IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004829

First-tier Tribunal No: EA/50324/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th February 2024

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

ABDIKAFI MOHAMED ABULLAHI
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms S Khan instructed by Parker Rhodes Hickmotts, Solicitors.
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 12 February 2024

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Curtis ('the Judge'), promulgated on 3 October 2023, in which the Judge dismissed his appeal against the refusal of his application for a family permit under Appendix EU (Family Permit) of the Immigration Rules.
2. Following consideration of the documentary and oral evidence the Judge sets out his findings of fact from [11] of the decision under challenge.
3. The Judge records at [28] that it is uncontentious that the appellant and his sponsor were married by way of a proxy marriage in Kenya on 4 May 2019 according to Islamic sharia law and that the marriage was formally registered with the Registrar on 4 April 2022.
4. At [38] the Judge finds that formal registration did not take place until long after the specified date of 31 December 2020 ('the specified date') and that it was not until the formal registration with the Registrar took place that the marriage was recognised under the laws of Kenya. The Judge finds prior to this it was registered under Islamic law but not the laws of Kenya.

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5. At [39] the Judge finds that as the marriage was not contracted until 4 April 2022, it was not before the specified date, meaning the appellant did not meet the criteria of being a family member of a relevant EEA citizen, and could not satisfy the requirements of paragraph FP 6 of the Immigration Rules, leading to the appeal being dismissed.
6. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 9 November 2023, the operative part of the grant being in the following terms:

> 2. The grounds in the application for permission to appeal argue that the judge erred in law in his assessment of the expert report and the evidence in the case. The grounds argue in summary at paragraph 19 that there is no requirement for a valid marriage to be registered under Sharia law. The imposition of such a requirement is impermissible under Section 49(3) of the Marriage Act 2014 and therefore under Kenyan law the marriage on 4th April 2019 was valid because it was valid under Sharia law regardless of its registration. It is argued that this is essentially what the expert report was stating.
> 3. It is well known that the formal validity of a marriage is determined by the law of the place of celebration. It is arguable that the judge erred in law in finding that it was not until the marriage was formally registered in April 2022 that it was recognised in Kenyan law in view of the expert report, court motion and the law of marriage in Kenya which Counsel has referred to. It is arguable that as long as the marriage is valid in Islamic law it does not matter if the marriage is registered as Kenyan law does not require it to be registered for it to be valid. All the contents in the application give rise to an arguable error of law.

7. At the appeal hearing we shared with the representatives our preliminary view that the Judge had erred in law in conflating the requirement for registration to be found in the Kenyan Marriage Act 2014 and the requirement for a valid marriage recognised according to the laws of Kenya. We indicated that our view was that the evidence provided, including the expert report, shows that a proxy marriage of the nature of that undertaken by the appellant is recognised as valid under Kenyan law, irrespective of whether it was registered or not.
8. The Judge refers to the position in English law, but that is of a similar manner in that although there is a requirement to register a marriage in this country failure to register the marriage does not render an otherwise lawful marriage void.
9. Mr Diwnycz accepted our assessment of the situation and that he was unable to refer us to anything that would support a counterargument.
10. We therefore formally announced in court our finding that the Judge has materially erred in law for the reasons set out in the application for permission to appeal and grant of permission to appeal, and that in light of the finding there is a valid marriage recognised by Kenyan law which took place before the specified date, meaning the appellant can satisfy the definition of a family member of a relevant EEA citizen, we substitute a decision to allow the appeal.

<u>Notice of Decision</u>

11. The First-tier Tribunal Judge materially erred in law. We set that decision aside.
12. We substitute a decision to allow the appeal.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber
13 February 2024