Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **DA/ 01530/2014**

THE IMMIGRATION ACTS

At **Royal Courts of Justice** Decision and Reasons Promulgated
On **12.10.2015** On 1 March 2016

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Tashinga Alvin MUSANDU

appellant

and

Secretary of State for the Home Department

respondent

Representation:
For the appellant: Mrs Usha Sood (counsel by direct access)
For the respondent: Mr Paul Duffy

DETERMINATION & REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Monica Pirotta and a lay member), sitting at Birmingham Magistrates' Court on 19 November 2014, to dismiss a deportation appeal by a citizen of Zimbabwe, born 8 May 1992, who had been in this country since 1999, but on 30 May 2012 was sentenced to eight years' imprisonment for robbery and attempted robbery.

2. The grounds of appeal raise various complaints about what happened; but there is only one I need deal with. The appellant was represented before the First-tier Tribunal by counsel instructed through the Trent Centre for Human Rights, though appearing, like Mrs Sood, by direct access. It was clear to everyone that she needed to have access to the appellant in the cells before the hearing.

3. The judge mentions what actually happened at paragraphs 12 -13: counsel wasn't allowed to see the appellant in the cells, because "… their security arrangements demanded that Counsel have proper identification papers to prove her role and identity, and she had not come prepared to present any ID. The escort officers, who are not prison officers, would not permit a consultation to take place in the Courtroom, and the representative was at a disadvantage. She was able to consult with the Appellant's witnesses."

4. Further information was given to counsel by the presenting officer at the hearing, which naturally she wanted to discuss with the appellant, but couldn't, because of what had happened. The panel went on to hear evidence from the appellant and his witnesses, and reached a decision on the merits of the case, with which I am not concerned at present.

5. The grounds of appeal mention that, though counsel had an opportunity to read the Home Office papers during the lunch adjournment, this was of limited use without access to her client. A foot-note to ground 4 adds that the requirement for ID to be produced for cell visits at Birmingham Magistrates' Court was not a national requirement: I can only add that, in quite a few years' practice at the criminal bar, admittedly some time ago, I was never asked for such a thing myself. While a wig and gown might have provided some assurance in the Crown Court, there was no difficulty in any magistrates' court either.

6. The judge, who as it happened had long experience at the Birmingham bar herself, was obviously taken aback by what had happened. In my view, the panel should never have been put in such a situation: though they did their best to put it right, by trying to arrange for a conference with counsel in the court-room, what counsel understandably described as the intransigence of the custody officers made that impossible.

7. I take the view that the hearing should have stopped right there. Then the judge, with the help of her resident judge, could have taken up these wholly unsatisfactory arrangements with those who had given custody officers such instructions, without any consultation with, or even notice to the Tribunal before which the appellant was to be produced. I am well aware of the pressures on first-tier judges to avoid adjournments, but sometimes that cannot fairly be achieved.

8. In my view this is one of the relatively rare cases in which it is not only possible, but necessary to apply the principles set out in *Nwaigwe* (adjournment: fairness) [2014] UKUT 418 (IAC), without going any further into the merits of the case. These will be

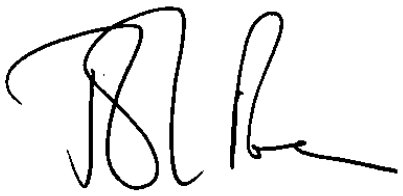
considered at a fresh hearing in the First-tier Tribunal, before another judge, Judge Pirotta having since retired.

9. If there should be any further difficulties caused by custody officers refusing to let counsel or other authorized representatives speak to detained appellants, then judges may wish to take the following steps:

(a) point out to custody officers that the representative is authorized to be in the court and precincts in that capacity, and request that they be allowed to speak to the appellant in detention;

(b) if that cannot be arranged, then require custody officers to bring the appellant into court, and allow them to have a private discussion with the representative there.

10. There is expected to be a Practice Direction by the President of the First-tier Tribunal, making clear that, while judges cannot control access to places of detention, they can and, subject to any overriding considerations of security in individual cases, must be allowed to control what goes on in their courts, on this as on other points.



(a judge of the Upper Tribunal)