



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/01339/2017  
HU/01344/2017  
HU/01350/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 4 February 2019

Decision & Reasons Promulgated  
On 15 March 2019

Before

DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL

Between

MISS R A (FIRST APPELLANT)  
MASTER M K (SECOND APPELLANT)  
MASTER M A K (THIRD APPELLANT)  
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: None

For the Respondent: Ms S Jones, Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellants, mother and sons and citizens of Nigeria, have permission to challenge the decision of Judge Devittie of the First-tier Tribunal sent on 29 August 2018 dismissing their appeals.

2. There was no appearance by or on behalf of the appellants. They were represented at the hearing before Judge Devittie by Mr Knight acting on behalf of Duncan Lewis, but the grounds seeking permission were signed by the first appellant alone. Having checked the file, I am satisfied she was properly served with notice of hearing at her last known address. I decided to proceed with the hearing in the absence of one of the parties and I heard brief submissions from Ms Jones.
3. Notwithstanding the brevity of the grounds and the failure of the appellants to attend, I consider that there are manifest errors in the judge's decision. One already identified by the judge who granted permission, is that the judge nowhere addressed whether the first appellant should have been treated as a vulnerable witness in accordance with the Joint Presidential Guidance Note No 2 of 2010. Another, similarly identified, is that the judge failed to engage with the extensive evidence in the bundles indicating that the first appellant had mental health problems and suicidal ideation. There was also an 8 September 2015 CAF assessment deeming her children to be at risk due to deterioration in her mental health. At paragraph 13 the judge stated simply that "I find that she is in relatively good health and there is no evidence to suggest to the contrary". Yet even earlier in his decision he had noted the evidence of Margaret Teribo, a community consultant, stating that the appellant was battling depression and mental health problems. It cannot be said that the extensive medical evidence all pointed one way, and indeed it was the position of the respondent in the Reasons for Refusal Letter, that her mental health problems were in the past, but at the very least the judge should have engaged with this evidence.
4. It would appear that the judge considered that the first appellant's circumstances on return to Nigeria with her children did not demonstrate very significant obstacles, in part because the children's father could be expected to return with them. At paragraph 12 and 13 the judge noted:
  - "12. She was unable to give coherent evidence in regard to whether she was in a relationship with the father of the children. A reading of her evidence indicates that she was unwilling to state whether or not she was in relationship with him. Her evidence was that she does have some contact with him but she would go no further and it was certainly not her case that she there is in existence a subsisting relationship and that they intend to live with each other permanently. It is not clear what the immigration status of her partner was. He certainly has not come forward, as the father of the children, to support the appeal. I therefore proceed on the basis that there is no meaningful relationship between him and the children. To the extent that such a relationship exists, he is a national of Nigeria and it is open to him to return to Nigeria with his partner and children. As I have indicated, what little information there is about him, is entirely unreliable as I do not believe that the appellant has been truthful in regard to the true circumstances of that relationship.
  13. There is no record of when the first appellant arrived in the United Kingdom. It is clear however that she has remained the UK in breach of the immigration rules. At the very latest, she would have arrived here shortly before the birth of her first child, in 2012. She is an adult, who has spent the

majority of her life in Nigeria. It is reasonable therefore to expect that she would have retained strong social, cultural and family ties in Nigeria. To the extent that the appellant denies having any family, I do not accept this evidence, in the light of the adverse credibility findings I have made. I find that she is in relatively good health and there is no evidence to suggest to the contrary. She would be able to provide support and care for her two children and in this endeavour she would be supported by her immediate family and the network in her home area in Nigeria. The appellant has shown tremendous resourcefulness in entering the United Kingdom, apparently legally, and living here for a significant period of time. It would be a much easier task for her to reintegrate into a country in which she grew up and with which she is familiar and has effective support from family and friends.

5. The difficulty with this analysis is that if there was “no meaningful relationship between [the first appellant’s children’s father] and the children”, then it was not reasonable to assess her case on the basis that he would return to Nigeria with her and so be able to help with the children. From one sentence in para 13, it appears that the judge proceeded on this basis and considered she would be a lone parent having the support of her own immediate family, but at the end of the preceding paragraph it appears that the husband’s support was what is relied on. A clear assessment of this issue was clearly very important because if he was in fact actively involved in (or was considered to be able to be actively involved in) the children’s lives as a parent, the first appellant could not expect to have her case considered on the basis she would be returning as a single mother.
6. In any event, the judge’s decision did not constitute an adequate treatment of the key issues concerning whether the first appellant’s mental health problems would prevent her from looking after her children if returned to Nigeria, whether she would return as a lone parent or with her husband.
7. For the above reasons I set aside the decision of the FtT Judge for material error of law.
8. I see no alternative to the case being remitted to the FtT.
9. In my view the appellants’ case is one that would greatly benefit from legal representation, but that is not in the power of this Tribunal to ensure.
10. I am informed by Ms Jones that the first appellant has now made an asylum claim.
11. It would obviously assist the FtT dealing with this appeal if the father of the first appellant’s children were to attend to give evidence, but again that is not something I can direct.
12. To summarise:

The decision of the FtT Judge is set aside for material error of law;

The case is remitted to the FtT (not before Judge Devittie).

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 12 March 2019

Dr H H Storey  
Judge of the Upper Tribunal