



**FIRST-TIER TRIBUNAL (CHARITY)
GENERAL REGULATORY CHAMBER**

Appeal number: CA/2021/0001/P

OLUWAGBEMILEKE AFARIOGUN

Appellant

- and -

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

Before: Judge Alison McKenna

Determined on the papers on 22 October 2021

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DECISION

The appeal is dismissed.

REASONS

Background

1. This appeal concerns a proposed Charitable Incorporated Institution ('CIO') known as 'Ifa Dudu'. It also concerns a religious movement, promoted by the Appellant, also known as 'Ifa Dudu'. The parties have at times used the term 'Ifa Dudu' interchangeably to refer both to the proposed CIO and to the religious movement. For reasons which I explain below, I have in this Decision attempted to establish a clear distinction between the putative charity (which I refer to as the 'proposed CIO') and the autonomous religious movement (which I refer to as 'Ifa Dudu').
2. The Appellant applied for the constitution of an organisation known as 'Ifa Dudu' as a CIO and its entry onto the Register of Charities. The objects of the proposed CIO were stated to be "*The advancement of the Ifa Dudu religion for the purpose of achieving the Nyeungana vision*".
3. The Respondent refused to constitute the proposed CIO and enter it onto the Register of Charities. The reason given was that it was not satisfied that the proposed CIO was established for exclusively charitable purposes for the advancement of religion for the public benefit. The Appellant now appeals against the Respondent's decision of 17 November 2020 to that effect (made following a Decision Review of an earlier decision).
4. The Respondent's decision was made under s. 208 of the Charities Act 2011 ('the Act'), which gives rise to a right of appeal to this Tribunal. The Tribunal's role in this matter is to "consider afresh" the Respondent's decision (see s.319 (4) (a) of the Act). The Tribunal, therefore, must re-determine the registration application itself, considering the evidence before it. It follows that the Tribunal is not concerned in these proceedings to establish whether the Respondent's own reasons for refusing the application were well-expressed, whether it acted reasonably in refusing the Appellant's application, or whether it could have handled the application process differently in any respect. In these respects, the Appellant's arguments fall outside of the Tribunal's jurisdiction.
5. If the Tribunal were to allow this appeal, it could exercise discretionary powers to quash the Respondent's decision, and (if appropriate) remit the matter to the Respondent and/or direct it to grant the application (see Schedule 6 to the Act). In determining this appeal, the Tribunal can consider evidence which was not before the Respondent when it made its own decision (see s. 319 (4) (b) of the Act).

Mode of Determination

6. The Notice of Appeal requested a determination on the papers and the Respondent agreed to this. The Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.
7. In making my Decision I have considered an agreed hearing bundle comprising over 800 pages and an authorities bundle also over 800 pages.

Appeal to the Tribunal

8. A Notice of Appeal dated 25 December 2020 was submitted to the Tribunal. The Notice of Appeal relied on some twenty pages of Grounds, which I summarise as follows: that the Respondent's Decision was not compliant with the Equality Act 2010; that the Respondent had taken the biased approach of discrediting the application and looking for reasons to refuse it; that the Respondent has misunderstood the Applicant's application by equating 'Ifa Dudu' with the religion of Ifa. It is submitted that 'Ifa Dudu' is a new religion which takes its doctrine not only from Ifa but also from Christianity, Islam, Hinduism, Buddhism, Judaism, Sikhism and Rastafarianism. It is submitted that the teachings of all these religions will be interpreted by 'Ifa Dudu' from the Nyeungana perspective. 'Dudu' is stated to mean 'Black and the 'beneficiaries' of the proposed charity are stated to be Black African people, Black Caribbean people, and any other person of Black African or Black Caribbean background. There is a pamphlet called '*The Official Core Beliefs, Tenet and Code of Ifa Dudu*' attached to the Grounds. I consider this document further under *Evidence* below.
9. The Notice of Appeal contains some helpful information about the background of 'Ifa Dudu'. It is stated that the Appellant himself is the founder of 'Ifa Dudu', which he established after experiencing an awakening in 2010, followed by further revelations, which came together as the 'Nyeungana Vision' in 2018.
10. The Nyeungana Vision is stated as follows:

"Imagine a tomorrow where all black people are forever united across physical geographic borders in their fight against poverty, marginalisation, injustice, discrimination and any other form of oppression. A tomorrow where we all feel empowered to help one another and are incredibly proud to be us. Whilst truly embracing our unique and natural beauty.

In that tomorrow we will be a superpower that is making positive contribution on the world's stage whilst pushing each other to new heights in the advancement of human endeavour.

United by our shared identity and indivisible by any instrument. We would have created the best environment for our offspring to strive. Forever. We call this Nyeungana."

11. The Appellant submits that, pending charitable registration, 'Ifa Dudu' has not been undertaking any activities. The Appellant states he had understood that he was not permitted to undertake activities pending registration. He explains that charity registration will now permit him to raise funds to undertake planned activities, such as building a House of Worship in the Ogun state of Nigeria. The Grounds include a letter from King James Olugbenga Sodiya, King of Ogunmakin, which confirms that he intends to make 'Ifa Dudu' the official religion of his Kingdom and that he has awarded 'Ifa Dudu' a plot of land in his Kingdom, on which to build the House of Worship.
12. In respect of the outcome sought, the Appellant asked the Tribunal to direct the constitution of the proposed CIO and its entry onto the Register of Charities as a religious charity.
13. The Respondent's Response to the Notice of Appeal, dated 3 February 2021, resisted the Appellant's appeal on grounds which I summarise as follows: s.208 of the Act states that the Charity Commission *must* refuse an application under s. 207 if it is not satisfied that the proposed CIO would be a charity at the time that it is registered; the onus is on the Appellant to satisfy the Tribunal that the purposes of the proposed CIO fall within s. 3 (1)(c) of the Act and would be for the public benefit. It is submitted that the Appellant has not provided sufficient evidence that 'Ifa Dudu' is a belief system satisfying the case law criteria for a religious charity, or that it would operate for the public benefit of the wider community. It is further submitted that Ifa Dudu's proposal to restrict its beneficiaries on the basis of the protected characteristic of race may contravene the Equality Act 2010, as the proposed CIO does not expressly permit this and does not engage the relevant legal exemptions. It is submitted that if the proposed CIO's means of operation would be unlawful, then it would not operate for the public benefit.
14. It is stated by the Respondent that the only adherents of the Ifa Dudu religious movement so far are the Appellant and the proposed CIO's trustees, and that its belief system consists only of a few generalised statements (which have been changed over the course of the application). The Respondent invited the Tribunal to dismiss the appeal.
15. The Appellant's Reply clarified the proposed activities of the proposed CIO as: preaching and teaching the *Core Beliefs, Tenet and Code* to its followers; building places of worship, providing publications, making donations to other charities, and providing information about Ifa Dudu to non-followers. Attached to the Reply is a revised version of the *Core Beliefs, Tenet and Code* document. The Reply submits that Ifa Dudu is no less a religion than any of the accepted religions from which it takes its authority.

The Law

16. Where an application for charity registration is also an application for the constitution of a CIO under s. 207 of the Act, the Respondent must refuse the application if it is not satisfied that the proposed CIO would be a charity at the time it would be registered (s. 208 of the Act).

17. The statutory framework for registration of an institution as a charity may be summarised as follows. Section 1 (1) of the Act defines *charity* as an institution which is (a) established for charitable purposes only and is (b) subject to the control of the High Court in the exercise of its jurisdiction with respect to charities. Section 2 (1) of the Act defines a *charitable purpose* as one which falls within section 3 (1) of the Act and is for the public benefit. Section 3(1) of the Act sets out a list at (a) to (l) of 12 descriptions of charitable purposes and at (m) allows for the recognition of new charitable purposes through a process of analogy. A charitable purpose must be for the public benefit. Section 4 of the Act provides that there is to be no presumption that a purpose of any particular description is for the public benefit and that any reference to public benefit is a reference to public benefit as that term is understood for the purposes of the law relating to charities in England and Wales.
18. In the Upper Tribunal's decision in *ISC v Charity Commission* [2011] UKUT 421 (TCC), it was held at [82] that, when applying the statutory test, the starting point is to identify the *particular purpose(s)* of the institution. The *particular purpose* is charitable if it falls within any of the categories listed in s. 3 (1) of the Act and is for the public benefit. The Upper Tribunal also decided in *ISC* at [188] that the meaning of *established* in the Act is "*what the institution was set up to do, not... how it would achieve its objects or whether its subsequent activities are in accordance with what it was set up to do*". The Upper Tribunal concluded at [44] that 'public benefit' has two senses. Firstly, whether the nature of the purpose itself is such as to be a benefit to the community. Secondly, that those who may benefit from the carrying out of the purpose are sufficiently numerous, and identified in such manner, as to constitute a section of the public.
19. Section 3 (1) (c) of the Act includes '*the advancement of religion*' as a description of a charitable purpose. S. 3 (2) (a) provides that, in this context, 'religion' includes a belief in more than one god, or no belief in god. The question of whether a proposed charity operates for the public benefit so as to satisfy s. 4 of the Act is a matter to be decided by the Tribunal on the evidence before it.
20. The Respondent's published guidance on registering a charity (at page 548 of the hearing bundle) states that to be charitable, a purpose must be 'certain' so that, if necessary, it could be enforced by the court.
21. The Respondent published guidance on the issue of the Advancement of Religion for the Public Benefit, together with an analysis of the law underpinning that guidance, in 2008. This guidance refers to the European Court of Human Rights' judgment in *Campbell and Cosans v UK* (1982) 4 EHRR 293, in which it was held that a '*belief*' involves the holding of spiritual or philosophical convictions which have an identifiable formal content and attain "*a certain level of cogency, seriousness, cohesion and importance*".
22. The Respondent's published guidance pre-dates the judgment of the Supreme Court in *R (Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77, in which Lord Toulson JSC described a religion as "*a spiritual or non-secular belief system, held by a group of adherents, which claims to explain mankind's place in the universe and relationship with the infinite, and to teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system....*"

23. The Respondent has referred me to the Upper Tribunal's Decision in *JP v South London and Maudsley NHS Foundation Trust* [2012] UKUT 486, which relied on the ECHR's test of *a certain level of cogency, seriousness, cohesion and importance* in assessing whether the Appellant's Article 9 ECHR rights were engaged by his detention under the Mental Health Act. The Respondent applied the same test when making its own decision on the *Temple of the Jedi Order* (authorities bundle page 625). The relevant legal principles are stated at [13] of the *Jedi* decision as follows:

...religion in charity law is characterised by belief in one or more gods or spiritual or non-secular principles or things, and a relationship between the adherents of the religion and the gods, principles or things which is expressed by worship, reverence or adoration, veneration intercession or by some other religious rite or service. In addition...it must be capable of providing moral and ethical value or edification to the public and characterised by a certain level of cogency, seriousness, cohesion and importance.

24. The Appellant has not referred me to any legal authorities in support of his case and he has not disputed the Respondent's exposition of the law relevant to this appeal, apart from making his submissions about the Equality Act 2010.

Submissions

25. Both parties provided the Tribunal with written submissions (Statements of Case) to assist me in making my Decision.
26. The Appellant's submissions raise a completely new argument which I understand to refer to his right to freedom of religion under the European Convention on Human Rights. This argument formed no part of his pleaded case. A Statement of Case is not the place to raise an issue for the first time because the Respondent has not been put on notice of it. I conclude that it would not be fair and just for me to rule on that issue in this Decision. In any event, for the reasons which I give below, I do not consider this argument to be well-founded in the context of this appeal.
27. The Appellant fairly acknowledges that he is a novice at drafting legal documents and submits that it would be unfair for the Tribunal to discriminate against him on a drafting point, as English is not his first language. He submits that there is only a minor difference between his own drafting and the drafting required by the Respondent. The Appellant submits that the Respondent has failed to back up its case that Ifa Dudu lacks cogency, cohesion, seriousness and importance and that this perceived fault must be applied to all the religions which Ifa Dudu seeks to interpret if it is to be applied to Ifa Dudu itself. It is submitted that the Respondent would have come to a more favourable conclusion if the application had been supported with a letter from a European King.
28. The Respondent's submissions dated 12 July 202 may be summarised as follows: there is no clear evidence that Ifa Dudu is a religion for the purposes of charity law; Ifa Dudu does not meet the public benefit requirement because it does not benefit a sufficient section of the public (the number of its adherents is negligible) and it has not demonstrated that it impacts on the wider community for the public benefit; the purpose and operation of Ifa Dudu would potentially contravene the Equality Act 2010 by restricting its beneficiaries on the basis of a protected characteristic. It cannot operate for the public benefit if to do so were unlawful.

29. It is submitted by the Respondent that the *particular purpose* of Ifa Dudu, as discerned from the proposed constitution of the CIO (including the amendment proposed during the course of the decision review process), when considered together with the background evidence provided, fails to establish the cogency, seriousness, cohesion and importance required for registration as a religious charity. In particular, it is submitted that the *Core Beliefs* document is too brief and generalised and that it does not appear to be complete and absolute as it has been amended during these proceedings. It is submitted by the Respondent that the evidence of *particular purpose* simply does not support the Appellant's claim that Ifa Dudu is a distinct religion with an identifiable formal content.

Evidence

30. I have reviewed all the evidence provided to the Tribunal in the hearing bundle, although I have not found it necessary to refer to all of it in this Decision. I note that the bundle contains multiple pages from websites featuring issues of concern to the Appellant. I have not found these at all helpful in making my decision, as they have no inherent evidential value and have not been introduced into evidence and produced by a witness in the usual way.
31. No formal witness statements have been filed in this appeal, although I have considered the letter written by King James Olubenga Sodiya, referred to above. It is notable that the King's letter is the only evidence I have seen about Ifa Dudu which emanates from a source other than the Appellant himself.
32. I have considered the objects of the proposed CIO. As noted above, these are: "*The advancement of the Ifa Dudu religion for the purpose of achieving the Nyeungana vision*". I note that the draft CIO constitution does not anywhere define the Ifa Dudu religion, which is referred to in its objects clause, and that the proposed CIO's constitution does not incorporate, append or refer to the *Core Beliefs* pamphlet.
33. The registration application was accompanied by a statement of faith (hearing bundle page 481) which is not the *Core Beliefs* pamphlet, but a shorter statement which says: *We believe that there is one supreme God. We believe in the Nyeungana vision and the continuous devotion to working towards realising the Nyeungana vision.* In response to the initial rejection of his application, the Appellant wrote to the Respondent on 17 June 2020 (page 498) and set out some more details, including some of the principles of the Tenet and Code, but also without referring to the *Core Beliefs* pamphlet or enclosing it.
34. The pamphlet entitled "*The Official Core Beliefs, Tenet and Code of Ifa Dudu*" (page 717) is clearly a key piece of evidence in this appeal. It would have been helpful to know when it was written, by whom, and how widely it has been disseminated. It consists of four pages, of which two are the front and back covers, so it is indeed brief. Page 2 contains a statement of the key principles of Ifa Dudu, including the Nyeungana Vision. Page 3 contains a flow-diagram which provides a "*Framework for Moral Teaching and Ethical Values*". This is not referred to on the previous page, so it is not clear how the two pages work together. The flow-diagram sets a test for the adoption of any moral or ethical value by first considering whether it is contained in all, or at

least two of the holy books of other religions, then applying a test for whether it is in line with the *Core Beliefs* statement. There is a “*review regularly*” stage and a final “*adopt*” stage. There is no statement regarding who has the authority either to review or adopt any moral or ethical value, or who has authority to amend the *Core Beliefs* document to include a newly adopted principle which passes the tests (although I note the pamphlet was amended by the Appellant during these proceedings, the amended version being at page 722).

35. I also note that the *Core Beliefs* pamphlet contains a reference on page 2 to “*an ordained person within the Ifa Dudu religion.*” I have seen no evidence that there is a formal ordination process for Ifa Dudu and, as I understand it, the Appellant is presently the only Ifa Dudu Minister. It is presumably intended that there will be other Ministers in the future as the application for registration (page 467) refers to the proposed activity of *providing grants to religious leaders in this faith for the purpose of furthering this religion*. It is stated that the CIO will not employ its founder or trustee (page 476).
36. The hearing bundle contains another important piece of evidence, which is the presentation prepared by the Appellant for the Respondent (pages 377, 685 and 698). This explains in diagrammatic form that the followers of Ifa Dudu interpret the holy books of world religions through the lens of Nyeungana. It states that this is the new way that God wants the Black community to interpret the scriptures and moral teachings of those religions. It states that Ifa Dudu is a religion because “*We believe in one Supreme God, We believe Nyeungana is a message from God...; We believe the tenet of Ifa Dudu was provided by God*”.

Conclusion

37. Following the approach of the Upper Tribunal in *ISC* (see paragraph 18 above), I have firstly sought to identify the *particular purpose* for which the proposed CIO was *established*.
38. I note that the name of the proposed CIO is ‘Ifa Dudu’ but that, as noted above, its proposed objects are “*The advancement of the Ifa Dudu religion for the purpose of achieving the Nyeungana vision.* (The Appellant later suggested that the objects should be amended to read: “*To advance the Ifa Dudu religion for the benefit of the public in accordance with the Nyeungana vision*”, but those objects are not formally part of the application now before me. If they were, my overall conclusion would in any event be the same). In construing the objects of the proposed CIO in the context of all the evidence, it seems to me that there is a clear conceptual distinction between Ifa Dudu as a religious movement, and Ifa Dudu as a proposed CIO. The King’s letter constitutes evidence which supports this understanding, as it is clearly not intended to mean that the proposed CIO would become the state religion of his Kingdom. The *Core Beliefs* document is also apparently intended to refer to an autonomous religious movement, as it has not been incorporated into the governing document of the proposed CIO.
39. It is important to make clear that this Tribunal does not, and may not, determine the question of whether Ifa Dudu should be regarded as a religion at all or in all contexts.

The narrow question for the Tribunal in determining this application is whether the proposed CIO meets the legal test for charitable status. In so doing, it is relevant to consider the binding legal authorities to which I have been referred as an aid to construing the term '*the advancement of religion*' where it appears in the Act, but the Decision of this Tribunal is not to be understood by the Appellant as preventing him from undertaking his religious project in a non-charitable context. I fear that the Respondent may have given the Appellant this erroneous impression during the course of its dealings with him and that the parties have at times elided two separate issues in their correspondence.

40. My initial conclusion on the first question, therefore, is that the purpose for which the proposed CIO was established was not to obtain charitable status for the religious movement of Ifa Dudu itself, but rather to establish a charitable organisation which operates alongside that religious movement and promotes its teaching and practice. There is a further complication with the objects clause in the shape of the reference to the Nyeungana Vision (explained at paragraph 10 above). The evidence from the Appellant (see paragraph 36 above) is that followers of Ifa Dudu interpret the holy books of world religions through the lens of Nyeungana. The *Core Beliefs* pamphlet includes the Nyeungana Vision as an integral part of the Ifa Dudu religion, so it is unclear why the objects clause refers to them as two separate concepts. On the basis of the evidence, I understand the proposed CIO to have been established to advance the Ifa Dudu faith, which includes the Nyeungana Vision. In any future application, this should be made clearer.
41. Having reached my conclusion as to the *particular* purpose of the proposed CIO, I have, secondly, considered whether that purpose is one which falls within section 3 (1) (c) of the Act. I note that s. 3 (1)(c) has some further definition in s. 3 (2), but it does not address what is meant by 'religion' in this particular appeal. It is helpful therefore to consider the definitions of that term adopted by the higher courts, albeit in different contexts.
42. A 'belief' was considered by the European Court of Human Rights in *Campbell and Cosans v UK* (see paragraph 21 above) to denote views that attain *a certain level of cogency, seriousness, cohesion and importance*. I note here that the world religions which Ifa Dudu seeks to reinterpret are the product of thousands of years of practice, and thousands of pages of doctrine. It is possible, objectively, to describe a self-contained and coherent belief system in relation to each one. The task which Ifa Dudu has set itself, of interpreting these teachings afresh and synthesising their doctrines, is a challenging one which it seems to me will require considerable industry if it is itself to meet the test of creating a belief system with an identifiable formal content. The evidence before me is that the work undertaken so far has been minimal, as demonstrated by the brevity of the *Core Beliefs* pamphlet. I find I am not persuaded on the evidence before me that it is possible presently to identify a cohesive formal content for Ifa Dudu as a religious belief system, or that the doctrine I have been able to identify meets the test of *cogency, seriousness, cohesion and importance*. This is because the project of reinterpreting the other religions has not yet been sufficiently advanced to demonstrate an outcome.
43. The absence of an identifiable formal content to Ifa Dudu in turn raises an issue about the legal 'certainty' of the objects for which the proposed CIO was established. The Respondent's guidance (cited at paragraph 20 above) refers to the need for 'certainty'

in the objects of a charity, so that the Court could enforce them if required. I note that, as the proposed CIO does not contain any constitutional definition of Ifa Dudu, and as the *Core Beliefs* document can apparently evolve and change without formality, it is unclear how a Court could comprehend so as to enforce religious objects which lacked a fixed and identifiable formal content.

44. The evidence before me shows that Ifa Dudu is a new religious movement, founded by the Appellant as a result of his own personal spiritual awakening and revelations. The Appellant believes that God has instructed him to lay the foundations of a new religion, by virtue of which the spiritual teachings of the main world religions may be synthesised into a doctrine which will speak to and inspire Black communities. However, the evidence suggests that much of the thinking about this new religion is, as yet, only to be found in the heart and mind of the Appellant himself, as there is a striking absence of evidence from other sources. The inclusion of the flow-diagram in the *Core Beliefs* pamphlet additionally suggests that the principles on which Ifa Dudu is based are still evolving and are expected to continue to evolve, as the difficult and demanding process of synthesising the shared principles of many religious teachings is undertaken. In applying Lord Toulson's indicia of a religion in *Hodkin* (see paragraph 22 above) it does not seem to me that, in the absence of an established conclusion to the process of reinterpretation, Ifa Dudu may be said to be able to "*teach its adherents how they are to live their lives in conformity with the spiritual understanding associated with the belief system....*"
45. I conclude that Ifa Dudu does not meet the definition of a 'religion' applied by the ECHR in the *Campbell and Cosans* judgment, nor the definition of religion adopted by the Supreme Court in *Hodkin*. I conclude therefore that as the proposed CIO was established to advance the religion of Ifa Dudu, it has been established for a purpose which does not fall within the description of a charitable purpose at s. 3(1)(c) of the Act.
46. That conclusion is sufficient to dispose of this appeal. However, I would like also to make two comments on the issue of the public benefit requirement, as follows. Firstly, as I have found that Ifa Dudu lacks an identifiable formal content, I find it is impossible to assess whether the proposed CIO is established for the public benefit in the first sense considered by the Upper Tribunal in *ISC*. I also conclude that there is insufficient evidence before me to allow me to decide whether the proposed CIO would operate for the public benefit in the second sense. It is unclear how the proposed CIO will operate in relation to its 'beneficiaries' and what it will offer to the wider general public. The evidential burden in this regard rests with the Appellant and he has not produced any objective evidence directed towards these points. I could not therefore conclude on the evidence that the proposed CIO would meet the test under s. 4 of the Act.
47. Secondly, the submissions of the parties as to the public benefit requirement were heavily influenced by a dispute between them concerning the Equality Act 2010. I have been asked to decide that issue, but this Tribunal is not the relevant forum to rule authoritatively on such matters. I note the disagreement between the parties on this point, and I agree with the Respondent that a charity which would be operating in breach of the law would not be for the public benefit. However, I am unable to determine whether the proposed CIO would be breaking the law as the Respondent

suggests or complying with it as the Appellant suggests. In any event, I do not need to decide this point in order to dispose of this appeal.

48. In the light of my findings above, I conclude that the proposed CIO would not be a charity if it were constituted as a CIO. For that reason, I must now dismiss this appeal.

(Signed)

Judge Alison McKenna

Dated: 22 October 2021