**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: DA/00756/2014**

**THE IMMIGRATION ACTS**

| **Heard at Royal Courts of Justice** | **Decision & Reasons Promulgated** |
|---|---|
| **On 25 April 2016** | **On 29 April 2016** |

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**TADIMANDJA KIOTA**
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms B Jones, Counsel instructed by Irving & Co Solicitors
For the Respondent: Mr K Norton, Senior Home Office Presenting Officer

## DECISION AND REASONS

1. This is an appeal by a citizen of the Democratic Republic of Congo who was born in 1986 against the decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State to deport him.

2. The appellant arrived in the United Kingdom in 1991 when he was then aged 5 years. He has not had a happy time in the United Kingdom. He was taken into care by social services in 1997 and he has been in trouble with the courts. In 2007 he was sent to detention for four months because he had been caught handling stolen goods. In 2008 he was sentenced to three years' imprisonment for an offence of robbery. He was warned that he was liable to be deported. He was in fact made the subject of a deportation order but he appealed successfully. In January 2012 he was convicted of offences involving possession of class A drugs,

in this case heroin, with intent to supply and he was sentenced to custody for 54 months.

3. That is clearly a sentence of over four years' duration. This apparently uncontroversial observation has become significant because it was stated in the appellant's grounds of appeal that the sentence was *not* one of at least four years. The grounds were not settled by the appellant personally or by his Counsel and they are not to be blamed for the error but it is a bad mistake to have made and undoubtedly contributed to permission to appeal being granted. Before me it was conceded immediately that this is a case where the relevant sentence was in excess of four years and that this necessarily creates difficulties for the appellant because of the operation of Section 117C of the Nationality, Immigration and Asylum Act 2002.

4. That said there are things about the Decision that are undistinguished.

5. Deporting the appellant would interrupt his child's private and family life and the child is a British citizen but the First-tier Tribunal Decision seemed to have no regard whatsoever for that child's rights as a British citizen.

6. It is also unsatisfactory that the First-tier Tribunal Judge seemed to think that the appellant's partner was a citizen of Ghana when she is in fact a national of Uganda. It is not easy to see how this mistake was made and it is at the very least annoying to see African countries lumped together as though they are somehow one homogenous culture.

7. It is also fitting that I remind myself, as Ms Jones, properly, has reminded me, that this is a case about deporting somebody from the country where he has grown up and spent much of his life to a country he could only have known as a child and where living conditions are often difficult. We must not become blasé about deporting people to poor countries that they do not know. It can be a very, very harsh thing to do.

8. The difficulty the appellant has in this case are the very clear words of Section 117C(6) of the Nationality, Immigration an Asylum Act 2002. It is in the following terms:

> "In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years the public interest requires deportation unless there are very compelling circumstances over and above those described in exceptions 1 and 2."

9. Exception 1 relates to a period of lawful residence and integration into the United Kingdom and exception 2 relates to relationships with partners and children. My attention was drawn to the case of **JZ (Zambia) [2016] EWCA Civ 116** which does not seem to be concerned with Section 117C but with analogous provisions in the Immigration Rules. As I understand that case it does not permit an interpretation of the Rules that ring fences the exceptions recognised under the Rules so that circumstances that do not provide what Jackson LJ called a "safety net" must be ignored when deciding if, cumulatively, there were exceptional circumstances. With respect that case is of limited value. It concerns the construction of rules and section 117C is not in the same terms. The requirements for "very compelling circumstances, over and above" will no doubt attract the

attention of the higher courts for some time to come but I do not see how they can exist here.

10. I asked Ms Jones how she could show on the evidence that there were compelling circumstances over and above those described in exceptions 1 and 2. It is no discredit to her that she struggled to answer the question. She had clearly given the matter thought but there is really no answer to that. The best she could say is that it was possible that a judge looking at the facts cumulatively would have been sufficiently impressed by all of the circumstances to have allowed an appeal.

11. I remind myself that I am looking to see if there is an error of law which would have to be material. With respect to Ms Jones I do not accept that there is anything in this case that would enable a judge deciding the appeal in accordance with the law to conclude that there were compelling circumstances over and above those described in exceptions 1 and 2.

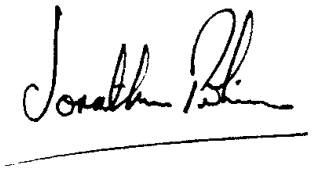
12. It follows therefore that I am bound to conclude that the errors complained of are not material. They are not made material because the First-tier Tribunal Judge referred to "exceptional" rather than "very compelling" circumstances. If there are circumstances where the test is material different they do not exist here.

13. Section 117 in its amended form was clearly intended to make it very difficult to allow the appeals of foreign criminals who had been sentenced to more than four years' imprisonment. This appellant is such a person. Notwithstanding careful submissions from Ms Jones I just do not see how the evidence could possibly support a conclusion that there were such circumstances here and I have to decide therefore that there is no material error and I dismiss the appellant's appeal. That is my decision.

**Notice of Decision**

14. The appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 28 April 2015