IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006127

First-tier Tribunal No:
EA/04931/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 May 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

Ms SAGAL WARSAME MOHAMED
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mahamed Cali Nur, sponsor
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 29 March 2023

DECISION AND REASONS

Introduction

1. We have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of the Appellant. Having considered all the circumstances and evidence we do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Mace promulgated on 31 August 2022, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 26 November 1994 and is a national of Somalia.

4. On 27 November 2021 the Appellant applied for an EUSS family permit as the wife of an EU National who has leave to remain in the UK.

5. On 11 April 2022 the respondent refused the Appellant's application because the respondent was not satisfied that the appellant and her sponsor had celebrated a legally recognised marriage.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Mace ("the Judge") dismissed the appeal against the Respondent's decision.

7. Grounds of appeal were lodged, and on 25 November 2022 Judge S Aziz gave permission to appeal stating

> It is arguable for the reasons set out at paragraphs 3-8 of the grounds that the Judge may have incorrectly concluded at paragraph 18 of the decision and reasons that Kenyan law does not accept as lawful an Islamic marriage conducted by proxy. The Marriage Act 2014 (referred to in the grounds) does appear to suggest that such marriages are lawful.

Representation

8. On 28 March 2023, the appellant's representative emailed the tribunal, saying:

> We write to confirm that we are no longer instructed in relation to the above mentioned hearing. The sponsor Mr Mahamed Cali Nur will be appearing on behalf of the appellant.

9. The respondent was represented by Mr A Nolan, a Senior Home Office Presenting Officer. The appellant was represented by her sponsor, Mr Mahamed Cali Nur. Mr Nur told us that the appellant's former solicitors told him to attend the hearing and reassured him that negotiating the hearing would be easy. We explained the procedure to be adopted to Mr Nur and helped him to move the grounds of appeal.

The Hearing

10. Ms Nolan opposed the appeal and relied on the respondents Rule 24 response. She told us that the decision does not contain an error of law, material or otherwise. Ms Nolan told us that the Judge carefully considered the (Kenyan) Marriage Act 2014. Ms Nolan took us to [16] to [19] of the Judge's decision and referred us to the guidance given in both Cudjoe (Proxy marriages: burden of proof) 2016 UKUT 00180 and Kareem (Proxy marriages – EU law) 2014 UKUT 24.

11. Relying on the guidance given in both of those cases, Ms Nolan told us that proof of proxy marriage is not limited to production of a marriage certificate. She told us that the Judge was correct to consider the law applicable in Kenya, and that the Judge carefully considered the terms of the (Kenyan) Marriage Act 2014, before reaching a sustainable conclusion that the marriage between the appellant and the sponsor is not recognised in either Kenyan or UK law because section 11 of the Marriage Act 2014 does not recognise a proxy marriage in the absence of one-party.

12. Ms Nolan asked us to dismiss the appeal and allow the decision to stand.

13. Mr Nur told is that the marriage is legal in Islamic law. He told us that the law is different in Kenya, and Muslims can register a marriage long after the celebration of the marriage. After reminding us that he is not a lawyer, he urged us to allow the appeal.

Analysis

14. The appeal before the Judge came down to a determination of whether or not the appellant and sponsor are parties to a marriage which is recognised as valid in Kenyan law.

15. The undisputed facts in this appeal are that

(i) The appellant is a Somalian national. She married the sponsor by proxy in Kenya on 27 November 2020.

(ii) The sponsor is a German national with limited leave to remain in the UK.

(iii) The appellant and the sponsor were represented by members of their families at their marriage ceremony. The sponsor was represented by his father. The appellant was represented by her father and her brother.

(iv) The marriage between the appellant and sponsor was registered in Kenya 5 months later, in April 2021. On 24 May 2021, the deputy chief Kadhi of Nairobi certified that the sponsor and the appellant were married on 27 November 2020, in accordance with Islamic sharia law.

16. Cudjoe (Proxy marriages: burden of proof) 2016 UKUT 00180 provides the following guidance:

> 1. It will be for an appellant to prove that their proxy marriage was in accordance with the laws of the country in which it took place, and that both parties were free to marry. The burden of proof may be discharged by production of a marriage certificate issued by a competent authority of the country in which the marriage took place, and reliance upon the statutory presumption of validity consequent to such production. The reliability of marriage certificates and issuance by a competent authority are matters for an appellant to prove.

> 2. The means of proving that a proxy marriage was contracted according to the laws of the country in which it took place is not limited to the production of a marriage certificate, as is recognised in Kareem (Proxy marriages - EU law) [2014] UKUT 24 (IAC).

17. Between [7] and [8] of the decision, the Judge rehearses the sponsor's evidence. Between [9] and [13] the Judge considers the documentary evidence. Representative's submissions are recorded between [14] and [15] of the decision. The Judge's findings and reasons start at [16] of the decision.

18. At [22] of the decision, the Judge succinctly explains why the appeal does not succeed. The Judge says the appeal cannot succeed because the Judge was not satisfied that the marriage had been contracted in accordance with the Marriage Act 2014. The Judge finds that the appellant and sponsor are not legally married, and so the appellant cannot be a family member of an EEA national.

19. The Judge's finding at [22] of the decision is explained by the Judge's consideration of the Marriage Act 2014 at [16], [17] and [18] of the decision. In the first sentence of [18], the Judge records that section 11 of the Marriage Act 2014 operates against the appellant and sponsor because the marriage ceremony they describe is defined by section 11 of the Marriage Act 2014 as a void marriage in Kenyan law.

20. The Judge manifestly applied the provisions of section 11 of the Marriage Act 2014 (in Kenyan law) to the evidence of the sponsor (recorded at [7] & [8] of the decision) and reached a sustainable decision that the marriage contract between the appellant and sponsor is void in Kenyan law.

21. It is those findings which lead the Judge to the sustainable conclusion at [22] that the appellant is not a family member of her German national sponsor.

22. The only ground of appeal is that the Judge's interpretation of the Marriage Act 2014 is incorrect. No reliable material is placed before us to suggest that the Judge could have read section 11 of the Marriage Act 2014 in any other way.

23. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing unfair in the procedure adopted nor in the way the evidence was considered. The appellant might not like the conclusion that the Judge arrived at, but the correct test in law has been applied. The decision does not contain a material error of law.

24. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

25. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 31 August 2022, stands.

Signed Paul Doyle Date 30 March 2023

Deputy Upper Tribunal Judge Doyle