Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DC/00099/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34
On 1 June 2020

Decision & Reasons Promulgated
On 19 June 2020

Before

MR C. M. G. OCKELTON, VICE PRESIDENT

Between

RONALD KAVUMA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appealed to the First-tier Tribunal against a decision dated 11 September 2019 to deprive him of his nationality. The First-tier Tribunal dismissed the appeal without a hearing. The appellant has permission to appeal to this Tribunal.

2. Directions dated 20 March 2020 were served on the parties. Those directions indicated that it appeared that elements of the present appeal could be determined without a hearing. Paragraph 2 of those directions set out a timetable for the submission of further representations by the parties. Paragraph 3 invited the parties to indicate if they thought that a hearing of the appeal was necessary and if so to give reasons.

3. In accordance with paragraph 2 of the directions I have submissions from Mr West, counsel on behalf of the appellant, a response by Mr Clarke on behalf of the Secretary of State, and a reply by Mr West. No submissions

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have been made under paragraph 3. It appears to me that this is a case suitable for determination without a hearing on the basis of the material available: the issues are clear, the parties have made full written submissions, and I have everything before me that is necessary for the determination of the appeal. I determine it under rule 34(1) with reference to rule 34(2).

4. The grounds of appeal challenge the procedure in the First-tier Tribunal, specifically that Tribunal's decision to proceed to determine the appeal without a hearing.

5. The decision letter dated 11 September 2019 runs to 38 paragraphs including routine content. It sets out the following basis for the decision. The appellant applied for and was granted visit entry clearance and obtained entry as a Ugandan national named Kato Rogers Ssekimpi born on 12 May 1983. In the same name he obtained further leave, but was refused indefinite leave. At some stage after that he assumed the name of Ronald Kavuma. That was an identity that had been concocted by a person called Ruth Nabuguzi, who invented a child called Ronald Kavumi, born on 20 June 1986, for whom she obtained indefinite leave to remain, which identity and status she sold to the appellant. As Ronald Kavuma he obtained indefinite leave to remain on 12 January 2004 and British citizenship on 26 April 2007. These facts were the basis of charges against the appellant and Ruth Nabuguzi for conspiracy to defraud. The appellant's convictions, on 1 March 2013, were in relation to the use of the identity of Ronald Kavuma in order to obtain British citizenship and Housing and Council Tax Benefits.

6. Following the appellant's convictions the grant of citizenship to him as Ronald Kavuma was declared null and void. There were representations made by solicitors on behalf of the appellant, Aldgate Immigration, in which the appellant claimed asylum and made a number of assertions as to his identity. He claimed that he was really Ronald Kavuma, and had nothing to do with a person called Kato Rogers Ssekimpi; but in a number of places in the submissions and other documents said his date of birth was 12 May 1983. As the criminal convictions showed beyond reasonable doubt that the identity of Ronald Kavuma was an invention, and as 12 May 1983 was the date of birth of the person who had entered the United Kingdom as Kato Rogers Ssekimpi, the Secretary of State decided that the claim to be really Ronald Kavuma was not the truth.

7. The Secretary of State considered the other matters put forward by the solicitors, rejecting article 8 arguments and arguments going to statelessness, and gave notice of her decision to deprive the appellant of his British citizenship, pointing out that a Refugee claim could be made only if the appellant is not a British citizen. The letter set out the right of appeal to the First-tier Tribunal.

8. Throughout, the letter made reference to annexes containing the information from which the account of the appellant's history had been drawn. It now said, it appears, that the letter as sent to the appellant and to Aldgate Immigration, did not have the annexes attached (I shall refer to this later). The copy of the letter available to me does not have them either: in setting out the summary above I have relied only on the text of the letter itself.

9. The notice of appeal to the First-tier Tribunal is dated 25 September 2019, that is to say at the very end of the period of 14 days allowed by the rules, assuming the decision was sent on the day it was dated (and nobody has said it was not). It is said to have been submitted by Kofi Aduku of Adukus Solicitors on behalf of the appellant and in accordance with his instructions. No grounds of appeal are specified: instead, the space for grounds of appeal against the deprivation of citizenship decision has only the words 'Detailed grounds to follow'. It is not suggested that there are grounds to be raised under any other head.

10. Rule 19(2) of the First-tier Tribunal's procedure rules gives the time limit of 14 days for notice of appeal, and by rule 19(4)(a) the notice of appeal "must set out the grounds of appeal". There is no provision for disclosure of the grounds to be reserved to a date later than that limited for the notice of appeal. There being no grounds in the notice, a member of staff of the Tribunal wrote to Adukus Solicitors on 26 September. The letter is headed "Request for Grounds of Appeal", and requires "complete and specific grounds of appeal, together with supporting reasons" to be provided by 3 October, and says that failure to comply with this "notice" may result in the appeal being dismissed without a hearing.

11. Adukus Solicitors responded at 8.42 pm on 2 October saying they had received the file from Aldgate Immigration only on 27 September, that they needed to consult the appellant and counsel in this 'complex matter' and seeking an extension of 14 days. The request was put before a judge, who granted an extension of five working days from 3 October, that is to say until 10 October 2019. No grounds were received within that time or subsequently. On 18 October the matter was put before Judge Kaler. On that date there had passed 37 days since the decision, that is to say over 250% of the time allowed by the rules for a notice of appeal with grounds. There were no grounds; there had been no response to the extension given for lodging them; there had been no request for any further extension; and there had been no indication of any difficulty in the appellant's dealing with the material had had available to him.

12. Judge Kaler noted the absence of the grounds and the absence of any explanation for their absence. She noted the provisions of rule 25(1)(e) which provides an exception to the requirement for a hearing where:

> "(e) a party has failed to comply with a provision of these Rules, a practice direction or a direction and the Tribunal is satisfied that in all the

circumstances, including the extent of the failure and any reasons for it, it is appropriate to determine the appeal without a hearing."

13. She exercised her discretion to determine the appeal without a hearing. She summarised the law and the facts. She concluded that having considered the papers as a whole and in the absence of any grounds of appeal there was no reason to depart from the Secretary of State's conclusions or to find that the decision was made otherwise than in accordance with the Immigration Rules and the law. Although there was not said even to be any challenge on art 8 grounds, she considered the matter briefly under that head and noted that the appellant's presence in the United Kingdom was connected with his fraud and that he had not put any evidence of his private or family life before her. There was no reason to suppose that the decision was disproportionate. She dismissed the appeal. Her decision was sent out on 21 October.

14. The appellant submitted grounds of appeal against that decision. The grounds extend to 12 pages and are substantially longer than the decision against which the appeal is brought. As I have indicated, they are based on the procedure adopted in the First-tier Tribunal. It is right to say at once that they contain not a hint that there is any basis upon which the decision of the Secretary of State might properly be challenged. Permission was granted by Judge Grant-Hutchinson because she thought, on the basis of those grounds, that it was arguable that Judge Kaler had erred in law for the following reasons:

    (a) there were reasonable circumstances which gave rise to an inability by the Appellant to provide specific grounds of appeal as requested by the Tribunal in the letter dated 26 September, 2019 when detailed annexes (as detailed in the grounds for permission to appeal) were not attached to the Respondent's Reasons for Refusal and without them the Appellant was clearly unable to give or receive proper instructions in his appeal;

    (b) whether the Judge had had sight of said annexes in coming to her decision and

    (c) in being unable to provide an appeal bundle and other supporting documents where the Appellant was not fully aware of what the case was against him and had only recently changed solicitors.

15. The subsequent submissions (11 pages) and reply (5 pages) sent on the appellant's behalf add nothing of substance to the grounds themselves, but offer some authorities in support of the proposition that on the basis of the facts set out in the grounds the Judge erred in determining the appeal without a hearing. I turn therefore to the grounds.

16. They set out a chronology, which indicates that counsel, the author of the grounds, received the file from Adukus Solicitors on 7 October 2019. He had a meeting with the appellant and his solicitor on 17 October. On 18 October the solicitor wrote to the Secretary of State asking for the annexes to the decision letter to be supplied. It should be emphasised

that although on its face the letter as presented to the Tribunal does not have the annexes, this, that is to say the grounds of appeal against the First-tier Tribunal's decision, is the first indication that the annexes were not provided when the letter was originally sent to the appellant and his solicitors. Further, the assertion that it did not have the annexes is not supported by evidence from the appellant or from his previous solicitors, or indeed any evidence at all. Nevertheless, erected on this assertion are grounds that (i) without the annexes the appellant did not know the case against him and that the decision of the First-tier Tribunal was therefore a breach of natural justice, and further that in the absence of the annexes there were reasonable grounds for failure to provide grounds of appeal; (ii) that it was unclear from the decision whether the judge had relied on annexes that were not available to the appellant; (iii) that dealing with the appeal without the appellant's input and in circumstances where the appellant was unaware of the case against him was unjust and unfair and so contrary to the overriding objective in accordance with which the judge's discretion should have been exercised. As can be seen, Judge Grant-Hutchinson considered each of those grounds arguable.

17. In order to determine whether those grounds have merit in establishing error by the judge, it is necessary first to look at the timescale, bearing in mind that, for the reasons indicated, the appellant, his solicitors and his counsel all knew the position as to time. It was this. The grounds should have been submitted with the notice of appeal, no later than 25 September. There had been an administrative and then a judicial extension of that time limit, to 10 October. They had been reminded that if there were no grounds the appeal might be dismissed without a hearing.

18. Against that background, the solicitors, who had received the file on 27 September, sent it to counsel on 7 October; and the subsequent events were, to everybody's knowledge, after the last date for submitting grounds of appeal. At no stage before Judge Kaler's decision was made was there any suggestion that further time was needed, or that the appellant and those representing him thought that to proceed as they had been reminded the Tribunal might proceed would not be a proper approach to the circumstances, although there was ample time for contact to be made with the Tribunal if that had been thought necessary.

19. In my view the judge cannot in these circumstances be faulted for the view she reached about the absence of grounds. There were none, and given the history there was no reason to think that there ever would be any.

20. Secondly, there is a real issue about whether the annexes were missing, and what the effect of that might be. As to whether they were missing, I have noted above that there is even now no evidence, and the appellant and those representing him did not seek to put any evidence before this Tribunal. If they were indeed missing from the beginning, it is very surprising indeed that it took five weeks from the furnishing of the

decision, sight of the decision by the appellant, two firms of solicitors and counsel, and a further week's delay, before they were asked for on 18 October. But even if they were missing their absence is wholly unable to provide any excuse or explanation for the total lack of any grounds of appeal. As the letter makes clear, the appellant had been dealing with the Secretary of State for many years; he had obtained his leave and his citizenship; he had been convicted of the fraud; he had received the decision that his grant of citizenship was null and void; he had (through solicitors) made further representations with documentation. It is wholly wrong to say, as the grounds do, that the case against him was based on documents that the appellant had not been sent. The case was based on the appellant's own conduct and experiences of which he was fully aware: the reference to the documents was not necessary for that, and if the appellant's case was that the letter was not accurate (regardless of any supporting documents) he had only to say so by way of grounds of appeal. It is inconceivable that when faced with the present decision he needed the annexes to tell what it was about at all. This is not a case where it is said that refinement of the grounds would require access to material presently unavailable: it is a case where it is said that there was a reasonable excuse for failure to provide any grounds at all. I reject that assertion. The truth of the matter is that there has been no demonstration of any reason why the basic grounds could not have been provided with the notice of appeal or, at the latest, by 10 October.

21. It follows that I also reject the assertion in the grounds that without the annexes the appellant did not know the case against him to a sufficient extent to meet it. At the stage in question, his meeting the case meant putting in grounds of appeal showing the basis of contest between the parties. He clearly had knowledge and information enough to do that if he chose.

22. For these reasons, even if the appellant or his previous solicitors or both did not have the annexes (which in the absence of evidence I do not accept) the first ground is not made out.

23. The second ground is simply speculative. There is nothing in the decision that gives any reason to suppose that the judge had material not available to the appellant. As a matter of fact, as I have said, the Tribunal's copy of the decision letter also lacks the annexes, so it is ex post facto clear that she did not have them. That would be no answer to grounds of this sort if her decision hinted at external knowledge, but it does not. There is nothing in this ground.

24. The third ground is that based on general principles of fairness and the overriding objective. It is not easy to see that it adds anything not already considered. It could only be unfair for the appeal to be considered without the appellant's input if he had had no opportunity, or no meaningful opportunity, to have input. He had ample opportunity. He had not only the opportunity given by the rules to submit grounds of appeal within 14

days: he had a further opportunity, not routinely available, more than doubling that time. He had a decision letter setting out a detailed case, even if without supporting reference documents, but consisting in large part of acts and events to which he was said to be a party, and there has been no remotely reasonable explanation of why neither he nor his solicitors nor his barrister were able to say either that he was not the person involved or that the acts and events did not carry the implications alleged in the decision if that was the appellant's case. There was nothing unfair in proceeding without a hearing when the appellant, fully professionally advised as he was, had not taken these opportunities or sought any (further) procedural relief.

25. I therefore reject all the grounds of appeal. They disclose no error of law by Judge Kaler. In reaching that conclusion as it happens I agree with Mr Clarke's submissions. Those submissions were possibly out of time, a matter that has caused Mr West to make further lengthy procedural submissions, but in fact I have not been informed by or needed to refer to Mr Clarke's submissions in responding to Mr West's grounds.

26. I should conclude by noting that the grounds of appeal to this Tribunal seek remittal to the First-tier Tribunal for a new decision made after a hearing. But there are still no grounds of appeal against the Secretary of State's decision or any indication of what they might be or have been. There is therefore, quite apart from the detailed calculus of determination of error of law by the First-tier Tribunal, no basis at all for any suspicion of error in the original decision, and no room for any underlying worry about the appellant's treatment by the Tribunal.

27. I order that Judge Kaler's decision shall stand.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 1 June 2020