



22 June 2016

PRESS SUMMARY

**Taiwo (Appellant) v Olaigbe and another (Respondents);
Onu (Appellant) v Akwiwu and another (Respondents) [2016] UKSC 31
*On appeal from [2014] EWCA Civ 279***

JUSTICES: Lady Hale (Deputy President), Lord Wilson, Lord Reed, Lord Hughes, Lord Toulson

BACKGROUND TO THE APPEALS

The issue in these appeals is whether the mistreatment of migrant domestic workers who are vulnerable because of their precarious immigration status amounts to direct or indirect race discrimination.

The appellant in the first appeal, Ms Taiwo, is a Nigerian national who entered the United Kingdom lawfully in February 2010 to work for the respondents. She had a migrant domestic worker's visa obtained for her on the false basis that she had previously been employed by Mr Olaigbe's parents in Nigeria. Ms Taiwo's passport was taken from her and she was expected to work during most of her waking hours for minimal wages. She was starved and subject to physical and mental abuse. She escaped and brought successful claims in the employment tribunal for the failure to pay her the minimum wage, for unlawful deductions from wages, for failure to provide rest periods and to give her written terms of employment. She was awarded compensation in respect of these claims but her claim for race discrimination, which would have entitled her to damages for the fear and distress she suffered, was dismissed. The tribunal found that her mistreatment was because she was a vulnerable migrant worker who was reliant on the respondents for her continued employment and residence in the UK, not because she was Nigerian.

Ms Onu, the appellant in the second appeal, suffered a similar experience. She had worked for her employers in Nigeria and came to the UK on a domestic worker's visa. She worked on average for 84 hours a week, without the required rest periods, nor was she paid the minimum wage and she was threatened and abused by her employers. She brought similar claims in the employment tribunal, which all succeeded including her claim for direct race discrimination. The latter finding was reversed by the Employment Appeal Tribunal.

The Court of Appeal heard Ms Taiwo and Ms Onu's appeals together and upheld the dismissal of their discrimination claims on the grounds that immigration status was not to be equated with nationality for the purpose of the Equality Act 2010. Ms Taiwo appealed (and Ms Onu applied for permission to appeal) to the Supreme Court.

JUDGMENT

The Supreme Court unanimously grants permission to appeal to Ms Onu but dismisses both Ms Taiwo and Ms Onu's appeals. It holds that neither appellant has suffered race discrimination because the reason for their abuse by the respondents was not nationality but their vulnerability as a particular kind of migrant worker. Lady Hale gives the only substantive judgment.

REASONS FOR THE JUDGMENT

Under s 13(1) Equality Act 2010 ('EA') a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. Race is a protected characteristic and includes colour, nationality and ethnic origins [13]. There is no doubt in these cases that the appellants were treated disgracefully by their employers in a way which employees who did not share the appellants' vulnerable immigration status would not have been treated. The question is whether discrimination on grounds of immigration status amounts to discrimination on grounds of nationality [14].

Generally speaking employers are free to choose whom to employ, subject to the limits under the EA (and earlier legislation) to protect specified groups, who have historically suffered discrimination, from being shut out of access to employment for irrelevant reasons which they can do nothing about [21]. Parliament could have chosen to include immigration status in the list of protected characteristics but it did not do so [22]. Immigration status is a function of nationality in that non-British nationals (other than Irish citizens) are subject to immigration control, but there is a wide variety of immigration statuses [23]. The appellants were particularly vulnerable to the abuse they suffered because of the terms of their domestic workers' visas which meant they were dependent on their current employers for their continued right to live and work in the UK [24]. But there are many non-British nationals living and working in the UK who do not share this vulnerability and would not have been abused in the same way. The treatment of the appellants had nothing to do with the fact they were Nigerian and they were not the subject of direct discrimination [26].

This was not a case of indirect discrimination. There was no 'provision, criterion or practice' as defined in s 19 EA applied by the respondents to all their employees regardless of their immigration status [32].

The present law does not therefore offer redress for all the harm suffered by the appellants. Parliament might wish to consider extending the remedy available under the Modern Slavery Act 2015 to give employment tribunals jurisdiction to grant compensation for ill-treatment meted out to workers [34].

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>