**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: PA/00909/2017**

**THE IMMIGRATION ACTS**

| **Heard at Manchester, Piccadilly** | **Decision & Reasons Promulgated** |
|---|---|
| **On 19th December 2017** | **On 2nd January 2018** |

**Before:**

**DEPUTY UPPER TRIBUNAL JUDGE MCGINTY**

**Between:**

**MR EZEKIEL TAIWO OLAJIDE**
(ANONYMITY DIRECTION NOT MADE)

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No legal representation present (Appellant in person)
For the Respondent: Mr McVeety (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This case last came before me sitting in the Upper Tribunal on the 12th October 2017. At that time, I adjourned the appeal, in order to give time for the Appellant to find and pay for alternative legal representation, his previous solicitors Messrs Arndale Solicitors having dropped his case the day before the appeal hearing listed before the Upper

Tribunal on the basis that they wanted payment up front, which the Appellant could not afford.

2. However, when the case came back before me today on the 19th December 2017, Mr Olajide again asked for an adjournment, and in his letter dated the 12th December 2017 which he handed in to seek an adjournment, together with what he told me orally, he said that although his friends from the church had promised to help him out financially they had not been able to help him gather the £700 needed to pay a solicitor, so he was again unrepresented. In his letter he said that he had been to Refuge Action on the 12th December when the letter was written who called Bolton CAB to see if they would be able to represent the Appellant at the appeal, but they said that they were at capacity and they would not be able to represent him until February 2018. On that basis the Appellant asked for his case to be adjourned until February 2018 so he could find a solicitor who could represent him.

3. Mr McVeety, however, on behalf of the Respondent, opposed the adjournment, and correctly pointed out that this was the third occasion, firstly before the First-tier Tribunal at the hearing before First-tier Tribunal Judge Lever, and then before myself in the Upper Tribunal and again today, when the Appellant had sought an adjournment on the basis he had not been able to pay for legal representation. He submitted that there was no evidence from Bolton CAB to indicate that they would actually take his case in February, and that the Appellant had been unable to find any legal assistance, whether from the Citizens Advice Bureau or otherwise, prior to the adjourned appeal hearing before the Upper Tribunal.

4. I bore in mind in this case the overriding objective and the need to deal with cases both fairly and justly, pursuant to Rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 including delivery of the case in ways which are proportionate to the importance of the case, the complexity of the issues, anticipated costs and resources of the parties, avoiding unnecessary formality in seeking flexibility in the proceedings, ensuring so far as practicable that the parties are fully able to participate in the proceedings, using any

special expertise of the Upper Tribunal effectively and avoiding delays for proper consideration of the issues. However, bearing in mind that the Appellant had not been able to secure legal representations on what had been effectively three occasions, with just his assertion that Bolton CAB would be able to take his case in February 2018, without any written evidence from them saying that that was the case or that they had actually agreed to represent him in February, in circumstances where previous time had been granted for him to seek representation and to arrange funds to obtain the services of a legal representative, but that had not been forthcoming, I did not consider it proportionate, fair or just to adjourn the case until February, in order to see whether in fact Bolton CAB would agree to represent him. The case could not simply be adjourned ad infinitum, to allow representation to be ultimately obtained, when he had been unable to obtain such representation since February 2017, when the case came before Judge Lever, now some 10 months previously.

5. The Grounds of Appeal had been drafted by previous solicitors, and properly set out in the arguments relied upon by the Appellant in the appeal before the Upper Tribunal. Further, given that this was an asylum appeal, I carefully considered the Judgment of First-tier Tribunal Judge Lever with anxious scrutiny, taking account of the Grounds of Appeal and what was then said in support of the appeal by the Appellant himself, together with the submissions made in the Rule 24 Reply and the submissions made by Mr McVeety on behalf of the Respondent, before making my decision.

6. The Appellant's case before the First-tier Tribunal was that he had come to the United Kingdom in 2004 on a visit visa and returned again in 2005 on a visit visa again until 2007, but his claim was that he had owed money or the return of goods to a man called Hamza, who had been pestering and threatening the Appellant for the return of the money or goods owed for a period of time. The Appellant's case is that he had gone to the police to report that matter and Hamza had then stopped threatening him, he had stopped writing to the Appellant and stopped visiting the Appellant. Judge Lever in his decision found that simply an alleged fear of Hamza because of an unpaid debt did not engage a Refugee Convention ground or protective rights under the ECHR, and that in

any event on the Appellant's own account his actions in going to the police were sufficient to remove any threat from Hamza. He therefore rejected the Appellant's protection claim.

7. Judge Lever went on to consider the Appellant's claim that due to his health he would be unable to access necessary medical help and assistance in Nigeria, and noted the evidence the Appellant had suffered a stroke in 2013 and that clinical psychology were unable to be sure whether or not the Appellant had a cognitive impairment or whether there were motivational issues and that he has been treated by means of medication for epilepsy and hypertension. It was said there was a letter also from the social worker who said that the Appellant suffered from lower back pain, high blood pressure and hypertension. Judge Lever found that there was no indication that the Appellant was currently undergoing any form of treatment or that he had any operational procedure pending and that following his stroke in 2013 he had made sufficient recovery that he could live and move independently although his memory may have been affected and there was a requirement for him to take a range of medication listed in order to assist with ongoing medical difficulties, such as high blood pressure and epilepsy and the Appellant's own case that he did not have day-to-day care, and appeared to live independently in a house with 2 others, but they were not relatives or friends. The Judge found that the Appellant's medical conditions were not sufficient to amount to a breach of the Appellant's Human Rights and found that apart from the fact the Appellant attended church and had friends within the community there was no evidence of any other activities or private life developed during his time that he was in the UK and there was no evidence he had ever entered employment in the UK. He found there was a functioning healthcare system in Nigeria and 24-hour care available in certain places. He found that the decision would not amount to a breach of the Appellant's Human Rights under Article 3 or Article 8.

8. The Appellant had now sought to appeal against that decision for the reasons set out within the Grounds of Appeal. That document is a matter of record and is therefore not repeated in its entirety here, but in summary, it is argued that the Judge failed to take

account of the fact the Appellant suffers from memory loss and as a result is incapable of looking after himself, which was said to be an exceptional feature and that the Judge had failed to apply such exceptionality when considering the Article 8 case. It is said that the Judge did not take account of the fact that the Appellant was a vulnerable witness when making findings in respect of credibility and the viability of obtaining medication upon returning to Nigeria and his ability to relocate given his health problems. It is said that the Judge has not carried out a proportionate assessment under Article 8 and has failed to consider and apply the relevant legal principles in Article 8 medical claims and had not given consideration as to the case of Akhalu (Health Claim: ECHR Article 8) Nigeria [2013] UKUT 400. It is said that the Judge failed to consider and apply paragraph 276ADE(6) in terms of whether there were very significant obstacles for the Appellant to be reintegrated back into Nigeria and this his health would be an impediment and it is argued that the Judge failed to assess the impact of removal on the Appellant and has based his findings upon an assumption the Appellant's family in Nigeria would help and support him to access his medication. It is argued that the Judge failed to consider or refer to the Clifford Chance report in the findings and the fact that it was said there that most people in Nigeria cannot access healthcare because it is not affordable or available to them. It is further said that there was procedural unfairness in that Refugee Action made a paper request for an adjournment in order to obtain legal representation and the appeal could not be justly determined, as the Appellant had been wrongly deprived of public funding and the Appellant struggled to present his case at the Upper Tribunal due to his vulnerability and the lack of grasp of the case.

9. Permission to appeal was granted by First-tier Tribunal Judge Keane on the 19th July 2017 who found that there are arguably three errors of law. Firstly he found it was arguable that the Judge perpetrated a procedural irregularity which made a material difference to the outcome and reflected a lack of fairness and he should arguably have granted the Appellant's request for an adjournment in order to secure legal representation. Secondly it is said that there was an arguable error in failing to resolve the issue of the Appellant's credibility and arguably the Judge did not make explicit findings, and that thirdly the Judge made an arguable error in determining the Article 8 appeal and arguably did not accord weight to the Appellant's private life established in

the UK, but merely concluded that his return would not bring about a disproportionate interference with his private life. It was on that basis only that permission to appeal was granted and permission to appeal was not granted to argue all of the grounds raised within the Grounds of Appeal. It is therefore the Grounds of Appeal upon which it was granted, which I address in my decision.

10. I bear in mind that in the case of Nwaigwe (Adjournment: Fairness) [2014] UKUT 0048418, it was found by Mr Justice McCloskey, the then President of the Upper Tribunal that a refusal to accede to an adjournment request could in principle be erroneous in law in several respects including potentially the failure to take account of all material considerations, permitting immaterial considerations to intrude, denying the party a single fair hearing, failing to apply the correct test and acting irrationally, which in practice in most cases the question would be whether the refusal to apply the effective party with a right to a fair hearing and was said to be applied as that of fairness and whether there was any deprivation in the party's right to a fair hearing.

11. In this case, in refusing the adjournment request at [21], the Judge gave clear, adequate and sufficient reasons for rejecting the adjournment request, firstly on the grounds that on the Appellant's case even if credible and at its highest had never engaged a Refugee Convention ground or other international protection treaty, secondly on the basis the Appellant appeared to have had the opportunity of consulting solicitors who did not take his case and thirdly that the Appellant had not been wrongly deprived of public funding and that Refugee Action were no doubt aware that public funding was limited and the fact the Appellant does not have legal representation did not mean that his case on appeal could not be justly determined. He further found that there had been a significant delay on the part of the Appellant in presenting his claim for asylum. Further, the Appellant had attended with Mr Chapman from Refugee Action, who although not acting as a Mckenzie Friend, it was clear from [8] that Judge Lever had invited him to add anything at any stage that he felt may be important to the Appellant or he felt the Appellant's memory may be at fault because of his medical condition.

12. Not every case needs a legal representative before an appeal can be heard before the First-tier Tribunal, and Judge Lever in this case, by seeking for Mr Chapman to assist the Appellant, ensured that there was fairness in the hearing and that the Appellant had not been deprived of the right to a fair hearing. The Judge clearly took account of the relevant aspects when considering the adjournment request refusal and did take into account the material considerations. Nor has he acted irrationally, he has applied the correct test and has not denied the Appellant a fair hearing. The first ground of appeal therefore lacks merit.

13. In respect of the second ground upon which permission was granted, it was arguable that the Judge had failed to resolve the issue of the Appellant's credibility and simply stated that the following points emerged from a claim made by the Appellant at [22], the point actually being made by the Judge thereafter from paragraph [23] onwards, that even if the Appellant's claim was credible, it neither engaged the Refugee Convention or his protection rights under the ECHR, and that it simply related to his disagreement about an unpaid debt and that Hamza had stopped threatening the Appellant after the Appellant had been to the police. Further, the Judge explained, given the passage of time it was extremely difficult to know how Hamza would be aware of the Appellant's presence in Nigeria particularly if the Appellant wished to relocate to another part of Nigeria upon return. The Judge's findings that even on the basis of the Appellant's account, if credible, would not be sufficient to entitle him to international protection, was a finding open to the Judge on the evidence, and given the nature of the Appellant's claim, could not in any way be described as irrational or perverse, and was in reality, the only finding open to the Judge on that evidence. His claim did not engage a Refugee Convention or any protected rights, and on his own case, the Appellant was no longer being threatened by Hamza, after he visited the police. Given that the Judge's finding was that even at its highest, the Appellant's claim did not entitle him to protection, there is no material error in the Judge's findings in that regard.

14. In respect of the third ground upon which permission to appeal was granted where it was arguable that the Judge did not consider the Appellant's private life properly when

considering the Article 8 claim, First-tier Tribunal Judge Lever at [30] clearly set out the Appellant's evidence that he attended church and appeared to have friends within the community, but other than that there was no evidence of any activities or private life developed in his time in the UK and that, there was also clear findings that he spoke English and there was no evidence he had entered into employment. The Judge further found that the Appellant had been unlawful in the UK since mid-2007 and therefore his private life such as it may be, counted for little, in terms of a private life developed since that time, in accordance with Section 117B(4). The Judge therefore has properly taken account of the Appellant's private life in the UK and properly set out the evidence in that regard and taken it into consideration when considering the Article 8 claim. There is no material error in that regard.

15. Further, although permission to appeal was not specifically granted in respect of the arguments raised regarding the Appellant, it is also clear from the findings of Judge Lever that the Appellant was not undergoing any schedule of treatment, and in terms of his health although having suffered a stroke in 2013, the evidence was unclear as to whether or not he had cognitive impairment or other motivational issues. He was simply taking medication for epilepsy and hypertension, high blood pressure but he did not need day-to-day care and was living independently in a house with two others who were not relatives or friends. The Judge has therefore properly assessed that the Appellant's health conditions were not sufficient to amount to a breach of either Article 3 or Article 8 on health grounds, and there was no material error in the Judge's consideration in that regard. Although criticism had been made of the fact that he had not made specific reference to the Clifford Chance report, there is no evidence that in fact that was written by an expert on the country, and is simply signed Clifford Chance LLP, and simply seems relates to a summary of background information in terms of police protection and healthcare and whether witchcraft was recognised as an issue in Nigeria. It was not a report from an expert, on the country's situation. As it was simply rehearsal of the background evidence, the judge did not specifically need to refer to the same by name.

16. The Judge had made perfectly adequate findings at [31 and 32] in respect of the healthcare provision within Nigeria, and further made previous findings that even at its highest, the Appellant was no longer at risk from Hamza, given that Hamza had stopped threatening him following the Appellant having reported Hamza's behaviour to the police. There was no material error in that regard either. However, therefore, even though the Appellant has been in person before the Upper Tribunal, I have given careful and anxious scrutiny to the decision of First-tier Tribunal Judge Lever, and in that decision, Judge Lever has given clear, adequate and sufficient reasons in a well-reasoned and thorough determination, and the decision reveals no material errors of law.

Notice of Decision

The decision of First-tier Tribunal Judge Lever does not reveal any material errors of law and is maintained;

I make no anonymity direction in this case, no such Order having been made by First-tier Tribunal Judge Lever and no such Order having been sought before me.

Signed

Deputy Upper Tribunal Judge McGinty Dated 19th December 2017