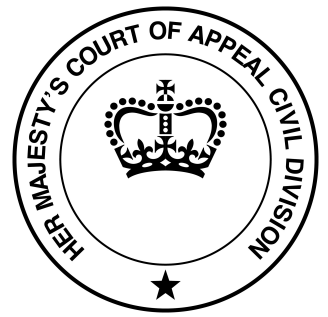




**IN THE COURT OF APPEAL, CIVIL DIVISION
APPLICATION FOR A SECOND APPEAL**

REF: C3/2020/1239/PTA



Opara –v– Olasemo

Decision on an application for a second appeal. The Judge will not give permission unless he or she considers that (a) the appeal would i) have a real prospect of success; and ii) raise an important point of principle or practice; or (b) there is some other compelling reason for the Court of Appeal to hear it.

ORDER made by the Rt. Hon. Lord Justice Floyd

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: Refused

Reasons

Ground 1: The judge held that the FTT's conclusion on the HMO issue was irrational (see paragraph 35). It is further clear that the judge accepted that the FTT had failed to have regard to relevant evidence (see paragraphs 39 and 44). These were errors of law and it followed that the Upper Tribunal could remake the decision. See Tribunals, Courts and Enforcement Act 2007 section 12(1) and (2). There is no error of law in this approach.

Grounds 2 and 5: The judge's approach to the evidence was not arguably incorrect: she gave herself a correct direction as to the criminal standard of proof and applied it.

Ground 3: The judge was unarguably entitled to rely on inferences from the evidence.

Ground 4: The applicant was in charge of the premises and was the person to whom rent was paid. She had indicated that she would not accept further rent from the respondent and his belongings had been removed from his room. The idea that the door was stuck with fresh paint was a suggestion by counsel which was not part of the applicant's case, was not put to the appellant and was unsupported by the decorator called by the applicant. There was no evidence, as opposed to speculation, as to why the respondent could not gain access to his room, apart from that proffered by the respondent, namely eviction. The respondent had said the lock looked different. In those circumstances the judge was entitled to find that the unlawful eviction allegation was proved to the necessary standard

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition

Signed:

Date: 21 October 2020

Notes

(1) Permission to appeal will only be granted in respect of second appeals if the court considers that:

- (a) the proposed appeal would have a real prospect of success and would raise some important point of principle or practice; or
- (b) there is some other compelling reason for the relevant appellate court to hear the appeal.

In respect of second appeals from the county court or High Court, see CPR 52.7.

In respect of appeals from the Upper Tribunal, see Article 2 of the Appeals from the Upper Tribunal Order 2008 (SI 2008/2834).

- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **C3/2020/1239/PTA**