



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

Appeal Number: IA/09297/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 17 September 2013**

**Determination
Promulgated
On 12 December 2013**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MARK ANING
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person
For the Respondent: Ms Vidyaharan

DETERMINATION AND REASONS

1. The Appellant is a citizen of Ghana born in 1982. He appealed against a decision of the Secretary of State made on 13 March 2013 to refuse to grant a residence card as confirmation of a right of residence as the spouse of an EEA national exercising Treaty rights in the UK (Immigration (European Economic Area) Regulations 2006 reg 7 and 17).

2. The Appellant claimed to have married Virginie Godelive Lunda, a citizen of France, under Ghanaian customary law by proxy.
3. The Respondent stated that it is permitted to marry under such customary law by proxy if the marriage certificate is accompanied by a statutory declaration which must state the names of the parties to the marriage; the places of residence of the parties at the time of the marriage; and that the conditions essential to the validity of the marriage in accordance with the applicable customary law had been complied with.
4. However, in the Appellant's case the statutory declaration that accompanied the marriage certificate did not state where he and the EEA national (the parties to the marriage) were residing at the time of the marriage. As such the declaration was not valid and by inference, the marriage certificate was not valid without a valid statutory declaration.
5. Accordingly, the Respondent did not accept the marriage certificate as proof that the Appellant is related to Ms Lunda.
6. He appealed stating in the grounds, in summary, that the information about residence had to be included in the 'registrar office application form' and not the statutory declaration. Their places of residence were shown on the 'registrar's application form' which 'is always retained by the registrar but the registrar will indicate our places of residence on the Customary Marriage Certificate.' The information required on the statutory declaration is the consent of the family members of the parties to the marriage.
7. His appeal was determined without a hearing by Judge of the First-tier Tribunal McDade. His determination was promulgated on 25 June 2013.
8. In his brief determination, having noted the comments by the Respondent stating the requirement that the marriage certificate be accompanied by a statutory declaration 'which must include, *inter alia*, places of residence of the parties at the time of the marriage' the judge continued:

'It is unarguable that this information was not contained in the statutory declaration made on 18 December 2012. Despite the Appellant producing a further bundle of evidence, none of the evidence appears to me to contain the information required to satisfy the requirements of the Rules. Apart from he and his wife stating that they "have been living in London" it takes the matter no further on the matter of where the parties were residing at the time of the marriage. This is fatal to the appeal.'
9. The Appellant sought permission to appeal giving the following reasons. First, the judge had ignored documents provided by the Appellant from the Office of the Metro Chief Executive, Accra Metropolitan Assembly where the marriage was registered which certify that the marriage was correctly registered and all documents relating to the marriage are genuine.

10. Second, the Respondent did not provide the background material supporting the assertion that the statutory declaration had to state the place of residence of the parties at the time of marriage.
11. Third, nowhere in the 'applicable customary marriage law' was it stated that the 'statutory declaration should indicate our places of marriage' and that their 'places of marriage can be found on the customary marriage certificate itself'.
12. Permission to appeal was granted on 11 July 2013 by a judge who stated:
 2. *The Appellant claimed that he and the relevant EEA national had entered into a customary proxy marriage in Ghana. The Respondent did not accept the marriage as genuine because, it was said, Ghanaian customary law requires a marriage certificate in relation to a proxy marriage to be accompanied by a statutory declaration which must state the place of residence of the parties at the time of marriage. The statutory declaration did not contain such information. The judge accepted the Respondent's argument.*
 3. *The grounds of appeal, drafted by the Appellant in person, contend that there is no such requirement in the case of a customary marriage such as this and that, in any event, the above information is contained within the customary marriage certificate. Further, complaint is made that the judge erred in simply accepting the Respondent's view as to the legal position.*
 4. *Albeit with hesitation, I have concluded it is arguable the judge erred in accepting the Respondent's view of the law without the Respondent providing evidence of it, as opposed to mere assertion. It does not appear that the Respondent has produced the relevant legal provisions or any other form of corroborative evidence.*
 5. *Permission is granted and all the grounds may be argued.'*
13. At the error of law hearing before me Ms Vidyaharan sought an adjournment. She understood that a case had been heard by the Vice President on customary marriage by proxy. A decision was awaited. The issue was whether the domicile of parties was relevant in such a marriage. I refused an adjournment because that was not a point that was in issue in this case.
14. The Appellant, through an interpreter, submitted brief written submissions which largely repeated what he said in the grounds. In addition, he submitted that the reference in the 1985 Ghanaian law which states that a statutory declaration accompanying the application for the registration of the marriage must state the places of residence of the parties at the time of the marriage was not a reference to the husband and wife but rather to

their respective fathers who stated their residence in the declaration to be in Ghana.

15. They were called 'the parties' because they were swearing the affidavit not the Appellant and his wife. As for the places of residence of himself and his wife, these were stated on the customary marriage certificate. There was 'clear evidence' from the judicial services of Ghana, the Ministry of Foreign Affairs and the Accra Metropolitan Assembly, confirming the validity of the marriage.
16. In reply Ms Vidyaharan disputed that 'the parties' referred to the residence of parents of the couple. The applicable law, which was referred to in a RALON report, clearly indicated otherwise.
17. In considering this matter the Appellant referred to documents which he said supported his claim to be lawfully married. There is an item entitled 'Form of Register of Customary marriages' containing 'Part A - Particulars of husband' and 'Part B - Particulars of wife'. It was agreed at the hearing that such was the purported marriage certificate. One of the categories is 'Place of residence of husband' and 'Place of residence of wife'. In each the entry is 'UK'. The statutory declaration (18 December 2012) is in the names of Ansu Geabour Aning and Jose Lunda, both of Accra, the fathers of Mark Aning and Virginie Godelive Lunda. It is stated that 'being the fathers (they) have full authority to represent (their) son and daughter in the matters that affect them both legally and customarily'; that on 15 October 2012 the 'above mentioned couple were married in Accra in our presence in accordance with the Ghanaian customary Marriage Laws and usages in the Republic of Ghana' and that 'after the customary rites were performed they lived together as husband and wife'. Mr Aning and Mr Lunda signed the declaration 'testifying the genuineness of the Ghanaian Customary marriage between Mark Aning and Godelive Lunda now existing'.
18. There is also a document from Accra Metropolitan Assembly (18 October 2012) signed by the Registrar of Marriages which states that it confirms the authenticity of the customary marriage certificate belonging to Mark Aning and Virginie Godelive Lunda. It adds:

'We confirm that the marriage was customary marriage by proxy which the families of the bride and groom have every right to represent them in matters that affect them both legally and customarily, wherefore we confirm them as legally binding husband and wife ...'
19. I note also a UKBA document (17 January 2012) entitled 'Customary Marriage and Divorce/Proxy Marriages Contracted in Ghana' by RALON, Accra (Risk and Liaison Overseas Network). In the section headed 'Registration of Customary Marriages' (P3) the report states:

'1. ...

2. After the customary rites have been performed, parents of the couple or persons standing in “loco parentis” to the spouses, or any adult (18 years and above) witness of choice, can be delegated to support a statutory declaration affirming the completion of the customary rites. The statutory declaration can be made separately by either family or could be jointly made by both families.
 3. The declaration states 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.’
20. Later, under the heading ‘Proxy Marriages (Mainly Customary Marriages)’ it is stated:
- ‘Customary marriage rites are sometimes performed by proxy. In this case, one or both parties are not present at the time of the ceremony. Consequently registration can be done by proxy ... In this case the registration form (First Schedule) can be completed on behalf of the couple by any adult delegated by them and only the names of the couple are stated on the form without their signatures. Alternatively, the form can be sent to the couple or either party where they reside to complete their portions and return the completed and signed form to the Registrar’.
21. It seems clear from the information referred to above under ‘Registration of Customary Marriages’ that while the ‘parents of the couple ... can be delegated to support a statutory declaration affirming the completion of the customary rites’, the requirements (at paragraph 3) to be stated in the statutory declaration include the married couple’s details. As indicated these requirements include:
- ‘(a) Names of the parties to the marriage;
 - (b) The places of residence of the parties at the time of the marriage ...’
22. I see no reason not to take the clear and ordinary meaning of the word ‘parties’ in the context it is used.
23. The parties to the marriage were Mark Aning and Virginie Godelive Lunda. The places of residence of the parties to the marriage at the time of the marriage were, according to the marriage certificate, UK.

24. I see no reason why I cannot rely on the contents of the RALON document. It conforms exactly with what is stated in the Ghanaian Customary Marriage and Divorce (Registration) Law 1985 referred to by the Appellant in his written submissions lodged for the error of law hearing and, indeed, in the initial grounds of appeal. I thus see no merit in the submission that the reference to the 'places of residence of the parties at the time of the marriage' refer to the parents of the parties to the marriage and not to the parties themselves.
25. I have considered what appeared to be the submission that information about residence was included in the marriage application form to the registrar and, consequently, in the marriage certificate itself (the Form of Register of Customary Marriages) and that the certificate was *ex facie* evidence that the marriage was valid, and that such was sufficient to remedy any defect in the statutory declaration. In my judgement it does not. The onus is on the Appellant to establish the validity of the marriage. The statutory declaration was not in the terms required by Ghanaian law. It is not a reliable document. As such it cannot be shown that the marriage certificate on which reliance is placed is reliable, nor indeed the documents from the Accra Metropolitan Assembly and other Ghanaian sources.
26. Ms Vidyaharan did not know whether the RALON report was before the First tier judge. Even if it was not, in the circumstances which included that the case was dealt with at the Appellant's request without a hearing, and in the absence of any submissions to the contrary, the judge was entitled to accept that the content and effect was as the Respondent claimed. Further, the documentary evidence containing the relevant legal provisions subsequently produced confirm the situation to be as the Respondent claimed it to be. As indicated such evidence is contained not only in the RALON report but is also clearly stated in the 1985 legislation to which the report refers (and which the Appellant put before the Tribunal in the original grounds).
27. I conclude that the First-tier Judge did not materially err in law in finding that information which was required to be stated in the statutory declaration was not contained therein with the consequence that the declaration was not valid and thus the marriage certificate not valid without a valid statutory declaration. Accordingly, the relationship with Virginie Godelive Lunda had not been established and the case failed under the EEA Regulations.

Decision

The decision of the First-tier Tribunal does not show a material error of law and that decision dismissing the appeal shall stand.

Signed

Date

Upper Tribunal Judge Conway