Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **DA 00523-13**

THE IMMIGRATION ACTS

At **Field House** signed: **15.10.2013**

on **15.10.2013** Sent out:**31.10.2013**

Before:

Upper Tribunal Judges
John FREEMAN, and **Peter KING TD**

Between:

Arafat KADDU

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Paul Costello* (counsel instructed by the Immigration Law Practice)
For the respondent: Mr Tom Wilding

RULING

This was an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge Michael Goldmeier and a lay member), sitting at Taylor House on 22 July, to allow a deportation appeal by a citizen of Uganda. There is no need for us to go into the grounds, for reasons which will become clear.

2. This appellant, following a sentence of two years' imprisonment in 2006 for possession of class 'A' drugs with intent to supply, had once again been convicted of a similar offence on 31 July 2008, and sentenced to imprisonment for four years. This should have attracted the provisions of the UK Borders Act 2007 s. 32, which replaced the discretionary procedure, requiring service of a notice of intention to deport, against which an appeal lay, by the automatic deportation order laid down in that section. For detailed reasons given by Nicol J in *Rashid Hussein* [2009] EWHC (Admin) 2492, and approved by the Court of Appeal in

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AT & JK (Pakistan) [2010] EWCA Civ 567, the automatic deportation provisions do apply to those convicted, as this appellant had been, between 1 November 2007 and 31 July 2008. What is more, s. 32 of the UK Borders Act 2007 is in mandatory terms: see s. 32 (5)

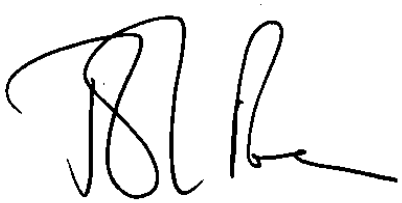
> The Secretary of State must make a deportation order in respect of a foreign criminal …

3. What actually happened is that the Home Office went in a rather leisurely way through the old discretionary procedure, resulting in the signing of a deportation order on 23 August 2012. However the appellant pointed out that he had never received the notice of intention to deport; and so the order was revoked, and a fresh notice of intention to deport served on 26 February 2013, against which the present appeal was brought.

4. However, as Mr Wilding pointed out, the fresh deportation notice was not in accordance with the mandatory procedure laid down by s. 32, and should never have been treated as an appealable decision in the first place. Mr Costello acknowledged that Mr Wilding had done what he could to alert him to this point before the hearing began; but understandably he had been somewhat taken aback by it, and asked for us to adjourn to another day. We were not prepared to do that, since it seemed to us that the combined effect of the statute itself, taken with the authorities cited, was quite clear. Though we offered to put this case back to the end of our list to allow Mr Costello to satisfy himself of this too, he did not see any useful purpose in that; nor had he any further submissions to make to us.

5. The result is that the decision of 26 February 2013 was not a valid immigration decision against which any appeal could lie to the First-tier Tribunal or us.

No valid appeal



(a judge of the Upper Tribunal)