



20 October 2021

## PRESS SUMMARY

**R (on the application of Majera (formerly SM (Rwanda))) (Appellant) v Secretary of State for the Home Department (Respondent)**

[2021] UKSC 46

*On appeal from [2018] EWCA Civ 2770*

**JUSTICES:** Lord Reed (President), Lord Sales, Lord Leggatt, Lord Burrows, Lady Rose

### BACKGROUND TO THE APPEAL

Mr Majera is a national of Rwanda who came to the United Kingdom as a child and was granted indefinite leave to remain. After being convicted of serious criminal offences in 2006, he received a sentence of imprisonment for public protection, and in 2012 was made the subject of a deportation order, which has never been implemented. In 2013 he was transferred to open prison conditions, and worked as a volunteer at a charity shop. On 30 March 2015, when he was released on licence, the Secretary of State decided that Mr Majera should be detained under paragraph 2 of Schedule 3 to the Immigration Act 1971 (“**the 1971 Act**”), pending his removal or departure from the United Kingdom.

On 27 July 2015, Mr Majera applied to the First-tier Tribunal for bail under paragraph 22 of Schedule 2 to the 1971 Act. On 30 July 2015, the First-tier Tribunal decided that Mr Majera should be released on bail, on condition that he report to his offender manager, and subject also to the conditions of his licence (“**the Bail Order**”). The Secretary of State sought a condition prohibiting Mr Majera from continuing to perform unpaid work, but the Tribunal decided not to impose such a condition. The Bail Order did not require Mr Majera to appear before an immigration officer at a specified time and place, despite paragraph 22(1A) of Schedule 2 to the 1971 Act requiring that it do so.

Later on 30 July 2015, an immigration officer gave Mr Majera a notice which stated that “the Secretary of State has decided that you should not continue to be detained at this time but, under paragraph 2(5) of Schedule 3 to the [1971 Act], she now imposes... restrictions”, including that he “may not enter employment, paid or unpaid” and that he be subject to a curfew.

On 3 December 2015 and 4 January 2016, the Secretary of State refused requests made by Mr Majera for the withdrawal of the prohibition on him carrying out voluntary work and for the relaxation of the curfew restriction, respectively. Mr Majera applied for judicial review of those decisions, on the ground that the Secretary of State could not lawfully impose conditions which the Tribunal had declined to order. In response, the Secretary of State conceded that the curfew condition was unlawful, but argued that it was lawful to impose the condition relating to unpaid work because the Bail Order was legally defective and therefore void.

The Upper Tribunal decided that the Secretary of State’s decisions were unlawful, and made a declaration that Mr Majera remained on bail in accordance with the Bail Order. The Secretary of State then appealed, successfully, to the Court of Appeal, which made a declaration that the Bail Order was invalid and had no effect in law.

Mr Majera now appeals to the Supreme Court. His appeal raises a question of constitutional importance: whether the government (or, indeed, anyone else) can lawfully act in a manner which is inconsistent with an order of a judge which is defective, without first applying for, and obtaining, the variation or setting aside of the order.

## JUDGMENT

The Supreme Court unanimously allows the appeal. This means that the order of the Upper Tribunal, quashing the Secretary of State's decisions and declaring that Mr Majera remains on bail in accordance with the Bail Order, is restored.

Lord Reed gives the sole judgment, with which the other Justices agree.

## REASONS FOR THE JUDGMENT

It is well-established that a court order must be obeyed unless and until it has been set aside or varied by the court (or, conceivably, overruled by legislation) [44]. This rule applies to court orders whether they are valid or invalid, regular or irregular [44]-[45]. The rationale for this rule lies in the rule of law and, more particularly, the basic principle that court orders should not be ignored by anyone, including the government [45], [49].

Rather than applying this rule, the Court of Appeal decided, on the basis of case law concerned with unlawful administrative acts and decisions, that the Bail Order had no legal effect, and so the Secretary of State was not required to comply with it [21]-[23]. Even in the context of administrative acts and decisions, it is an over-simplification to say that an unlawful act has no legal effect at all [27]. There are a variety of circumstances in which an unlawful administrative act may have legal consequences [29], [31]. In any event, the present case is concerned not with an unlawful administrative act but with an order of a tribunal, and so gives rise to different issues and is governed by different principles [43].

In this case, even if the Bail Order was invalid, the Secretary of State was obliged to comply with it, unless and until it was varied or set aside. The allegation that the Bail Order was invalid was not, therefore, a relevant defence to Mr Majera's application for judicial review. As there was no other basis on which the Court of Appeal reversed the decision of the Upper Tribunal, and the Secretary of State does not ask the Supreme Court to dismiss the appeal on other grounds, it follows that Mr Majera's appeal should be allowed [56], [59].

The Court adds that, even if the alleged invalidity of the Bail Order had been relevant, it was not necessarily appropriate to allow the Secretary of State to raise this issue in the course of these proceedings. The Secretary of State had every opportunity to challenge the Bail Order if she considered that it was defective: she could, and should, have raised the matter with the First-tier Tribunal, and she could alternatively have applied to the Upper Tribunal for permission to apply for judicial review. Had she made such an application, the Upper Tribunal would have taken into account her delay in doing so, and any hardship which might be caused to Mr Majera, when deciding whether to grant permission and whether to grant a remedy. The procedure adopted by the Court of Appeal did not allow for consideration of these issues at any stage [58].

*References in square brackets are to paragraphs in the judgment*

## **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>