



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: PA/04098/2020**

Appeal

THE IMMIGRATION ACTS

**Heard at Field House
On 29 November 2022**

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

Before

**UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

Between

**CA (NIGERIA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. O Adebayo, Solicitor, David & Vine Solicitors

For the Respondent: Mr. T Lindsey, Senior Presenting Officer

Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or her family. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of Judge of the First-tier Tribunal Thapar (“the Judge”) sent to the parties on 27 March 2021 by which her appeal against a decision of the respondent not to grant her leave to remain was dismissed. The appellant seeks international protection.
2. Judge of the First-tier Tribunal Neville granted the appellant permission to appeal on all grounds by a decision dated 29 April 2021.
3. The error of law hearing was originally listed before Upper Tribunal Judge Stephen Smith on 11 April 2022. Neither the appellant nor her legal representatives attended, and no reason was provided to the Upper Tribunal for their non-attendance. UTJ Stephen Smith considered it to be in the interests of justice to proceed with the hearing and subsequently dismissed the appeal on all grounds.
4. Following the appellant filing an application for permission to appeal to the Court of Appeal dated 15 June 2022, UTJ Stephen Smith noted the reasons given for non-attendance before him at the error of law hearing, namely that neither the appellant nor her legal representatives, David & Vine Solicitors, had received notice of the hearing date. The application was accompanied by witness statements from the appellant’s daughter, CO, and Mr. O Adebayo, the latter subsequently representing the appellant before us. Following directions dated 13 September 2022, UTJ Stephen Smith set aside his decision under rule 43(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 by a decision dated 9 April 2022.
5. The hearing *de novo* was listed before this panel on 29 November 2022.

Anonymity direction

6. The Judge issued an anonymity direction, though no reasoning was provided as to why the appellant’s rights protected by article 8 ECHR were considered to outweigh the public interest in details of these proceedings being generally disseminated; the right of freedom of expression being protected by article 10 ECHR: *Cokaj (anonymity orders, jurisdiction and ambit)* [2021] UKUT 202, at [17]-[28]. We observe that there is a requirement that reasons be given when an anonymity direction is made.
7. No party before us requested that the direction be set aside.
8. Upon considering rule 14(1)(b) of the 2008 Procedure Rules and the general principle underlying UTIAC Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private, we are satisfied that it is presently in the interests of justice that the appellant is not publicly recognised as someone seeking international protection. We are satisfied that the appellant’s protected rights as established by article 8 enjoy greater weight than the open justice principle protected by article 10: *re Guardian News and Media Ltd and Others* [2010] UKSC 1, [2010] 2 AC 697.
9. We confirm the anonymity direction above.

Background

10. The appellant is a citizen of Nigeria and presently aged 71. She retired from full-time employment as a doctor in 2004. She was issued with a six month visit visa in March 2019 and subsequently entered this country to visit CO, a British citizen. Shortly after her arrival in this country, CO gave birth to the appellant's granddaughter.
11. On 27 August 2019, the appellant applied for leave to remain outside the Immigration Rules.
12. She subsequently sought international protection, thereby voiding her application for leave to remain. She relied upon what she asserted to be the general lawless situation in Nigeria, and additionally the risks that she said were faced by women generally. She recited two specific instances where she was a victim of crime. In 2010 her home in the city of Ikorodu was targeted by thieves; she reported the incident to the area superintendent, but not to the police. She relocated to rented accommodation in Enugu in 2016 and three years later, in August 2019, she was informed by her cousin that this property had been burgled and vandalised whilst she resided in this country.
13. The respondent refused the claim for international protection by a decision dated 18 June 2020.

Hearing before the First-tier Tribunal

14. The CVP hearing was listed before the Judge, sitting at Birmingham Civil Justice Centre, on 1 February 2021. The appellant was unrepresented, and was aided by CO. A preliminary issue arose as to the service of documents, with the Judge recording at [8] of her decision:
 - '8. I took care and time to ensure that all relevant documents were before the tribunal. I informed [CO] that the bundle submitted on behalf of the appellant was not fully uploading. [CO] advised that she had not seen a copy of the respondent's bundle. [The presenting officer] advised that some copies of the documents within the appellant's bundle that he received were blank. [CO] advised that this should not be the case. I stood the matter down for [CO] to resend all documents relied upon by email and for a copy of the respondents bundle to be sent to [CO]. I additionally allowed further time for the representatives to review each other's documents.'
15. Following the resumption of the hearing both the appellant and CO gave evidence and were cross-examined. The Judge dismissed the appellant's appeal.
16. The Judge found that the 2010 incident did not take place and, if it did, it had not targeted the appellant. The 2019 incident in Ikorodu was found to

have been an opportunistic burglary of a property that had been vacant for over three years. The Judge concluded that the appellant had made only minimal approaches to the police, and there was no reason she could not approach them for protection upon her return to Nigeria if necessary. She had never been threatened or attacked herself. She had not experienced any of the indiscriminate violence to which she claimed she would be exposed, and would always enjoy the ability to relocate internally, as she had done previously. Her fears were found to be speculative.

17. As to the human rights appeal, the Judge concluded that the appellant's removal would not breach rights protected by article 3 and 8 ECHR.

Grounds of appeal

18. The following grounds of appeal are advanced:

- i) The Judge's conduct of the hearing was procedurally unfair because:
 - a) the appellant did not have enough time to consider the contents of the respondent's bundle, which was served at the door of the hearing, and the matter was stood down for only an hour, which was not enough time for the appellant and CO properly to consider its contents;
 - b) the Judge created an atmosphere that made the appellant unable to present her case properly and thereby caused immeasurable unfairness to the appellant;
 - c) the respondent breached a direction that the bundle must be served five days before the hearing, and the Judge wrongly allowed the bundle to be served at the hearing which prevented the appellant from being able to scrutinise the interview transcripts.
- ii) Because the appellant was a litigant in person, the Judge should have made additional allowances to facilitate her participation in the process.
- iii) The appellant's right to a fair trial under article 6 ECHR was violated by the judge's approach.

19. Mr. Adebayo fused grounds (i) and (ii) at the hearing, identifying the heart of the challenge to be that the Judge should have intuitively appreciated that the appellant was not ready to proceed when the hearing resumed after the one-hour break.

20. In respect of ground (iii) we observe the judgment in *Maaouia v. France* (app. no. 39652/08) (2001) 33 EHRR 42 where the Strasbourg Court confirmed that proceedings concerned with entry, stay and deportation do not concern a civil right or obligation capable of protection under article 6 ECHR. This principle was confirmed by the Strasbourg Court in *MN v. Belgium* (app. no. 3599/18) (5 March 2020), at [137], and recently re-

affirmed domestically by Mr. Justice Swift in *R (ALO) v. Secretary of State for the Home Department* [2022] EWHC 2380 (Admin), at [16].

21. In granting permission to appeal in April 2021, Judge of the First-tier Tribunal Neville reasoned, *inter alia*:
 - ‘2. I am concerned at the lack of detail in the witness statement provided as to whether more time to prepare, or an adjournment, was ever actually requested. The application’s prospects of success would likewise have been increased by the provision of a transcript; the hearing was likely recorded by the Tribunal. Nonetheless, it must be recognised that the Judge gives scant detail as to whether the parties were actually ready to proceed after what time was allowed or, if not, why they were required to proceed. I therefore conclude, with some hesitation, that the application narrowly crosses the low threshold of arguability and that I should grant permission.
 3. I make no directions concerning provision of a transcript or further evidence, this being for the appellant to progress herself with the Upper Tribunal, but she should certainly be alive to its likely importance in the fair resolution of her appeal.’
22. David & Vine Solicitors did not seek a transcript of, or a recording of, the hearing before the Judge on behalf of the appellant.

Decision on error of law

23. The core of the appeal is concerned with procedural fairness. It is trite that fairness is conducive to the rule of law. Lord Diplock observed in *O’Reilly v. Mackman* [1983] 2 AC 237, at 279F-G, “the two fundamental rights accorded ... by the rules of natural justice or fairness, viz. to have afforded to him a reasonable opportunity of learning what is alleged against him and of putting forward his own case in answer to it and to the absence of personal bias against him on the part of the person by whom the decision falls to be made.” It is appropriate to observe that the scope of fairness is context specific.
24. There is a requirement that there be a ‘material irregularity’ in respect of procedural unfairness: *Neil v. North Antrim Magistrates’ Court* [1992] 1 WLR 1220, at 1230D-F.
25. The height of the appellant’s case is set out in the witness statement of CO. The following paragraphs were agreed by the representatives to be relevant to our consideration:
 - ‘7. The document exchange prior to the date was not conducted appropriately. In spite of the fact that I sent 2 electronic copies & 2 physical copies of the required documents to the court and the Home Office, which was acknowledged by the judge, the Home Office/Tribunal did not provide a Home Office bundle and presented an incomplete version of the evidence I had sent them.

8. The Immigration Judge then stood the matter down for only one hour so that we can sort out the paperwork. I informed the court that appropriate exchange of documents/bundles was not done, and we did not receive the Home Office bundle, we however did not get any positive response to our concern in this respect.
9. I was unfairly required to gather and send documents, under pressure, before the hearing started. Multiple pages of the document presented to the judge by the court were blank and incomplete, even though I submitted complete copies to them. I only found out about this because I asked to confirm the evidence they had in their possession.
10. As a result, I was unfairly put under pressure to resend so many multiple emails and to transfer the large volume of documents, in batches, to the court admin person.
11. I was almost crying. It was so bad that instead of adjourning the case, the Judge delayed the case for just an hour while I struggled to resend documents to them that they should have been efficient enough to put together in the court file.
12. Under this tense and confusing atmosphere, I cannot confirm what documents were exchanged. The actions, directions and attitude of the Judge, the Court and the Home Office Representative really put me through a lot of stress and anxiety and made me so disorganised to the point that I lost my composure, confidence, and my thought process on appeal and completely forgot many things I wanted to tell the court to assist the Judge to be able to make an informed decision.
13. When the hearing was re-started an hour later, due to the disorganising and disruptive events recounted above, my presentation, confidence and memory were adversely affected. I even forgot to say some of the key facts I wanted to say.
14. In addition, and very importantly, direct legal discussions between the lawyer from the other side and the Judge happened without substantial effort to explain things to me, being aware that I am a non-legal representative to my mother.
15. The Judge and the Home Office knew quite well that I have no legal training and we were acting in person. The Judge could have created a balanced and fair platform and atmosphere in the court by carrying us along and reducing discussion to a level that any lay person would understand.
16. I later came to realise that asylum application [sic] and its processes including its appeal process are very technical and thus require technical skill far above what I have and could ever have. I feel strongly that the Immigration Judge should have advised us of this fact and at least assisted us to understand what was going on including many technical and registered language deployed throughout the whole process.

[...]

19. I also further consider that the judge should have adjourned the matter so that all the documents would be properly served.

20. It is further considered that no reasonable person would go away thinking or saying that Justice had been done in this case. It is a trite principle of justice, that justice must not only be done, but it must also be seen to be done.'
26. Mr. Adebayo accepted that an adjournment had not been sought by the appellant at the hearing before the Judge, nor had the appellant or CO indicated to the Judge that the appellant was not ready to proceed when the hearing resumed. Mr. Adebayo conceded that the reference to 'almost crying' at §11 did not equate to 'crying' and the Judge would not have been aware that CO was upset. He appropriately accepted that the height of the case was identified at §13 of the witness statement.
27. Despite Mr. Adebayo's careful presentation of the appellant's case, the fundamental difficulty is that the Judge was entirely unaware that CO was flustered at the resumption of the hearing. There was no obligation placed upon the Judge to make further enquiries as to the appellant's preparedness, nor as to CO's, in circumstances where no express concern was raised by either of them at the resumption. She had undertaken introductory explanations as to relevant procedure and ensured that the appellant was in possession of the respondent's bundle. The appellant and CO engaged in proceedings, and CO was permitted the opportunity to make submissions on behalf of her mother. At no time was the Judge informed as to the appellant or CO experiencing difficulties following resumption of the hearing.
28. Mr. Adebayo did not pursue ground (i)(b). We consider he was right not to do so. In respect of an adverse atmosphere having been created by the Judge, the witness statement adds little, and no request was made for a recording of the hearing to be made available at the hearing. There is no reference within the witness statement to CO expressly requesting that legal terms and references be explained to her mother and herself on the ground that they were not understood. In circumstances where the Judge had two highly educated persons appearing before her, it was reasonable for her to expect any concern as to the use of language to be identified so that she could address it.
29. The respondent confirmed by her rule 24 response, dated 20 October 2021, that her bundle was sent to the appellant at her address held on file in accordance with directions on 11 August 2020. There was no challenge to this assertion by Mr. Adebayo before us.
30. In respect of ground (ii), Mr. Adebayo was unable to identify a specific allowance that should properly have been made by the Judge in circumstances where no issues of concern as now identified in CO's witness statement were raised before her at the hearing.
31. In the circumstances, whilst understanding that the appellant and CO possessed limited knowledge of both law and relevant procedure before the First-tier Tribunal, and CO is now able to enunciate that she felt disadvantaged at the relevant time, we are mindful that there is no typical

litigant in person; they will come from a diverse range of social and educational backgrounds. Some may be very skilled at representing themselves. A litigant in person's knowledge, aptitude and general attitude towards the proceedings are largely unknown quantities at the outset of the hearing. Consequently, there is no formulaic approach to be adopted by a judge when considering an appeal conducted by a litigant in person. In this matter, the Judge took reasonable steps to aid the appellant in respect of the respondent's bundle and was not subsequently informed on the resumption of the hearing that the appellant and CO had any concerns as to the continued conduct of proceedings. In the circumstances, no material procedural unfairness arose. Consequently, the appeal is dismissed.

Notice of Decision

32. The decision of the First-tier Tribunal dated 27 March 2021 did not involve the making of a material error on a point of law.
33. The appeal is dismissed.
34. The anonymity direction issued by the First-tier Tribunal is confirmed.

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan

Dated: 29 November 2022