Upper Tribunal for Scotland

2026UT79
Ref: UTS/AP/26/0038

DECISION OF

Sheriff O'Carroll

ON AN APPLICATION FOR PERMISSION TO APPEAL
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)
IN THE CASE OF

Mrs Fatou Ndiaye

Appellant

- and -

Axelrod Capital Ltd
per Hovepark Letting Ltd

Respondent

FTS Case Reference: FTS/HPC/EV/24/1374

14 October 2026

Decision

Permission to appeal against the decision of the First-tier Tribunal (Housing and Property Chamber) dated 10 October 2025 is refused.

Reasons

[1] *Background.* The respondent is the landlord of the appellant. The respondent made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal"), for an eviction order against the appellant. After sundry procedure and

hearings, the tribunal eventually refused the respondent's application for eviction by way of decision dated 10 October 2025, finding that the statutory ground for eviction of the appellant had not been made out.

[2] Despite having been successful in opposing the respondent's application for an eviction order against her, the unrepresented appellant nonetheless sought to appeal against the tribunal's decision. She sought leave to appeal its decision on a variety of grounds. By way of decision dated 6 February 2026, the tribunal refused leave to appeal.

[3] The appellant then sought leave to appeal to this Upper Tribunal by way of application dated 11 March 2026. She did so, not by reference to the original decision of the tribunal, but by way of reference to said decision of the tribunal refusing leave to appeal. The ten grounds of appeal make various challenges to: the procedure adopted by the tribunal in previous case management discussion hearings, to findings of fact and adequacy of reasons, to its findings as regards the appellant's health vulnerabilities, to other procedural decisions made at previous CMDs, failure to properly consider certain evidence and to its interpretation of procedural rules.

[4] This tribunal fixed a hearing by way of Webex remote hearing to take place on 2 June 2026 to consider the application for leave to appeal, which was intimated to the appellant on 13 April 2026. On 13 May 2026, the appellant objected to a remote hearing and sought a hearing in person and a French interpreter. She said that she had certain disabilities, lacked access to the internet and needed reasonable adjustments to be made.

[5] This tribunal adjourned the hearing to 9 July 2026 as an in-person hearing to be held at the newly installed tribunal suite at Edinburgh Sheriff Court. That was intimated to the appellant on 21 and 27 May 2026.

[6] On 6 July 2026 the appellant emailed the UT administration in which she objected to the venue as she believed that was an irregularity, the tribunal system being separate from that of the court system, as she had it. On the assertion that the venue amounted to a serious procedural irregularity, she sought "relisting" to the Upper Tribunal in Glasgow. She also raised many other matters concerning alleged procedural irregularities in this Tribunal, the

contents of standard letters sent to her by this UT administration and different email addresses used by different parts of the administration. In response to this, the Clerk of the Tribunal was instructed to respond to the appellant stating that the hearing would proceed as previously intimated and that the tribunal would take account of all the matters that she had raised and would deal with them at the hearing. No reply was received to that email.

[7] The hearing took place as arranged on 9 July 2026. In terms of Rule 22 of the Rule of Procedure, the venue for hearings is at such a time and place in Scotland as the President may determine. The Clerk of the Tribunal acts under the direction of the President for that purpose. The Tribunal Suite in Edinburgh Sheriff Court, where this UTS member customarily sits, is an authorised venue which was properly intimated to the appellant in advance.

[8] The appellant did not appear, and no further communications were received from her. There was no appearance either by or on behalf of the respondent who had previously indicated it would not appear.

[9] That non-appearance notwithstanding, standing the contents of said email of 6 July 2026, this Tribunal further adjourned the hearing to a further date; which was later confirmed to the parties by letter and emails as 12 October 2026, at the same venue. The Tribunal also made an Order dated 27 July 2026 dealing with all the matters raised by the appellant in said email of 6 July 2026.

[10] On 12 October 2026, the appellant once again failed to appear. Neither did she seek an adjournment or provide a reason for non-appearance. The respondent did not appear either, having again stated that it did not intend to make an appearance. The Tribunal is entitled in terms of Rule 28 of the UTS Rules of procedure to proceed with the hearing in the absence of a party provided that the Tribunal is satisfied that the party has been notified of the hearing and that it is in the interests of justice to proceed in the absence of that party. This Tribunal was amply satisfied, having consulted with the Clerk to the Tribunal, that ample proper notification of the hearing arrangements had been given to the appellant.

Given the history of the proceedings and the content of the written documentation available to the Tribunal, the Tribunal was satisfied that it was in the interests of justice to proceed with the hearing. It did so.

[11] *The law regarding permission to appeal*. Appeal to this Upper Tribunal lies only on error of law on the part of the tribunal. Permission to appeal is required. Permission will only be granted by a Tribunal if it can be shown that an arguable error of law has been identified in the proceedings in the tribunal below. The tests for demonstrating error of law are well-known and need not be repeated here: see *Advocate General for Scotland v Murray Group Holdings Ltd* [2015] CSIH 77 for example. By contrast for example, permission to appeal will not be granted where the ground relied on is in essence an attempt to reargue matters which have already been decided by the tribunal below.

[12] The test for arguability is not a high one. The appellant is not required at the stage of seeking permission to appeal to prove that the tribunal did err in law. That is a matter for determination at a full hearing on the appeal, if the appeal gets that far. But the appellant does require to show that there is a real argument requiring a full hearing for proper resolution of the contention that the tribunal has erred in law. Mere assertions of error of law will not suffice. Neither will allegations of errors of law which can readily be shown to be unfounded suffice. In deciding whether an arguable error of law has been established, this Tribunal gives due deference to the expertise of the members of the tribunal below whilst acknowledging at the same time that this Upper Tribunal for Scotland is itself a specialist part of the adjudication mechanism.

[13] Even if the case is one in which permission to appeal could be given, that decision is ultimately one for the discretion of the Upper Tribunal. The Upper Tribunal may refuse permission if a mistake by the tribunal did not affect the outcome, that is the error was not material and did not affect the outcome: *Secretary of State for the Home Department v Makke* [2005] EWCA Civ 176, at [23]-[24]; *R v Secretary of State for Social Services ex parte Connolly* [1986] 1 WLR 421; *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982. Permission to appeal may be refused even if the application discloses an error of law but

which has no merit or substance or if further litigation would be disproportionate: see for example *Cook v Plummer* [2008] FLR 989, at [13], or if the proceedings as a whole have become abstract, that is, academic: *R(Begum) v Social Security Commissioners* [2002] EWHC 401 (Admin), at [22].

[14] *Merits of the proposed appeal.* The appellant seeks to appeal against a decision of the tribunal in which she was successful. The tribunal refused to make an eviction order against the appellant. In this appeal, the appellant does not seek an order of eviction against herself or to change that particular decision. Such an appeal would be absurd. A ground of appeal is something that if accepted would lead to the decision under appeal being changed: see for example *AS (Afghanistan) v Secretary of State for the Home Department* [2011] 1 WLR 385 at [30]. The appeal is incompetent.

[15] Indeed, the stated grounds of appeal do not challenge the decision of the tribunal dated 10 October 2025. The purported grounds of appeal are all directed at the decision of the tribunal refusing leave to appeal against that decision of 10 October 2025. Thus, even if it were competent to appeal against a decision of the tribunal in which one was successful, the grounds of appeal are directed against a different decision of the tribunal. There is no appeal against a decision to refuse leave to appeal: section 55(2) Tribunals (Scotland) Act 2014. The appeal is incompetent.

[16] Even if one were to regard those grounds of appeal as an attempt to challenge the decision of the tribunal dated 10 October 2025, the grounds are in reality an attempt to challenge a number of historical procedural decisions in this long-lasting case, now spent and irrelevant, and to challenge parts of the narrative in the tribunal's decision, against which there is no right of appeal. In any event, even if an arguable error of law were to be shown (which has not been done) the outcome would not change and thus leave to appeal would have been refused in the exercise of this Tribunal's discretion in any event: see para [13] above.

[17] Accordingly leave to appeal is refused.



Sheriff O'Carroll
Member of the Upper Tribunal for Scotland

There is no right of appeal or review of this decision: section 55(2) Tribunals (Scotland) Act 2014.