**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: UI-2021-000536
HU/01194/2021

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **on 22 June 2022** | **on 3 August 2022** |

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**KIKELOMO ILEMOBAYO**

Appellant

**and**

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

Respondent

**Representation:**
For the appellant: No appearance
For the respondent: Mr S. Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 27 January 2021 to refuse a human rights claim.

2. First-tier Tribunal Judge Siddall ('the judge') dismissed the appeal in a decision promulgated on 13 August 2021. The judge summarised the basis of the claim and the appellant's immigration history [3]-[4]. Her claim was based on her private and family life with Mr Ibitola who she said she had been living with since 2012. Mr Ibitola was born in Nigeria but became a British citizen in 2010. The appellant entered the UK on 15 August 2007 as

a visitor. She overstayed and had remained in the UK without leave ever since. The respondent accepted that the appellant was in a genuine relationship with Mr Ibitola but refused the application on the ground that she could not meet the immigration status requirement of Appendix FM of the immigration rules. The respondent concluded that there would not be insurmountable obstacles to the couple continuing their family life in Nigeria for the purpose of paragraph EX.2 of Appendix FM. The appellant did not meet the requirements for leave to remain on private life grounds under paragraph 276ADE(1) of the immigration rules [5].

3. The judge went on to consider the evidence produced in support of the appeal. The judge noted that Mr Ibitola was 69 years old but was still in employment. The evidence showed that after a period of sick leave he was working 25.5 hours a week [16]. Evidence from King's College Hospital showed that Mr Ibitola suffered from chronic kidney disease, hypoparathyroidism, gout and a high BMI. The judge noted that the letter was incomplete and did not include the doctor's recommendations. The letter stated that Mr Ibitola has mobility problems and walks with a stick. He was under the care of the 'Low Clearance clinic' for management of his kidney disease [17]. In contrast to the evidence summarised at [16] the judge noted that there was also evidence to show that Mr Ibitola was signed off work from 17 June 2021 to 17 September 2021 [18].

4. The judge noted that Mr Ibitola had three surviving children, one of whom lives in Nigeria. It was claimed that he could not live with his son. Although the judge noted Mr Ibitola's claim that his son was not working she found that it was not clear how his son and his wife were supporting themselves [19]. Mr Ibitola said that he had visited Nigeria in 2014 and 2019. The judge found that his evidence about the second visit was confused. Mr Ibitola claimed that he was in Nigeria for three months because of a medical crisis but then said that he was in hospital for three days before being transported back to the UK [20].

5. The appellant's evidence was that she did not have anything to return to in Nigeria. Her children lived abroad and she did not own any property there. She claimed that she had no relatives there but the judge noted that in her visa application form she claimed to have siblings and distant relatives in Nigeria. The judge found that it was more likely than not that the appellant continued to have some family members in Nigeria [21]. The appellant said that it would be difficult to return to Nigeria to make an entry clearance application because she would be separated from her husband for a prolonged period of time. He relied upon her for care and assistance because of his medical conditions [23].

6. The judge turned to make her findings on this evidence. It was accepted that the couple are in a genuine and subsisting relationship. The judge took into account the fact that the appellant had lived in Nigeria until she was 45 years old. She said that she had never worked but did not appear to have any health problems. Her partner was still in work although in poor health. At the date of the hearing he was signed off work on medical

grounds. The judge found that Mr Ibitola also had connections to Nigeria. Her partner had made two trips to Nigeria in recent years. She concluded that the couple would not be without family support if they relocated to Nigeria [29]-[30].

7. The judge went on to consider the evidence relating to Mr Ibitola's poor health. She accepted that there would be disruption to his healthcare if the couple relocated. She took into account the fact that Mr Ibitola was able to remain in Nigeria for a period of three months on the last occasion he visited and received healthcare while he was there. No evidence had been produced to show that the healthcare he requires would not be available in Nigeria [32]. The judge concluded that there was insufficient evidence to show that his health conditions were so severe or that care would not be available such that there would be insurmountable obstacles to the couple continuing their family life in Nigeria [34]. The judge referred to the correct test of 'insurmountable obstacles' and relevant case law [33]. For these reasons she concluded that the appellant did not meet the requirements of Appendix FM of the immigration rules [35].

8. The judge proceeded to conduct a wider assessment of Article 8 with reference to the five stage test outlined in *Razgar v SSHD* [2004] UKHL 27 and the statutory provisions contained in section 117B of The Nationality, Immigration and Asylum Act 2002. She took into account the fact that the appellant spoke English, but this is a neutral factor. She also gave weight to the fact that the relationship formed at a time when the appellant was remaining in the UK unlawfully [39]. Nevertheless, she went on to consider the fact that the appellant had lived in the UK for a period of 14 years. Her partner had been resident in the UK for many years and had become a British citizen in 2010. She accepted that he was 'to some degree dependent upon the appellant' [41]. She noted that Mr Ibitola was in employment but given his age and health concluded that there was some question mark as to how much longer he would be in employment. While noting that their preference was to continue their family life in the UK the judge concluded that their circumstances did not outweigh the public interest in maintaining an effective system of immigration control when the appellant did not otherwise meet the requirements of the immigration rules [44].

9. The appellant applied for permission to appeal to the Upper Tribunal on the following grounds:

   (i) The judge's findings relating to the ability of the sponsor to relocate to Nigeria were irrational in light of his age and health. It was asserted that the decision was 'palpably wrong and unduly harsh'.

   (ii) The judge failed to consider the hardship that the appellant might face if she had to return to Nigeria to apply for a visa or the hardship that the sponsor might face if he had to give up his job to relocate.

(iii) The judge failed to 'give credence to' the appellant's oral evidence that she would face hardship in terms of maintenance and accommodation in Nigeria.

(iv) The grounds submitted that: 'The family life of the appellant and sponsor overweighs and it is unjustifiable harsh (sic) for the appellant and his (sic) spouse to relocate to Nigeria with reference to Article 8 (Sri Lanka (2019) EWCA Civ 1630 (sic) at paragraphs (25-32)'

(v) The judge made a 'mistake' regarding the appellant's family circumstances in Nigeria. The grounds repeated the assertion that it would be a financial burden on the sponsor to pay for the appellant to remain in a hotel while she made an entry clearance application.

(vi) It was submitted that the judge wrongly interpreted the law and did not have enough evidence to support the decision.

10. First-tier Tribunal Judge Ford granted permission in the following terms although did not formally limit the grant of permission as recommended by the Upper Tribunal in *Safi and others (permission to appeal decisions)* [2018] UKUT 388 (IAC) and *EH (PTA: limited grounds; Cart JR) Bangladesh* [2021] UKUT 0117 (IAC) :

> '3. The only ground that is arguable is that the Tribunal may have erred in making its assessment of whether continuing family life in Nigeria would entail very serious hardship for the Appellant or her husband given the extent of his health issues. The remaining grounds are not arguable….'

11. There was no appearance by or on behalf of the appellant at an earlier hearing in the Upper Tribunal on 16 February 2022. Following a telephone enquiry by the clerk, the Upper Tribunal adjourned the hearing even though it seemed apparent that the appellant had been served with a notice of hearing. The Upper Tribunal sent further directions to the appellant warning her that if she did not attend on the next occasion the Upper Tribunal might proceed to determine the appeal in her absence (annexed).

12. There was no appearance by or on behalf of the appellant today. The appellant sent an email to the Upper Tribunal on 23 May 2022 asking about the listing of the appeal. This email address was also given as the appellant's address in the application for leave to remain. I am satisfied that the evidence shows that the notice for this hearing was sent to the appellant at the same email address on 27 May 2022 and that she has been served with the hearing notice. There was no message to explain her absence. There was no application for an adjournment. In the circumstances, I was satisfied that the Upper Tribunal could proceed to determine the appeal in the absence of the appellant.

## Decision and reasons

13. The appellant has done nothing to pursue this appeal despite being given an second opportunity to attend court. The original grounds of appeal are

poorly pleaded and in places incoherent. They are characterised by unparticularised statements that can only be described as general disagreements with the First-tier Tribunal's findings, which do not identify any material errors of law in the decision.

14. The only point that First-tier Tribunal Judge Ford considered might arguable was the first ground of appeal. When analysed, it does nothing more than make a general statement that the finding that there would be no insurmountable obstacles to the couple continuing their family life in Nigeria was irrational without particularising what it was in the evidence that might compel a different outcome. The evidence before the First-tier Tribunal appeared to be extremely limited. The appellant and the sponsor gave oral evidence, but it appears that there was no evidence relating to the conditions in Nigeria. There was incomplete evidence relating to the sponsor's health. There was no evidence relating to the availability of healthcare in Nigeria. The judge noted the limited evidence relating to the sponsor's health, but was entitled to take into account the fact that it appeared that he had received healthcare when he became ill on a visit to Nigeria in 2019. No further arguments have been put forward on behalf of the appellant at the hearing.

15. For the reasons given above, I conclude that the first ground does not disclose a material error of law in the First-tier Tribunal decision. The judge's findings were within a range of reasonable responses to the very limited evidence before her.

DECISION

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

The decision shall stand.

Signed M. Canavan Date 22 June 2022
Upper Tribunal Judge Canavan

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**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**

# ANNEX

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## NOTE AND DIRECTIONS

**Decision: hearing adjourned**

1. The appellant appealed the respondent's decision to refuse a human rights claim. The First-tier Tribunal dismissed the appeal in a decision promulgated on 13 August 2021. The appellant was legally represented before the First-tier Tribunal, but appeared to make the application for permission to appeal in person. The First-tier Tribunal granted permission to appeal to the Upper Tribunal.

2. The appeal was listed for hearing on 16 February 2022. The Upper Tribunal's records show that the hearing notice was sent to the appellant at the email address given for service.

3. There was no appearance by or on behalf of the appellant at the hearing. The court clerk was asked to make a telephone enquiry to see whether the appellant intended to attend. The clerk reported that the appellant initially stated that she did not received the hearing notice, but also stated that she had sought advice from solicitors. A telephone enquiry with the relevant solicitor indicated that the appellant had approached them about a week before the hearing. She had not signed a letter of authority and they confirmed that they were not formally instructed.

4. The appellant has made no formal application for an adjournment. On the information currently before the Upper Tribunal it appears that, contrary to her reported assertion, the appellant was properly served with the hearing notice. The fact that the appellant sought advice from solicitors shortly after the hearing notice was served also indicates that she was likely to be aware of the hearing and may have wanted to be represented. We do not know why she did not instruct representatives to attend the hearing on her behalf, but one possible reason might have been lack of funds. Even if she

could not afford a legal representative the appellant did not attend the hearing nor ask for time to find one.

5. This is a finely balanced decision because no formal application has been made for an adjournment and no reasons have been given by the appellant for her failure to attend the hearing. However, we bear in mind the importance of the issues involved in a human rights appeal. We also note that it appears that some effort may have been made by the appellant to seek legal advice prior to the hearing. In the circumstances the panel considered that it is in the interests of justice to adjourn on this occasion.

6. The appellant should be aware that if she does not attend on the next without good reason the hearing is likely to proceed in her absence.

7. If, in fact, the appellant does not want to pursue this appeal, she should consider whether it is appropriate to withdraw it rather than wasting further court time and public funds.

**DIRECTION**

8. If the appellant continues to be unrepresented for the next hearing she must notify the Upper Tribunal at least 14 days before the next hearing (i) if she requires the assistance of an interpreter; and (ii) in what language.

9. If the appellant is legally represented for the next hearing, it is not the usual practice of the Upper Tribunal to book an interpreter.

Signed: M.Canavan Date: 16 February 2022
Upper Tribunal Judge Canavan