



**Upper Tribunal**

**(Immigration and Asylum Chamber)** Appeal Number: OA/06733/2015

**THE IMMIGRATION ACT**

**Heard at Field House**

**On 9<sup>th</sup> January 2019**

**Decision & Reasons  
Promulgated**

**On 23<sup>rd</sup> January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**JUA**

**(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Ms Asanovic instructed by DJ Webb & Co Solicitors

For the Respondent: Mr Tarlow, Senior Home Officer Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Greasley promulgated on the 9<sup>th</sup> April 2018 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's application for entry clearance as an adopted child of sponsors present and settled in the UK and claims based on Article 8 of the ECHR.
2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances including the fact that the proceedings concern the interests and status of a child I consider it appropriate to make an anonymity direction.
3. Leave to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Gill on 22<sup>nd</sup> November 2018. In granting leave to appeal permission had not been granted in respect of certain of the grounds raised. Thus the case appeared before me to determine whether or not there was a material error of law in the decision on the basis of the limited grounds granted.
4. I note that this appeal has been previously before the Upper Tribunal and was remitted for hearing afresh. It was on that basis that the case came before Judge Greasley.
5. At the commencement of the hearing with regard to the error of law issue before me the appellant's representative sought leave to amend the grounds of appeal. The amendment primarily concerned the status of the adoption documentation from the Nigerian courts and what approach should be taken in respect of such documentation in accordance with the case of Buama [2012] UKUT 00146.
6. At the time of the original application and decision Nigerian Courts were a competent administrative authority or court for the purposes of the Immigration Rules, specifically with regard to paragraph 310 (vi)(a). Whilst subsequently the position had changed and Nigerian Courts were no longer competent courts, the statutory instrument making that variation did not have retrospective effect.
7. Where there was an adoption order from a competent court Buama had set down in paragraph 17:-

*"In relation to the order of the Ghanaian court it is on the face of the order valid. The immigration rules do not appear to contemplate refusal to accept the validity of the order of a competent court. Further, any challenge to the validity of the order had to be by expert evidence in my view. Simply setting out the provisions of the statute is not sufficient....."*
8. The effect is clear when one is dealing with the order from a competent court expert evidence is required to bring into question the validity of that court order. The order from the courts in Nigeria

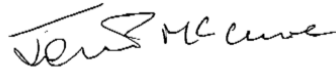
were from a competent court and therefore to challenge their validity it would have been necessary to obtain expert evidence. There was no expert evidence.

9. Mr Tarlow on behalf of the respondent objected to a very late change to the grounds of appeal in part on the grounds that it would prejudice the respondent. I do not see that there is any prejudice to the respondent. Any issues that arise can be dealt with by given the respondent time to consider the issues raised, check the documentation submitted and consider the evidence.
10. I note that otherwise further documentary evidence has been submitted to answer the issues that have been raised in this appeal. Whilst such additional evidence does not impact upon the assessment of whether the judge on the evidence before her has erred in law, such evidence is highly material to the issues in the case.
11. I am concerned with the interests and rights of a child. These proceedings have become prolonged the original application having been made in 2015. Whilst the issue should have been raised earlier, it appears to me in the interests of justice that the amendment ought to be allowed.
12. In the circumstances I permitted the amendment of the grounds to include the challenge to the decision that as the order from the Nigerian Court was from a competent court, expert evidence was required to challenge the validity of the order.
13. The judge cannot be criticised as the issue was not raised before her. However it is a matter of law and clearly it is a matter that ought to have been taken into account.
14. In light of the amendment Mr Tarlow accepted that the approach to the court order from a competent court may be in error. He accepted therefore that the appropriate course was for the present decision to be set aside and the case would have to be heard again. Whilst given the history of this matter I would have preferred to deal with the case, Mr Tarlow submitted that the respondent required time to consider the evidence now submitted and to review the file.
15. Given the circumstances I therefore decided that the best course was for this case to be remitted back to the First-tier Tribunal for hearing afresh.

#### Notice of Decision

16. For the reasons set out there is a material error of law in the decision of the First-tier Tribunal. I set the decision aside and remit the case to the First-tier Tribunal for hearing afresh.

Signed



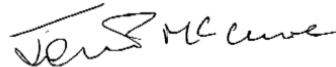
Deputy  
January 2019

Upper Tribunal Judge McClure Date 9<sup>th</sup>

**Direction regarding anonymity- rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings

Signed



Deputy Upper Tribunal Judge McClure

Date 9<sup>th</sup> January 2019