



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/03274/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6 November 2014**

**Determination
Promulgated
On 11 February 2015**

Before

UPPER TRIBUNAL JUDGE DEANS

Between

MS CHRISTABEL NANA HEMAA DANSO

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Blum of Counsel, instructed by Rahman & Co Solicitors

For the Respondent: Mr P Armstrong, Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) This is an appeal with permission against a decision by Judge of the First-tier Tribunal Hunter dismissing an appeal against a refusal by the respondent to issue the appellant with a residence card under the EEA Regulations.
- 2) The appellant was born on 28 October 1984 and is a national of Ghana. She submitted to the respondent a Ghanaian customary marriage certificate stating that she was married to her EEA national spouse on 25 July 2009

by proxy in Ghana. The certificate stated that this marriage was registered with the District Registrar on 4 September 2013.

Decision of the First-tier Tribunal

- 3) The judge addressed a number of issues raised by the respondent relating to the validity of the proxy marriage, in accordance with NA (Customary marriage and divorce – evidence) Ghana [2009] UKAIT 00009. The first of these was that the appellant's spouse was a Dutch national and a valid customary marriage can be contracted validly only between two Ghanaian citizens. There was evidence before the judge, however, to show that the appellant's spouse had Ghanaian nationality at the time of the marriage ceremony.
- 4) The second issue the judge was required to address was the relationship between the appellant and the person who represented her at the marriage ceremony, whom she claimed was her father, and the relationship between her spouse and the person who represented him. In accordance with NA, it was a requirement of a valid marriage that representatives of the two families were present as witnesses to the event.
- 5) The appellant was able to produce evidence, in the form of birth certificate, to show that she was represented at the event by her father. The birth certificate for the appellant's spouse was accepted by the judge as showing that he was also represented by his father.
- 6) The third issue the judge was required to address in respect of the proxy marriage was whether a statutory declaration which accompanied the marriage certificate was valid. The judge noted that on the face of the marriage certificate it was stated that the parties were residing in the UK and that the appellant was a spinster and the bridegroom had no other existing marriage. The judge accepted that this information should be read along with the information contained within the statutory declaration and that the certification complied with the Ghanaian statutory requirements.
- 7) To support this view the judge had regard to a letter dated 28 January 2014 from the Ghanaian High Commissioner in London confirming that the marriage was properly registered in accordance with the statutory provisions in Ghana.
- 8) The respondent had accepted in terms of CB (Validity of marriage: proxy marriage) Brazil [2008] UKAIT 00080 that a proxy marriage would be recognised as valid in the UK where it was legal in the country in which it took place.
- 9) The next question the Judge of the First-tier Tribunal was required to address was whether, as the appellant's spouse was a Dutch national, the

proxy marriage would be recognised in the Netherlands, as required by the decision in Kareem (Proxy marriages – EU Law) Nigeria [2014] UKUT 00024. The judge heard a submission on behalf of the appellant to the effect that under Dutch law a marriage certificate issued by a competent authority would be recognised but found there was no evidence to support this submission. The judge noted in accordance with Kareem that without independent and reliable evidence about the recognition of the marriage under the laws of the EEA country concerned, as well as the country where the marriage took place, it was likely that the Tribunal would be unable to find that sufficient evidence had been provided to discharge the burden of proof. The Tribunal went on to state that mere production of legal materials from the EEA country concerned would be insufficient evidence because this would rarely show how such law is understood or applied in that country. A mere assertion as to the effect of such laws would for similar reasons carry no weight.

- 10) In accordance with Kareem the judge was not satisfied that the proxy marriage in Ghana would be recognised under Dutch law. Accordingly the appellant was unable to show that she was the family member of an EEA national in accordance with regulation 7 of the EEA Regulations.
- 11) The Judge of the First-tier Tribunal then went on to consider whether the appellant could be considered a family member of her spouse under Regulation 8(5) on the basis that she was the partner of an EEA national and could show that she was in a durable relationship with the EEA national. In relation to this, the judge noted that although the parties were married in July 2009 they did not start living together until September 2012. The reason for this was that the appellant was still studying and then looking for a job, although the judge did not find her explanation in this regard to be satisfactory. There was very little in the way of documentary evidence to show the couple were cohabiting. In consequence the judge was not satisfied that the appellant was in a durable relationship with her EEA national partner.

Application for permission to appeal

- 12) The application for permission to appeal was made on the basis that although the Judge of the First-tier Tribunal referred to the case of Kareem, the judge did not consider what the Tribunal's decision actually stated about Dutch law and the recognition of marriages. The case of Kareem concerned a Dutch national who was married by proxy in Nigeria. The Tribunal considered the relevant provisions of the Dutch Civil Code at paragraphs 25 to 32 of the decision. This included a provision that where a marriage was contracted outside the Netherlands and was valid under the law of the state where it took place or became valid afterwards according to the law of that state it would be recognised in the Netherlands as a valid marriage. In addition, a marriage was presumed to be valid if a marriage certificate had been issued by a competent authority.

- 13) The application pointed out that in the case of Kareem, the Tribunal was not satisfied that the marriage would be treated as valid in Nigeria. In the present appeal, however, the judge had found that the marriage was valid in Ghana and that the marriage certificate had been issued by a competent authority. The judge then stated that no evidence was provided to show that a marriage certificate issued by a competent authority would be recognised under Dutch law and so the judge concluded that it had not been established that the marriage would be recognised under Dutch law. In so doing the judge did not consider key elements of Kareem, as referred to above. The judge should have realised that the marriage would be presumed to be valid in the Netherlands as the certificate was issued by a competent authority and was valid under the law of Ghana.
- 14) Permission to appeal was granted on this basis.
- 15) A rule 24 notice dated 10 October 2014 was submitted on behalf of the respondent. This stated that the grounds of the application were misconceived. It was explicitly set out in Kareem that the Upper Tribunal was not capable of making any findings on Dutch law without expert evidence. Reference was made to paragraph 29 of Kareem, in which it was stated that the passages from the Dutch Civil Code cited were silent on whether a proxy or customary marriage would be recognised in the Netherlands or whether such a marriage would be incompatible with Dutch public order. It was recognised that Article 1:66 permitted marriage by representation in certain circumstances, which would suggest that marriage in the absence of one of the parties would not be contrary to Dutch public order. The Tribunal, however, had no evidence on this complex issue and had been given no assistance on how Dutch law might apply.
- 16) It was submitted on behalf of the respondent that there was no expert evidence before the First-tier Tribunal in the present appeal and therefore there was nothing which identified how Dutch law applied. The Judge of the First-tier Tribunal did not err.

Submissions

- 17) At the hearing before me, Mr Blum acknowledged that the issue was a narrow one. The Judge of the First-tier Tribunal did not follow the findings of the Tribunal in Kareem at paragraphs 25-31. Under Dutch law, according to paragraph 27 of Kareem, if there was a marriage certificate then the presumption was that it was valid. In the rule 24 notice the respondent relied on paragraph 30 of Kareem but at paragraph 31 the Tribunal had proceeded to consider whether the marriage certificate in that case would be presumed valid. The tribunal did not need to consider whether the Nigerian certificate in Kareem was a proper certificate unless it was satisfied that this aspect of the Dutch Code was clear. The Dutch

Civil Code, as understood by the Upper Tribunal in Kareem, showed a presumption in favour of validity. The Judge of the First-tier Tribunal in the present appeal said there was no evidence on recognition under Dutch law but did not have regard to the actual assessment made by the Upper Tribunal in Kareem. At paragraph 68.c of Kareem the Tribunal stated that a document which called itself a marriage certificate will not raise a presumption of the marriage it purports to record unless it has been issued by an authority with legal power to create or confirm the facts it attests. Reference was made to TA (Kareem explained) Ghana [2014] UKUT 00316. There was enough of the Dutch Code accepted in Kareem to show that the marriage in the present appeal would be recognised as a valid marriage.

- 18) It was pointed out to Mr Blum that according to the quoted provision from the Dutch Civil Code, the certificate would raise no more than a presumption of validity. Mr Blum submitted that it would be up to the Secretary of State to challenge this presumption.
- 19) For the respondent, Mr Armstrong submitted that there was no material error. The judge had referred to the observations made by the Upper Tribunal at paragraph 68 of Kareem and this showed that they were in the judge's mind. There was no evidence in the form of a letter from the Netherlands stating that the marriage was valid. The appellant bore the onus of proving the validity of the marriage in the Netherlands and in the absence of documentary evidence she had failed to discharge this burden.
- 20) In response Mr Blum emphasised that the judge did not look at all the evidence. The judge did not need to look at the evidence in relation to Dutch law if the judge was not satisfied that the proxy marriage was valid under the law of Ghana, as in Kareem the Tribunal was not satisfied that the proxy marriage under consideration in that case was valid under the law of Nigeria. In the present appeal the judge had looked at the general points in the headnote to Kareem but neglected to look at the actual assessment carried out by the Upper Tribunal. The Upper Tribunal in Kareem was satisfied by the provisions of the Dutch Civil Code that it was necessary to look at the validity of the marriage certificate in Nigeria.

Discussion

- 21) As Mr Blum submitted, the issue in this appeal is a narrow one and in considering it I have been ably assisted by the parties in their written and oral submissions.
- 22) On the face of it, the provisions of Article 10:31(4) of the Dutch Civil Code, as set out in Kareem, indicate that a marriage will be presumed to be valid if the marriage certificate has been issued by a competent authority. In addition Article 10:31(1) states that a marriage which is valid under the law of the state where it took place, or has become valid afterwards

according to the law of that state, will be recognised in the Netherlands as a valid marriage.

- 23) As the respondent pointed out, in terms of paragraph 29 of Kareem, however, these provisions are silent on whether a proxy or customary marriage will be recognised in the Netherlands. Furthermore, as was pointed out at the hearing before me, the marriage certificate raises no more than a presumption of validity, according to the Dutch Civil Code, and it is not clear how this presumption might be challenged or who would bear the onus of doing so.
- 24) I am satisfied that these issues could be resolved only by either expert evidence from a lawyer well-versed in the relevant Dutch law or by some form of recognition by the appropriate statutory authority in the Netherlands. I accept, as Mr Armstrong submitted, that the onus is on the appellant in this appeal to produce such evidence and she has not done so. In the absence of such evidence, the judge was not required to speculate about the application of the provisions of the Dutch Civil Code as set out in Kareem, even assuming they were still applicable.
- 25) Mr Blum attempted to show that reliance could be placed upon the provisions of the Dutch Civil Code referred to in Kareem because in Kareem the Tribunal went on to consider whether a proxy marriage conducted in Nigeria would be recognised as valid in that country. The validity of the marriage in Nigeria was a prerequisite for recognition of the marriage in the Netherlands. There would be no need to look at the validity of the proxy marriage under Nigerian law if such a marriage would not be recognised in the Netherlands.
- 26) I do not consider that the Tribunal's efforts in Kareem in seeking to establish whether the marriage would be recognised in Nigeria show that the Tribunal accepted without qualification that if the marriage was recognised in Nigeria it would be recognised in the Netherlands. Recognition in Nigeria was an essential first step prior to considering whether the marriage would be recognised in the Netherlands. If the Tribunal had been satisfied that the marriage was recognised in Nigeria, the Tribunal would then have had to return to the issue of whether the marriage would be recognised in the Netherlands. As the Tribunal found, however, that the marriage was not recognised in Nigeria, it did not need to return to this issue, which remained without any final resolution in the decision in Kareem.
- 27) The position in this appeal is that the Judge of the First-tier Tribunal did not have adequate or sufficient evidence to show that the proxy marriage, although recognised in Ghana, would be recognised in the Netherlands. In the absence of such evidence the Judge of the First-tier Tribunal did not err in law in finding that the appellant had not shown that a proxy marriage in Ghana would be recognised under Dutch law. Accordingly the decision by the Judge of the First-tier Tribunal shall stand.

28) As the judge pointed out, relying upon Kareem, without independent and reliable evidence about the recognition of the marriage in the relevant EEA country, the Tribunal is likely to be unable to find that sufficient evidence has been provided to discharge the burden of proof. Mere production of legal materials from the EEA country will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. This is precisely the position in this appeal where legal materials from the Dutch Civil Code are cited without evidence to explain how proxy marriages are regarded or how any presumption in relation to validity, if it applies to a proxy marriage, would be treated. These are obvious issues arising from a reading of the relevant provisions of the Dutch Civil Code but there may be others, which would only be known to an expert witness from that jurisdiction.

Conclusions

29) The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

30) I do not set aside the decision.

Anonymity

31) The First-tier Tribunal did not make an order for anonymity. I have not been asked to make such an order and I see no reason to do so.

Signed

Date **6 November 2014**

Judge of the Upper Tribunal