



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/08093/2017

THE IMMIGRATION ACTS

Heard at Field House
Decision given orally
On 14 August 2018

Decision & Reasons Promulgated
On 23 August 2018

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

BAMIDELE JOSEPH LASISI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Amgbah, Legal Representative

For the Respondent: Ms Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who is a citizen of Nigeria, born 3 September 1977, appeals the decision of First-tier Tribunal Judge Hawden-Beale who dismissed his appeal under the Immigration (European Economic Area) Regulations 2006 refusing him a residence card as a family member of an EEA national, [SA], a citizen of Italy. The respondent refused the application by reference to legislation in Nigeria, in particular, the Birth, Death, etc. (Compulsory Registration) Decree No. 69 1992 Act Cap B9 Laws of the Federation of Nigeria 2004 ("the 2004 Act"). The relevance of the 2004 Act to the

appellant's case is because he undertook a customary marriage by proxy to [SA] on 29 April 2017 in Nigeria and that it was registered in accordance with this legislation.

2. The reason why the respondent did not accept that the marriage had been properly registered and therefore not valid under Nigerian law was because an oral motion by only one parent was considered insufficient evidence for the customary marriage was registered in accordance with the 2004 Act. This led him to doubt the reliability and credibility of the registrar whose competence was also called into question by reference to registration of the marriage in accordance with Native Law and Custom, rather than the 2004 Act. The respondent also asserted that evidence provided by only one parent was insufficient to establish consent from both families and thus he was not satisfied that the claimed marriage by proxy had been properly executed to satisfy requirements of the law of Nigeria.
3. For reasons best known to himself, the appellant decided to permit his appeal against that decision to proceed on the papers before the First-tier Tribunal Judge. He relied on grounds which asserted the validity of registration of the marriage and that the procedures followed met the requirements of proxy marriage under the 2004 Act. He relied on a bundle of material which included:
 - (i) a letter from the registrar, Mr Aditomiwa, confirming his status as registrar of Mushin Local Government Grade 'A' Customary Court confirming that the marriage was duly registered under the 2004 Act on 8 May 2017. This is dated 3 October 2017 and thus postdating the respondent's decision;
 - (ii) a letter from the Chairman of Mushin Local Government Council confirming performance of the marriage according to native law and custom;
 - (iii) a further letter from Mr Aditomiwa dated 8 May 2017 (which appears to have been before the Secretary of State) confirming marriage under native law and customs;
 - (iv) a further document dated 8 May 2017 which explains the consent by the appellant's mother to the marriage and by [SA]'s aunt, [JO];
 - (v) an affidavit from the aunt to [SA] as witness to the marriage;
 - (vi) two further affidavits from the mother of the appellant and [SA]'s brother confirming like evidence.
4. The judge did not accept that the appellant had demonstrated he had validly married in Nigeria. The decision records the material that had been provided at paragraph 11 and at paragraphs 12 and 13 the judge set out the reasoning as follows:

"12. I have considered the respondent's assertion that the marriage has not been validly registered because the Local Government Edict states that the motion of one parent is insufficient evidence that the marriage has been correctly registered. I note that the respondent has not provided any of the legislation (or the source of that legislation) to which she refers in the refusal letter in breach of Rule 24 of the Procedure Rules. I have taken account of the case of **MH ([2010] UKUT 168 (IAC))** which held that if the respondent relies upon an unpublished document in the refusal letter, she is obliged to produce that

to the Tribunal otherwise the Tribunal is entitled to assume that she no longer relies upon it as the basis of her refusal.

13. I note that such documentation has not been produced and therefore I assume that the respondent no longer relies upon it, (sic) However, having considered the requirements for the registration of a Nigerian customary marriage as set out at paragraphs 37-39 of **KAREEM**, I note that there is nothing to confirm that the EEA national's brother has the authority to consent to her marriage and there is nothing to confirm that the person, who has signed the marriage certificate, is indeed a Registrar as he claims. Therefore, although the respondent has not provided the evidence to support her assertion that the marriage is not valid, neither has the appellant. I therefore find that the appellant has not discharged the burden of proof and shown that his marriage is valid in Nigeria."
5. It appears that the judge proceeded on the basis that because the Secretary of State had not produced the legislation and other material referred to in the refusal letter, he no longer wished to rely on those matters. As an alternative approach, the judge referred to the decision of the Tribunal in *Kareem* (proxy marriages- EU law) [2014] UKUT 00024 (IAC) as the basis for deciding whether the requirements for "customary marriages" had been met. The judge furthermore understood that it was [SA]'s brother who had consented to the marriage and questioned the want of his authority to do so. The judge was also concerned that there was nothing from the registrar to confirm his identity. The concluding sentences of paragraph 13 indicate possible confusion in the judge's mind over the burden in this case. The conclusion is that the Secretary of State had not provided evidence to support the assertion that the marriage was not valid, but on the other hand nor had the appellant. By this I understand to mean that the appellant had failed to demonstrate the marriage was valid. This confusing approach was picked up in the grant of permission to appeal by First-tier Tribunal Judge Bird in her decision dated 21 June 2018.
 6. The grounds of appeal relied on by the appellant are, as acknowledged by Mr Amgbah, that the appellant had adduced evidence to support his contention that the customary marriage was registered by the competent authority and the judge ought to have attached weight to the letter from the registrar accordingly.
 7. In the course of submissions from the representatives, matters emerged which could properly have formed the basis of a ground of challenge rather than the anodyne one advanced on the appellant's behalf. These include procedural unfairness by the judge in taking a point in respect of the brother's consent when that had not been raised by the Secretary of State, and furthermore, a misunderstanding of the evidence which clearly demonstrates that his consent was not given to the marriage; he merely confirmed that he was present. Miss Fijiwala took a generous approach in her submissions. She stated that the grounds of challenge did not identify error by the First-tier Tribunal, but commendably accepted that there was an error of procedure in respect of the points taken by the judge, of which the appellant was unaware and invited me to find error on that basis. I do so and set aside the decision. I remake that

decision based upon what I have heard from the parties and the matters that have been discussed.

8. Returning to the reasons given by the Secretary of State for refusing to recognise the validity of the marriage, it was accepted by Miss Fijiwala that, based on the evidence before me, there was no evidential support for the assertion that the evidence by only one parent was insufficient. A reading of the extracts provided in the refusal letter from the 2004 Act contemplates that a single person's consent was required for each of the parties to the marriage. The form in MCM1 Registration of Native Law and Customs Marriage indicates, as I have already observed above that the appellant's mother consented on his behalf and that [SA]'s aunt consented on her behalf.
9. The further point taken by the Secretary of State that an oral motion provided by only one parent would be considered insufficient evidence is no longer a matter relied on as conceded by Miss Fijiwala. She acknowledges that according to Mr Aditomiwa JP, a motion which is an application to the court or judge for an order, can only be moved by an individual. Miss Fijiwala was content for me to remake the decision based on the material before me.
10. The two points of concern raised by the Secretary of State in the refusal letter have been satisfactorily addressed for the reasons which I have given taking account of the material produced by the appellant subsequent to the decision, in particular the confirmation from the registrar that the marriage was registered under the 2004 Act and not simply confined to registration under the 1992 Decree which I have referred to. Accordingly, I am satisfied that the appellant has demonstrated on the balance of probabilities that he is validly married under Nigerian law.

NOTICE OF DECISION

11. There is no other matter outstanding and accordingly I allow this appeal. By way of summary therefore the decision of the First-tier Tribunal is set aside for error of law. I remake that decision and allow the appeal.

Signed

Date 15 August 2018

UTJ Dawson

Upper Tribunal Judge Dawson