



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2023-001455

First-tier Tribunal No: HU/52052/2021  
IA/06114/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

25<sup>th</sup> September

2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**SNORINE IMBWAGA**  
**(ANONYMITY ORDER NOT MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Gajjar

For the Respondent: Mr E Terrell

**Heard at Field House on 22 June 2023**

**DECISION AND REASONS**

1. This is the appeal of Snorine Musaivi Imbwaga, a citizen of Kenya born 18 October 1983, against the decision of the First-tier Tribunal (which heard her appeal on 18

January 2023) to dismiss her appeal (itself brought against a refusal of her human rights claim of 10 May 2021).

### **Background to appeal**

2. The immigration history given by the Respondent is that the Appellant entered the UK with leave to enter as a student on 17 February 2009, extending her leave as a post study worker until 13 September 2013 and as an unmarried partner until 12 May 2016. However that latter leave was curtailed to end on 14 October 2014 (the Appellant's Sponsor, Olurotimi Martins, a British citizen, having notified the Respondent that their relationship had ended). A domestic violence application was refused on 12 November 2014 and arrangements were made for her return to Kenya. She was recorded as having absconded in September 2017 though emerged to be served with an overstayer notice on 25 September 2018. On 4 August 2020 she applied for leave to remain as an unmarried partner; that application's refusal leads to the present appeal.
3. The Appellant's appeal is based on her private and family life, the latter comprising her asserted relationship with Mr Martins, who has adult children in this country and an established career in the care sector. Her case as put below was that her relationship with the Sponsor was a long-standing one which, whilst it had had its ups and downs, was nevertheless extant for around a decade including a period from 2014 to 2018 when they were, as she put it in oral evidence, "seeing each other". The representations supporting the application underlying this appeal refer to the Appellant and Mr Martins having reconciled after she received notice that she should leave the country in November 2016. A supporting letter from Mr Martins stated that they had dated since 2009 and had resolved their differences since 2018.

### **First-tier Tribunal decision**

4. The First-tier Tribunal identified the critical issues as the existence of a genuine and subsisting relationship amounting to family life, whether Immigration Rule 276ADE(vi) was satisfied and whether there was a viable human rights claim outside the Rules. It found that the evidence as to the Appellant's relationship was unreliable, because it was implausible that the Sponsor would not have sought a divorce from his previous wife earlier had his relationship with her truly ended in 2010, which invited an inference that in reality he had reconciled with his wife during an extended period when he and the Appellant were no longer together. The Appellant's oral evidence that she and the Sponsor were seeing one another from 2014 to 2018 was inconsistent with her witness statement which asserted that they reconciled in 2018. Additionally there was no reliable independent evidence adduced for cohabitation between the Appellant and Sponsor in 2018, a document supposedly attesting to that assertion bore signatures that looked altered and was unsigned, a utility bill for one property bearing their names and address added little weight, and utility bills for a second property were largely in the Sponsor's name. Other documents did not corroborate any consistent period of cohabitation. Accordingly the Appellant's claim to have cohabited with her partner for two years was not accepted.
5. As to the Appellant's private life, the First-tier Tribunal accepted that she was not in contact with her parents. However given she was an adult that was not a decisive factor bearing in mind that she was highly educated and could find employment in Kenya. There was little overt evidence of private life notwithstanding having lived in

the UK since 2009 and she faced no very significant obstacles to integration there. Whilst it was accepted that her Sponsor had an established career in the care sector in the UK (where he had lived for at least forty years) and four adult children aged from 25 to 38, those factors and his lack of Kenyan connections did not constitute insurmountable obstacles to pursuing their relationship in Kenya. Based on those findings, the First-tier Tribunal dismissed the appeal.

### **Permission to appeal**

6. Grounds of appeal contended that the Appellant's private life claim had not been fully determined and that there were in reality serious cultural barriers to the Appellant's reintegration in Kenya. Granting permission on 25 April 2023 for the First-tier Tribunal, Judge Komorowski stated that most of the matters raised amounted to no more than a disagreement with Judge Black's conclusions: however the first ground warranted further consideration as it was arguable that no distinct conclusion had been reached on the Appellant's private (as opposed to family) life. Accordingly permission to appeal was granted on that ground alone.

### **Upper Tribunal hearing**

7. Mr Gajjar accepted the constraints to which he was subject given this was a limited grant of permission. There was real private life here to be evaluated. Supporting evidence relied on below included a letter from a Pastoral Care Minister at the House of Bread International stating he had met the Appellant at church services and that the latter had made a good impression on him. She had been resident in the UK since 2010 and a degree certificate confirmed her success in her studies; a number of members of the community had supported her case and spoke to her depth of integration in society here. Notwithstanding this depth and range of material the First-tier Tribunal had failed to conduct a residual proportionality assessment.

### **Decision on error of law**

8. The First-tier Tribunal's closing sentence addresses the test outside the Rules thus: "There was no reliable evidence on which to justify consideration outside of the rules as there was no reliable evidence of unduly harsh consequences for the appellant or the sponsor." Whilst summary treatment of a private life in this manner can be a tempting short-cut, it was not appropriate on the facts advanced. The Appellant has lived in the UK for over a decade and studied here. It could therefore reasonably be presumed that she had established private life here and so it was necessary to identify those elements and make a structured if concise assessment of the case. So I accept the Appellant's case to the extent that there is an error of law in the Tribunal's decision.
9. However I do not accept that the error of law was material. The Appellant's witness statement is very brief indeed as to any meaningful private life ties in the UK. The supporting letters indicate that she enjoys a social life here. There is mention of her pride at graduating from university in 2010. But beyond that there is virtually nothing. So once that very limited private life fell to be assessed by reference to the presumption within s117B(5) of the Nationality Immigration and Asylum Act 2002 that "little weight should be given to a private life established by a person at a time when the person's immigration status is precarious", the appeal was doomed to fail. I conclude that the error of the First-tier Tribunal had no practical significance.

Decision:

- (1) The First-tier Tribunal made no material error on a point of law.
- (2) The appeal is dismissed.

A handwritten signature in black ink, appearing to read 'M.A. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes  
Immigration and Asylum Chamber

**2023**

**19 September**