



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/08138/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
Promulgated  
On 4 October 2018**

**Decision & Reasons**

**On 11 October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANUELL**

**Between**

**MS ESTHER OLUWAYEMISI OLABISI AKINTAYO**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Permission to appeal was granted by First-tier Tribunal Judge Robertson on 9 August 2018 against the dismissal of the Appellant's EEA permanent residence card appeal by First-tier Tribunal Judge James in a decision and reasons promulgated on 5 July 2018. The Appellant is a national of Nigeria, born on 14 July 1975. She relied on retained rights of residence as the former spouse of an EEA national.
2. Permission to appeal was granted because the judge had admitted further evidence and heard submissions on such evidence after the hearing had concluded, in the Appellant's absence. There were

also questions arising as to the correct interpretation of the evidence.

3. The Appellant attended the Upper Tribunal hearing in person. Her application for an adjournment to seek legal representation had been refused by another Upper Tribunal judge, and was again refused because the hearing could proceed fairly without such representation.
4. The Appellant brought to the court several untidy bundles of disorganised papers. Among them Mr Lindsay was able to locate an official copy of the Appellant's decree absolute dated 6 November 2014. (The First-tier Tribunal judge had found that the decree absolute had not been produced.)
5. The Appellant relied on her brief grounds of appeal and the grant of permission to appeal.
6. Mr Lindsay submitted in summary that any procedural unfairness had not been material, as the Appellant had not produced sufficient evidence on any view to show that she met the Immigration (EEA) Regulations 2016.
7. The discovery of the decree absolute among the papers which the Appellant had brought to the tribunal was in itself a clear indication of how wrong the First-tier Tribunal hearing had gone. The appeal file showed that the Appellant's original solicitors had been the subject of intervention by the Solicitors Regulatory Authority, raising the risk of missing documents and general confusion. [10] of the decision and reasons shows that the Appellant's papers as produced at the first stage of the hearing were disorganised and potentially incomplete. Judges must always take special care when dealing with litigants in person.
8. It must also be said that the Appellant must accept responsibility for attending a hearing without making better efforts at preparation. The decision and reasons shows that the Appellant's papers at the First-tier Tribunal hearing were in a sorry state. (Nothing had improved by the stage of the Upper Tribunal hearing.)
8. Be that as it may, the tribunal has no option but to find that the judge fell into serious procedural error by continuing, resuming or reconvening the appeal hearing in the Appellant's absence. The judge had no way of knowing whether or not the Appellant had been let down by the late arrival of further, potentially relevant documents, without hearing from the Appellant herself. The fact that the judge had with some justification formed an adverse view of the materials so far produced by the Appellant did not entitle the hearing to be reconvened in the Appellant's absence, at least without the Appellant's consent. There was no reason for the Appellant to have remained at the hearing centre after the judge

had, so far as she was aware, completed the hearing. There was manifest unfairness in considering the additional documents and receiving submissions in the Appellant's absence. Those submissions contributed to the dismissal of the appeal.

9. As already noted, an example of the resulting problem is that the judge was mistaken to find that there had been no evidence of the decree absolute. The judge is not perhaps to be blamed for that, but it illustrates why this was plainly an appeal which should have been adjourned so that it could be reconvened and conducted fairly.
10. It remains to be seen what the outcome of a fairly conducted hearing will be. Certainly, it cannot be said that the procedural fairness was immaterial since the inevitable outcome would have been dismissal. The tribunal finds that there was procedural unfairness amounting to a material error of law. The original decision is set aside, to be reheard in the First-tier Tribunal before any judge except First-tier Tribunal Judge James.
11. The tribunal explained to the Appellant that it is her responsibility to prepare her evidence properly and to put it into good order before the rehearing. Mr Lindsay accepted on behalf of the Home Office that the decree absolute dated 6 November 2014 had been seen and accepted as genuine.

## **DECISION**

The appeal to the Upper Tribunal is allowed.

The original decision is set aside. The appeal must be reheard in the First-tier Tribunal before any judge except First-tier Tribunal Judge James.

2018 **Signed**  
**Deputy Upper Tribunal Judge Manuell**

**Dated** 4 October