



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

Appeal Number: PA/04232/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 7 June 2019**

**Decision & Reasons Promulgated
On 11 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**P. T.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Rogers, Solicitor, IAS

For the Respondent: Mr Stainthorpe, Home Office Presenting Officer

DECISION AND REASONS

The Appellant, a citizen of the DRC, entered the UK illegally in October 2015 and made a protection claim which was refused on 19 March 2018. The Appellant's appeal against that decision was heard on 12 November 2018, and dismissed, by First-tier Tribunal Judge T Jones, in a decision promulgated on 3 January 2019. The Appellant's application for permission to appeal was granted by Upper Tribunal Judge Grubb on 13 March 2019 on all the grounds advanced. The Respondent did not reply to that grant with a Rule 24 response.

The Appellant's case was that he had left the DRC for South Africa in 2009, fearing persecution if he remained. That is initially correctly recorded by the

Judge [11], but his decision then goes on to record in three subsequent passages his apparent understanding that the Appellant had not left the DRC prior to October 2015 [26, 36, 43]. It is common ground before me that these cannot be characterised as mere typographical errors, of no consequence. I agree, it is not possible to read the decision as a whole, without concluding that this must have reflected the Judge's mis understanding of the evidence when he came to make his decision. Although Mr Stainthorpe was not prepared to concede that this error of fact amounted to a material error of law, he was unable to point to any authority that assisted his position. The relevant authority is ML (Nigeria) [2013] EWCA Civ 844. A factual error, if significant to the outcome, can constitute an error of law, but the key question is whether the Appellant has had the fair hearing to which he is entitled, before any adverse findings of credibility are made against him. A necessary part of that fair hearing is that the Tribunal has listened carefully to his case, and has understood it, before proceeding to make any adverse findings upon it. That is the prism through which the error of fact is to be viewed; to see whether it discloses that the judicial process was sufficiently flawed to amount to an error of law.

In my judgement the Appellant has clearly established the error of law complained of, and identified by Upper Tribunal Judge Grubb in granting permission. The central adverse finding of fact is set out in paragraph 43. It is extremely difficult to understand what the Judge was trying to articulate in this passage, although whatever it may have been, the incorrect date of departure from the DRC appears to have been central to it.

In the circumstances both parties agree that a fresh hearing is the only pragmatic course open. I agree. None of the findings of fact made by the Judge are safe, or can be preserved. In circumstances such as this, where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than First tier Tribunal Judge T Jones, at the North Shields Hearing Centre.

A Lingala interpreter is required.

The remitted appeal may not be suitable for the short warned list given the recent developments in the DRC, about which the Appellant may wish to file evidence to explain why he says he would now be at risk of harm upon return to the DRC. The Appellant must write to the Tribunal by 5pm 21 June 2019 explaining what further evidence he proposes to file, and setting out a proposed timetable. The Tribunal will issue Directions for listing on 24 June 2019.

Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo, with the directions set out above.

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 him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
Deputy Upper Tribunal Judge J M Holmes

Date 7 June 2019

A handwritten signature in black ink, appearing to be 'J M Holmes', written in a cursive style with a long horizontal flourish extending to the right.