**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA 10471 2008

**THE IMMIGRATION ACTS**

| **Decided without a Hearing at Field House** | **Determination Promulgated** |
|---|---|
| **On 19 September 2013** | **On 7 October 2013** |

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**SANDRA MURIRITIRWA**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

# DETERMINATION AND REASONS

1. The appellant is a citizen of Zimbabwe who was born in 1982 and so is now 39 years old. She is represented by Luqmani Thompson & Partners Solicitors.
2. She claimed asylum at her port of arrival in the United Kingdom on 1 May 2008. It transpired that she had left Zimbabwe the previous day and destroyed her documents on the aeroplane on which she travelled. It is not clear to me exactly what "immigration decision" under section 82(2) of the Nationality, Immigration and Asylum Act 2002 was made in her case but it is accepted that there was a decision that she was able to appeal on the grounds that she is a refugee or otherwise entitled to international protection.
3. Her appeal was dismissed by Immigration Judge N M K Lawrence in a determination promulgated on 6 February 2009. She asked for the decision to be reconsidered. The application was refused by a Senior Immigration Judge but ordered by Silber J on 17 June 2009 and on 13 August 2009 Senior Immigration Judge Warr remitted the appeal to be reheard. The appeal came before Immigration Judge Charlton-Brown on 22

October 2009. She dismissed the appeal in a determination promulgated on 23 November 2009. The appellant sought permission to appeal to the Court of Appeal. Permission was given by the Court upon the appellant making an application in person. On 18 November 2010 the Court of Appeal remitted the appeal to the Upper Tribunal for reconsideration.

4. Eventually the appeal came before me at Sheldon Court on 8 September 2012. The appellant ID not appear but Mrs M Morgan, the Senior Presenting Officer, instructed by the respondent was not satisfied that the Tribunal had the correct address for service. She understood that the appellant had recently given birth to twins. It was apparent from Mrs Morgan's file that the appellant was complying with fortnightly reporting conditions and had given no reason to think she had lost interest in pursuing the appeal. Although no formal orders were made Mrs Morgan indicated that she would make further enquiries to see if the case needed a new decision. There was a hearing at Bennett House in June 2013 and then came before me again at Field House on 15 July 2013. The appellant was represented on that occasion by Mr J Luqmani and the respondent by Mr C Avery. On that occasion was some evidence that the appellant had established a lasting partnership with a former citizen of Zimbabwe who was now a naturalised British citizen and that they had two children who were British nationals and a third child was expected around the time that I had the hearing.

5. I then gave orally the following directions:

> "1. No later than 15 September 2013 the respondent shall EITHER confirm in writing that she stands by the existing Decision and Reasons OR issues a further decision and supporting letter.
>
> 2. This file will be taken to Upper Tribunal Judge Perkins either on 16 September 2013 or as soon as is convenient after the respondent replying in accordance with Direction 1 above.
>
> 3. The respondent is reminded that she can apply for these Directions to be varied at any time but if these directions are not satisfied by 15 September 2013 and no further time is sought the Tribunal may conclude that the respondent does not wish to oppose the appeal and may decide the appeal without a hearing."

6. My Record of Proceedings confirms my recollection that these Directions were agreed and that typed copies were served directly on the representatives by my clerk at the end of the hearing.

7. Shortly afterwards the appellant's solicitor asked for two minor corrections to be made to the directions I had handed out. The directions served did not carry the correct appeal number and I had misspelled Mr Luqmani's name. Clearly these did not change the substance of the directions but both the use of a wrong number and the unintentional discourtesy of misspelling Mr Luqmani's name were mistakes that I was happy to put right. I have checked with the administration and the erroneous number that I had created (AA/10471/2013) does not exist on our computerised data base so I am entirely satisfied that there has been no misfiling by the

Upper Tribunal in this respect. The corrected directions were sent on 22 July 2013.

8. It follows that the respondent appears to have done nothing.

9. It is not the function of the Procedure Rules or indeed Upper Tribunal Judges to punish parties for failing to comply with directions. Any personal irritation I might feel at my directions being ignored must be subsumed under the guiding principle of the overriding objective of the Rules which is to enable the Tribunal to deal with cases fairly and justly.

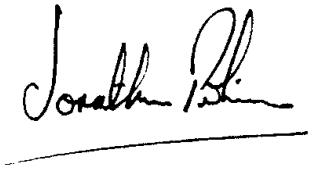
10. I know from experience that the respondent's officers are frequently unable to comply with their directions and I believe that this is much more likely to be the result of limited funding than indifference or wanton neglect. This is expressly why I reminded the respondent that she could apply for more time before indicating that if there was no response I "may conclude that the respondent does not wish to oppose the appeal and may direct the appeal without a hearing".

11. Further papers have come from the appellant. They show that a person identified elsewhere as the appellant's partner was recognised as a refugee in October 2002 and that the appellant gave birth to his child in 3 July 2012. The appellant's solicitors had previously disclosed birth certificates for twins identified as the children of the same partner born on 216 July 2011 and copy passports identifying the twins as British citizens.

12. I have also received a letter from the appellant's representatives reminding me of the directions that I gave but I had in fact submitted a first draft of this determination to the typists before I received it.

13. I can see no realistic prospect of the appellant being removed during the minority of her children. She has been in the United Kingdom since 2008 and in the light of the lack of response from the respondent I have decided that it is just to determine the appeal without a hearing and to conclude that the appellant's case is no longer opposed.

14. In the circumstances I allow the appeal under the Qualification Directive and under the European Convention on Human Rights on both refugee and human rights grounds.

Signed
Jonathan Perkins
Judge of the Upper Tribunal  Dated 4 October 2013