Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02193/2020**

THE IMMIGRATION ACTS

Heard at Field House via MS Teams	**Decision & Reasons Promulgated**
On the 28 April 2022	**On the 16 May 2022**

Before

UPPER TRIBUNAL JUDGE GILL

Between

T A O **Appellant**
(ANONYMITY ORDER MADE)

And

The Secretary of State for the Home Department **Respondent**

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the original appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.
I make this order because this decision mentions the appellant's medical condition in some detail.
The parties at liberty to apply to discharge this order, with reasons.

Representation:
For the Appellant: Mr I Khan, of Counsel, instructed by Supreme Solicitors.
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and background facts:

1. This is the re-making of the decision on the appellant's appeal. The appellant is a national of Nigeria born on 11 July 1995. His appeal against a decision of the respondent of 18 February 2020 to refuse his protection and human rights claims was dismissed on asylum, humanitarian protection and human rights grounds (Articles 3 and 8) by Judge of the First-tier Tribunal Abebrese in a decision promulgated on 24 March 2021.

2. Permission to appeal was granted by the First-tier Tribunal on 15 September 2021.

3. In a decision promulgated on 11 February 2022 (the "EOL Decision") following a hearing on 1 February 2022 (the date of signature on the EOL Decision of 4 October 2021 is incorrect), I decided that Judge Abebrese had not erred in law in reaching his decision to dismiss the appellant's appeal on asylum and humanitarian protection grounds. However, I decided that he had materially erred in law in reaching his decision on the appellant's human rights claim and I therefore limited the ambit of the re-making to the following (para 37 of the EOL Decision):

   (i) the appellant's Article 3 claim based on his medical condition;

   (ii) the appellant's Article 8 claim, specifically:

      (a) whether there would be very significant obstacles to his reintegration in Nigeria and therefore whether he satisfies the requirements of para 276ADE(1)(vi) of the Immigration Rules; and

      (b) if para 276ADE(1)(vi) is not satisfied, whether the decision is nevertheless disproportionate.

4. In view of the appellant's physical condition, I gave instructions for the resumed hearing to take place remotely, unless the appellant objected with reasons. He did not object. He had attended the "*Error of law*" hearing on 1 February 2022 via Microsoft Teams and was in bed throughout. He was also in bed throughout the hearing on 28 April 2022 and gave his evidence from his bed, given the evidence summarised at para 9 below.

5. At the hearing, I raised the question whether the appellant should be treated as a vulnerable witness in accordance with the *Joint Presidential Guidance Note No. 2 of 2010*. Mr Khan and Mr Whitwell agreed that he should. As stated above, he gave his evidence from his bed. Towards the end of the hearing, the appellant confirmed that he had been able to concentrate throughout the hearing; that, when he moved in bed, it was in order make sure that he would not be in pain during the hearing; and that he was not in pain at the hearing.

6. Paras 21 and 22 of the EOL Decision set out the appellant's known immigration history as follows:

> "21. …, the appellant's immigration history, on the evidence before the judge, was as follows:
>
> 27.04.2007: The appellant applied for entry clearance for medical treatment in the United Kingdom. He was granted a visa which was valid from 17 May 2007 until 17 November 2007.

There was no evidence before the judge of the date of the appellant's arrival in the United Kingdom.

In 2007: The appellant returned to Nigeria.

27 July 2008: The appellant claimed to have arrived in the United Kingdom for a second time on this date. His leave to remain expired on 2 January 2009.

22. The grounds state that the appellant first arrived in the United Kingdom on 25 May 2007 and that he departed the United Kingdom in September 2007. Mr Fazli [The appellant's Counsel at the "Error of law" hearing] informed me that this information was stated in the grounds and relied upon in his submissions before the judge on basis of the appellant's instructions. However, he confirmed that **there was no *evidence* before the judge of the precise date of the appellant's first arrival in the United Kingdom and that he left the United Kingdom in *September* 2007."**

7. There is still no evidence of the precise date of the appellant's first arrival in the United Kingdom and that he left the United Kingdom in *September* 2007.

8. The appellant's Article 3 claim is based on his medical condition. In January 2004, he was hit by a car and suffered traumatic pelvic injuries including a rupture to his urethra and broken legs. He was 8 years old at the time. He has had a history of kidney failure, leading to end stage kidney failure in 2007.

9. In the United Kingdom, the appellant was started on dialysis. In September 2020, he had a complicated kidney transplant but he subsequently had a number of complications. He is "*now managed with a long term catheter with plastic stents inserted into his kidney to keep it functioning" (*letter from Royal Free London dated 5 March 2020). He has an *'enlarged heart and suffers from reoccurring blood clot and shortness of breath due to clot in his lungs*' (letter from Enfield Council dated 17 March 2020). Since his kidney transplant, he has been suffering from excruciating pain located around the site of the procedure and around his groin muscles. He has weekly check-up and blood checks at Royal Free Hospital to monitor his kidney, blood pressure and risk of clotting. He is unable to stay in a sitting position or bend to reach or pick something up ("*Support Plan and Review*", completed on 19 January 2021, from Enfield Council).

10. The appellant lives with his mother in the United Kingdom. She helps with his care. The "*Support Plan and Review*" from Enfield Council states that the appellant's presenting health problems cannot be managed by his mother alone.

11. The appellant's Article 8 claim is based on his medical condition, on private life established in the United Kingdom and on the very significant obstacles that it is said would exist to his reintegration in Nigeria.

12. At the commencement of the hearing, Mr Khan informed me that he would be calling the appellant and his mother to give evidence. He confirmed this at the conclusion of the appellant's evidence. Mr Whitwell then said that, if the mother is called to give evidence, he would wish to question her on para 8 of her witness statement (AB2/25) where she said that most of the appellant's previous treatments in the United Kingdom were privately funded. Mr Khan then decided not to call her to give evidence.

13. Mr Whitwell informed me that the appellant's mother has an outstanding application (see para 18 below) and he drew my attention to the decisions of Judges of the First-tier Tribunal Doran and A W Khan that were in the respondent's bundle.

Immigration history of the appellant's mother

14. I have taken the immigration history of the appellant's mother from the decision of Judge Khan.

15. The appellant's mother is also a Nigerian citizen, born on 31 July 1967. On 27 April 2007, she made an application for a visa to bring the appellant to the United Kingdom for medical treatment. The application was granted, with a visa valid until 17 November 2007. On application, she was granted an extension of her visa until 2 July 2010 for the purposes of further medical treatment for the appellant.

16. On 6 July 2010, the appellant's mother made an application for leave to remain on human rights grounds (Articles 3 and 8) which was refused on 4 July 2011. On 19 June 2012, she claimed asylum which was refused on 18 July 2012. She challenged the decision. In a decision promulgated on 7 September 2012, Judge of the First-tier Tribunal Doran required the respondent to reconsider her Article 8 claim together with that of her dependent son (that is, the appellant) on medical grounds, although he dismissed her appeal on asylum grounds, humanitarian protection grounds and in respect of Articles 2 and 3 of the ECHR.

17. In a supplementary refusal letter dated 17 February 2014, the respondent once again refused the human rights claim of the appellant's mother after having considered medical evidence in relation to the appellant. The appellant's mother appealed against that further decision. The appeal was dismissed under the Immigration Rules and on human rights grounds by Judge Khan in a determination promulgated on 29 July 2014.

18. At the hearing before me, Mr Whitwell informed me that the appellant's mother had made a further application on 15 June 2021 for leave to remain on human rights grounds under the 10-year route in Appendix FM of the Immigration Rules, with the appellant as a dependent on her application. She also made an application for a fee waiver. Mr Whitwell informed me that these applications are outstanding and that they will not be considered by the respondent until the instant appeal is determined. Mr Khan confirmed that the application of 15 June 2021 by the appellant's mother with the appellant as a dependent is outstanding.

19. Mr Whitwell also informed me that the appellant's mother has not had leave since 2 January 2009 although I note that her immigration history as set out in the decision of Judge Khan (summarised at paras 15-17 above), if correct, would indicate that her leave expired on 2 July 2010.

The appellant's documents:

20. There are three bundles of documents from the appellant which I shall refer to as AB1, AB2 and AB3. Bundles AB1 and AB2 contain a skeleton argument and documents of a generic nature. All three contain documents that are specific to the appellant. The specific documents are:

    (i) Bundle AB1 (51 pages) that was before Judge Abebrese contains:

        a) a witness statement (undated, unsigned) from the appellant (AB1/23-24);
        b) a witness statement (undated, unsigned) from the appellant's mother (AB1/25-26);
        c) a letter from Royal Free London dated 5 March 2020 (AB1/27),

d) a letter dated 11 March 2020 from Hornsey Park Surgery (AB1/28-29); and
e) a letter from Enfield Council dated 17 March 2020 (AB1/30-31).

(ii) Bundle A2 (67 pages), which was also before Judge Abebrese, contains:

a) a witness statement dated 2 February 2021 and signed, from the appellant (AB2/23-24);
b) a witness statement dated 2 February 2021 and signed, from the appellant's mother (AB2/25-26);
c) a letter from Royal Free London dated 3 December 2020 (AB2/27);
d) a discharge letter from Royal Free London relating to the appellant's admission to hospital from 21 January 2021 to 24 January 2021 (AB2/28-29); and
e) a "Support Plan and Review" from Enfield Council completed on 19 January 2021 (AB2/32-40).

(iii) Bundle A3 (11 pages), the first four pages of which are out of order and which contains:

a) a letter dated 25 March 2022 from Royal Free London (AB3/1 + 3);
b) an Outpatient prescription, the second page of which (at AB3/2) is barely legible (AB3/4 + 2);
c) a discharge summary (AB3/5-7) from an unknown hospital (the top part of the document where the institution's logo might appear is missing) showing that the appellant was admitted on 13 March 2022 with fevers for which he was treated and discharged on with ten days' worth of antibiotics. He is awaiting a cystoscopy. Attached to the discharge summary is a document entitled "*Medications and Medical Devices*" (AB3/8-11).

21. I am aware that neither Mr Khan nor Mr Whitwell had a copy of AB1. The bundle of documents referred to in the "*Error of law*" hearing at which the appellant was represented by Mr Fazli, was AB1. The parties' representatives at the "*Error of law*" hearing did not have AB2, nor did I. In any event, the witness statements in AB1 and AB2 are the same in all material respects. The skeleton arguments in AB1 and AB2 are the same.

22. Notwithstanding that directions given in the EOL Decision stated that any further evidence that the appellant wished to rely upon must be filed and served no later than 21 days before the hearing date, I received bundle AB3 less than an hour before the hearing was due to commence.

<u>The appellant's oral evidence</u>

23. In examination-in-chief, the appellant confirmed his witness statement dated 2 February 2021 was true and correct. He was then tendered for cross-examination.

24. In cross-examination, the appellant said that he first came to the United Kingdom when he was 11 years old. He was 14 years old when he arrived the second time. He has not had leave to remain since 2 January 2009.

25. The appellant said that he was not sure whether invoice number IO115242 for £2,385 from Royal Free London NHS Foundation Trust referred to at para 75 of the respondent's decision letter dated 18 February 2020 remains outstanding. He was not

sure whether any sums of money have been paid for his healthcare in the United Kingdom. Asked whether his mother has paid for his healthcare, he said that there was some confusion concerning his healthcare. When he first arrived in the United Kingdom, he received treatment in a private hospital. On the second occasion, his mother handled everything. It was meant to be private treatment. They brought money with them into the United Kingdom so that he could have his operation in the United Kingdom. It was difficult for them to raise the money. He was seen by a doctor in a private hospital in Great Portland Street and he was then transferred to Great Ormond Street Hospital. He could not say exactly when he ceased funding his treatment privately and began receiving NHS treatment.

26. The appellant said that he is still using a catheter. Although the discharge letter from the Royal Free London dated 24 January 2021 (AB2/28) states that he could pass urine independently without a catheter, the catheter had to be reinserted subsequently because he was unable to empty his bladder fully. He confirmed that he no longer receives dialysis.

27. The appellant confirmed that the "*Support Plan and Review*" from Enfield Council recommended a care package but it also recommended that the matter be transferred to Haringey Council because the appellant was not living within the area of responsibility for Enfield Council. He said that Haringey Council had provided him with the care package. He could not say whether the care package provided by Haringey Council was the same as the care package recommended by Enfield Council. Bundle AB3 does not include any evidence that Haringey Council was providing him with a care package because he had not been asked to provide the evidence.

28. When referred to the letter from Royal Free London dated 25 March 2022 (AB3/3) which states that *"[the appellant's] life is significantly constrained such that, really, he has not been out of the house other than hospital attendances for at least two years*", the appellant said that he provided the hospital with this information.

29. The appellant does not know why there is no information in the bundles about the lack of medical care in Nigeria. However, he knows that it is difficult to find money to pay for medical treatment. One dialysis treatment could cost almost 200,000 Naira. In addition, the doctors in Nigeria do not know what they are doing. Before he came to the United Kingdom, a lot of the damage was caused by the medical treatment in Nigeria. These are the reasons why he came to the United Kingdom.

30. When he was in Nigeria, the appellant had no chance to go to school between the ages of 8 and 14 because of his medical problems. He undertook studies in the United Kingdom until 2016 and achieved up to the equivalent of B.Tech/Bachelor of Technology or 'A' level. He was about to go to university when he had kidney failure.

31. The appellant's sister in Nigeria was born in November 1992. He last spoke to her "*not that long ago".* When pressed, he said it was a few months ago. When pressed further, that *"it was this year*". He does not know exactly which state in Nigeria she lives in. He last saw her before he came to the United Kingdom in 2008. It is "*not often*" that he communicates with her because their relationship is complicated. He has his medical issues and she "*also has difficult issues, medicals and other stuff".* Since being in the United Kingdom, he has not been visited by any relatives from Nigeria.

32. In re-examination, asked whether he knew anything about his mother's application of 15 June 2021 for leave to remain, he said he was "*not too sure about that*". His mother's case is at the same stage as his case. They do not have any leave to remain at present.

33. I then heard submissions, following which I reserved my decision.

ASSESSMENT

34. The burden of proof is upon the appellant to establish his Article 3 claim based on his medical condition. The test to be applied in Article 3 health cases is that found at para 183 in Paposhvili v Belgium 2016 ECHR 1113 as explained by the Supreme Court in AM (Zimbabwe) v SSHD [2020] UKSC 17 at paras 29-31; namely, whether the appellant would face a real risk, on account of the absence of appropriate treatment in the receiving state or the lack of access to such treatment, of being exposed to (i) a serious, rapid and irreversible decline in his state of health resulting in intense suffering, or (ii) a significant, meaning substantial, reduction in life expectancy: para 117 of MY (Suicide risk after Paposhvili) [2021] UKUT 00232 (IAC).

35. The appellant's Article 8 claim falls to be considered outside the Immigration Rules, given that there is no right of appeal against a decision made under the Immigration Rules. I consider whether the decision breaches the appellant's human rights and the human rights of those others affected by the decision. I follow the step-by-step approach explained at para 17 of R (on the application of Razgar) v SSHD (2004) UKHL 27. It is for the appellant to establish to the standard of the balance of probabilities any facts upon which he relies.

36. If the proportionality balancing exercise is reached, the burden shifts to the respondent to establish to the same standard that the decision is proportionate. At this point, although there is a requirement on the respondent to show that the interference is proportionate, the appellant is nevertheless expected to put before the Tribunal evidence which is within his realm of knowledge. I follow the structure recommended by the Senior President of Tribunals in TZ (Pakistan) and PG (India) v SSHD [2018] EWCA Civ 1109 which means that it is necessary to consider first whether the appellant meets the requirements of the Immigration Rules. If he does, then that finding is positively determinative of her appeal. The refusal decision will be disproportionate and there will be no need for further examination. In this case, the appellant relies upon para 276ADE(1)(vi) of the Immigration Rules, i.e. that there are insurmountable obstacles to his reintegration in Nigeria.

37. If the appellant does not meet the requirements of the Immigration Rules, I consider proportionality using the *'balance sheet' approach* suggested by the Supreme Court in the case of Hesham Ali v SSHD [2016] UKSC 60, setting out (after finding any relevant facts) those factors that weigh in favour of immigration control against those factors that weigh in favour of any family and private life, giving reasoned weight to each. I then reach a conclusion as to whether the decision is disproportionate.

38. I may consider evidence about any matter which I think relevant as to the substance of the decision, including evidence which concerns a matter arising after the date of decision, pursuant to section 85(4) of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002").

39. I stress that I have considered all of the evidence, whether or not specifically referred to in this decision. I have made by findings of fact on the evidence as a whole, taken in the round.

Credibility

40. In assessing credibility, I have treated the appellant as a vulnerable witness and applied the guidance in *Joint Presidential Guidance Note No 2 of 2010.* In relation to para 5 of the *Joint Presidential Guidance Note No 2 of 2010* and as is evident from the above, the applicant was represented by Mr Khan.

41. I record that all questions were asked of him in an appropriate manner. No objections were made by anyone to the manner in which he was being questioned or how the questions were phrased or put or the manner in which the hearing was conducted. The applicant did not say at any time that he did not understand something. No concerns were expressed by anyone at the hearing that there were any problems with the appellant's understanding of the proceedings or the conduct of the hearing.

42. Para 3 of the *Joint Presidential Guidance Note No 2 of 2010* states:

> "3. The consequences of such vulnerability differ according to the degree to which an individual is affected. It is a matter for you [the judge] to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole."

43. Mr Khan did not identify any vulnerability and, indeed, the issue of the appellant's vulnerability and whether the *Joint Presidential Guidance Note No 2 of 2010* was applicable was raised by me and not by or on behalf of the appellant.

44. In relation to para 3 of the *Joint Presidential Guidance Note No 2 of 2010,* the vulnerabilities I have identified are that, according to the "*Support Plan and Review*", the appellant is unable to stay in a sitting position and, according to the letter dated 25 March 2022 from Royal Free London (AB3/1 and 3), he suffers pain.

45. As stated at para 5 above, the appellant was allowed to give evidence from his bed. He confirmed towards the end of the hearing that he had been able to concentrate throughout the hearing; that, when he moved in bed, it was in order make sure that he would not be in pain during the hearing; and that he was not in pain at the hearing.

46. Accordingly, I am satisfied that, by accommodating the vulnerabilities I had identified in the way I had, as explained above, the quality of his evidence was not affected in any way by any pain. Accordingly, the allowance I give in assessing his evidence is limited.

47. I turn to assess the credibility of the appellant's evidence.

48. As can be seen from **paras 23-32 above**, the appellant's oral evidence was limited. However, I did not find the limited evidence he gave was credible. I do not believe his evidence that the reason why he did not provide evidence that Haringey Council were providing him with a care package was that he had not been asked to provide the evidence. It must have been obvious to him and his representatives that evidence that Haringey Council were *currently* providing him with a care package would be more useful in his appeal than evidence that a care package had been recommended by

Enfield Council on 19 January 2021, some fifteen months ago. The fact that the "*Support Plan and Review*" from Enfield Council was included in bundle AB3 which I received less than an hour before the hearing is telling. It means that bundle AB3 was prepared very close to the hearing or at least reviewed by his legal representatives very close to the hearing. That being the case, if the appellant was in possession of a more up-to-date care package from Haringey Council that was favourable to his case, it is inconceivable that that would not have been included in AB3 either instead of or in addition to the "*Support Plan and Review*"` from Enfield Council.

49. The appellant's evidence concerning his contact with his sister was vague and elusive. I did not find it credible that he "*does not know for sure exactly which state in Nigeria she lives in*". His evidence as to the reasons why they were "*not often*" in contact because their *"relationship was complicated*" was that "*he has his medical issues and she also has difficult issues, medicals and other stuff*". This explanation was likewise lacking in credibility and elusive. His initial evidence, that he was "*not too sure about that*", when asked whether he knew anything about his mother's application of June 2021 for leave to remain with him as a dependant was, I find, an attempt to avoid having to admit knowledge about the application.

50. Judge Abebrese did not find the appellant's evidence about the basis of his asylum claim at all credible. In giving his reasons, Judge Abebrese also found, inter alia, that the appellant's evidence was vague (for example, at paras 15 and 19). That was precisely my experience too, in relation to the evidence he gave about his human rights claims.

51. For all of the reasons given above, I find that the appellant was not a credible witness. His evidence is so unreliable that I am not prepared to accept his evidence, unsupported by documentary evidence, as sufficient to establish any fact that he relies upon on the standard of the balance of probabilities or even to the lower standard of a reasonable likelihood.

52. Judge Abebrese also heard oral evidence from the appellant's mother. He did not find her credible in the evidence she gave about the appellant's claim. I did not hear any oral evidence from her. At para 8 of her witness statement (AB2/25), she said that most of the appellant's previous treatments in the United Kingdom was funded privately. It has not been explained why documentary evidence in support of her assertion has not been submitted. The opportunity to have her give oral evidence and be tested in cross-examination about this was not taken (see para 12 above). I do not accept her evidence, unsupported by any documentary evidence, that most of the appellant's medical treatment in the United Kingdom was privately funded. I find that his medical treatment in the United Kingdom has been mostly funded by the NHS.

53. For all of the reasons given above and having given the appellant such allowance as I consider appropriate on account of his vulnerabilities, I do not accept that the appellant's medical treatment in the United Kingdom has been largely funded privately. I find that it has been provided by the NHS. I do not accept that he is currently receiving a care package from Haringey Council. I do not accept that he does not know where his sister lives in Nigeria or that he is not in regular contact with her.

<u>The appellant's Article 3 claim</u>

54. Mr Khan relied upon the appellant's skeleton argument dated 7 September 2020 insofar as it concerns his Articles 3 and 8 claims (AB1/1-22 and AB2/1-22) which I have

read carefully. The submissions on the appellant's human rights claims begin at page 8 of the skeleton argument. The skeleton argument refers to the appellant's NHS records dating back to 2008 (para 40), a diagnosis of Dr Rita Peralta, Clinical Research Fellow (para 41), a letter/report written by Dr Goodlad dated 3 August 2018 (para 42) and notes dated 1 August 2018 by Dr Obichene (para 43).

55. However, whilst extracts from the documents/letters/reports/notes written by these medical professionals are quoted in the skeleton argument, I do not have the full documents. Further and in any event, it is clear that these were written before the appellant had his kidney transplant in September 2020. This is clear, for example, from the fact that the extract from Dr Obichene's notes of 1 August 2018 states that *"Dr Jones has been working … to allow [the appellant] to be activated on the transplant list".*

56. It is therefore clear that the medical evidence quoted in the skeleton argument is now historic. The absence of any up-to-date medical report on the appellant's condition now that he has had his kidney transplant is notable.

57. Paras 44-49 of the skeleton argument quote from background material in relation to medical facilities in Nigeria. However, it is clear that the focus of this is on (for example) treatment for kidney disease, availability of kidney transplants, renal replacement therapy and dialysis, the relevance of which has not been explained in view of the appellant's current physical health, including the fact that he has had a kidney transplant and is no longer receiving dialysis.

58. Given that there is no up-to-date medical report at all before me, I am left to make what I can of the medical evidence that has been submitted. This comprises of the documents described at para 20 above. The most recent of these is the letter dated 25 March 2022 from Royal Free London (AB3/pages 1 and 3).

59. It is clear that what the appellant has been through following the accident in 2004 has tragically changed the course of his life and that of his mother. Not only has he been unable to further his studies, his life and that of his mother have been focused on his medical treatment over the years. He has had a stent-dependent kidney transplant in the United Kingdom. He has had re-occurring urinary tract and bladder infections.

60. The letter from Royal Free London dated 25 March 2022 (AB3/pages 1 and 3) is brief. It states that the appellant continues to have significant difficulties with a variety of pains which the letter proceeds to describe. The letter states that one of many difficulties for the appellant was the lack of a definitive explanation for all of his various pains and that, although Dr Phillip Lodge, Consultant in Palliative Medicine, was sure that there was an element of neuropathic pain, there was also some mechanical pain related to abnormal bladder and bowel motility.

61. The "*Support Plan and Review*", completed on 19 January 2021, from Enfield Council states, inter alia, that the appellant has weekly check-up and blood checks at Royal Free Hospital to monitor his kidney, blood pressure and risk of clotting. This document describes the appellant's physical health as follows:

> "Recent kidney transplant
> Excruciating Pain
> Re-occurring blood clots
> Shortness of breath
> Drowsiness – as a result of medication"

62. In terms of the care that the appellant's needs, the *"Support Plan and Review"* states, inter alia, that the appellant is unable to stay in a sitting position or bend to reach or pick something up. Apart from attending medical appointments, he spends his day at home and in bed as this helps him to deal with the pain. He is unable to complete his personal care independently due to excruciating pain and being unable to sit, bend or reach. He avoids doing any strenuous tasks as he is at risk of his blood pressure rising. He is also at risk of dizziness and drowsiness, caused by his medication. He requires the support of another to dress himself, prepare his meals, and ensure that he takes his medication and that his living environment is safe, habitable and clear from obstructions and hazards on walkways.

63. Finally, the "*Support Plan and Review*" states that the appellant has a history of anxiety and depression which stem from his presenting health problems. It is not known whether the author of the plan (Busola Onafowokan) had sight of any medical evidence or whether reliance was placed solely on the appellant self-reporting.

64. I draw attention to the fact that there is no medical report on the appellant's mental health. There is therefore no medical evidence that he suffers from anxiety and depression. In his submissions, Mr Khan relied upon the appellant being at risk of suicide but there is no medical evidence on his mental health and risk of suicide. In the absence of up-to-date medical evidence, I do not accept that the appellant suffers from anxiety and depression or that he is at risk of suicide.

65. The "*Support Plan and Review*" is fifteen months old. There is no evidence that a care package has been made available by Haringey Council, let alone that it is comparable to the care package recommended by Enfield Council. I have already said that I do not find the appellant credible and that I am not prepared to accept his evidence unsupported by any documentary evidence. I do not therefore accept that he is currently receiving a care package from Haringey Council.

66. However, even if I am wrong about that, the reality is that it has not been shown that his mother, who has no status in the United Kingdom, cannot return to Nigeria with him and provide the care that he needs with the assistance of his sister, if necessary.

67. In relation to his physical health, the appellant is no longer receiving dialysis. He is still using a catheter. He is still prone to reoccurring infections, the most recent of which was in March 2022 when he was hospitalised from 13 March for 7 days (AB3/5-11). There is no evidence that adequate treatment for urinary tract and bladder infections is not available in Nigeria, if this is needed. He is taking several different types of medication, as listed in the "*Support Plan and Review*" (AB2/34) and at AB3/8-11. I have no evidence that the medication he requires is not available in Nigeria. If he still requires a regular check-up and blood checks to monitor his kidney, blood pressure and risk of clotting, there is no evidence that this is not available in Nigeria.

68. If his mother's evidence at para 8 of her witness statement is true, that most of the appellant's medical treatment in the United Kingdom has be privately funded, it has not been explained how she obtained those funds and why the source(s) of those funds would to be available to help to pay for his medical treatment in Nigeria and any care to supplement what his mother and his sister can provide.

69. For the reasons given above, the appellant's Article 3 claim falls far below the threshold in AM (Zimbabwe).

70. Further and in any event, it is important to note that there is no medical evidence at all that, if the appellant is not in receipt of adequate medication and/or any care package that he may be receiving at present and/or if he is not regularly monitored for his kidney, blood pressure and risk of clotting and/or that if he does not receive adequate treatment for urinary tract and bladder infections, if he needs it, he faces a real risk, on account of the absence of such appropriate care/treatment in Nigeria or the lack of access to such care/treatment, of being exposed to (i) a serious, rapid and irreversible decline in his state of health resulting in intense suffering, or (ii) a significant, meaning substantial, reduction in life expectancy. In effect, I am being asked to draw this inference from the very limited evidence before me. I am not prepared to do so. This alone is determinative and makes his Article 3 claim based on his medical condition wholly untenable, leaving aside everything I have said above.

71. The lack of an up-to-date medical report is telling. I have no doubt that, if the appellant's current physical and/or mental health condition is sufficiently serious such that his removal to Nigeria would expose him to a real risk of a serious decline in his health resulting in suffering, such a medical report could easily have been obtained from one of the medical professionals engaged in his case and submitted to the Tribunal. There is no such evidence. This notwithstanding that the hearing before me was a resumed hearing when the appellant had a second opportunity to produce the evidence.

72. I dismiss the appellant's Article 3 claim based on his medical condition.

The appellant's Article 8 claim

73. Although the "*Support Plan and Review*" is fifteen months old, I accept that there is dependency going beyond normal emotional ties between the appellant and his mother, given his medical condition on his arrival in the United Kingdom with entry clearance to obtain medical treatment, his previous need, for example, for dialysis and a kidney transplant and, following his kidney transplant, his continued need for *some* care which his mother provides. I accept that family life is being enjoyed between them.

74. Given the period of the appellant's residence in the United Kingdom, I accept that he has also established private life in the United Kingdom, although there is no evidence before me of the quality of his private life or its content. To the contrary, the evidence is that he has not been able to establish private life outside of his home since he discontinued his studies in the United Kingdom. As the letter from Royal Free London dated 25 March 2022 states (AB3/3) he has not really been out of his house for the last two years other than for hospital attendances. On the whole of the evidence before me, I find that he has established private life but it is not extensive. To the contrary, it is limited in its scope, nature and depth.

75. The level of interference required in order to satisfy the second of the five-step approach explained in Razgar is not a high one. I am satisfied that the respondent's decision would interfere with the appellant's private life. Likewise, it is not disputed that the respondent's decision is in accordance with the law and that it pursues the legitimate aim of maintaining immigration control.

76. In the assessment of proportionality, the first step is to consider whether the appellant satisfies any applicable provision for the grant of leave to remain. In this regard, he relies upon para 276ADE(1)(vi) of the Immigration Rules, i.e. that there would be very significant obstacles to his reintegration in Nigeria.

77. Para 276ADE(1) provides, insofar as relevant, as follows:

> 276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and
>
> …
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK

78. If the appellant satisfies the requirements of para 276ADE(1), the decision would be disproportionate for that reason alone without the need to consider any other matters, such as for example, any public interest considerations under s.117B of the NIAA 2002.

79. In SSHD v Kamara [2016] EWCA Civ 813, the Court of Appeal explained, at para 14:

> "… The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

80. I find that there are no very significant obstacles to the appellant's reintegration in Nigeria, for the following reasons:

(i) I note that the appellant spends his time mostly in at home and in bed. That is the content of his private life at present. He gave oral evidence that he communicates with friends online. This can continue to be the case if he returns to Nigeria. Accordingly, the private life that he currently enjoys in the United Kingdom can be easily replicated in Nigeria in all its material respects.

(ii) There is no credible evidence why his mother cannot return to Nigeria with him. She does not have any status in the United Kingdom. Accordingly, it is open to her to return to Nigeria with the appellant in which case there would be no interference with their family life. Furthermore, she would be able to continue to provide him with care, supplemented, if necessary, with care from his sister who is now nearly 30 years old. There is no evidence before me that shows that she would be unable to assist in providing care for the appellant.

(iii) If the mother's evidence (witness statement, AB2/25/para 8) that the appellant's medical treatment in the United Kingdom has been mostly privately funded is true, the source(s) of those funds have not been explained and it has not been explained why funds from such source(s) would not be available to provide the appellant with support and treatment, if needed, in Nigeria. Nor is there any evidence/explanation why the appellant's sister could not assist in that regard.

(iv) In the particular circumstances of the instant case, that is, in circumstances where the appellant spends his time mostly in bed and at home, I cannot see that the test in Kamara is applicable in the same way as it applies to other individuals who may need to seek employment and therefore need to understand how society works in Nigeria, become enough of an insider to participate and operate on a day-to-day basis in Nigerian society and to build up within a reasonable time a

variety of human relationships in order to establish their private and family life, as the guidance in Kamara states.

(v) However, in case I am wrong about that, no evidence was given to show that the appellant would experience very significant obstacles to his reintegration, other than the evidence as to his medical condition which I have considered in the context of Article 3. I do not accept that the appellant's current medical condition and physical limitations in looking after himself, even if these are still at the same level as described in the "*Support Plan and Review*" by Enfield Council, amount to very significant obstacles to his reintegration in Nigeria, for the following reasons:

a) There is no evidence that adequate medication for his needs is not available in Nigeria or that his pain cannot be managed in Nigeria with suitable pain relief medication or that adequate checks in respect of the checks he needs regularly are not available in Nigeria or that adequate medical treatment if he continues to suffer from re-occurring infections is not available in Nigeria.

b) The appellant has not shown that he cannot receive the care he needs from his mother supplemented, if necessary, by care that is provided by his sister and/or (if his mother's evidence that his medical treatment in the United Kingdom has been mostly privately funded is true) paid for.

c) I do not accept that the fact that the appellant has to use a catheter and has mobility problems and problems looking after himself would cause him difficulties in his reintegration in society in Nigeria in a way that they have not caused in his being integrated (if he is integrated) in society in the United Kingdom.

d) The appellant last left Nigeria at the age of 14 years. He therefore has experienced life in Nigeria for 14 years. The way of life in Nigeria would therefore not be strange to him. It has not been suggested that there are any linguistic barriers to his reintegration in Nigeria.

81. In addition to not satisfying para 276ADE(1)(vi), I find that the appellant also fails to meet the suitability requirement in para 276ADE(1)(i). Para 75 of the decision letter states that an invoice from Royal Free London for £2,385 remained unpaid as at the date of the decision letter. There is no credible evidence that the debt has been paid. Accordingly, para S-LTR.4.5 of Appendix FM applies.

82. It is therefore necessary to consider whether there are exceptional circumstances meaning that the decision would result in unjustifiably harsh consequences for the appellant and his mother such that the decision would not be proportionate. This means, in effect, that I have to balance the public interest imperative of maintaining immigration control with the interests of the appellant. The fact that he does not satisfy any relevant provision under the Immigration Rules for the grant of leave to remain is a factor which strengthens the weight to be attached to the public interest in maintaining immigration control, although that is not determinative. In considering the issue of proportionality, I follow the *"balance sheet"* approach suggested by the Supreme Court in the case of Hesham Ali v SSHD [2016] UKSC 60. His immigration history is relevant.

83. In the appellant's favour, I take into account that he has established private life in the United Kingdom and that he also enjoys family life with his mother. However, the weight

I give to his private life in the United Kingdom is limited by reason of the fact that I have found that his private life in the United Kingdom is limited and that his private life can easily be replicated in Nigeria in all its material respects given that he mostly spends it in the United Kingdom in bed. Likewise the weight that I give to his family life with his mother is limited by reason of the fact that, if his mother returned to Nigeria with him (as she is free to do), there would be no interference with their family life.

84. In the appellant's favour, I also take into account that it is likely that his mother has also established private life in the United Kingdom. However, the weight I give to this factor is limited given that: (i) she arrived in the United Kingdom some time in 2007/2008, aged 40/41 years; (ii) any private life she has established in the United Kingdom was established whilst her immigration status was precarious, up until 2 July 2010, and unlawful subsequently; and (iii) there is no evidence before me as to why she would not be able to re-establish her private life in Nigeria in all its material aspects.

85. I take into account in the appellant's favour, his medical condition and that he is on several different types of medication in the United Kingdom, the most recent evidence of which is at AB3/8-10. Although there is no evidence that he is currently receiving a care package from Haringey Council, I accept that his mother provides him with care. The fact that he does not meet the Article 3 threshold in AM (Zimbabwe) does not preclude him from succeeding under Article 8. I do not repeat what I have said above (paras 55-71) about his medical condition, medication and care needs but I make it clear that I have taken everything into account afresh in my consideration of his Article 8 claim.

86. It is relevant to consider and apply the public interest considerations in s.117B(1)-(5) of the 2002 Act which provide as follows:

> **"117B** *Article 8: public interest considerations applicable in all cases*
>
> (1) The maintenance of effective immigration controls is in the public interest.
>
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
> (a) are less of a burden on taxpayers, and
> (b) are better able to integrate into society.
>
> (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
> (a) are not a burden on taxpayers, and
> (b) are better able to integrate into society.
>
> (4) Little weight should be given to—
> (a) a private life, or
> (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
>
> (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious."

87. Section 117(B)(3) is an important factor in this case. There is no credible evidence that the appellant's medical treatment in the United Kingdom has been mostly privately funded, as his mother has claimed in her witness statement. Mr Khan submitted that the appellant is not to blame for the fact that there may be a debt that remains

outstanding for his medical treatment. However, it is not a question of blame but a question of fact whether or not this treatment has been publicly funded. I find that his treatment has been funded by the NHS. I find that, if he remains in the United Kingdom, any future medical treatment that he may need and his care needs will be publicly funded. This is a weighty consideration against him.

88. The appellant arrived in the United Kingdom with leave in order to receive medical treatment. He last had leave on 2 January 2009. Accordingly, any private life established in the United Kingdom up until 2 January 2009 was established at a time when his immigration status was precarious so that s.117B(5) applies. Any private life established in the United Kingdom from 3 January 2009 has been established whilst he was present in the United Kingdom unlawfully, so that s.117B(4)(a) applies.

89. Having conducted the balancing exercise, giving such weight as I consider appropriate to each factor as explained above, I find on the whole of the evidence taken in the round, that the decision is not disproportionate.

90. I therefore dismiss the appellant's Article 8 claim.

Decision

91. The making of the decision of Judge of the First-tier Tribunal Abebrese involved the making of any error of law sufficient to require it to be set aside. The Upper Tribunal re-makes the decision on the appeal as follows:

    The appeal is dismissed on asylum grounds.
    The appeal is dismissed on humanitarian protection grounds.
    The appeal is dismissed on human rights grounds, Article 3 and Article 8.

Signed
Upper Tribunal Judge Gill Date: 4 May 2022

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**
3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**
5. **A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is "sent' is that appearing on the covering letter or covering email**