the reported comment of the President, which advanced rather than hindered the case; but a small step to find a real risk of monitoring; "absence of evidence is not evidence of absence"; LGBT+ activists willing to attract personal attention must be a small number within the UK Nigerian community; the issue is toxic in Nigeria; there might be no reported example of such a risk, but that was likely to be tested only if the UK were to return someone in breach of its international obligations. The Home Office submission on false motivation was irrelevant because there could be no rational finding that such motivation reduces risk. The appellant, in the twenty-first century, could not avoid being googled.
35. On the article 3 case, the skeleton argument relies upon the expert opinion that the appellant is returned "is likely to suffer from a substantial deterioration in mental health due to her subjective fear of being returned ... likely to deteriorate to worsening depression, anxiety and PTSD." Dr Galappathie opines that without access to treatment she would "rapidly deteriorate within a matter of hours" of return to the point of "immediate and high risk of self-harm or suicide".
36. "Procedural breach" is argued to arise from the evidence of Dr Ahmed that the appellant would require "consistent and long-term specialist mental healthcare" which she is highly unlikely to be able to afford or to access, due to poor availability. The respondent is said to have failed to dispel doubts or obtain assurances required in light of that evidence.

37. In oral submissions, Mr Grutters said that the evidence showed that GP records supported the expert opinion (there had been a submission from the respondent to the contrary) and that the experts had satisfied themselves of the appellant's reported symptoms, which made it much more likely they were genuine than that she was making it all up. The reports opined that these were not invented symptoms. Mental health facilities in Nigeria are direly lacking, and are only for the wealthy, not for the appellant. Her presentation at the hearing was consistent with her diagnoses.
38. I reserved my decision.
39. I am obliged to both representatives for their clear, detailed and thorough submissions. Not every reference given and point made is dealt with herein, but I seek to resolve the crucial issues.
40. Mr Grutters correctly based the asylum case only on real risk of *perception* as lesbian or as an activist in Nigeria. However, in view of the content of the reports and witness evidence (not submissions), and for avoidance of doubt, I record a finding that there is no possibility of the appellant presenting herself in Nigeria as a lesbian or as an LGBTI+ activist. Her presentation has been conclusively determined to be spurious, prior to the hearing before me.
41. Three witnesses gave evidence supporting the appellant's activities in the UK. They were plainly sympathetic to the appellant, but they were all credible. The same applies to the information provided by witnesses who were not cross-examined, and to the information in the supporting letters. That all goes to the appellant's activism, the primary facts of which are not in any significant dispute, so no detailed rehearsal or analysis is required.
42. The only significant dispute arising from the oral evidence is whether Mr O is credible.
43. Ms Ahmed made two valid points – the late emergence of the witness, and the absence of a statement from the uncle.
44. The witness might fear identification, but the chance of anyone learning of his evidence in a UK tribunal and having an interest in conveying it to Nigeria appears remote. He might easily have sought reassurance on the matter (for example, through the appellant's lawyers) long before he did. It is not a powerful explanation for coming forward with convenient information after years of procedure and at the last moment.
45. This also has to be placed in the context of an appellant elaborating on her case through successive deceptions over a lengthy period.
46. Mr O gave his evidence in a straightforward and matter-of-fact manner. I was struck by the detail of his reluctance to return to complete arrangements following his mother's decease, which emerged almost incidentally in re-examination, and had the ring of truth.

47. I find it likely that the witness is reluctant, after disclosure of his sexuality, to return to his area of origin, where his relatives (apart from one) are hostile.
48. His statement makes the much bolder suggestion, but only indirectly, that the authorities actively monitor the diaspora in the UK to identify and persecute LGBT+ campaigners entering Nigeria.
49. Mr Grutters makes a valid general point on “absence of evidence”, but if there were any such practice, it is hard to think that information would not be in the public domain.
50. As Ms Ahmed observed, there has been no reference to evidence that activities of this nature abroad constitute any crime in Nigerian law.
51. Accordingly, I find Mr O also to be credible, but with the above limitations.
52. There was a lesser dispute arising from the oral evidence, on whether the appellant’s distress was genuine, feigned, or exaggerated.
53. There is no reason to believe anything the appellant says; but she has lived a stressful life for years, presenting false pictures and lifestyles and failing time and again to have her successive versions of herself accepted. It is hard, without posing as an expert, to see that as anything but mentally exhausting and distressing.
54. I cannot say that the appellant feigned her emotion, although it did not arise from the anguish of being continuously and incorrectly disbelieved. In any event, I draw nothing adverse from it.
55. Ms Ahmed argued that the appellant, even if identified, would not be at risk, because she would be seen as a fake.
56. I do not accept the counter-argument that such a line is entirely irrational, but I do not think that it is a safe answer to the claim. Some Nigerians, the authorities in particular, might be indifferent to a false claim. Some homophobic persecutors would surely not pause over a fine distinction. The case is not defeated on this point.
57. Dr Amundsen opines that there is a possibility of monitoring and reporting by the Nigerian authorities. It cannot be said there is absolutely none, but there is no evidence that any such instance has ever occurred. The issue is one of fact and degree.
58. The evidence, as a whole, falls short of showing a real risk that the Nigerian authorities have identified the appellant as a target of persecution for her activities in the UK.
59. That leaves the second mechanism identified by Mr Grutters, an internet search.

60. Entry of the appellant's name is likely to produce results including her image and her activism. She might delete entries under her control on Facebook and elsewhere, but she has an internet presence beyond that on public media.
61. Again, the question is one of fact and degree. No one in Nigeria is motivated to investigate the appellant's circumstances with a view to persecuting her. She would do nothing to identify herself as a lesbian or an activist, or to encourage anyone to enquire into her UK activities. It is not beyond all possibility that a curious person might look her up, and that information might reach a homophobe motivated to persecute her; but the likelihood of such a chain of events is vanishingly small.
62. The evidence does not rise to a reasonable likelihood that in Nigeria the appellant would be of adverse interest to anyone.
63. I turn to the medical case.
64. The psychiatric report at [92] finds no indication of feigning or exaggerating symptoms. That must be a valid clinical observation based on all that was known to Dr Galappathie, but it is not the full picture. The appellant suffers from anxiety and depression, as accepted above, but that is connected to her life of concoction. She does not admit that to her medical professionals. She gives them a selective and misleading history. She places the precise extent to which her portrayal of symptoms is real or feigned beyond either medical or legal detection.
65. The psychiatric report at [86] records no history of self-harm or attempted suicide. It proceeds from there by accepting the appellant's account and her stated intentions if forced to return. The appellant's stated fears, however, are neither subjectively nor objectively well-founded. There can be no doubt that she will continue to make matters as difficult as she can, but without in any way diminishing the quality of the report, on the wider evidence I am unable to adopt its conclusions on the drastic consequences of return.
66. The opinion of the appellant's GP is undermined for the same reasons.
67. The appellant's case does not reach the stage at which she might need the extensive mental health care identified as lacking in the report of Dr Ahmad. She uses standard anti-depressant medication, but that is available.
68. The medical case falls short at all stages, the appellant not being seriously ill in the sense required for protection, and no consequences being established at the necessary level.
69. The decision of the FtT has been set aside. The decision substituted is that the appeal, as brought to the FtT, is dismissed.
70. An anonymity direction remains in place.

H Macleman

2 December 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.