



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

Appeal Number: HU/09329/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 July 2019**

**Decision & Reasons Promulgated  
On 01 August 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**A. I. K.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr David Chirico (Counsel)

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**ERROR OF LAW-DECISION AND REASONS**

1. This is an appeal by the appellant who is a citizen of Sierra Leone. He appeals against the decision made by First-tier Tribunal (Judge O'Keeffe) (FtT) who dismissed his human rights appeal in a decision promulgated on 13 November 2018.

**Background**

2. The appellant applied for further leave to remain on the basis that he had a genuine and subsisting relationship with his child, in respect of whom he had a parental responsibility agreement and in respect of whom he had

instructed solicitors to make an application for the re-introduction of contact.

3. The FtT heard the appeal on 7 November 2018. The appellant was not represented and did not attend the hearing. The FtT proceeded to determine the appeal by way of a hearing in absence of the appellant. It found no evidence of any genuine parental relationship between the appellant and his child. It found that “the most that the evidence demonstrates is that the appellant is the child’s biological father.” It concluded that the decision would have no impact on the existing arrangements for the child.

### **Grounds of appeal**

4. The grounds of appeal argued that the FtT failed to have regard to the evidence before it which showed that the appellant had a relationship with his child and was seeking to resume contact with his child (**SSHD v AB (Jamaica)**) [2019] EWCA Civ 661).
5. Secondly, it was argued that the FtT had no evidence or explanation for the appellant’s absence and in considering whether to proceed to hear in absence failed to consider the best interests of the child. The FtT failed to take into account that the appellant had been unrepresented, that the address given to the Tribunal was for his previous solicitors and that the appellant had thus far shown little participation in the appeal. All of which ought to have highlighted for the FtT that the appellant was either unaware or unable to attend the hearing. Unbeknown to the FtT the appellant suffered from a mental health illness at the date of hearing had been hospitalised. At that time he had lost contact with his family and his legal representatives.
6. It was further argued that the FtT failed to consider the question of what private life and family life the appellant had established in the UK.

### **Permission to appeal**

7. Permission to appeal was granted by Upper Tribunal Judge Kebede essentially on the grounds that there was a fairness issue in particular having regard to the evidence that had now been produced to show that the appellant had been in hospital from 13 October 2018 to 5 December 2018.

### **Submissions**

8. At the hearing before me Mr Tarlow conceded that objectively the decision was unfair to the appellant given his circumstances and the Respondent was not therefore opposing the application. There was no Rule 24 notice provided.

9. Mr Chirico submitted that not only was the decision objectively unfair but also the legal position as regards genuine and subsisting relationships had moved on citing **AB (Jamaica)**.

### **Decision**

10. I decided to set aside the decision given that there was no challenge to the grounds to appeal. It was clearly unfair objectively for the determination to stand in light of the evidence now produced as to the reasons for the appellant's failure to attend. The appellant provided evidence to show that he had been in hospital due to severe depression and psychosis at the time of the hearing. There was also evidence from his brother and former partner to confirm that at that time he was not in touch with members of his family and had not contacted his solicitors.
11. I take the view that all of the grounds of appeal were made out in any event. The FtT did not consider where the best interests of the child lay in its assessment of whether or not it was fair to proceed with a hearing in absence, or at all. There was evidence before the FtT to show that the appellant had a parental responsibility agreement with regard to his child and evidence of an e-mail sent in March 2018 instructing solicitors to make an application to court for the re-introduction of access. Although the FtT relied on **SR (subsisting parental relationship-Section 117B(6)) [2018]**, it applied a somewhat restricted definition of what is considered to be a genuine and subsisting relationship.
12. Accordingly I have decided to remit the matter to the First-tier Tribunal for a hearing de novo. Mr Chirico requested that the appeal be reheard in Taylor House as the appellant had now instructed solicitors from Wilson & Co. I concurred with that request.

### **Decision**

13. There is material error of law. The decision is set aside. The matter will be remitted to the First-tier Tribunal at Taylor House for rehearing (excluding Judge O'Keeffe).

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 31.7.2019

Deputy Upper Tribunal Judge G A Black

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed

Date 31.7.2019

Deputy Upper Tribunal Judge G A Black