



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

Appeal Number: EA/06704/2019

THE IMMIGRATION ACTS

**Heard at Birmingham Justice Decision & Reasons Promulgated
Centre
On 9 December 2021 On 9 February 2022**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**JUDITH PHIRI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Imamovic instructed by Tann Law Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the rehearing of the appellant's appeal against the Secretary of State's decision of 24 November 2019 refusing her application for a residence card on the basis of her marriage to an EEA national, Mr Phillip Donkor, the sponsor. The application was refused on the basis that the marriage is one of convenience.
2. It appears that there have been three previous appeals (and possibly even more) raising essentially the same issue, the most recent being an unsuccessful application which resulted in an appeal dismissed on 21 June

2019 by Immigration Judge Boylan-Kemp on 21 June 2019 and, although it was not in issue before the judge on that occasion or in respect of the most recent appeal, there is also a relevant decision of First-tier Judge Tully in which the appeal of the appellant was dismissed following a hearing on 14 November 2016.

3. Following a hearing on 9 December 2020 I set aside the decision of Judge Sharma who had heard the appeal on 24 February 2020, and directed that the matter be reheard in the Upper Tribunal. Subsequent to that there was a hearing before me and Deputy Upper Tribunal Judge Jarvis on 7 July 2021. Issues were raised about the conduct of the previous representatives and also at that time the decision of Judge Tully was produced by Mr Kotas who at that time appeared on behalf of the respondent. Ms Imamovic needed to take instructions on that matter and as a consequence the hearing was adjourned to December 2021 which is the hearing with which we are now concerned.
4. There was a brief discussion at the start of the hearing about the implications of Judge Tully's decision. Mr Tan referred to the finding of the judge on that occasion as to whether or not the appellant was in fact divorced from her first husband and that this raised matters of credibility. It remained the case the burden is on the appellant to establish facts including whether or not she was divorced and with regard to the view of the Ghanaian authorities on the matter.
5. It was common ground that we would simply proceed and see how matters developed.
6. The appellant gave evidence, adopting her three previous statements which were all true to the best of her knowledge.
7. She and her husband had first met in 2013 at the house of a friend. This was the house of her friend Lizzie. She also had a friend Fati Cisse. She was a friend to the appellant's husband and she knew her because of him. She had met her husband at Lizzie's house. When she met him Cisse was also present. She was asked when they decided to marry and said it was in April to May 2013. She was asked whether there had been an important event before the marriage and she said that they did a customary marriage to retain their African culture. Before that they had had an engagement at their current address. As far as she could recall that had been in April 2013. The appellant had been present and her husband and her mother and also Cisse and Lizzie and another friend Chambe. Chambe had come in the middle of the engagement and stayed for a drink and then left. They had eaten at home and then gone out for a meal.
8. With regard to her marriage by proxy in Ghana, the two witnesses had been her uncle and her husband's uncle. She was asked whether any tradition had to be observed and she said they had to wear a traditional Ghanaian coat and that they were meant to slaughter a goat but they could not do that here so it was done in Ghana. As to how the ceremony

was marked in Ghana she said they had to pay a dowry of 10,000 Ghanaian cedi.

9. She was asked how they celebrated on the day of the marriage and she said they had food at home and went out. This was her and her husband and her mother and Lizzie and Cisse and just a few friends. Her sister was not here by then but was in Ireland. They had gone out to eat at Nando's.
10. She was asked what mutual friends other than Cisse and Lizzie she and her husband had and she said it was only them. They had lost contact with others due to the pandemic. She had tried to avoid being around people as she worked in a care home. She worked Mondays to Fridays 9 to 5, in contrast to her position earlier when she used to do twelve hour shifts and did not have fixed days to work. Her husband worked nights Monday to Friday and occasionally at weekends.
11. As regards the impact of the work on them she said that now they had most weekends and during the weekends they normally spent time at home. This was because of the pandemic and she tried to avoid being around people because of the job.
12. Before the pandemic when she had time with her husband they would normally be at home watching movies.
13. She was asked when she last saw her sister and she said that her sister and her husband had gone with her last Friday to Manchester for a graduation ceremony party for her cousin. She had gone with her sister and her sister's husband and a cousin. Her husband was working on the nightshift from 4 to midnight and was unable to come.
14. She was asked with reference to the two earlier hearings in 2016 and 2019 where her mother and sister were in 2019. She said they had been in court. They had not been called to give evidence. She had no idea why. The solicitor knew they were there.
15. She was asked why she continued to stay with her husband. She said it was because they were happily married.
16. When cross-examined by Mr Tan the appellant was asked about how she went about divorcing her previous husband and she said she had to contact the registry office in Malawi and she sent the marriage certificate as they wanted evidence and they processed the divorce certificate. It was put to her that the divorce certificate had the date of 13 March 2013. She was asked how long the process took in total until the divorce was finalised and she said it was about three months. She agreed that the process had therefore begun three months before 13 March 2013. She was asked to explain why if that was so that at the 2016 hearing she had said she had taken no steps to dissolve that marriage. She said she thought she misunderstood the question and thought the judge wanted the divorce certificate on the spot. It was put to her that he had asked her

whether she had undertaken any steps and that was very different from asking her if she had the divorce certificate. She said it was a misunderstanding and English was not her first language. It was put to her that she had a representative at the hearing and she agreed. She was asked whether she had explained to them that she misunderstood the question and she said that after the hearing the solicitor never asked her anything. She was asked whether she had not said anything after she got the judge's decision and said the solicitor had explained about the refusal and that was it and so she had decided to change and felt she was not getting support.

17. It was put to her that although she said she misunderstood the judge's question, in her statement she said she panicked when he asked the question and she was asked why she had not just explained she had asked for and was awaiting the divorce certificate. She said she thought she had panicked and thought it was to be produced on the spot and she had misunderstood.
18. With regard to the divorce certificate she was asked why certain sections were not completed. She said she was not sure and that was how she had got the document. She also had no idea why it did not detail the marriage certificate number or receipt number for the fees paid.
19. She was referred to page 6 of the bundle and the fact that in her statement she said at paragraph 9 she had asked her brother to get the information and he had given her a letter. She was asked whether this was that letter and said yes. She agreed that she also said that he had received the letter and scanned and emailed it to her and page 7 was his email. She was asked why the words Republic in the header and Division also in the header were misspelt and she said it was a court error and she had no idea. With regard to her brother's email at page 7 she was asked why she had not provided the email from the registrar to her brother. She said her brother was sorting it out on her behalf as she could not travel to Malawi and he had gone to collect the documents and sent them to her.
20. She was referred to paragraph 9 of her witness statement of 29 November 2021 and it was put to her that what she referred to there about the request to her brother and the letter he was given and the email he sent contrasted in that they were both dated 30 November 2021 and yet her letter was dated 29 November 2021, referring to matters that had not yet occurred. She said that her brother emailed her the letter beforehand and used her work email and she asked him to send it on her private email so he had to resend it. It was put to her that the letter was dated 30 November, in contrast to the statement which referred to the letter which she had already produced. She said that the letter was available already and she sent a lot of statements to her solicitor.
21. She was asked how many husbands a woman in Ghana could have and replied, one.

22. There was then some discussion as to whether Mr Tan could refer to the contents of the appellant's interview in May 2013. Though evidence had been ruled out with regard to discrepancies alleged between that and her husband's interview at that time because no copies of the husband's had been produced, I ruled that it was open to Mr Tan to ask questions concerning that interview where they did not bear at all on discrepancies alleged between his and her evidence. Mr Tan set out in outline the general issues of concern and Ms Imamovic took instructions from the appellant and subsequently cross-examination continued.
23. Mr Tan asked the appellant about her being represented at the wedding in Ghana and asked where her uncle Moses was and she said he was in Malawi. As regards her husband's uncle Kwao and where he lived she said that he used to live in Ghana but he died in 2019. She was asked whether there were any reasons why she had never put in a statement from either of them before and she said that it was her other representative and she was never instructed to do so. She had never suggested to them that she could get this information. She was asked whether there was any reason why she had not produced copies of their declarations to the Ghanaian authorities before her marriage and said she did not know she needed them. It was put to her that she had produced several letters from the Ghanaian authorities and she was asked why she had not produced her family declarations that said she was free to marry. She said her previous representatives had not instructed her to do so but just to get what she did.
24. She was referred to questions 39 and 41 of her interview referring to her husband's mother and brother and was asked why she did not mention his uncle. She said there was no reason but she had just thought she would mention biological family, the mother.
25. She was referred to paragraph 16 of Judge Tully's decision in 2016 where she said she got married in Ghana as she wanted to be in the presence of her and her husband's fathers. She said it was their African culture and you would call your father's brother your father and likewise your mother's sister you would call mother. She was asked why therefore she had referred to them earlier as her uncles and she said they were her uncles and she called them like dad.
26. She was referred to her answer to question 168 where she had said she was married on 11 May 2014, not 2013 and was asked why. She said she thought it was an error. As to whether she had ever corrected it, she could not recall and said it was quite a while since the interview.
27. Her relationship with her ex-husband had ended in January 2013. She was referred to the fact that she had made an EEA application for a residence card on the basis of her marriage to the ex-husband, on 10 April 2013. She was asked why she had done this if the relationship was over. She said that she had sent all the documents to the solicitor before the marriage was dissolved and she presumed he had sent the documents

late. She had had to pay £65 for that application. She was asked why therefore she had not established with the solicitors that the relationship was over and she was divorced from him. She said she just thought, and she was going to that solicitor. She was asked whether she said that they made the application without her instructions and said yes. The solicitor was in Nottingham and she could not remember their name.

28. She was asked about the further application on 6 June 2014 under the EEA Regulations which was refused. She could not recall which solicitors she had used for that but that she thought it was the one in Leicester. It was put to her that the application was refused and appealed and she said she could not recall.
29. She was asked whether she recalled a hearing before that before Judge Tully in 2016 and she said she had attended quite a few courts and could not recall which judge it was.
30. Her mother had given evidence at a court hearing for her but prior to 2019 she thought. She thought that it was a court in Stoke-on-Trent but could not recall the year. She could not recall whether it was before the 2016 hearing. She had attended quite a few courts.
31. She was asked why there was no evidence from Lizzie to whom she referred as having introduced her to her husband and she said they lost contact with her, both of them. As to why there were no photographs of the engagement party to which she had referred earlier she said they had taken photographs on the phone but lost them before they printed them.
32. She was referred to page 48 of the bundle before the First-tier Judge which was her Application by a Commonwealth Citizen or a Declared Citizen or Resident for registration as a citizen of Malawi. This was dated 27 September 2018. She was referred to her present passport and reference number. There was a copy of the passport at page 13 of the bundle. This had the same reference number as the declaration, but Mr Tan pointed out that the passport was issued on 28 September 2018 and she was asked how she could give the number on an earlier date. She said that all of it came from the post office in Malawi. They had done the declaration and her passport was issued the next day and she had gone for the one-day service. She agreed that it was the case that the form was completed by the post office. She was asked how it was that it bore her signature and she said they emailed her and she scanned an email back to them. It was the old passport: the one on which she had come to the United Kingdom.
33. She was referred to question 95 at the interview where she said she had to buy a Malawian passport and it was not a real one. She was asked how if the first passport was obtained through unofficial means she could have declared to the Malawian passport office that all the details were true. She said that she had taken it to the Malawian High Commission passport office in London and they had verified that it was a true passport. This

was the case even though she got the first passport fraudulently. She had told them that and they had just shaken their head.

34. On re-examination she was asked about the fact she said she had lost the pictures of the engagement ceremony and she said she had lost the phone by then. She also had pictures of the marriage ceremony and that was the phone with the pictures. As regards the application, she believed it was sent by the previous solicitors and there was a miscommunication about the previous relationship. She had paid £65 for the application to the solicitor in Nottingham and she thought that that was in 2012.
35. With regard to her statement of 29 September 2011, and whether she had said that she had various other statements sent to the solicitors, comments about her brother at page 6 the previous statements and her comments on that in the statement and she replied no. She had resent to the solicitor her witness statements.
36. As regards page 4 of her statement and the 29 November date, she was asked when she had sent it to the solicitors and said it was on Thursday 2nd in the evening. She had updated it on Thursday 2nd. The solicitor had contacted her at work and she said she could not update it at that time but would do it when she got home and she had done so in the evening. She was asked why she had left the 29 November date on and said that when she updated it she just did not change the date.
37. The next witness was the sponsor, Mr Phillip Donkor. He adopted his earlier statements, the contents of which he said were all true.
38. He had first met his wife in 2013 in January at the house of their friend Elizabeth whom they called Lizzie. They had met in January and talked, and got married in May. He was asked whether anything happened before May and said they used to call each other and initially when asked if there was an engagement before marriage said no and then said that he did have an engagement with her in May. It was attended by her mother, his wife and him and their two friends Lizzie and Cisse. It had taken place at their flat where they now lived. On the engagement day they and the two friends had spent time in the house and had a couple of drinks and some food and then they had decided to go to Nando's.
39. When he and the appellant got married they were in the United Kingdom. The marriage took place in Ghana. They had celebrated with his mother and Cisse and Lizzie and a friend whose name was something like Kath but he did not really know. He had not stayed long. As to whether there were any traditions they had to observe for the marriage ceremony for it to be performed/valid he said that back home they had to pay the right price for such ceremonies and there were clothes. After eating in the flat they had gone to Nando's.
40. He had no family in the United Kingdom. They were mainly in Holland but also in Ghana. His mother, brother and his wife and extended family were

in Ghana. His mother had lived in the Netherlands before living in Ghana and went every year to Ghana and was living permanently in the Netherlands but had holidays in Ghana but in 2020 had decided to move.

41. At the time of the marriage his witness had been his uncle Kwao who died in June 2019.
42. As regards friends in the United Kingdom he and his wife had mutual friends in Lizzie and Cisse but they were no more in contact with them and otherwise he did not have friends.
43. As regards his current work arrangements he worked Mondays to Fridays and occasionally weekends. He spent time with his wife at the weekends. He worked nights sometimes, so it was weekends. As regards doing things together he did not like to go out so they watched movies and football and he was a Chelsea fan.
44. As to when they got married what he understood about his wife's previous marriage he said she told him she was married to a guy and they divorced.
45. He had been to court in 2019 though there had been so many courts he could not really recall. He thought that her mother used to come with them but could not remember what year she came. As to when they last saw her mother and sister he said it was when they were called to London and they saw her mother then and they saw her sister last Friday when they went to Manchester but he had had to go to work. As to why they had not seen her mother since the last time in court he said that she did not live in Leicester and worked so it was a bit difficult for her to come and see them.
46. He remained with his wife because he loved her. His family had all moved but because of her he was still in the United Kingdom. He would want her to live with him in Ghana as you had to experience the place and experience his family and get to know Ghana better.
47. In cross-examination the witness was asked when his wife's previous marriage ended and said he could not recall. He had left it with her and did not want to interfere. They were not together and divorced. He had not asked her.
48. It was put to him that his wife said the engagement was in May and he had said April and he said it had been a while and he could be mistaken. There was a lot on his mind. He was asked when he would say the relationship with his wife went from being friends to being more serious and he said he told her his feelings and she told him about her divorce and he said they had to take it to another level. In January 2013.
49. He had not been aware of the fact that his wife had made an application in April 2013 as the wife of her ex-husband. Asked whether this was the first time he had heard of it he said it was something to do with her and him and he did not want to involve himself. He was asked whether the fact of

her making that application after the relationship was supposedly ended and his had started changed his mind about their relationship and he said he did not know anything about her previous relationship.

50. They had lost contact with Lizzie before 2019. Communication had been broken from 2018 onwards. She did not like calling, you had to call her and he had limited his activities with her. He was asked whether they had ever asked her to provide supporting evidence before 2019 and said yes he thought she had written a statement. He could not recall for how many appeals that was. It had been their joint idea to ask her to give a statement. He was asked whether he recalled his wife's mother giving evidence at an earlier appeal hearing and said yes she had come to some courts and she fully supported them. It had been his and his wife's idea for her to give evidence.
51. As regards his uncle who had represented him at the wedding he was asked whether he had not asked him to provide a statement/evidence in previous applications/appeals and said the lawyer did not request it from them. It was put to him that he had given examples of him and his wife deciding to call witnesses and was asked why he had not done so in respect of his uncle. He said his uncle had signed on the court form and if the lawyer had asked him but he had not done so.
52. It was put to him that he referred to Kwao as his uncle but at the hearing in 2016 the evidence was that the wedding took place in Ghana so he and his wife's fathers could be present. He was asked why he had said uncle, he said that in their culture in Ghana the uncle was your father and that was why the mother's brother was automatically your father in Ghanaian culture.
53. He was asked whether the fact that his wife had accepted she got her Malawian passport on a fraudulent basis affected his view of her honesty and he said she never told him that. It was not good but it was the first time he had heard of it and he did not know how you got a passport in Malawi.
54. They both had mobiles. As regards communication he did not call her during work but sometimes they called each other and they saw each other at home. He would message her once in a while. He had not produced any of the calls or messages as evidence of the relationship as no one had asked them to do so.
55. As to why they had produced no photographs of the engagement party he said he had been angry about that as they used the phone and then his wife lost the phone and he was going to print the pictures and she lost the phone. He did not remember if anybody else had taken photographs.
56. There was no re-examination.

57. The next witness was the appellant's mother, Mrs Deliwe Phiri. She adopted her statement of 13 July 2019 as being true to the best of her knowledge and belief.
58. She had first learnt of the relationship between her daughter and Mr Donkor between 2012 and 2013, she thought, she said her memory was going bad. She was asked how she knew they were married and she said her son-in-law asked for her hand in marriage in 2013 and as to where it was when he used to come to her home. She had accepted in 2013. There had been an engagement attended by her and Lizzie and Cisse and her daughter and husband. They had cooked some food to eat at home and then gone to Nando's.
59. On the day they got married they were at home, it was their tradition that when people got married people would gather and enjoy and be merry. Lizzie, Cisse, and a friend Chambe just came but did not stay, and the appellant and her husband. They had gone out again to Nando's. All of them who were at the house went there and Chambe came and went as she had children.
60. The last time she had seen the appellant and her husband was at the court hearing in London.
61. She knew that the appellant had been previously married. It had not really worked. She could not have interfered because it was private life and it broke and they divorced. She knew that because her daughter told it was over. It was years ago and she could not remember when. It was put to her the Home Office did not believe the marriage was genuine and she was asked why she said it was. She said because they are genuinely married and love each other. They live together and the appellant is happy with her husband and he as well. She said that she saw them, they never had any problems between the two of them and her daughter always said she was OK.
62. When cross-examined the witness thought that she had first met Mr Donkor around 2012 to 2013 before the couple got engaged. As to whether she had had any role or responsibility in arranging the marriage she said normally when they told her they were getting married she was involved and they were her family now, she was her daughter and she had agreed to what they wanted to do. They arranged things themselves and she would wait for them. She knew nothing about her daughter obtaining her Malawian passport fraudulently and had not known about this. Nor had she known that after she said she had divorced her ex-husband she had made an application to the Home Office on the basis that she was still married to him. She was asked whether she had not known about the passport or the application and whether that changed anything as to her views on her daughter's honesty and she said that she did not think that could change her being honest. We came across things in life and she might get confused and might not get support from her, the witness and

was maybe afraid to tell her her problems. With their culture at times they did not approach their parents with their problems.

63. On re-examination she was asked again about the passport and the application. She was asked whether her belief that her daughter was genuinely married was affected by those matters and she said only it was that she was a mature person and it did not change her view about their relationship. She was persuaded it was a genuine relationship because they loved each other. Apart from living together which you could do when not in love, she said he gave love to her daughter and she could tell it and could tell when he was with her. It was a look, if she looked at them the way he talked to her. Her daughter had never come to her with a problem about the relationship. She asked her if she was happy with her marriage and she said she was. Her son-in-law hugged her daughter on return from work and was not shy to do it in front of her though he was not supposed to.
64. The next witness was Magret Phiri, the appellant's sister. She adopted the contents of her letter at page 19 in the bundle as being true. She had been introduced to Mr Donkor by the appellant in 2013, she would say January/February. After they met, the next important occasion in their life was that they got engaged sometime in April. She was asked whether she was aware that they were married and she said that her sister had told her. Since the marriage she had not seen them often because of the pandemic but often before. She had last seen her sister last Friday when they went to Manchester for a cousin's graduation. She and her husband Andrew Thornhill and the cousin had gone with her. She was aware of the appellant's previous marriage. As regards its status, they got divorced. This was before she married Mr Donkor. Her sister had told her this. They had been divorced before she married her husband. As to why she thought the marriage was genuine she said whenever she went to their home they were together and he supported her all the time including going to court.
65. On cross-examination the witness was asked when she came to the United Kingdom and she said it was towards the end of 2012. She had remained in England since. As to what passport she had used to come to the United Kingdom she said she had not used a passport but was smuggled into the country. She had started in Malawi and Zimbabwe, came to England but could not describe the journey. She was asked whether she had used any travel documentation at all and said she did not know, it had all been arranged. She had not used any travel documents to the United Kingdom but on the journey there were travel documents though she would not know if they were genuine. She had just had to pay. All was arranged.
66. She knew that the appellant had got her Malawian passport fraudulently. She was not aware that her sister had made an application for leave on the basis of the relationship to the ex-husband after the divorce. That did not affect her views as to her sister's honesty because she was her sister and she believed her. She was asked whether she believed her when she

talked to her but it was all right if you tried to lie to someone else and said not that, but she did not believe she would say anything untrue.

67. It was put to her that the appellant had said that the sister was not there to celebrate the engagement as she was in Ireland and asked why she said that and she said her sister must have been confused with the timing. As to the regularisation of her stay she said it was in 2017 but did not have the actual date.
68. On re-examination she was asked what the basis of her leave was in 2017 and said it was with her ex-partner Mr Wells and it was not 2017 but she thought 2019. They were not married but were partners.
69. The next witness was Mr Andrew Thornhill who adopted as true and relied on his statement at page 21 of the bundle. He is the partner of Magret Phiri. He was asked how he knew the appellant had been living with her husband and said it was awkward with the pandemic and they met up occasionally because of work difficulties of Mr Donkor's and his. They had last met last Friday when they went to Manchester for a party, four of them but Mr Donkor had been at work. As regards any difficulties in Mr Donkor's work for them he said that he worked nights and she worked days so it could be awkward. He had been convinced it was a genuine relationship from early days when he saw them together and how they were together.
70. On cross-examination he said he would say that the appellant was honest. He did not know of her relationship with her ex-husband and he knew she had had an ex-husband. He knew nothing about her getting a fraudulent passport in the past or making an application on the basis of marriage after the divorce to the person. Neither affected his views of her honesty. Since he joined the family unit all he had seen from her was trust and honesty.
71. There was no re-examination.
72. In his submissions Mr Tan referred to the previous determinations and the relevance of the guidance in Devaseelan. Evidence that could have been provided in the past had to be treated with the greatest of circumspection. It would be rare not to hold it against the appellant. The earlier judges had found inconsistencies and there were credibility issues.
73. As to whether the current marriage was valid, reference was made to paragraph 25 of Judge Tully's judgment. There it was found that there was no evidence that the appellant was free to marry Mr Donkor. There was clear evidence, at paragraph 24, as to whether steps had been taken to dissolve the marriage, and those steps had not been taken, and hence she was not divorced. The appellant now said she was divorced and referred to proceedings several months before March 2013. This was well before the hearing before Judge Tully in 2016. The appellant said she lost the original certificate and then sought a replacement. The explanation she

gave was that she panicked when Judge Tully asked her. The response was clearly untrue. It should be borne in mind that she was represented at the time and always had been. She could have said yes and that proceedings had been undertaken, etc., and her explanation made no sense and was not credible. The document produced should be assessed in light of her overall credibility, and given no weight. The appellant said it was an extracted certificate issued in 2016 but there was no reference to 2016. 2013 was the only date on it. The document was incomplete. For example, there was an absence of who were witnesses and the numbers and the appellant could not explain why. She said the copy was provided to her brother and sent in an email on 30 November. The email and the letter were dated 30 November but her statement was dated 29 November yet it spoke of events that could not have taken place. She had backtracked in re-examination and said she made amendments but had not changed the dates. It was one of a number of issues about documents and dates. There was a letter from the Malawi High Court at page 6 of the bundle which contained a number of spelling mistakes. It was the High Court and the magistrate's decision and it was not reliable and should have no weight attached to it.

74. One would expect to see evidence, for example, about the marriage in Ghana. There had been two witnesses to the process of the marriage being registered. The relatives had been assigned as representatives on both sides. There was no evidence from either. Mr Donkor's uncle had died in 2019 but the relationship had been in dispute since 2013 to 2014 so there had been plenty of time to produce a date and statements. There was a conflict with the oral evidence. Judge Tully at paragraph 16 noted the evidence of the appellant and her husband where it was said that the marriage ceremony in Ghana needed their fathers as was their evidence there but today they referred to them being their uncles and gave an uncorroborated explanation that father was the same as uncle, even if one accepted that it was not the term they used today or before Judge Tully. Also, the appellant's status on the Ghanaian marriage certificate was described as spinster but on her own evidence she was a divorcee. She said you could only have one husband in Ghana and the claim should be rejected that she was divorced. There was no evidence that the Ghanaian marriage was valid. The Ghanaian authorities had not been told she was married at the time. Even beyond that and the subsistence of the relationship the focus was on their intentions at the time the marriage took place. The appellant's interview should be noted, for example, the answers at questions 112 to 114 where a range of dates was given as to when she separated from her ex-husband. She gave a different date there as to when she got married, referring to 2014, in answer to question 168. The husband gave evidence of the engagement party taking place in May whereas the appellant said April. There was inconsistency as to whether her sister was in the United Kingdom at the time. Her husband had no idea of her previous use of a fraudulent passport and no idea of the April 2013 application as the wife of her ex-husband. It was odd that the witnesses did not find these matters to be negative in respect of the

appellant's credibility. The application in connection with her ex-husband after the divorce spoke volumes. There was a fee to pay and her ex-husband's ID documents would be needed to support the application. She said she thought the former representatives filed the application late. This should be contrasted with her answer to question 132 where she gave a different explanation.

75. Also, one might expect evidence from the friend Lizzie who was said to be a close friend and her absence was significant. There was some evidence of a loss of contact, but it was significant in light of the history of the applications. There was an odd absence of evidence of day-to-day communication such as texts and cards. The witnesses today were close family members with a vested interest perhaps in the appellant remaining in the United Kingdom but there was a rather startling gap in their knowledge of the appellant's history. The mother had had no role in arranging the marriage. She seemed to be unaware of the passport fraud or the later application yet this did not affect her view of the appellant's honesty, and likewise her sister. It should be contrasted with the evidence as to where she was in April at the time of the engagement party. Her sister had a history of people being involved in obtaining documentation and still considered the appellant to be truthful. The last witness added little as he was more recent and it was odd that he still regarded the appellant as truthful.
76. As regards the witness support letters, none of the witnesses had attended today. They made no comment on the intentions at the time of the marriage. There was a lack of detail. There was a lack of information as to why they believed what they believed. There was no identification with some of them. The last three letters were significant as regards their absence. Cudjoe claimed to have been present when the marriage was celebrated but was not named by the witnesses today. Likewise with regard to Chambe who was referred to her perhaps as present but she had not been present. As regards Hove there was no live evidence or ID.
77. Viewed holistically the nine support letters were indicative of a social life outside the house, in contrast to what was said to Judge Boylan-Kemp in 2019 that inconsistencies arose from the limited time they spent together and that they had little life outside the home.
78. Another element was the attempt to blame the former representatives for not putting forward supporting evidence. There had been at least three appeals before 2020 and the appellant's mother had given evidence previously, she said in Stoke, and put in a support letter. This was motivated as the appellant and her husband thought it appropriate to do so, so little weight should be attached to criticism of the representatives for not asking the appellant to get evidence. There was clearly a degree of capability and experience on the part of the appellant and her husband and the wider family with regard to the appeals process. The case in respect of the former representatives was not made out. In the latest bundle there were copies of communications with the previous

representatives. The allegation of inadequate conduct was not fleshed out in detail. There was no record of instructions by the appellant to use sources of evidence. It was rather brief and vague and not reconciled with the even earlier representatives.

79. The appeal should be dismissed.
80. In her submissions Ms Imamovic adopted and developed the points set out in her skeleton argument of December 2020. The sole issue, she said, was whether the marriage was one of convenience. As regards the issues concerning discrepancies, Judge Boylan-Kemp had attached no weight to the interviews as they were incomplete and the Tribunal was urged to do the same. There had been two earlier decisions. It was true that the earlier decisions were the starting point but they were not the end. Reference was made to MW [2019] UKUT 411 (IAC). The Devaseelan guidance was not a legal straitjacket. Their evidence entitled the Tribunal to depart from those earlier decisions. Reliance was placed on today's witnesses, and also on statements from others who were not here today and also evidence with regard to the continuation of the relationship as set out in the bundles.
81. As regards Judge Tully's decision and today's evidence about the claimed invalidity of the marriage and credibility it should be noted from the earlier hearing that that was not the position and the appellant had been put in a position where they had presented their bundles with regard to credibility and not necessarily with regard to the validity of documents issues. It was the case that the onus was on the appellant to prove the marriage was genuine and that it also was valid, but the Secretary of State had had the divorce certificate since 2019 as could be seen from page 28 of her bundle, and before Judge Tully's decision. Up to today with regard to the alleged discrepancies concerning the appellant's evidence no Home Office evidence had been provided to go behind her assertion that she was married and divorced before her current marriage. Reliance was placed on what was said at QC [2021] UKUT 33 (IAC).
82. There was a duty to check and verify in certain cases only and it was argued that this was such a case where the Home Office could quite easily have checked and had not done so, but had simply drawn attention to certain anomalies. With regard to the response to the credibility points, reference was made to page 6 of the bundle where the appellant was said to be untruthful before Judge Tully and today but it was clear from her evidence that she had misunderstood what the question was. She had only said what she did to Judge Tully because of the misunderstanding and that she was mistaken and not dishonest. She could have told Judge Tully what she had done but misunderstood the question. This was not unusual and did not automatically make her evidence untruthful. She obtained the document at page 6 of the bundle in good faith, and had explained how she got it. As to the omissions on the form she said this was how she had received it and did not know why, it was like that. There was no evidence

to say the form would always be filled in or whether the procedures had been followed. She should not be blamed for anomalies in the document.

83. Also, with regard to her statement of 29 November 2021 and the claimed timeframe inconsistency, she had clearly explained that she had written a number of witness statements with updates and forgot to amend the date on the last statement. It was relevant to note that the supplementary bundle had been received by Ms Imamovic on 2 November 2021 but an earlier statement she had received from the appellant had not had these comments on it.
84. With regard to witnesses not attending, reference was made to pages 196 to 199 of the Home Office bundle, an acceptance by the Malawian authorities that they had seen statutory declarations made on their behalf and the marriage certificate had been issued. There was a presumption that the marriage complied with Ghanaian law given that even if the statutory declarations had been accepted they were produced to another court which accepted it. Also, with regard to paragraph 16 of Judge Tully's decision and the terminology of the two witnesses it was argued that the terms uncle and father were used interchangeably and the appellant and her husband had been consistent on that. Their evidence in the round was credible and capable of being relied on.
85. With regard to Mr Tan's criticisms about different dates being given, for example at questions 112 and 114 as to when the appellant separated from her ex-husband, at question 113 she said she divorced in 2013 and separated in 2012. It did not say exactly when she was divorced. The question had not been put to her today. It was clear from the answers to questions 112 and 113 that she was divorced in 2013 and that was also her evidence today. She was not asked about question 112 and that should not be used against her, and in any event was broadly consistent. She had explained the apparent inconsistency in answer to question 168 that it was 2014 and not 2017 and that was an error.
86. As regards the appellant and her husband not recalling the correct month in which they got engaged he had been clear that his memory and recollection were not the best. It was not a negative in the broadly consistent evidence but just a case of his recollection being poor as to when they got engaged.
87. As to when the appellant's sister entered the United Kingdom, from Ms Imamovic's note the appellant had said she did not think her sister was in the UK at the time but was not sure. Given the timeframe, equally her memory might not be as good as it was now. It was not an attempt to mislead or conceal things.
88. With regard to Mr Tan's argument in respect of the previous application in April 2013 on the basis of the appellant's relationship with her ex-husband, Ms Imamovic's understanding of her evidence was that she had paid £65 in advance of the application and believed the representatives had carried

on and made the application and were not privy to the relationship being ended. Mr Tan had referred to the answer to question 132 in contrast to that, but it had not been put to her and if the question was properly read she had said she just carried on with an application which is consistent and not different although it perhaps lacked greater detail. The answers today could not be compared to those at the interview.

89. Also, a lot had been made of the false passport presented in the past but the appellant had been open and honest about that. Mr Tan had sought to discredit the witnesses in regard to this but they had been honest and told what they knew and what they did not know. The fact of unawareness of details of her past did not undermine what they had seen of her. It was wrong and a mistake and her husband, as he had said, was unhappy with it, but that did not alter his view of what he and the other witnesses knew her to be. A person could be mistaken and yet honest subsequently. Likewise with regard to their ignorance of the two elements of their history, this did not make everything else about her a complete lie. The evidence did not bear out the submission. They had given honest and frank evidence. The mother's evidence went to the detail of the engagement and the marriage and the evidence of the sister also. There was awareness of the evidence of the ongoing relationship which could shed light on the intentions in getting married. The relationship had been ongoing since 2013. There had been repeated hearings. The husband remained in the United Kingdom. He could leave but he wanted his wife to be with him. His evidence was credible.
90. As regards the statements of the three people in particular, Cudjoe had not said he attended at the engagement, Chambe came and went, as the Tribunal had been told, Khadaji said that she was at the marriage ceremony but this was not put to the appellant. Celebrating a marriage did not mean a person was present at the time and it was a matter of interpretation and not put to the appellant and an adverse inference should not be drawn.
91. As regards other witnesses Lizzie was aware of the relationship before the marriage and Cisse also. Other letters were with regard to the ongoing relationship.
92. As regards what was said on the part of the respondent in regards to blaming previous representatives for evidence not being provided there were statutory declarations also. The evidence was that the appellant and her husband were aware of certain people they maybe should call and acted on other occasions on the instructing solicitors' instructions and had acted in good faith in reliance on that. Just because they were aware of the need for one person's evidence did not mean they would appreciate the need for other evidence. There was correspondence about this at pages 12 to 17 of the bundle including the very telling email at page 14 which asked what the advice was about the witnesses and the response at page 15 that the husband was the important witness and he gave evidence and it did not say that, for example, they told the appellant she

should call her mother and sister and the appellant had decided not to call them. On the totality of the evidence the evidential burden was via the earlier decisions but rebutted by the appellant who had given an innocent explanation via the evidence both oral and written which had been provided. There was evidence of cohabitation and an ongoing relationship. If the Tribunal found there was no marriage and/or it was invalid because of the divorce evidence being incomplete/unreliable the refusal letter was based on the marriage and if there was no marriage there was no marriage of convenience. If the Home Office said the evidence was not reliable and claimed that it was undermined it was a step too far and there was no evidence of that. If the Tribunal agreed with Judge Tully on the unreliability of the documents they were in a durable relationship under Regulation 8 and even if it was found the documents did not comply with Malawian law there was still evidence of a durable relationship since 2018. The appeal should be allowed.

93. I reserved my decision.
94. The appeal in this case concerns a challenge to the refusal by the respondent to grant the appellant's application for a residence card on the basis that she is married to an EEA national exercising community rights in the United Kingdom. The respondent has also challenged the validity of the marriage in light of the earlier decision of Judge Tully in 2016 in which he found that the appellant had not shown she was in a valid marriage with an EEA national since she had not shown that she had taken steps to dissolve her previous marriage prior to undertaking a proxy marriage with Mr Donkor in Ghana. It is necessary that I consider the evidence in this regard but I shall in any event go on to consider if the appellant is married to Mr Donkor lawfully, whether that is a marriage of convenience or not.
95. The appellant was represented before Judge Tully. She was appealing against a decision refusing her application for an EEA family permit as the spouse of Mr Donkor. The appellant had said that she met Mr Donkor in January 2013 when she was still in a relationship with her former partner Sergio Fernando, a Portuguese national. The judge noted that the appellant had made applications on 21 June 2012, 18 December 2012 and 10 April 2013 for an EEA residence card on the basis that she was married to Mr Fernando, her former partner. She had been married to him in a proxy marriage ceremony in Malawi. The applications had all been refused because the respondent had not accepted that she had discharged the burden of proof of showing that her marriage was valid. The judge noted that the position was that the appellant claimed to be legally married to Mr Fernando by proxy but could not prove to the respondent's satisfaction that the marriage was valid. He went on to say that just because she could not prove this to the respondent's satisfaction did not mean that she was not legally married, presumably she would not have made repeated applications to the respondent on this basis unless she thought she was genuinely married. He said that it might well be that she was legally married to Mr Fernando in Malawi but was unable to prove that.

96. At paragraph 24 of his decision Judge Tully noted that he asked the appellant if she had taken steps to dissolve her previous proxy marriage before entering into a second proxy marriage with the sponsor and she said she had not. She said they did not divorce and that when she received the refusals from the respondent she took the view that it was not a “proper” marriage and simply renounced her Malawi citizenship and sent everything back. The judge noted that there was no evidence before him to show that the act of renouncing her Malawi citizenship would act to dissolve a proxy marriage entered into at a time she held that nationality. The judge found that the appellant claimed to have entered into a proxy marriage with Mr Fernando, had taken no steps to dissolve it and yet had produced no evidence to show that it was not binding on her. He went on to say, at paragraph 27 of his decision, that the appellant had produced no evidence that she would legally be able to enter into a proxy marriage if she had had a previous proxy marriage that had not been dissolved. He did not accept on the evidence before him that the appellant was free to enter into a proxy marriage with the sponsor or that it would be valid in view of her status as a person who had had a previous undissolved proxy marriage to Mr Fernando. In light of her disclosure that she had not taken steps to dissolve her previous marriage he did not accept that the marriage she had undertaken was valid in Ghana.
97. It is the appellant’s evidence now that she was divorced and there were proceedings several months before March 2013. She said she lost the original certificate and had sought a replacement and her explanation was that she panicked when Judge Tully asked her about the previous marriage. She has now produced what is said to be a certificate of divorce issued in 2016. There is however, as Mr Tan observed, no reference to 2016 and the only date on it is 13 March 2013. There are a number of gaps on it, for example, as regards the names and villages of witnesses, though, as Ms Imamovic argues, there is no evidence as to whether or not witnesses would necessarily have been present and this could not be held against the appellant. The document purporting to be a confirmation of the issuing of the divorce certificate on 13 March 2013 is dated 30 November 2021, as is the covering email from the appellant’s brother. However, the appellant’s statement in which she refers at paragraph 9 to her brother’s email and the letter from the court is dated 29 November 2021. There is a further difficulty in that the word “Republic” in the header to the purported court document is misspelt, as is the word division “Civil Division”. The document purports to be issued by the High Court of Malawi through the Blantyre District Registry and signed by a magistrate.
98. In re-examination the appellant said that she had made an amendment but did not change the date on her statement.
99. I do not regard this evidence as credible. The appellant has not provided a credible explanation as to why it was that she told Judge Tully in 2016 that she had not been divorced from her first husband if that were not true. Her explanation that she panicked in giving the answer that she did is entirely lacking in credibility. As Mr Tan said, it would have been very easy

for her simply to say that proceedings had been undertaken and yet she did not do so despite the fact that she was professionally represented and at no point subsequently sought to remedy what had been said by her at that time. I also have real concerns about the genuineness of the document purporting to come from the High Court in Malawi bearing in mind the two misspellings in the header of that document and I do not accept the appellant's explanation for the fact that her witness statement predates the date on that document and her brother's email.

100. It follows from this that I do not accept that the appellant has shown, in accordance with the Devaseelan guidelines, any basis to depart from the findings of Judge Tully in 2016 that she did not divorce her previous husband Mr Fernando and therefore she was not entitled as a matter of law to marry Mr Donkor. As a consequence, as found by Judge Tully, she was not validly married to Mr Donkor by means of the purported proxy marriage in Ghana in May 2013.
101. I will however go on to consider whether or not it has been shown that the marriage, if there were one, is one of convenience and in that regard the burden is on the Secretary of State. As regards the evidence of the marriage being registered, there was no evidence from either of the purported witnesses to that event. Mr Donkor's uncle died in 2019 but there were several years before then when a statement could have been obtained from him given the dispute about the marriage since that time. The evidence before Judge Tully was that the marriage in Ghana was conducted in the presence of the appellant's father and the sponsor's father but it transpires that it was in fact their uncles. It is said that uncle and father are essentially synonymous, but that was not the evidence previously and I do not accept that explanation.
102. The only evidence of the genuineness of the marriage that has been able to be tested before the court is that of the appellant and her husband and her mother and sister. Evidence from supposedly close friends such as Lizzie and Cisse could not be tested as it is said that they are no longer in contact with these supposedly close friends. That, together with the evidence of Wellington Maruba, Awura Cudjoe and Tarisai Chambe has to be regarded as weakened as a consequence. There is an inconsistency in the evidence as to whether or not the appellant's sister was in the United Kingdom at the time of the engagement and I attach a small amount of weight to that as I do also to the inconsistency as to the timing of the engagement party. I do not attach adverse weight to the fact that the witnesses claimed still to find the appellant honest. A person may have been dishonest in the past without that necessarily having to be held against her. I consider there is clear materiality to the credibility point concerning the application made by the appellant on the basis of her relationship with Mr Fernando at the time when she claimed to be engaged to Mr Donkor. I do not accept that this can be blamed on the previous representatives. It is an application that was made on behalf of the appellant and there is no evidence to show that she was not aware that that application was being made on her behalf at a time when she now

claims to have been divorced from Mr Fernando. I consider that she is a witness significantly devoid of credibility. Mr Donkor's evidence and that of the appellant's mother and sister are supportive of her claim but that is to be expected given the closeness of their relationship to her. Taken as a whole I consider that the Secretary of State has discharged the burden of proof in showing that this, if it is a legal marriage, is a marriage of convenience.

103. However for the reasons set out above, I do not accept that the couple are in fact married. The appeal is dismissed.

No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'Allen', written in a cursive style.

Signed

Date

28 January 2022

Upper Tribunal Judge Allen