



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

Appeal Numbers: OA/07907/2013  
OA/07908/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 August 2014**

**Decision Promulgated  
On 19 August 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APLEYARD**

**Between**

**JOSHUA MATOVU (FIRST APPELLANT)  
(ANONYMITY ORDER NOT MADE)  
JOHNATHAN MULIKA (SECOND APPELLANT)  
(ANONYMITY ORDER NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr. E. Eluwa, Solicitor.

For the Respondent: Mr. E. Tufan, Home Office Presenting Officer.

**DECISION AND DIRECTIONS**

1. The appellants are citizens of Uganda born respectively on 23 September 1999 and 25 January 1997. They appealed against a decision of the Entry Clearance Officer for Nairobi made on 13 February 2013 refusing to grant entry clearance to enter the United Kingdom as the children of a person

with limited leave to remain in the United Kingdom under paragraph 301 of the Immigration Rules HC 395 (as amended).

2. Following a hearing at Hatton Cross Judge of the First-tier Tribunal Mr Ian Howard dismissed their appeals.
3. The appellants were granted permission to appeal by Judge of the First-tier Tribunal Chohan for the following reasons:-

“1. Permission is sought to appeal, in time, against the determination of First-tier Tribunal Judge I Howard, promulgated on 4 April 2014, dismissing the appellants’ appeal against a decision of the respondent to refuse to grant entry clearance.

2. In essence the grounds argue that the judge failed to consider the leading jurisprudence and that he drew inaccurate conclusions on factual issues.

3. The judge was not satisfied that the sponsor, the appellants’ mother, had responsibility for the appellants. At paragraph 19 the judge states, ‘... the majority of the decisions that have to be taken on behalf of these two teenage boys are being taken by an aunt and not their mother’. However, at paragraph 14 of the determination the judge found that the appellants’ mother and her husband ‘play a role in the appellants’ lives’. It seems the judge found that on a day-to-day basis the aunt made the decisions. The day-to-day decisions may well be made by the aunt on a practical level, however, it is not clear from the determination whether the judge found the appellants’ mother had totally abdicated parental responsibility to the aunt.

4. Accordingly, there is an arguable error of law and all grounds may be argued.”

4. Mr Eluwa relied on all the grounds put forward in the application seeking permission to appeal contending amongst other things that the determination revealed fundamental errors of law and approach thereby rendering it unsafe. The two broad challenges he put forward are that the judge failed to correctly apply the leading jurisprudence in this case to the facts that he had accepted which in turn infected consideration of Article 8. Secondly that the judge drew inaccurate conclusions on some factual matters resulting in unfairness to the appellants.

5. Mr Tufan argued that the judge had directed himself properly and clearly considered the evidence and was not satisfied on the basis of that evidence that the sponsor had sole responsibility for the appellants albeit that she and her husband may play a role in the appellants’ lives. Further that the judge’s findings are adequately reasoned and not irrational. No material errors of law are disclosed within the determination and that the

grounds seeking permission to appeal are no more than a disagreement with the judge's findings.

6. I am satisfied that for all the reasons asserted in the grounds the judge has materially erred and in coming to his conclusions has provided inadequate reasoning. The conclusion that he came relating to the authenticity of a death certificate of the appellants' father, which was provided at the hearing, was not open to be made on the evidence. Moreover, in coming to his conclusions the judge appears not to have taken account of the authority of **TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049** and the guidance therein as to how to approach the issue of "sole responsibility".
7. Further it is difficult to glean from the determination why the appellants' appeals did not succeed. Inadequate reasons for findings on material matters prevail, coupled with a failure to take account and/or resolve conflicts of fact or material matters. All the reasons put forward in the grounds seeking permission to appeal, cause me to conclude the judge materially misdirected himself in law.
8. The determination is therefore set aside in its entirety and the appeal will proceed to a de novo hearing.
9. In deciding whether to set aside the decision of the First-tier Tribunal under Section 12 of the Tribunals, Courts and Enforcement Act 2007, I can dispose of the appeal in one of two ways, either by remitting the case to the First-tier Tribunal or by remaking the decision. The choice is regulated by paragraph 7 of Part 3 of the Practice Directions of the Immigration and Asylum Chamber of the Upper Tribunal which only contemplates remittal in very limited circumstances. This though is such a case. The effect of the cumulative errors detailed above has been to deprive a party - the appellants - before the First-tier Tribunal of a fair hearing, or other opportunity for the parties' case to be put to and considered by the First-tier Tribunal. Moreover the appellants' solicitor seeks the opportunity of submitting the death certificate to the respondent for enquiries regarding its authenticity. In all these circumstances I remit the case to the First-tier Tribunal subject to the attached directions. I do so with the consent of both representatives before me today.
10. Anonymity direction not made.

Signed

Date 19 August 2014.

Deputy Upper Tribunal Judge Appleyard