



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/22437/2012

THE IMMIGRATION ACTS

Heard at Field House
On 14th February 2014

Determination Promulgated
On 26th March 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

EBENEZER ADELEKE ADELIYI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Nasim, Counsel, instructed by Maliks & Khan, Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria born on 10th October 1979. He seeks the issue of a residence card as confirmation of a right to reside in the United Kingdom as the spouse of an EEA national exercising treaty rights in the United Kingdom. The

application was refused by the respondent on 26th September 2012. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Fisher on 9th January 2013.

2. It is the contention of the appellant that he was married to the sponsor in Nigeria on 23rd May 2011. He produces a marriage certificate to that effect. Neither he nor his sponsor in fact went to Nigeria for the purposes of marriage but contend that it was a proxy marriage as evidenced by the various documents.
3. In the alternative it was said that the appellant and sponsor were in a durable relationship such that the appeal should be allowed on that basis.
4. An important document, which is relied upon by the appellant, is the document issued from the Lagos State Government reference number MCC/MLG/013/2011 purporting to be a marriage certificate showing that the marriage between the appellant and sponsor was one performed according to native law and custom. It is a document showing two dates namely 16th April 2011 and 23rd May 2011.
5. Reliance was placed by the respondent in the reasons for refusal upon paragraph 24.23 of a COIS Report of Nigeria which stated as follows:-

“The United States State Department Reciprocity Schedule in an undated section on marriage certificates in the country accessed on 17th April 2011, recorded that both parties to the marriage technically must be physically present at the same location with witnesses to sign certain marriage documents, proxy marriages have ceased to be valid but still occur.”

Given that there was no evidence that the appellant or his sponsor had been present at the marriage ceremony the marriage certificate was not accepted as being valid. The grounds argued on behalf of the appellant are that was a misunderstanding of the situation. The certificate of marriage had been issued by a Nigerian authority as proof of the marriage. Reliance was placed upon the UKBA Nigerian Country of Origin Information Report dated 6th January 2011 at paragraph 24.19 which indicates that although proxy marriages are not recognised under Nigerian civil law they are allowed under customary law. It is also contended in the COI 2012 Report at paragraph 12.12 that:-

“A salient feature of customary law in Nigeria is that it must be accepted by the community in which it is practised...To the extent that Islamic law is primarily written, it contains a certain level of rigidity not available in the flexibility of unwritten customary laws. Customary law in Nigeria is established either by the courts taking judicial notice of the fact that it exists, or it is established by proof. Proof of customary law can further be distinguished by the forum in which such proof is called for. It could be in a non-customary or non-area court, or it could be in those two systems of courts that are the primary Tribunals for the adjudication of matters of customary and Islamic law”.

6. Thus it is contended that marriage by customary law in Nigeria is recognised and is established either by the court taking judicial notice of the fact that it exists or established by proof. Thus it is contended that the respondent was incorrect in saying that proxy marriage were not customary marriage and was not capable of being recognised as such by the authorities.
7. At the hearing the First-tier Tribunal Judge adopted as a basis for the consideration of the validity of the marriage whether or not the parties had been present at the marriage ceremony itself. Also that proxy marriages had ceased to be valid although they still occurred. The Judge found that the mere fact that a court had provided written confirmation of the marriage was not sufficient proof that it was valid under Nigerian civil law.
8. The Judge did not find that there was a durable relationship nor that Article 8 ECHR was engaged in this case.
9. Grounds of appeal were submitted essentially on the basis that the Judge had not fully looked at the background material dealing with customary marriage and failed to take account that the marriage was a customary one recognised by a "local customary court". Reliance was placed upon the Nigerian Marriage Act 1949 which provides that although a person married under the Act is incapable of contracting a valid marriage under customary law, nothing in the Act affects the validity of any marriage conducted under or in accordance with any customary law. It was contended therefore that the Judge erred in law in finding that the marriage was not valid, albeit that it was conducted by proxy and was not valid under Nigerian law.
10. Permission to appeal was granted on that basis and thus the matter came before me for hearing on 22nd March 2013. The background material relating to this question was very brief indeed.
11. Paragraph 24.21 of the COIS report of 6th April 2011 states as follows:-

"The United States State Department Reciprocity Schedule, in an undated section on marriage certificates in the country, recorded that both parties to the marriage technically must be physically present at the same location with witnesses to sign certain marriage documents, proxy marriages have ceased to be valid but still occur."
12. There was however a further paragraph in the same report namely paragraph 24.19 which reads as follows:

"In an email from the British High Commission in Abuja to UKBA of 1st December 2008 it was stated:
'Although proxy marriages are not recognised under Nigerian civil law, they are allowed under customary law'."

13. It was argued before me that the First-tier Tribunal Judge approached the matter on the point of view that proxy marriages were not recognised as such under Nigerian civil law and failed to appreciate that such may be recognised under customary law. It was contended that had the Judge noted paragraph 24.19 that the approach to the case may have been materially different.
14. It seems to me that paragraphs 24.19 and 24.21 of the COI Report present an extremely and unrealistically narrow basis upon which to resolve this issue. No doubt in relation to each customary marriage there is a manner and way in which that custom falls to be satisfied. Even taking 24.19 at its highest, for a proxy marriage to be recognised under customary law it obviously has to meet that customary requirement and in the current case there is no indication whatsoever, as I have indicated before, of any detail. Nevertheless it seems to me that the Judge failed to pay any regard to paragraph 24.19 and it cannot be said with certainty as to what conclusion the Judge may or may not have come to on that particular passage. On no interpretation that is clearly supportive of the appellant's case. It is for that narrow reason that I set aside the decision of the First-tier Tribunal Judge for the decision to be remade.
15. The matter came before me for rehearing. There was before me the bundle of documents that had been before the First-tier Tribunal Judge. The appellant also attended although the sponsor did not. He said that she was unwell. I note that she did not attend on the hearing before me on 22nd March 2013, on 9th January 2013 the matter had been determined upon the papers.
16. Some guidance has been given by the Tribunal to this issue as set out in the decision of **Kareem (Proxy marriages - EU law) [2014] UKUT 0024 (IAC)**. That decision highlights a number of issues which fall for consideration in cases such as these.
17. The first issue is whether the documentation which has been presented by the appellant is such as to establish that a customary marriage took place.
18. There is a document from the Mushin Local Government Grade A Customary Court dated 23rd May 2011 confirming that the parties were married under native law and custom on 16th April 2011 at 7 Mufutau Street, Ilupeju, Mushin, Lagos State of Nigeria. The basis for that document being issued was the oral submission of the appellant's father supported by a six paragraph affidavit.

The affidavit from the appellant's father living at 7 Mufutau Street merely states that the marriage took place at 7 Mufutau Street and that it was conducted with the consent of both parents. The final document is the certificate of marriage issued by Lagos State Government on 23rd May 2011 that the marriage was performed according to native law and custom. That is a somewhat curious document bearing two dates but according to the appellant it was submitted to the Nigerian Consulate of the United Kingdom and was stamped by the consulate on 30th October 2012.

19. Mr Nasim, who represents the appellant, submits that at no stage was there any challenge made to the authenticity of those documents in particular the marriage certificate. Therefore that the documents ought to be accepted as being genuine and accordingly that the marriage did take place and has been recognised by the government.
20. In the case of **Kareem** the production of a marriage certificate issued by a competent authority (that is issued according to the registration laws of the country where the marriage took place) will usually be sufficient. A document which calls itself a marriage certificate will not raise a presumption of marriage it purports to record unless it has been issued by an authority with legal power to create or confirm the facts it attests.
21. The case of **Kareem** was indeed one based upon the allegation that a customary marriage in Nigeria had been conducted. The Tribunal was at pains in that determination to consider the ingredients that are required for the formalities of registration.
22. In considering whether the appellant's marriage certificate was issued by a competent authority the Tribunal has considered the Nigerian Births, Deaths etc. (Compulsory Registration) Act 1992 and two letters from the British High Commission dated 4th February and 22nd May 2013. Those letters are not before me but there seems to be no reason why the approach taken by the Tribunal should not be followed in this case.
23. The letter of 4th February 2013 confirmed that proxy marriages, including those where neither the bride nor groom are present, are fairly common and are recognised according to Nigerian customary law because such marriages are not merely the union of a couple but also the families. Such marriages will be legally binding where celebrated in accordance with the native law and custom of a particular community. The letter however describes the registration of such marriages.
24. Proxy marriages can only be accepted as valid in Nigerian law if conducted under customary law. Where legal requirements prescribe a marriage certificate to be presented then only a certificate issued under the Marriage Act will be acceptable. Since most couples conduct "registry weddings" in addition to their customary marriage.
25. The letter of 22nd May 2013 confirms amongst others the following points which are relevant to this appeal:
 - (1) A Nigerian citizen can marry a foreigner by proxy under customary law in a ceremony that is held in Nigeria.
 - (2) The validity of a customary marriage in Nigeria does not depend upon it being registered within 60 days.

- (3) No certificates are issued in respect of customary marriages by any recognised official body and no official records are kept.
26. The Tribunal considered the Nigerian Births, Deaths etc. (Compulsory Registration) Act 1992 and in particular part 5 of that Act which relates to the registration of customary marriages or divorces. This legislation appears to have been amended and supplemented by a statutory instrument in 1996. Part VII of the 1996 legislation indicates that there is a requirement that a customary marriage should be registered within 60 days and that certain details are to be provided and included in any certificate issued.
27. The details required for registration are the names of the bride and groom, their marital status, their occupation, their ages, their states of origin, the address of their usual place of residence, nationalities, the name of the persons who consented to the marriage and the respective relationship of those persons to the bride and groom. The certificate should include most of these details together with a registration number, the date of marriage, the date of registration and the signature of the court registrar.
28. It was recognised by the Tribunal at paragraph 40 that such provisions appear to give a different picture to that provided by the High Commission as to whether a customary marriage could be registered and whether certificates could be issued. That perhaps reflects the difficulties which arise in the absence of independent and reliable evidence regarding how the laws of a country are applied.
29. On one reading therefore if the marriage was conducted by custom it did not require the documents that have now been presented as confirmation that it took place. If that be so it raises starkly the question as to the status of such documents and why they were issued if not required.
30. If however the documents purport to be the proper registration of that wedding in accordance with the statute then clearly the document from the Lagos State Government does in no way conform to that requirement, many of the ingredients are missing from it.
31. The Tribunal were also aware that the same Nigerian laws also make provision about who can be a registrar. There was no evidence that the person who signed the certificate or court order was a registrar. The mere fact that it is said that the document from the Mushin Local Government is signed by a registrar with a stamp does not of itself mean that that registrar is properly constituted for that purpose. In any event that document from the Mushin Local Government does not contain much of the information that is required by statute for the proper registration of marriage.
32. I am unpersuaded that the certificate has been issued by a competent authority in Nigeria upon the balance of probabilities. Indeed the document issued by the

Mushin Local Government does little more than reflect the affidavit signed by the appellant's father contending that the marriage did take place.

33. It is not clear upon what basis the Lagos State Government certificate was issued but presumably on the basis of the Mushin Local Government document and the sworn affidavit. As I have indicated, much of the required detail for registration is missing and in those circumstances I do not find that the certificate was issued by a competent authority in Nigeria or that it was from an authority with legal power to create or confirm that which it attests. Indeed as I have said the reverse situation may be the case that no official certificates are issued to confirm customary marriage in which case the issue starkly arises why these documents are in existence at all.
34. Even if the marriage certificate itself is not evidence of the marriage it is open to the Tribunal to look at the surrounding circumstances to determine whether or not the proxy marriage took place.
35. The difficulty which I highlighted in my decision and directions of 22nd April was that there are many customary marriages, no doubt very particular in custom, style and content to the community who recognises them. There is nothing by way of detail in the evidence that was provided in written form to assist as to the form and substance of the marriage.
36. The appellant in his statement of 21st December 2012 produces the documents as proof of the marriage but gives little detail about how it was conducted and in what form it was conducted. The sponsor herself makes an even shorter witness statement of 21st December 2012 simply saying as follows:-

“We discussed this with our parents and would have wished to get married in the UK registry but were unable to do so due to Ade’s status. We discussed this with our parents and with their consent our marriage was done according to Ade’s custom and tradition. Once this was done we were issued with a certificate as confirmation of our marriage which was sent to us.”
37. It begs the very question as to what was actually done in pursuance of the customs of the appellant or his family. The sworn affidavit by the appellant's father is equally uninformative merely saying that the marriage took place at the address in Nigeria and that the marriage was conducted with the consent of both parents. The form of marriage is not stated.
38. The appellant gave further evidence on that matter. He said that the two families met together at his father's house, the sponsor's parents travelling to Nigeria. It was traditional that the wife's family produce a dowry of cash and other items or items of clothing and fruit. 5,000 naira was to be paid.
39. The staff from the local government also had to be present and observe the marriage and a representative of the local government was present and took a report to the

local government. A treasury receipt showed the official money paid by the parents to the council issuing the certificate.

40. The affidavit from the father does not speak to the fact that both parents were actually present and no doubt that would be a fact that could be established by the production of flight tickets from Portugal to Nigeria in the name of the sponsor's parents.
41. Ms Everett, who represents the respondent, invited me to find that the evidence was not credible that there would have been a representative of the local authority present at the wedding. It was a customary wedding and not a formal civil wedding. Indeed even if there had been such a representative there is no affidavit from that representative presented. It is unclear why a statement or affidavit from the father concerning the events in his house should be required if a representative of the Mushin administration was present to have confirmed that. The only document that is capable of being seen as possible verification is the treasury receipt representing 250 naira paid by the appellant's father to the Lagos State Government for the production of this certificate. It does not assist with the form and the substance of the marriage.
42. Having heard the appellant and having considered the evidence I do not find the appellant to be credible as to the circumstances in which the alleged marriage took place. I do not find it credible that the sponsor's parents went to Nigeria to conduct the wedding that is stated as having occurred. I do not find on the balance of probabilities that a proxy marriage or customary marriage took place as alleged or at all.
43. There is a third complication or hurdle that needs to be surmounted in cases involving EEA nationals and that is as found by the Tribunal in **Kareem** that any wedding that has been conducted must be recognised by the appropriate EEA country, in this case Portugal. As indicated there is little evidence that it was recognised by the Nigerian authorities and, even if it were, it also falls to be recognised by the Portuguese authorities. There is no evidence at all that that is the case. The Tribunal in **Kareem** set out why it came to the conclusion that that was an important matter in these cases. There is a lack of any expert or legal evidence on that matter.
44. Thus I do not find that the appellant is validly or lawfully married to the sponsor.
45. I turn therefore to consider the alternative aspect namely that of a durable relationship. The statement of 21st December 2012 gives very little detail at all as to any family life that exists between the appellant and the sponsor. The detail provided is to state:-

“Jacqueline and I are married and we live together as husband and wife. We have been married for over one year and I believe that the substance of our relationship should be considered as we have a long term relationship.”

There was no indication as to when the appellant first went out or met the sponsor. There was even less information about the relationship from her in her statement. Significantly she does not appear at the hearing. There has been no more detailed statement from her as to her situations and circumstance. I indicated in the decision of 4th April 2013 that on the rehearing any expert evidence or any evidence in connection with family or private life should be served. None has been provided. The appellant has although present at the hearing given little detail as to his relationship.

46. The documents that were submitted in the bundle really add very little to the nature of the relationship that is claimed. There are some wage slips in relation to the sponsor, various Customs and Revenue forms to show that she is working in the United Kingdom. There are a number of bank statements, documents to show that she lives at 168 Rye Hill Park in London. There is a mobile phone document with the name of the appellant at that address dated August 2011 and a tenancy agreement, the names of the appellant and the sponsor 95 Woolmore Street in London as from 23rd April 2011 for a term of twelve months. Finally there are photographs purporting to show signs of affection between the sponsor and the appellant although the date of those photographs it is not clear.
47. Therefore is there little material that is before me to conclude that a durable relationship is in existence. Significantly the First-tier Tribunal Judge highlighted the paucity of any information or evidence concerning durable relationship in paragraphs 8 to 10 of the determination. Despite the lapse of time since that decision nothing further has been presented.
48. In all the circumstances therefore I do not find that the appellant is validly married according to the laws and customs of Nigeria nor do I find that he is in a durable relationship with the sponsor.
49. In those circumstances his appeal against the decision to refuse to grant him a registration certificate is dismissed.

Signed

Date

Upper Tribunal Judge King TD