



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

Appeal Number: IA/19837/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30th November 2015**

**Decision & Reasons Promulgated
On 24th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

KWAKU BADU YEBOAH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Garrod, Counsel; instructed by Justice and Law Solicitors

For the Respondent: Ms K Pal, Senior Presenting Officer

DECISION AND REASONS

1. For ease of comprehension, the parties are referred to by their appellate status and positions before the First-tier Tribunal.
2. The Secretary of State appeals with permission against the decision of Designated First-tier Tribunal Judge Taylor allowing the Appellant's appeal against the Secretary of State's refusal of his application for issue of a residence card, confirming his of a right of residence pursuant to the Immigration (European Economic Area) Regulations 2006 ("2006 Regulations").

3. In a Refusal Letter dated 30 April 2014, the Secretary of State refused the Appellant's application with reference to Regulations 7 and 8(5) of the 2006 Regulations. The Appellant appealed against that decision and the First-tier Tribunal promulgated its decision allowing the Appellant's appeal against that decision on 12 January 2015.
4. The Respondent appealed against that decision and was granted permission to appeal by Upper Tribunal Judge Doyle, to a limited extent. The sole ground upon which permission was granted may be summarised as follows:
 - '(i) It is arguable that the judge erred in considering the evidence of recognition of a proxy marriage in Ghana, with reference to headnote (g) of *Kareem (Proxy marriages - EU law) Nigeria* [2014] UKUT 24 (IAC), which states as follows:

It should be assumed that, without independent and reliable evidence about the recognition of the marriage under the laws of the EEA country and/or the country where the marriage took place, 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 or country where the marriage took place will be insufficient evidence because they will rarely show how such law is understood or applied in those countries. Mere assertions as to the effect of such laws will, for similar reasons, carry no weight.'
5. I was provided at the hearing with a Rule 24 response from the Appellant which parties had the benefit of reading before the hearing commenced.

Submissions

6. Ms Pal submitted that the judge did not engage with any of the Secretary of State's analysis of the legal deficiencies in the Appellant's evidence and instead mischaracterised her challenge as being one of fraud alone; and consequently there were no findings on whether the documents contained the material information, not whether documents were supplied. She however accepted that she was in difficulty in approaching the appeal in light of the sole ground upon which permission was granted.
7. Curiously, both Ms Pal and Mr Garrod agreed that headnote (g) of *Kareem*, as mentioned in the grant of permission, was irrelevant. For my part, it is only of passing relevance as it mentions that mere production of legal materials will be insufficient because they will rarely show how such law is understood or applied. In my view that is not the case here as it was clear based upon the materials before the judge, that Ghanaian customary law is quite clear as to how it is applied, there was evidence from the Ghanaian High Commission as to how it was understood by the relevant authorities, and the Appellant had produced unreported determinations of the Upper Tribunal which demonstrate how such law is understood and applied previously.

8. Ms Pal submitted that the Secretary of State had expected to see evidence of either the Appellant's EEA spouse (Ms Botah) having Ghanaian nationality or that her parents held Ghanaian nationality. The reason for this is that the Secretary of State's interpretation of Ghanaian customary law is that both parties to a Ghanaian customary marriage must hold that nationality or only one party should whilst the parents of the other party must hold such nationality. On that basis, Ms Pal submitted the judge had failed to grapple with whether the marriage was properly registered.
9. For the Appellant, Mr Garrod whom also was present at the hearing before the First-tier Tribunal replied at length, making reference to the voluminous bundle of evidence and materials submitted on behalf of the Appellant before the First-tier Tribunal as follows.
10. Mr Garrod first drew my attention to a letter from the Ghana High Commission dated 17 March 2014 (at pp.60-61 of the bundle) which gave detailed commentary on Ghanaian law concerning customary marriages and stated *inter alia* that "by registering a customary marriage, the State knows about the existence of the marriage; it also prevents disputes on the existence of the validity of a customary marriage; and the certificate issued to the spouses is used to support requests by Foreign Missions in applications for visas and permits". The letter gave further commentary in relation to a leading Ghanaian jurisprudence on the legality of proxy marriages known as *McCabe v McCabe* [1994] 1 FLR 410; [1994] 1 FCR 257, which confirmed that the marriage of an Irish national to a Ghanaian national was valid i.e. the customary proxy marriage was valid despite the Irish husband not being of Ghanaian nationality or origin. This Ghanaian precedent clearly contradicts the Secretary of State's position that Ghanaian nationals cannot marry foreign nationals unless that foreign national person's parents are Ghanaian.
11. I was also pointed to pages 62-66 of the bundle which showed a letter from the Ghana High Commission dated 9 November 2012 which confirmed that 4 items attached to the letter were genuine. These documents consisted of a Certification from the Legal and Consular Bureau, a Certification from the First Deputy Judicial Secretary of the Judicial Service of Ghana (dealing with the declaration confirming the marriage), a Statutory Declaration (confirming the marriage before a Notary Public) and a Form of Register of Customary Marriage issued by the Registrar. Mr Garrod submitted that this was evidence before the judge that the Appellant and Ms Botah had been complied with the formalities of registering the customary marriage. This was because the Registrar was satisfied with the marriage and issued a certificate. This was reinforced by the letter from the High Commission confirming the authenticity of those documents validating the marriage.
12. Directly tackling the Secretary of State's ground of appeal concerning whether marriages between Ghanaian nationals and foreign nationals were permissible and in what circumstances, Mr Garrod drew my attention to a previous reported determination of the Upper Tribunal known as *NA*

(*Customary marriage and divorce – evidence*) Ghana [2009] UKAIT 00009 at [10-11] wherein the expert opinion of a barrister (Ms Mercy Akman of 36 Bedford Row) was accepted by the Upper Tribunal. Ms Akman’s report was referred to by the Upper Tribunal at [11(5)] wherein she stated *inter alia* as follows:

“... A valid customary marriage can only be validly contracted between two Ghanaian citizens and both parties must have capacity to marry ...”

13. That, Mr Garrod submitted, was the source of the Secretary of State’s position that marriages can only be contracted between Ghanaian citizens; however that authority was overtaken on this issue by a later unreported determination of the Upper Tribunal. To this end, Mr Garrod referred to the determination of Upper Tribunal Judge Martin in *Alexandra Amoako v Secretary of State for the Home Department* (unreported, IA/23315/2012) which saw the same expert barrister resile from her previous expert evidence, at paragraph 3, in the following terms:

‘The Appellant had also obtained a further expert report from the same expert who had given evidence in *NA*, Mercy Akman. It was she who, before the Tribunal in *NA*, said that customary marriages were only available to Ghanaian nationals. In her new report she said that she, after additional research and reflection, wished to clarify and revise that opinion to say that customary marriages were available between non-Ghanaian citizens. I have concerns about that expert opinion because it was not sourced or evidence-based which cast doubt, in my view, over not only that expert report but the evidence before the Tribunal in *NA*. However that all became somewhat irrelevant when Mr Walker produced a UKBA document entitled “Customary Marriage and Divorce/Proxy Marriages contracted in Ghana” dated 17th January 2012 which at page 3 refers to those eligible to enter into such marriages and it includes:-

- Ghanaian nationals resident in Ghana or abroad;
- At least one of the parties must be a Ghanaian national;
- If both parties are non-Ghanaian nationals at least one of the parents of any of the couple must be a Ghanaian national
- For a customary marriage to be registered. Non-Ghanaian nationals with no parental links to Ghanaian citizenship are not entitled to customary marriage certificates.’

14. Mr Garrod highlighted that Ms Botah, was born in Ghana and drew my attention to her previous passport (at p.542 of the bundle) even though she was now an EEA national.
15. I was then directed to pp. 633-635 of the bundle, wherein the Appellant’s solicitors had produced sections 5-19 of the Customary Marriage and Divorce (Registration) Law 1985. Within that legislation, Mr Garrod referred to section 13 which reads as follows:

'In any proceedings a true copy of the entry in the register certified under the hand of the Registrar shall be admissible in evidence as sufficient proof of the registration of the marriage or the dissolution of the marriage.'

16. Mr Garrod highlighted that registration of a customary proxy marriage was mandatory from 1985 to 1991, however, failure to register did not affect the validity of the marriage and registration is now optional as confirmed at [24(b)] of *NA*. All of which was explained to the judge in submissions.
17. I was then asked to note the references in the Refusal Letter to section 3(1)(c) of the Customary Marriage and Divorce (Registration) Law 1985. Section 3(1) states as follows:

'The application for registration of the marriage shall be accompanied by a statutory declaration stating the following:-

 - (a) names of the parties to the marriage;
 - (b) the places of residence of the parties at the time of the marriage;
 - (c) that the conditions essential to the validity of the marriage in accordance with the applicable customary law have been complied with.'
18. Mr Garrod submitted that the Home Office's interpretation of the legislation was that the Home Office expect these matters underlying the registration to be proven to them independent of the fact that the marriage has been registered, however by virtue of the 1985 legislation, a Ghanaian would only need to prove eligibility to a registrar and then would be able to rely on the marriage certificate after the event, the issue of registration having been satisfactorily discharged according to the Registrar's satisfaction under law. Mr Garrod suggested it would be staggering to suggest that the marriage certificate formalities have not been complied with simply because the marriage certificate is a Ghanaian one, as opposed to one from a European country. He submitted that the registration certificate from the Registrar should be accorded respect following registration to the Registrar's satisfaction, in accordance with section 13 of the Customary Marriage and Divorce (Registration) Law 1985. In short, the Secretary of State is misapplying Ghanaian law. The test is whether the marriage is registered in Ghana, which it is, and if so, the certificate would be sufficient proof.
19. In conclusion, Mr Garrod submitted that it was only necessary in this particular appeal that the Appellant was Ghanaian as confirmed by the Registry, by the Ghanaian High Commission referring to *McCabe v McCabe*, through the retreat from the expert evidence in *NA* and the UKBA document entitled "Customary Marriage and Divorce/Proxy Marriages contracted in Ghana" referred to in *Alexandra Amoako* by the Secretary of State. In that light, pursuant to section 13 of the Customary Marriage and Divorce (Registration) Law 1985, the marriage was registered and the certificate of marriage was sufficient proof for the purposes of this appeal.

No Error of Law

20. I do not find that there was an error of law in the decision such that it should be set aside. My reasons for so finding are as follows.
21. In relation to the sole issue, it is unfortunate that the grounds of appeal did not refer to the evidence before the judge at the First-tier Tribunal, as in my view, this considerable evidence demonstrated that the judge had sufficient cause to find in the Appellant's favour. I am most grateful to Mr Garrod for his exhaustive submissions which highlighted the evidence before the First-tier Tribunal and upon which submissions were made. I therefore find that the First-tier Tribunal had sufficient cause to find as it did, however even if there were an error in the extent of reasons given, I am fortified in my view that such omission would be immaterial given my view of the evidence. Tying together the evidence and legislation I was pointed to and have rehearsed above, I find as follows in relation to each item.
22. In relation to the letter from the Ghanaian High Commission dated 17 March 2014, which gave detailed commentary on Ghanaian law concerning customary marriages (as summarised above) the Ghanaian authorities have expressed their view on their law governing customary proxy marriages and it is their view that registration demonstrates the validity of a customary marriage and the certificate issued thereafter is sufficient evidence of this lawful registration which is used to support requests by Foreign Missions in applications for visas and permits.
23. This stance accords with my view of the Customary Marriage and Divorce (Registration) Law 1985. In relation to section 3(1)(c), this section rehearses the items that shall be submitted for registration of a customary marriage. In essence, this is a question of lawful procedure which the Registrar for marriages will necessarily review before issuing a couple with a Form of Register of Customary Marriage. Section 13 makes clear that following registration, a true copy of the entry in the register certified under the hand of the Registrar is sufficient proof of the registration of the marriage. The evidentiary value of such an entry is clearly of some weight given that the legislation makes clear that such evidence is admissible in proceedings and is admissible as sufficient proof of registration. Therefore, in an application such as the instant one that the Appellant and his spouse previously made, as opposed to legal proceedings, it is unclear why the Respondent would question the due process of the registration that the Registrar has already considered, satisfied themselves of and consequently issued a Form of Register of Customary Marriage. This stance is also tenuous given that the Ghana High Commission rely on certificates in Ghanaian Foreign Missions in relation to visas and permits. Consequently, the provision of a marriage certificate where the marriage has been registered was sufficient proof of a marriage validly registered by the Registrar. It would seem to me that if the Respondent seeks to take issue with prima facie evidence of a valid marriage, it should obtain

appropriate evidence of its invalidity, such as a confirmation by the Registrar that the registration was in fact invalid.

24. In relation to the issue of whether the Appellant could enter into a marriage with Ms Botah, given that she was an EEA national and was no longer a Ghanaian national, I accept that the expert evidence in relation to this issue highlighted in NA, has been retreated from. There was certainly no contradictory evidence or legislation from the Respondent on this issue either before the First-tier Tribunal or myself. Were there any doubt as to the ability of a non-Ghanaian national (without Ghanaian origin or ancestry) to enter into a customary proxy marriage with a Ghanaian national, that doubt is clearly dispelled in light of the jurisprudence referred to by the Ghana High Commission on the legality of proxy marriages in *McCabe v McCabe*. The fact that the Ghanaian courts found that a marriage between an Irish national and a Ghanaian national was valid despite the Irish national not being of Ghanaian nationality or origin places this issue beyond question, even against the evidence expected of parties according to headnote (g) of *Kareem*.
25. In relation to the further issue raised by the Secretary of State's Refusal Letter that Ghanaian nationals cannot marry foreign nationals unless that foreign national person's parents are Ghanaian, it is not necessary for me to decide this issue given the document drawn to my attention which appeared in *Alexandra Amoako* and was helpfully cited therein. As stated in that determination, those eligible to enter into Customary Proxy Marriages include:
- Ghanaian nationals resident in Ghana or abroad;
 - At least one of the parties must be a Ghanaian national;
 - If both parties are non-Ghanaian nationals at least one of the parents of any of the couple must be a Ghanaian national
 - For a customary marriage to be registered. Non-Ghanaian nationals with no parental links to Ghanaian citizenship are not entitled to customary marriage certificates.
26. This document was not placed before me by either party but was only relied upon to the limited extent that it appeared in the *Alexandra Amoako* determination of Upper Tribunal Judge Martin. Nonetheless as a document upon which the Respondent has previously relied and given that she did not seek to retreat from its position before me, I shall take into consideration. The Appellant clearly falls under the first bullet-point as a Ghanaian national resident in the UK, and the marriage satisfies the second bullet-point as the Appellant is a party to the marriage and at least one of the parties to the marriage is therefore Ghanaian. In relation to the third bullet-point, it is of irrelevance given the Appellant's nationality, and therefore I reject Ms Pal's submission that the Appellant needed to show that Ms Botah's parents were Ghanaian. It appears that this would only be necessary if neither party to the marriage was Ghanaian. It is also clear that the third bullet-point contradicts the second, making this document's

interpretation somewhat unhelpful. Finally, the fourth bullet-point is not relevant for the purposes of this appeal.

27. My view is further enforced by the reference in *Alexandra Amoako* to the expert evidence of Mercy Akman in *NA* being clarified before the Upper Tribunal on that occasion. In harmony with Upper Tribunal Judge Martin, I do not place weight upon that expert evidence, particularly as it is not before me, but also for the reasons given in *Alexandra Amoako* and in light of that expert evidence not contradicting the UKBA document referred to above.
28. Therefore, I accept Ms Pal's submission that the evidentiary burden of establishing a valid customary proxy marriage lies with the Appellant; however, pursuant to the valid registration of the customary marriage, production of the marriage certificate was sufficient *prima facie* proof of that marriage's validity. This validity is confirmed by section 13 of the Customary Marriage and Divorce (Registration) Law 1985 and enforced by the letters and attachments from the Ghana High Commission.
29. The judge's consideration of the evidence refers to considering those certificates at paragraph 23 of the determination. As an aside, the authenticity of those documents was also accepted by the Respondent (see paragraph 5 of the determination) before the First-tier Tribunal. Therefore, in relying upon those certificates, including the marriage certificate, the judge did not fail to consider the evidence of recognition of a proxy marriage in Ghana. Even if I am wrong in this view, having considered the evidence for myself, I do not find that any omission in the judge's consideration resulted in material error such that the determination should be set aside.
30. Consequently, given my findings above, the grounds do not reveal an error of law such that the decision should be set aside.

Decision

31. The appeal to the Upper Tribunal is dismissed.
32. The decision of the First-tier Tribunal is affirmed.

Signed

Date

Deputy Upper Tribunal Judge Saini