



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: RP/00115/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 27 March 2019**

**Decision & Reasons
Promulgated
On 07 May 2019**

Before

**THE HONOURABLE LORD UIST
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE McWILLIAM**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR Y A S
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: In person

DECISION AND REASONS

This is an appeal brought by the Secretary of State. For convenience we will refer to the parties as they were before the First-tier Tribunal (“the FTT”).

The Secretary of State relied on the grounds of appeal, the thrust of which is that the FTT did not consider whether the appellant had rebutted the presumption under s.72 of the 2002 Act and should have done so

(notwithstanding the absence of a certificate) in accordance with Mugwagwa s.72 - applying statutory presumptions Zimbabwe [2011] UKUT 00338.

The FTT heard the appeal in the absence of the appellant. The unrepresented appellant told us that he did not receive notice of the hearing because the Secretary of State had his wrong address. The address should have been Flat 73 not Flat 83. We note that the FTT sent the notice of hearing to Flat 93. We are satisfied that the appellant did not receive notice of the hearing.

Notice of Decision

The judge erred because he did not properly apply Mugwagwa. The judge was required to consider the statutory presumption, and this is a matter that the judge rehearing the appeal must turn his or her mind to within the statutory framework set out in the 2002 Act. The judge may find assistance in the case of Mugwagwa and the case of Essa (Revocation of protection status appeals) [2018] UKUT 00244 (IAC).

We set aside the decision to allow the appeal. We remit this case to the FTT for a fresh hearing before a different judge. Both the Secretary of State and the appellant wished this case to be reheard by the FTT. We decided, having regard to paragraph 7 of the Practice Statement of the IAC of 25 September 2012, that this was appropriate.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Lord Uist

Date 2 May 2019

Lord Uist