



**IN THE UPPER TRIBUNAL**  
**(IMMIGRATION AND ASYLUM CHAMBER)**  
**000484**

**UI-2023-**

(PA-54378-2021)

**THE IMMIGRATION ACTS**

Heard at Edinburgh  
on 23 August 2023

Issued on

**4<sup>th</sup> September  
2023**

Before

UT JUDGES MACLEMAN & RINTOUL

Between

**THE SECRETARY OF STATE FOR THE HOME  
DEPARTMENT**

Appellant

and

**RUTH NYANORWA SULEIMAN**

(no anonymity order)

Respondent

For the Appellant: Mr J Bryce, Advocate, instructed by Latta & Co,  
Solicitors For the Respondent: Mr A Basra, Senior Home Office  
Presenting Officer

## **DECISION AND REASONS**

1. The parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The appellant is a citizen of Tanzania, born on 7 May 1977. Her daughter, Cleopatra, born on 15 April 2005, also a citizen of Tanzania, has cerebral palsy. The appellant made an unsuccessful asylum claim in 2017 – 2018. On 7 September 2020 she made further submissions, again based on protection grounds and on her daughter’s medical condition.
3. The respondent refused the claim on 26 August 2021. The decision is long and detailed but, unhelpfully, has no page or paragraph numbers. The medical aspect and the interests of the child are firstly considered at page 17 under the heading “exceptional circumstances”. *GS (India) & others v SSHD* (article 3 and article 8) [2015] EWCA Civ 40 is cited for the propositions that absence or inadequacy of medical treatment cannot be relied upon as engaging article 8, and that where article 8 is engaged by other factors, non-availability of treatment “may be a factor in the proportionality exercise; but ... cannot be treated as itself giving rise to a breach since that would contravene the ‘no obligation to treat’ principle”. At pages 19 – 21 under the heading “Article 3 (medical)” *AM (Zimbabwe) v SSHD* [2020] UKSC is cited; evidence of care for cerebral palsy available in Tanzania is set out; and it is not accepted that the high threshold of severity to breach article 3 is reached.
4. FtT Judge Farrelly allowed the appellant’s appeal by a decision dated 10 February 2023. The decision sets out diffuse findings under the heading “conclusions” from [12 – 25]. At [12] the protection claim is briefly rejected, and is no longer in issue (although it is not mentioned in the final “notice of decision”, which says simply, “the appeal is allowed under article 8”). At [14, 16, 18, 20, 22-25] he considers Cleopatra’s situation in Tanzania in relation to stigma, hospitals, specialist care, medication, and total dependency on adults. He states no conclusion on medical grounds (although it may be implicit that he did not think the case could succeed by those tests). At [24] he is “conscious of his section 55 obligation” and that her best interests “probably lie in remaining in the UK where she can continue to avail of specialist and free medical treatment”. He says at [25] that is not the only consideration, but is primary, and that “central to the proportionality assessment is the question of immigration control”. The rest of his decision is under the heading “proportionality”. The Judge firstly notes that the child would be returning with her mother, and her private life “can be replicated in her home country”. He refers to *Zoumbas v SSHD* [2013] UKSC 74 on the best interests of the child. At [31-32] he finds, based on a report by Dr Ramsay, that it would be in her best interests to remain here, and says lastly at [34], “I would not have allowed the appeal under article 8 but for Cleopatra’s disabilities and consequent care needs”.

5. The SSHD sought permission to appeal on grounds, in summary, as follows:
  - (a)... failing to undertake a proportionality balancing exercise ...
  - (b) ... failing to have regard to the public interest factors in section 117B of the Nationality, Immigration and Asylum 2002 ... no regard to the appellant's ability to speak English or whether she and her daughter are financially independent ...
  - (c)... failing to attach little weight to ... private life of the appellant and her daughter ... established with unlawful immigration status ... no adverse weight given to ... reliance on NHS treatment ...
  - (d)... *Dube* [2015] UKUT 00090 (IAC) cited on the statutory obligation on Judges to have regard to part 5A of the 2002 Act ...
  - (e)... failing to factor in the failure of the appellant to satisfy the immigration rules ...
  - (f)... treating the best interests of the child as paramount, contrary to *AR (Pakistan) v SSHD* [2010] EWCA Civ 816.
6. FtT Judge Lawrence granted permission on 3 March 2023.
7. Mr Bryce provided a rule 24 response to the grounds and grant of permission, sensibly conceding that it was an error not to refer to the statutory considerations.
8. Mr Basra submitted that the error was material; the decision should be set aside; there was no further evidence; there were no facts in dispute; and the UT could remake the decision.
9. In his written and oral submissions Mr Bryce sought to persuade us, by reference to *AJ (Angola) v SSHD* [2014] EWCA Civ 1636 at [49], applied in *Dube*, that the error was immaterial; the Judge had, in substance, although not in form, applied the tests; there was no need to set the decision aside; and even if we did, as there was no complaint about the assessment of the daughter's circumstances, we should remake the decision in the appellant's favour, with specific reference to part 5A of the 2002 Act.
10. We reserved our decision.
11. Mr Bryce suggested that lack of reference to part 5A was not the Judge's fault, or not entirely his fault, because the respondent did not deal with it in the decision and neither party mentioned it the hearing.
12. Both sides were remiss. They were duty-bound to frame their analysis within the article 8 statutory structure. However, as Mr Bryce acknowledged, the provisions are directed at courts and tribunals in mandatory terms, and parties' failure cannot relieve the Judge of that. The provisions are fundamental to every human rights appeal.
13. We have no difficulty in accepting the submission that the question is not

whether the provisions were formally cited, but whether they were applied in substance.

14. We also uphold the submission that the need in terms of section 117B (1) to have regard to the public interest in maintenance of effective immigration controls is acknowledged at [25, 30 & 32] of the decision.
15. Mr Bryce demonstrated that the grounds at (b) make a bad point on section 117B(2), ability to speak English. There is no doubt from the evidence that the appellant and her daughter both have that ability. The matter could carry only negative weight. Absence of express consideration, in this case, has no legal effect.
16. On financial independence, section 117B(3), Mr Bryce was able to say only that the Judge was aware of the appellant's lack of self-sufficiency, and that it "might seem" that this had been addressed. We cannot find anything in the decision to stretch that far. This consideration is absent.
17. Section 117B(4) and (5) require little weight to be given to private life established while here unlawfully, or while immigration status is precarious. Mr Bryce said there was effectively a finding of precarity at [26]. He argued further that precarity was not an absolute bar, on the authority of *Rhuppiah v SSHD* [2018] UKSC 58; the Judge recognised the limited degree of flexibility available; and was justified in finding that the "extreme facts" of the case outweighed this consideration.
18. Again, we find nothing in the decision which can stretch that far. It is exceptional for precarious status to be outweighed by a claim to remain based on the private life interests of a close relative. Such an issue must be explicitly tackled and resolved. The facts here are highly sympathetic; but by reference to the tests for success on medical grounds, they are not extreme.
19. The grounds are also accurate on the point that the Judge (despite a self-direction at one stage to the contrary) in the end treated the best interests of the child not as a primary but as a paramount consideration.
20. The grounds show absence not merely of formal but of any consideration of matters to which the tribunal was bound to have regard by part 5A of the 2002 Act:- (i) the economic well-being of the UK, and the appellant's, and her daughter's, lack of financial independence, and (ii) the little weight to be given to private life established while immigration status was unlawful or precarious. They show further error in (iii) the tribunal's approach to the best interest of the child. Any one of those errors might have been sufficient to set the decision aside. Together, they leave no doubt.
21. The facts are not in dispute. There has been no significant change of circumstances and neither side seeks to offer any further evidence. We proceed (as anticipated by directions, usual practice, and submissions) to remake the decision.
22. We note another defect in the decision, although it is missed by the grounds. Apart from the protection issues, which are no longer live, the

outcome turned on the health issues of the appellant's daughter. The appellant's representatives (advisedly) do not appear to have advanced the case in the FtT as one where the tests for a medical case were met (and, rightly, there was no such suggestion to us). This played a part in lulling the Judge into error. His decision is silent on the tests on medical grounds.

23. Although perhaps not to the same general standard as provided by health and social services in the UK, treatment and care for cerebral palsy is available in Tanzania.
24. The appellant's daughter is not, on return, through absence or lack of access to treatment, at real risk of a serious, rapid and irreversible decline in her state of health. The case does not come close to the article 3 test stated in *Paposhvili v Belgium* [2017] Imm AR 867 and approved in *AM (Zimbabwe)*.
25. The public interest question, in terms of section 117A(3), is whether interference with the rights of the appellant and her daughter to respect for private and family life is justified under article 8(2) of the ECHR.
26. We have regard, in terms of section 117B (2), to the maintenance of effective immigration controls being in the public interest.
27. The appellant and her daughter would return together to Tanzania. The case involves no interference with family life.
28. Accordingly, this is not a case where medical grounds, falling short on article 3, may be coupled with family life considerations to contribute to a successful outcome.
29. The question is whether the appellant and her daughter have a right to remain in the UK based on their private life here.
30. Cleopatra's medical and care needs might be served better in the UK than on return to Tanzania; but on return of her mother, it would be in Cleopatra's best interests to return with her.
31. The appellant and her daughter both speak English, so section 117B(2) discloses a neutral factor.
32. In terms of section 117B(3), the economic well-being of the UK, we are unable to quantify the burden on taxpayers, but the appellant and her daughter are not financially independent. They impose significant costs on the public purse for their support, care and medical treatment. They would continue to do so. This weighs significantly against them in the proportionality balance.
33. Sections 117B(4) and (5) require us to give little weight to the private lives the appellant and her daughter have established here. The limited flexibility of this provision does not import a lower standard for a case on medical grounds.
34. The appellant and her daughter do not have a right to remain in the UK.

The refusal of leave is not disproportionate to their right to respect for private and family life.

35. As we have said, the case arouses natural sympathy, but there was no legal foundation on which to allow the appeal on account of disability and care needs. It is unfortunate that false hopes were raised.
36. The decision of the FtT is set aside and the following decision is substituted: the appeal, as originally brought to the FtT, is dismissed on all grounds.
37. No anonymity direction has been requested or made.

*Hugh Macleman*

23 August 2023  
UT Judge Macleman