



IAC-FH-CK-V1

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

Appeal Number: OA/02768/2014

THE IMMIGRATION ACTS

**Determined at Field House
On 31 July 2015**

**Decision & Reasons Promulgated
On 5 August 2015**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**DJUMA PEECHIO BAKARI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

ENTRY CLEARANCE OFFICER - NAIROBI

Respondent

Representation:

For the Respondent: none

For the Appellant: none

DECISION AND REASONS

1. The appellant is a national of the Democratic Republic of Congo (DRC), born on 5 May 1977. He applied for entry clearance as the spouse of a recognised refugee in the UK. This was refused on the basis that the respondent was not satisfied the appellant and the sponsor were in a genuine relationship or that they were married. An appeal hearing was originally set down for 23 October 2014. This hearing however was adjourned as the respondent required more time to produce a copy of the 'Gateway Interview' that occurred on 22 October 2012. There was

no suggestion that the sponsor or the appellant's representative failed to attend this hearing.

2. A new hearing date was fixed for 02 December 2014. On this occasion no-one attended on behalf of the appellant. The Judge decided to hear the appeal in the absence of the appellant pursuant to rule 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. In arriving at this decision the Judge took into account the fact that the Notice of Hearing was issued to the appellant and the sponsor and that the sponsor had been afforded a reasonable opportunity to attend the hearing. The Judge proceeded to consider the evidence before him and found that the appellant and sponsor were not validly married, that they were not in a genuine and subsisting relationship at the date of the decision, that they did not intend to live together permanently, and that the decision would not result in a breach of Article 8 ECHR.
3. In the Grounds of Appeal the appellant maintained that neither he, nor his solicitors nor his sponsor received the Notice of Hearing for the appeal held on 02 December 2014. This, it was essentially claimed, deprived him of a fair hearing as no evidence was given by his sponsor and no representations were made on his behalf.
4. It was apparent from the Grounds of Appeal and the documents contained in the Tribunal file that the appellant was represented by his current solicitors since at least 23 October 2014. By Notice dated 16 February 2015 the First-tier Tribunal accepted that it failed to send the Notice of Hearing to the appellant's solicitors on 30 October 2014. The Notice of Hearing was sent to the appellant's address at '15 Sankyry', whereas this should have been '15 Sankuru', and the statement from the sponsor dated 17 October 2014 contained a different address to that given in the Notice of Appeal.
5. When the renewed application for permission to appeal came before me I extended time in respect of the lateness of the application and I granted permission to appeal. I indicated in a memorandum to the Grant of Permission that it was the Upper Tribunal's preliminary view that, in circumstances where the appellant's solicitors were not informed of their client's appeal hearing, a fact now accepted by the First-tier Tribunal, a procedural error occurred that deprived the appellant of a fair hearing and which constituting a material error of law. I required the respondent to indicate in writing within 10 days whether they opposed the Upper Tribunal's preliminary view, and if they did not the Tribunal would proceed on the basis that the First-tier Tribunal decision contained a material error of law and the appeal would be remitted back to the First-tier Tribunal to be considered afresh by a Judge other than Judge Devlin pursuant to section 12(2) of the Tribunals, Courts and Enforcement Act 2007.

6. On 14 July 2015 the Upper Tribunal received a Rule 24 response from the respondent, dated 10 July 2015, indicating that the respondent did not oppose the appellant's application and inviting the Tribunal to determine the appeal with a fresh oral (continuance) hearing by virtue of a material procedural error of law.
7. In these circumstances I am satisfied that a material procedural error of law vitiated the decision of the First-tier Tribunal.

Decision & Directions

The First-tier Tribunal made a material error of law.

The appeal is remitted back to the First-tier Tribunal for a fresh hearing, all issues open, before a Judge other than Judge Devlin.



Signed

31 July 2015
Date

Upper Tribunal Judge Blum