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NEWS REPORT

Country:	United Kingdom
Title:	Taiwo v Olaigbe; Onu v Akwiwu [2016] UKSC 31
Date:	27 June 2016
Expert:	Lucy Vickers
<u>Context</u>	
Issue at stake:	Does abuse of vulnerable migrant domestic workers amount to unlawful nationality discrimination?
Ground of discrimination:	Race/ethnic origin
Source:	National Court Decision: Supreme Court [2016] UKSC 31 22 June 2016
Field:	Employment
Applicable law:	Equality Act 2010

Content

Case: The claimants were both migrant domestic workers who were subject to abuse and mistreatment by their employers (they were required to work for very low pay without breaks and subject to physical and mental abuse). They were able to claim successfully for breaches of the National Minimum Wage Act 1998, unlawful deductions from wages and breach of Working Time Regulations 1998. Ms Taiwo was unsuccessful in her Employment Tribunal (ET) claims for nationality discrimination, on the basis that the adverse treatment was because of her vulnerable immigration status, rather than on the basis of nationality. Those of the same nationality who had a different immigration status would not have been subject to the same treatment. As regards her indirect discrimination claims, no 'provision, criterion or practice' had been identified which put the group to which the claimants belonged at a disadvantage, and so the indirect discrimination claim also failed. Ms Onu was successful in her claim for race discrimination before the ET, on the basis that her status as a migrant worker was clearly linked to her race. The decision of the ET in Ms Taiwo's case was upheld by the Employment Appeal Tribunal (EAT); the decision of ET in Ms Onu's case was overturned by the EAT. The Court of Appeal heard the two appeals and held that immigration status could not be equated with nationality for the purposes of the Equality Act 2010. The cases were then appealed to the Supreme Court.

Decision of the Court: The question for the Supreme Court was whether discrimination because of immigration status amounted to discrimination because of nationality. Nationality is protected as part of the protection against race discrimination under section 9 Equality Act 2010, along with ethnic or national origins. A subsidiary question was whether the employers' conduct amounted to indirect discrimination against those who shared that nationality. The Supreme Court upheld the decision of the CA, and confirmed that this was not discrimination because of race or nationality, but instead discrimination because of vulnerable immigration status. Such a status is not a protected characteristic under the Equality Act 2010.

Key points of analysis:

The case confirms that discrimination because of immigration status does not amount to discrimination because of nationality. The Supreme Court noted that such treatment may amount to the offence of slavery or servitude or forced or compulsory labour under section 1 of the Modern Slavery Act 2015 or of human trafficking under section 2 of that Act, but that it does not amount to nationality discrimination.

Internet link source: <https://www.supremecourt.uk/cases/docs/uksc-2014-0105-judgment.pdf>.