



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/09266/2017

THE IMMIGRATION ACTS

Heard at Field House
On 14 May 2018

Decision and Reasons Promulgated
On 20 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

KOJO APPIAH FORSON
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Lawrencia and Co Solicitors

For the Respondent: Ms N Willocks-Briscoe (Home Office Senior Presenting Officer)

DECISION AND REASONS

1. This is the appeal of Kojo Appiah Forson, a citizen of Ghana born 23 June 1980, against the decision of 8 February 2018 of the First-tier Tribunal dismissing his appeal, itself brought against the refusal of a residence card (on 7 November 2017) confirming his asserted right of residence as the spouse of an EEA national.
2. The Appellant's application was based on his proxy marriage to Kennisha Joanna Baptiste, a citizen of France.
3. The Respondent identified the main considerations when assessing the validity of a marriage: the need for the marriage to be recognised in the country in which it took place, having been properly executed to satisfy the requirements of the law there,

and there being nothing in the law of either party's country of domicile to restrict the freedom to marry. Any marriage certificate had to be issued by a competent authority with legal power to create or confirm the facts to which it attested.

4. Having regard to those considerations, the decision maker did not consider that the statutory declaration supporting the application satisfied the necessary requirements laid down by Ghanaian law: there was no information provided as to whether the parties were free to marry, as to their place of residence at the date of marriage, whether the requisite customs were duly followed, and it was not accepted that a person not established as either a citizen of Ghana or of Ghanaian descent could be party to a proxy marriage. Given the concerns held generally about documents from Ghana in the light of country information suggesting birth certificates could be obtained relatively easily and then misused to found (inaccurate) applications for confirmation of Ghanaian nationality, the decision maker did not accept that the marriage was established as valid.
5. A statutory declaration described the formalities surrounding the celebration of the marriage. The Appellant was represented by his father, one Joseph Baptize represented Kennisha. Each representative confirmed they had the right to represent their family member in all matters affecting them customarily and legally. They confirmed the dates of birth of the Appellant and Kennisha as 23 June 1980 and 27 June 1989, and that each lived in the UK. The marriage had been recognised as lawful following the performance of customary rites at [] on 6 May 2017.
6. A series of further declarations confirmed the validity of the signatures. A certification from Juliana Amonoo-Neizer of 31 July 2017 stated that the customary marriage was duly declared; she was the Assistant Director, Legal and Consular Bureau, Ministry of Foreign Affairs and Regional Integration, and confirmed that the signature of the First Deputy Judicial Secretary covering the signature of George Kom, a Notary Public, was true and certified as such. On 3 August 2017 Hanaan Kkyi Asaku certified that the signature of Juliana Amonoo-Neizer was genuine. A letter from the Ghanaian High Commission of 30 August 2017 confirmed the signatures on the original statutory declaration and those from Mr Asaku and Ms Amonoo-Neizer were all genuine. The letter additionally stated that the Registrar of the Ga West Municipal Assembly had confirmed the customary marriage was properly registered under the Customary Marriage and Divorce (Registration) Law 1985, and thus the Mission was satisfied as to the marriage's compliance with the relevant formalities.
7. The First-tier Tribunal determined the appeal without a hearing, none having been requested, concluding that the Appellant had not established his case on balance of probabilities. There was no evidence that the Appellant's spouse was truly a Ghanaian national, and whilst the customs used to formalise marriages varied widely, they had one thing in common: they were the customs of Ghanaians.
8. Grounds of appeal argued that the First-tier Tribunal had erred in law in

- (a) Rejecting a document ostensibly validly issued from a competent body representing the Ghanaian government;
 - (b) Overlooking *McCabe v McCabe*, a case where the validity of a marriage between a Ghanaian and a non-Ghanaian was accepted.
9. Permission to appeal was granted by the First-tier Tribunal on 6 March 2018, on the basis that *NA Ghana* had not necessarily ruled that only Ghanaians could contract proxy marriages; furthermore it was arguable that relevant supporting evidence was overlooked.
 10. Before me the Appellant's advocate submitted that the judge had erred in law in failing to apply the proper test, overlooking material considerations and essentially finding that a non-Ghanaian could not participate in a valid proxy marriage without reliable evidence. Ms Willocks-Briscoe replied that the judge had assessed all the evidence, and was ultimately entitled to hold that only those holding Ghanaian nationality or otherwise having family links with the country could validly contract proxy marriages. Furthermore the chain of confirmation from various officials attested only to the validity of the signatures at each stage, rather than confirming that the marriage had truly been valid.
 11. The representatives were agreed that in the event I identified a material error of law, I should proceed to determine the appeal on the available papers. Ms Willocks-Briscoe provided me with an unpublished Immigration Enforcement document titled *Customary and Proxy Marriages and Divorces in Ghana* (February 2016) which, in a section titled *The Ceremony*, stated that customary marriages could be celebrated by proxy via a joint meeting or assembly of both couples' families, being a public event witnessed by representatives of both sides. The marriage would be validated via the presentation and acceptance of "head rum". A customary marriage between a Ghanaian male and non-Ghanaian female should be regarded as doubtful because the constitutive acts regarding "head rum" could not be adhered to unless the female could show that one of her parents had links to Ghanaian heritage. This document gave its authors as Rebecca Ackah and Richard Murray of RALON (UKVI's Immigration Intelligence service) in Accra.

Findings and reasons

12. The parties are agreed that section 3(1) of the PNDC (Provisional National Defence Council) Law 112, specifically the Customary Marriage and Divorce (Registration) Law 1985, provides the legal basis for the assessment of the validity of customary marriages. Part 1 headed *registration of customary marriage* states that:-
 - "3. (1) The application for registration of the marriage shall be accompanied by a statutory declaration stating the following: -
 - (a) the 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.

(2) The statutory declaration shall be supported by parents of the spouses or persons standing in loco parentis to the spouses except where there are no such persons living at the time of application for registration.”

13. In *NA Ghana* [2009] UKAIT 00009 §11, the expert evidence of Mercy Akman was cited as relevant to the criteria which must be met under Ghanaian customary law for a customary marriage to be considered legal, thus:

“7. ... It is a type of marriage contracted under the particular tradition and customary practices of a group of people....A valid customary marriage can only be validly contracted between two Ghanaian citizens and both parties must have capacity to marry. This means that there should be no violation of any rule of tribal relationship. These rules differ from tribe to tribe...

8. A particular characteristic of customary marriage which distinguishes it from the system of marriage in Europe and other places is that it is not just a union of “this man” and “this woman”. It is the union of “the family of this woman” and “the family of this man”. Marriage in the customary context therefore unites families and not merely the individuals.

9. It involves payment of a bride price by the bridegroom’s family to the bride’s family. If the appropriate bride price is not paid, there is no valid marriage, even if parties live as man and woman for many years. The acceptance of drink from the man’s family is an indication of the consent of the wife’s family to the marriage....It is potentially polygamous in nature; a man may decide to marry as many women as his strength and resources can accommodate.

10. There is not always a formal ceremony. Even if there was, the couples do not have to be present at this ceremony for a valid marriage to take place, provided representatives of the two families are present as witnesses to the meeting or event.”

14. *NA Ghana* at 15.5.2 sets out an extract then extant on the UK BIA website which stated:

“Since it is possible for Ghanaians living outside Ghana to obtain the proper certificates, certificates of marriage or divorce authenticated by the Ghanaian High Commission, should be requested in all cases where the marital state of an applicant is important. Statutory declarations made by a parent or other family elder of either party to an unregistered customary marriage should only be accepted where they complete a chain of otherwise first class documentary evidence of a claim to citizenship.”

15. *McCabe v McCabe* [1994] 1 FLR 410, a decision of the (English and Welsh) Court of Appeal, confirmed that the marriage of an Irish national to a Ghanaian national was

valid i.e. the customary proxy marriage was valid despite the Irish husband not being of Ghanaian nationality or origin.

16. *NA Ghana* turned on the evidence that was necessary to demonstrate the *dissolution* of a customary marriage. When recording the relevant evidence regarding the registration and dissolution of marriages, upon which the parties did not materially differ, the Tribunal noted that “The onus of proving either a customary marriage or dissolution rests on the party making the assertion”; and concluded that oral evidence *might* suffice to establish the validity of a marriage’s dissolution, albeit that a party would be expected to produce the best evidence reasonably available to them. The evidence from Mercy Akman where she stated that only Ghanaian nationals could be party to these relationships was incidental to their conclusions. The Tribunal itemises the more significant aspects of the evidence before it §24, observing that the material relied on by either side was to the same effect - but this aspect of her account does not feature amongst that evidence, and nor was it necessary for the Tribunal to subject the proposition to any analysis. In *Awusu* [2017] EWCA Civ 178, the appeal of Mr Awusu was allowed outright, notwithstanding that he, a Ghanaian national, was married by proxy in Ghana to a German national.
17. It seems to me that the First-tier Tribunal materially erred in law in its rather brief determination of the issues before it. The sole basis for its decision was the assumption that only Ghanaian nationals could be party to proxy marriages. However, the absoluteness of that proposition is cast into doubt by both *Awusu* and *McCabe*. It is also inconsistent with the fact that the High Commission has confirmed the validity of the marriage on the particular facts of this case. Clearly the First-tier Tribunal needed to grapple in greater detail with the range of material before it.
18. In line with the parties’ preferred resolution of the appeal I now proceed to determine the matter finally.
19. I do not consider that the Home Office criticisms of the evidence have force. The Court of Appeal has twice issued judgments which are consistent with non-Ghanaian nationals, and indeed individuals with no identified Ghanaian heritage, participating in valid proxy marriages. I acknowledge that neither decision turned on this issue, but I consider the outcome of those cases to be nevertheless telling. The Secretary of State has not identified any legislative authority that would stand in the way of proxy marriages of this nature, and the material from the immigration enforcement unit at RALON does not reveal its source, nor the expertise or methodology of the report’s compilers.
20. The burden of proof to establish the validity of his marriage lies on the Appellant, and mere inadequacies in the Home Office critique of his case are not sufficient to get his case home. However, he has provided affirmative evidence in support of his case. The statutory declaration before me states the parties to the marriage, their places of residence, and that the essential conditions for the marriage’s validity have been satisfied. Those are the essential requirements for registration of a marriage to proceed under section 3 of the legislation in question.


21. The High Commission's letter has certified that the chain of evidence linking its conclusion as to validity with the original statutory declaration is valid, but actually goes rather further, and states independently that its enquiries have shown that the marriage is a valid one. The Home Office themselves acknowledge that a chain of satisfactory documents can evidence the validity of a marriage. It seems to me that in this particular case the evidence chain suffices to discharge the burden of proof on the Appellant, on balance of probabilities, to establish his marriage is a valid one.
22. I accordingly find that the Appellant is the family member of a qualified person and that he is entitled to the residence card originally sought. His appeal is allowed.

Decision:

The appeal to the Upper Tribunal is allowed.

Signed:

Date: 15 May 2018

A handwritten signature in black ink, appearing to read 'M.A.S. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes