



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

Appeal Number: HU/03154/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 February 2018**

**Decision & Reasons Promulgated  
On 28 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FROMM**

**Between**

**NANCY ROBI MAKURI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Maku-Kemi, Solicitor

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS ON ERROR OF LAW**

1. The appellant is a citizen of Kenya born on 3 June 1984. She came to the UK in order to study but remained following her marriage to a British citizen, Mr Dema Mandiangu (“the sponsor”). She was granted leave to remain as a spouse from 1 February 2013 until 1 February 2015. The decision now appealed resulted from the refusal of the respondent to grant her indefinite leave to remain. That decision was made on 19 January 2016.
2. The reasons for refusal letter explained that the appellant and the sponsor were invited to attend marriage interviews on 14 January 2016. The

respondent was satisfied that information obtained from those interviews cast doubt over the genuineness of the relationship. The discrepancies between the respective answers provided did not demonstrate the level of familiarity that would be expected from a genuine couple. Examples are set out in the letter. The respondent relied on paragraph 287(a) of the Immigration Rules and also paragraph 322(2) because it was considered the appellant had made false representations regarding her relationship.

3. The appellant appealed to the First-tier Tribunal arguing her marriage was genuine and subsisting and therefore the decision amounted to a breach of article 8 of the Human Rights Convention. The appellant and the sponsor gave oral evidence at the appeal hearing and they maintained that their marriage was subsisting.
4. In a decision promulgated on 29 June 2017, Judge of the First-tier Tribunal Traynor dismissed the appeal. In a lengthy decision containing a thorough assessment of the evidence, he came to the following conclusions in paragraph 65:

“It was submitted that the Appellant has always respected the Immigration Rules and, therefore, there was no reason why she would seek to contravene those Rules. However, in circumstances where she and the person who she married know little of each other, I find that the Respondent was entitled to conclude that on the balance of probabilities they are not involved in a genuine and subsisting relationship, but rather that they have entered into an arrangement, namely a marriage of convenience, so as to enable the Appellant to remain in this country in circumstances where she would not otherwise be entitled. It is accepted that the Appellant held leave to remain as a student until 13 November 2012 and that, following her marriage in April of that year, she applied in July for leave to remain as a spouse. It is therefore accepted that she has always held lawful leave to remain. Nevertheless, that does not mean that the arrangement she has had with the person who she has married is such that they are involved as a genuine couple who share a common home and a common domestic way of life. I find that there are significant discrepancies in their knowledge of each other which lead me to conclude that they have failed to provide credible explanations as to why they would withhold information or not have knowledge of each other’s families, particularly where they come from different countries. The fact that she was granted leave to remain as a spouse in 2012 was based solely upon the fact that the parties had only recently married. I acknowledge that in May 2015 the first application was refused because the Appellant was not able to provide evidence of English language proficiency as required by the Immigration Rules. Whilst the Respondent has not explained why the Appellant was not interviewed at that time, the fact remains that when she and her spouse were interviewed their answers were both discrepant and inconsistent. All of this satisfies me that the application does not establish that the parties are involved in a genuine and subsisting relationship and, therefore, the refusal under the Rules was entirely correct.”

5. The judge concluded that he could not be satisfied that there was subsisting family life and he dismissed the appeal on article 8 grounds.
6. The appellant sought permission to appeal on two grounds but permission to appeal was granted only on the second of them. Judge of the First-tier Tribunal Grant-Hutchinson noted the argument that the judge had arguably erred in law in that he misapplied the burden of proof concerning a marriage of convenience by placing the burden on the appellant, not the respondent. She found it was arguable the judge had misdirected himself on this point which could have made a material difference to the outcome or the fairness of the proceedings in this regard.
7. The respondent has not filed a rule 24 response. I heard submissions from the representatives on the question whether the judge made a material error of law in his decision.
8. Mr Maku-Kemi relied on the points made by Judge Grant-Hutchinson in her order. He suggested that there had been unfairness in the proceedings as result of the judge directing himself incorrectly that the burden rested on the appellant. Mr Bramble noted that the judge had made a decision under paragraph 287 of the rules but not paragraph 322. In the latter case, the burden did rest on the respondent to establish that false representations had been made. He said the judge had made an error in his self-direction at paragraph 49 but this error was not material. Clear reasons had been given in the decision as to why he did not accept the marriage was subsisting and the threads had been drawn together in paragraph 65 of the decision. In reply, Mr Maku-Kemi emphasised his view that the matters relied on by the judge did not entitle him to come to the conclusion that the marriage was not subsisting.
9. At the end of the hearing, I indicated that I did not consider the judge had made a material error of law and the appeal was dismissed. My reasons are as follows.
10. Firstly, the grounds seeking permission to appeal are misguided in their reliance on the concept of a marriage of convenience. Of course, I recognise the judge used those words in paragraph 65 of his decision. However, a marriage of convenience is a concept applicable only in European law and this appeal contains no element of European law. When paragraph 65 is read as a whole it is clear that the judge had at the forefront of his mind the correct test which lay at the heart of this case, namely, whether the appellant and the sponsor were in a genuine and subsisting marriage. His reference to a marriage of convenience appears to be an inference drawn from his primary finding that, in the past, the couple entered into an arrangement. However, that does not mean that the judge erred in his primary finding regarding the subsistence of the relationship. His self-direction at paragraph 49 of his decision, that the burden of proof was on the appellant to establish on a balance of probabilities that she and the sponsor were involved in a genuine and subsisting relationship, was correct.

11. Secondly, I agree with Mr Bramble that the error on the part of the judge in failing to direct himself that the burden of establishing the general discretionary ground for refusal applied in this case could not be material. He did not make a clear finding about false representations. He did not have to give that a finding that there was no subsisting relationship effectively put an end to the appeal. If there was no relationship of the kind relied on, the appellant had not shown article 8 was engaged.
12. Thirdly, I disagree with Mr Maku-Kemi that the reasons provided by the judge for his decision were inadequate. The judge gave numerous reasons, based on the evidence, for his decision. He took into account the explanations offered for discrepant answers but rejected them, as he was entitled to do. He did not approach the respondent's challenges uncritically. Among the numerous reasons given by the judge, two stand out. Noting that the appellant claimed to have been undergoing fertility treatment in order to have a child with the sponsor, the judge was entitled to find it inconsistent that the sponsor had not told her that he had successfully fathered a child from a previous relationship until the eve of the marriage interview and that he admitted he had never provided a sperm sample. These are very strong reasons.
13. There is no error of law in the First-tier Tribunal's decision to dismiss the appeal and the decision shall stand.
14. The appellant's appeal is dismissed.

### **Notice of Decision**

The Judge of the First-tier Tribunal did not make a material error of law and his decision dismissing the appeal is upheld.

No anonymity direction is made.

Signed

Date 23 February 2018

**Deputy Upper Tribunal Judge Froom**