Upper Tribunal
(Immigration and Asylum Chamber)

Katsonga ("Slip Rule"; FtT's general powers) [2016] UKUT 228 (IAC)

THE IMMIGRATION ACTS

Heard at Stoke	**Decision Promulgated**
On 29 January 2016	
	…………………………………

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MARTIN

Between

JANE MILAMBO KATSONGA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard, instructed by Fountain Solicitors.
For the Respondent: Mr A McVeetie, Home Office Presenting Officer.

1. *The 'Slip Rule', rule 31 of the First-tier Tribunal Procedure Rules, cannot be used to reverse the effect of a decision.*

2. *Following the repeal by the 2014 Act of subsections (3) to (6) of s 86 of the 2002 Act, the First-tier Tribunal appears to have no duty or power to 'allow' or 'dismiss' an appeal.*

DECISION AND REASONS

1. These proceedings concern Ms Jane Milambo Katsonga, who appears to be a national of either Zimbabwe or Zambia or both. She came to the United Kingdom in June 2004 on a six month visit visa. On the expiry of that visa she remained without leave.

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In February 2004 she claimed asylum, asserting that she was from Zimbabwe and giving a history of difficulties there before she left some ten years previously. She also claimed that as she had resided in the United Kingdom for ten years, although she appeared to have formed no close relationships, her removal would breach her rights under article 8 of the European Convention on Human Rights.

2. The Secretary of State refused her claims in a letter dated 29 August 2014. The Secretary of State noted that, although she now claimed to be Zimbabwean for the purposes of a refugee claim, she had previously supported applications for visas with a Zambian passport. Her credibility was further damaged by the delay before making her claim. She failed to provide any substantiation of her claimed history. If there were any substance in it she would be able to relocate to another part of Zimbabwe and be employed there. Her article 8 claim fell outside the rules and her circumstances where not such as to give her a right to remain in the United Kingdom despite not meeting the requirements of the rules. The consequential decision that she should be removed from the United Kingdom is dated 3 September 2014.

3. Ms Katsonga appealed. There was a case management hearing before the First-tier Tribunal, but then the appeal was adjourned on two or three occasions before coming before Judge O'Rourke for a substantive hearing on 13 May 2015. Judge O'Rourke heard oral evidence from the appellant, who appeared in person and made submissions. There were also submissions on behalf of the respondent. The judge found that the appellant had no well-founded fear of persecution in either Zambia or Zimbabwe. At paragraph 22(ii) the judge found that the appellant would find it difficult to readjust to life in Zimbabwe but given that she was effectively destitute in the United Kingdom she would be no worse off in Zimbabwe. So far as article 8 was concerned, the appellant accepted that she had no family life in the United Kingdom and the judge gave at paragraph 24 reasons for considering that her return to Zambia or Zimbabwe would not cause a disproportionate interference in her article 8 rights. Following that paragraph is the heading "Notice of Decision", under which there are three sentences as follows:

> "The appeal is refused on asylum grounds.
> The appeal is refused on humanitarian protection grounds.
> The appeal is allowed on human rights grounds."

4. The determination is dated 13 May 2015 and was sent out on 14 May 2015. Applications for permission to appeal against that decision were submitted by a Home Office Presenting Officer on behalf of the Secretary of State and by solicitors on behalf of the appellant. The Home Office application set out grounds as follows:

> "The judge of the First-tier Tribunal has made a material error of law in the determination.
> Application for amendment of determination (Rule 60 Procedure Rules).
> Please find attached determination of Immigration Judge O'Rourke under cover of an IA60 Notice dated 15/05/2015, allowing the appeal of Ms J Milambo Katsonga against the decision of the Secretary of State to refuse her application for asylum.

> The decision to allow the appeal appears to be inconsistent with the Immigration Judge's findings of fact. The decision to allow the appeal seems therefore to be a "slip of the pen" and amenable to amendment pursuant to the Slip Rule. Please treat this as an application for the determination to be amended pursuant to Rule 60(1) of the 2005 Procedure Rules.
> This application was served on the appellant…."

5. The appellant's application for permission to appeal was supported by grounds asserting that the judge had failed properly to determine the question of the appellant's nationality, failed to apply country guidance, had inadequately reasoned her conclusions on asylum, and had failed to explain why her finding that the appellant's difficulties in integration into Zimbabwe were not sufficient to cause the appeal to be allowed under the immigration rules. No action appears to have been taken on that application.

6. The Secretary of State's application was, however, judging by a note on the file, passed by the judge who was supposed to be dealing with it to the Resident Judge at Newport, with a request that he ask Judge O'Rourke to correct and re-promulgate the determination. That was done, and Judge O'Rourke issued a further determination on 17 June 2015. It is identical in all respects to the first determination, save that the last line now reads "the appeal is refused on human rights grounds". Against that determination the appellant also appeals, submitting grounds identical to those against the first determination, but adding grounds in relation to its correction. The grounds point out that the Secretary of State was in error in referring to rule 60 of the Procedure Rules, and suggesting that the determination as now issued is contrary to the finding in relation to the appellant's difficulty in readjusting to life in Zimbabwe. First-tier Tribunal Judge Reid granted permission, apparently in relation to both determinations.

7. Although the matter was not the subject of any submission before us, it is perhaps worth beginning with Judge O'Rourke's use of the word "refused". The appeal was subject to the appeals provisions in the 2002 Act before their amendment by the Immigration Act 2014. Section 86(3) provided that the Tribunal must allow the appeal insofar as it thought that the grounds were made out, but s-s (5) reads:

   > "Insofar as sub-section (3) does not apply, the Tribunal shall dismiss the appeal."

   "Dismissed" rather than "refused" is therefore the appropriate word. Quite what the position is now we do not know. Sub-sections (3)–(6) of s 86 were repealed by the 2014 Act. There appears to be no replacement provision. Clearly there is now no obligation on the First-tier Tribunal to allow or dismiss an appeal. Bearing in mind that the First-tier Tribunal's powers are limited to those found in the statute, it must be doubtful whether the First-tier Tribunal is even empowered to allow or dismiss an appeal following the 2014 amendments. Fortunately we do not have to determine that issue.

8. Of more immediate concern in the present appeal is the ambit of the "Slip Rule", formerly to be found at rule 60(1) of the Asylum and Immigration Tribunal (Procedure) Rules 2005, and now in rule 31 of the Tribunal Procedure Rules 2014. That rule reads as follows:

> "Clerical mistakes and accidental slips or omissions
> 31. The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by –
> (a) providing notification of the amended decision or direction, or a copy of the amended document, to all parties; and
> (b) making any necessary amendment to any information published in relation to the decision, direction or document."

9. There appears to be no clear authority on the meaning and use of the "Slip Rule". It is, however, instructive to consider the authorities on the meaning of CPR 40.12, allowing the Court to correct at any time "an accidental slip or omission in a judgment or order". Despite the width of the wording in the CPR, there is an important restriction on the power given by that rule. The power is there to enable a misprint to be corrected, or to make the judge's meaning clear: Bristol-Myers Squibb v Baker Norton Pharmaceuticals Inc [2001] EWCA Civ 414. The power cannot be used to change the substance of a judgment or order: further authorities are cited at CPR 40.12.1 in the White Book. It is because the judge can use the slip rule only to make his original meaning plain rather than to change his original decision, that the Civil Procedure Rules and the Tribunal's Procedural Rules contain no provision for consultation with the parties. Indeed it is difficult to see that the parties ought to have any input into the judge's expression of what he originally meant.

10. We do not think that the power under the slip rule enables a decision to be reversed at the instance of the losing party. Once a decision has been given in a particular sense it may be subject to setting aside under rule 32 or the appellate process. In all other respects, having made and sent out the decision, Judge O'Rourke was *functus*. For the foregoing reasons we regard the purported use of the slip rule to produce the second determination in the present case as ineffective. We allow the appeal against the second determination on the grounds that the First-tier Tribunal had no jurisdiction to make that second determination.

11. The first determination is the determination of the First-tier Tribunal. That is the determination against which both parties sought permission to appeal. The Secretary of State's application appears to have been the first received. Although Judge O'Rourke took the action we have indicated, there was no actual decision whether to grant or refuse permission to appeal. In the circumstances, and sitting as judges of the First-tier Tribunal, we grant both the Secretary of State and the appellant permission to appeal against Judge O'Rourke's decision, in each case on all the grounds advanced. That brings before the Upper Tribunal the appeal or appeals against Judge O'Rourke's first and only valid determination. Our determination of that appeal has a measure of agreement from the parties. It is that the determination contains errors of law as identified in the Secretary of State's grounds and, further, in

the judge's failure to give adequate reasons for her conclusions on the asylum appeal. We set aside Judge O'Rourke's decision and remit the appeal for fresh determination by a judge other than Judge O'Rourke. No findings of fact are preserved.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 31 March 2016