



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-002896

First-tier Tribunal No: HU/14183/2019

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 19<sup>th</sup> of October 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**  
**DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON**

**Between**

**MY**  
**(ANONYMITY DIRECTION MADE)**

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr Lawson, a Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 10 October 2023**

Order Regarding Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

**DECISION AND REASONS**

**Procedural History**

1. The Appellant, a citizen of Eritrea, who at the date of hearing was residing in Khartoum, appealed against the decision of an Entry Clearance Officer ('ECO') who refused to grant him permission to enter the UK as the spouse of a refugee pursuant to the provisions of para 352A of the Immigration Rules. His

appeal was dismissed by First-tier tribunal Judge Hollings-Tennant ('the Judge') who promulgated his decision on 23 May 2022. He applied for, and was granted, permission to appeal to the Upper Tribunal, and Upper Tribunal Judge Hanson ('Judge Hanson') heard the appeal on 25 April 2023 who found the Judge had erred in law and set the decision aside. The case was listed before us for the resumed hearing at 10.00am on 10 October 2023.

2. The Appellant was not legally represented at the resumed hearing. The Sponsor was due to appear on behalf of the Appellant but did not attend the hearing. We are satisfied there has been valid service of the notice of hearing, setting out the venue, date, and time of hearing, by email on 22 September 2023 in accordance with the Procedure Rules. There was no request for an adjournment before us, and no contact by the Sponsor to confirm that she was on her way but had been delayed. We therefore considered it appropriate to proceed in her absence pursuant to the provisions of Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 because the Appellant had been notified of the hearing and it was in the interests of justice to proceed.
3. The procedural history, the grounds on which permission to appeal was requested, the grant of permission, the relevant findings of the Judge, and the submissions made by the representative on behalf of the Respondent and the Sponsor are recorded within the error of law decision promulgated by Judge Hanson on 21 June 2023.
4. However, for the purposes of this decision, we have set out the discussion and analysis part of the error of law hearing in full as follows:

"13. Permission to appeal to the Upper Tribunal was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Grubb in the following terms:

2. It is argued (1) the judge (a) misunderstood the expert evidence concerning the requirements for a valid marriage in Sudan, in particular that a certificate would be necessary and (b) wrongly stated that counsel had conceded the marriage was not valid; (2) that it was procedural unfair to raise with certification issue at the hearing for the first time; and (3) it was wrong to take into account the absence of any supporting documentation of cohabitation given the appellant and sponsor were illegally living in Sudan.

3. Ground 1 is arguable, namely that the judge may have misread the expert evidence and what was counsel's position on the validity of the marriage. I would also give permission on Ground 2 although it may be important that the "new issue" being raised did not lead to any adjournment request for the expert to consider. Permission is also granted on ground 1 even if, standing alone, I would have been reluctant to do so.

4. For these reasons, permission to appeal is granted on all grounds.

14. The ECO opposes the appeal in a Rule 24 reply dated 30 November 2022

15. The appellant has made an application pursuant to Rule 15(2A) of the Upper Tribunal procedure rules, dated 12 December 2022, to adduce an addendum report of Mr Verney on the issue of the lawfulness of marriages in

Sudan. The application was not accompanied by any such report and one had not been seen by Mr Gazge.

### **Discussion and analysis**

16. The inference in the Rule 15(2A) application is that if a further report is provide by Mr Verney it will show the need, or rather lack of need for a *gassema*, in order to demonstrate validity.

17. Ground 1 of the application for permission to appeal assets the evidence of Mr Verney was not that the marriage would need separate registration to be valid, as Mr Verney gave no evidence as to what would be required in order for the marriage to be valid, and that there was no basis on which the Judge could lawfully find that the marriage requires registration in order to be valid, an issue which was not conceded at the hearing.

18. The exact wording in the report of Mr Verney considered by the Judge is as follows:

17. Registration of marriage in the Coptic Orthodox Church does not interact with the Sudanese civil court and registry of marriages. Church certification would not be accepted by the Sudanese national registry.

18. If formal proof of marriage were needed in the Sudanese system, the couple would have to undertake sperate registration, with a "gaseema" certificate of marriage issued in the civil court registry.

19. There is merit in the submission that the wording of Mr Verney's report is limited to considering the procedure if proof of a marriage is needed rather than the legal validity of a marriage. In interpreting the same as the latter the Judge has made a mistake of fact material to the finding on this point. The reason the report was worded as it was, is explained in the grounds where reference is made to the fact the question of the validity of the marriage was not raised in the refusal and was said to only have been raised by the Judge at the hearing.

20. The marriage was conducted in an Orthodox Church. It is believed that Sudanese law provides for a civil marriage for non Muslim but also recognizes the validity of non Muslim religious marriages provide none of the principles involved are Muslin. The Sponsor is an Orthodox Christian. If the appellatant is not a Muslim the marriage may be recognised in Sudanese law.

21. It is accepted that unofficial, non-registered marriages — known as orfy or traditional weddings similar to common law marriages are valid but such will not satisfy the test outlined by the Judge giving rise to the need for those in such a marriage to remarry in a civil or religious ceremony before they may be issued an immigrant visa.

22. I find there are a number of concerns that require further investigation in this appeal. The Judge's findings in relation to the relationship issue are infected by legal error for the reasons set out in the grounds and grant of permission to appeal."

### **Discussion and analysis**

5. At the resumed hearing, we considered the evidence that we had before us. Firstly, in relation to the issue of validity of the marriage, we accept that MM &

NA [2020] EWCA 93 (Fam) is not authority for the proposition that religious marriages are always recognised in their country of origin; MM & NA related to the practices in Somaliland, for which relevant evidence was adduced and findings made; the witness in MM & NA, Mr Jama, was said to have “an array of impressive legal credentials”. In relation to the Appellant, evidence would need to be adduced as to what is accepted as a valid marriage by the Sudanese authorities, to confirm, as it was in MM & NA, that the marriage between the Appellant and the Sponsor achieved “full legality on the date of the marriage contract regardless of whether or not there is in existence a formal certificate issued by the court” (para 14).

6. In the reasons for refusal letter the ECO stated that although the Appellant had stated that he and the Sponsor were married on 20 May 2015, no evidence of the marriage was provided. Without evidence of the marriage, it would have been difficult for the ECO to raise the issue of whether or not the marriage was valid under Sudanese law. This issue only became apparent when the Church certification of the marriage and Mr Verney’s report in relation to marriages within the Eritrean community in Sudan were submitted by the Appellant.
7. The issue of the validity of the marriage, although raised at the First-tier Tribunal hearing, was raised by the Judge\* because of evidence submitted by the Appellant. The Appellant was legally represented at First-tier Tribunal hearing, and there was no request for an adjournment because of a new issue being raised which arose out of the Appellant’s own evidence. However, the finding at the error of law hearing that the Judge had erred in treating the issue of validity of the marriage as the same as the proof of marriage, meant that the Appellant was free, at this resumed hearing, to present evidence to establish that his marriage to the Sponsor was regarded as a valid marriage under Sudanese law by way an additional report from Mr Verney, for which permission was given under Rule 15(2A).
8. At the resumed hearing we had before us an Addendum report from Mr Verney relied upon by the Appellant, comprising 4 pages. The relevant parts of Mr Verney’s Addendum report are set out at paras 1 – 2, in which it is stated:

“a. Despite the Appellant and Sponsors marriage not being subject to separate registration by means of a “gaseema” certificate, the marriage was “valid” according to Sudanese law. Two Sudanese lawyers and two other Sudanese professionals confirmed this to me, along with the following;

b. Most Ethiopians who marry in Sudan do not have the residency status necessary for a civil registration. They are asylum seekers or refugees. They don’t get a “gaseema” certificate because this is not open to them.

c. The primary concern in Sudan is of perceived morality – the question of adultery. That’s what is “against the law”.

d. Marriage by a Coptic Orthodox priest (or a Muslim cleric) is sufficiently “official” or “valid” to avoid accusations of adultery, and is acceptable both within the Ethiopian refugee community and wider Sudanese society. It means the couple can live together without interference.”

9. We note that Mr Verney has set out his qualifications at pp 3 - 4 of his Addendum report and provided a copy of his Curriculum Vitae. However, there is nothing within his Addendum report to indicate particular legal credentials. Furthermore, although he refers to two Sudanese lawyers, there is no sourcing within his Addendum report to establish who they are, or what their particular expertise is. Nor is it stated within the Addendum report what the expertise is of the other "two professionals" he referred to within it, and for these reasons we put little weight on the content of this Addendum report. On the balance of probabilities, we find that there is insufficient evidence before us to establish that the Appellant has discharged the burden to show that his marriage to the Sponsor is recognised as valid by the authorities in Sudan.
10. This takes us on to the Judge's assessment of the provisions of para 352A(ii), that is whether or not the Appellant had established he and the Sponsor were living together in a relationship akin to marriage for a period of two years in Sudan before she fled to the UK. The reason for the challenge to the decision on this issue by the Appellant was that it was wrong of the Judge to take into account the absence of documentation of cohabitation given that the Appellant and the Sponsor were illegally living in Sudan. However, this was the only submission made in relation to the Judge's findings on this issue; there was no challenge to the adverse credibility findings of the Judge at [21 - 22]. The Judge acknowledges, at [19] that "documentary evidence may not readily be available to those living in a country without lawful residence status" but finds that residence in a country for nine years, living and working there, would have yielded some evidence, and this finding was open to him on the evidence before him. In the absence of any further specific submissions as to the Judge's reasoning on this issue, we find that the Judge's findings at [19 - 29] are well-reasoned, and open to him on the evidence before him. There was no additional evidence before us that would establish that the Appellant has discharged the burden and standard of proof on this issue.
11. Similarly, it was open to the Judge on the evidence before him to find that the Appellant had not established that he has a family life with the Sponsor such that Article 8(1) of the ECHR is engaged, nor was there evidence to suggest that the best interests of the Sponsor's child under section 55 were adversely affected by the Respondent's decision to refuse entry clearance at [30].
12. On the basis of the above, we remake the decision to dismiss the Appellant's appeal.

### **Notice of Decision**

13. We re-make the decision to dismiss the Appellant's human rights appeal.

**M Robertson**

Deputy Judge of the Upper Tribunal

Immigration and Asylum Chamber

**12October 2023**