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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2019] EWHC 2428 (Fam)

No. BR16F00063

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 25 July 2019

Before:

MR JUSTICE HOLMAN

(**In Public**)

B E T W E E N :

FRANCIS SHARA OGUNWARE — Applicant

- and -

FUNMILAYO SHARA OGUNWARE — Respondent

THE APPLICANT appeared in person.

MS Y. OJO (CW Law Solicitors) appeared on behalf of the respondent.

J U D G M E N T

(As approved by the judge)

MR JUSTICE HOLMAN:

1 In this short judgment I will refer to Francis Shara Ogunware as 'the applicant' and Funmilayo Shara Ogunware as 'the respondent'. I personally prefer to avoid using such legalistic and impersonal words to describe people as applicant and respondent, but if I were to describe them in this case as 'husband' or 'wife', I would appear to be pre-judging the very matter in issue between them.

2 There is listed for hearing before me today a single application. That is a *pro forma* application in Form D70 for "application for declaration of marital/civil partnership status". It is a printed form in which the applicant has completed the various boxes in typewriting. On the court file there is a copy of this application in Form D70. In the top right-hand corner of the front sheet of the prescribed form of application, there are boxes in which a court official inserts the name of the court, the case number, the date the application was received by the court, the date upon which it was issued by the court, and the fee charged or remission ID.

3 On the copy of the Form D70 which is actually upon the court file (which I have obtained during this hearing), those parts have not been completed by any court official and are blank. Neither party has been able to produce to me a copy of this Form D70 which bears the seal of the court or has any of those boxes completed by any court official. Further, the photocopy of the application in Form D70, which was within the bundle prepared for this hearing by the solicitors for the respondent, leaves blank and uncompleted part 9 of the form on the sixth page of the prescribed form, which is the "statement of truth". However, the copy of the form which is upon the court file itself does have a name inserted as the name of the applicant. The inserted name is "Francis Shara Ogunware". Those are the names of the applicant. He himself (who acts in person) has told me today that those names are written on the form in his own handwriting. A little further down, there is a box in which should be

inserted a signature of the applicant or his solicitor. Within that box, on the copy of the form upon the court file, there is an apparent signature and I have to say, with due respect to the applicant, that it is completely indecipherable and is, frankly, little more than a few squiggles. But he has said that that is his genuine signature. In the box for the date, there is inserted, apparently using the same biro in which the name was written and the signature signed, the date “06/12/2017”. The applicant says that he did personally insert his name and sign the form and write that date, and that he did all of that on 6 December 2017.

4 In those circumstances, as I have found upon the court file a copy of this Form D70, including the statement of truth completed and signed and dated by (he says) the applicant, I have decided that I should proceed on the basis that that application was duly issued in a court, albeit that there is no evidence of its actual issue. Since the form is within the court’s own file, it must have come from somewhere; and if, indeed, the applicant or somebody on his behalf did lodge it with the court, then, of course, it should have been formally issued by the court. I will treat that document as the application which is before me today, and it is the only application which is before me today.

5 The manner in which the form has been completed is somewhat contradictory, but I accept that, at any rate for a person apparently acting as a litigant in person, the form may be said to be rather confusing. In part 1 on the first page of the formal application, there is a question, “Are you a party to the marriage this application relates to?” and the box for “marriage” has been ticked. Beneath that, there are alternative boxes, “yes” or “no”, and “yes” has been ticked. So, at that point, the applicant might appear to be saying that he is a party to a marriage and that it is to that marriage that the application relates.

6 On the second page of the form, under part 2, there is space for completing the “details of marriage”. Within that part of the form as completed, the applicant has stated:

"On the 30th day of December 2006 ... Francis Shara Ogunware ... married ... Funlayo[sic] Olapeti at ... the marriage registry at Lagos in Nigeria..."

7 So, at that point, it appears that the applicant is himself propounding that a marriage took place between himelf and the respondent at the marriage registry at Lagos in Nigeria on 30 December 2006. However, when one reaches part 5 of the form and "grounds for this application", one sees very clearly that the applicant is, in fact, asserting the precise reverse. He says within part 5:

"I seek a declaration that the marriage which the respondent alleges took place on 30th December 2006 did not subsist on that date or on any subsequent date for the following reasons:

(1) I was not in attendance at a ceremony on 30th December 2006 in Lagos, Nigeria.

(2) The registry in Lagos have confirmed that they have no record of the marriage certificate a copy which has been provided by the respondent. The last marriage certificate for the end of the year 2006 was not up to the number quoted on the certificate provided by the respondent.

(3) I have never lived with the respondent and I believe she alleges we were married in order to support a claim for financial relief, in particular against my property in the United Kingdom..."

8 It does appear that in 2013 there were some divorce proceedings between these parties in Nigeria and the box in part 5 of the form continues:

> "I further seek a declaration that the divorce certificate dated 2nd December 2013 is not entitled to recognition in England and Wales given the marriage dissolved by that decree did not, in fact, take place."

9 So, notwithstanding the somewhat contradictory aspects of the earlier parts of the form, one sees very squarely from part 5 what the contention of the applicant is. In a sentence, he is contending that although the respondent has produced what purports to be a marriage certificate between these parties of a marriage contracted on 30 December 2006, no such marriage ever took place. Although he does not say so in terms, it must follow that he is asserting that, in some way, the certificate of marriage which has been produced is not authentic but is, in plain language, bogus.

10 Within the documents that have been produced by one or other of these parties, there are a number of photocopy copies of a document which certainly purports to be a certificate of marriage issued under the Marriage Act of the Federal Republic of Nigeria. These photocopies ascribe to the registration of this particular marriage the number 4872/2006. They state that there was a marriage on 30 December 2006 between Francis Shara Ogunware and Funlayo[sic] Shara Olapeti. Further details are given as to their respective ages, their occupations, their addresses, and the name and occupation of their respective fathers.

11 One version of this certificate of marriage (entirely in photocopy form) has written upon it, above the formal part of the certificate of marriage itself, the following:

> "Note: having gone through our records at the disposal of the registry, no record of the marriage certificate was found. However, the last marriage certificate number for the end of the year was not up to the quoted number on the certificate."

12 Beneath that, there is a signature which I cannot decipher, and a written date "11/12/15" (or possibly "16"). Beneath the signature, there appears to be a rubber stamp but it is so faint as to be completely indecipherable.

13 It is, of course, the applicant who has asserted within part 5 of his formal application that:

> "The last marriage certificate for the end of the year 2006 was not up to the number quoted on the certificate provided by the respondent."

That, in turn, may be based upon those words that I have just quoted which have been written on top of the photocopy marriage certificate. I asked the applicant today whether he has the original copy of the certificate of marriage upon which, in their original form, those added words were written, but he says he has not.

14 There is another version of the certificate of marriage, which appears to be a photocopy of the same original document, upon which there are a number of rubber stamps. In the top right-hand corner, there is a rubber stamp which says "KASALI S. B. CERTIFIED 01 FEB 2018 TRUE COPY OF THE ORIGINAL". In the top left-hand corner, there appears to be the same identical rubber stamp, although this time with the inserted date "20 FEB 2018". At the bottom of the photocopy of the certificate of marriage, there is written "02/02/2018", and beneath that there is a signature which I cannot decipher, and beneath that a rubber stamp which says "Kasali S. B. Federal Registrar of Marriage". Although I cannot decipher the signature in the bottom right-hand corner of that version of the certificate of marriage, it does appear (to my entirely lay eye) to be very similar indeed to the signature upon the other version of the marriage certificate, to which I have referred, which records that no recording of the marriage certificate was found and that the last marriage certificate number for the end of the year was not up to the quoted number on the certificate.

15 Assuming, for one moment, that the same signature does appear on each of those documents, it would appear that on 11 December 2015 or 2016, a person was certifying that no record of the marriage certificate was found and that the number upon the certificate is not consecutive to the last number or numbers for the end of the year, and the same person was later certifying in February 2018 that the certificate of marriage is a "true copy of the original".

16 Further, the applicant has produced today a document headed "Ministry of Interior Federal Marriage Registry Ikoyi-Lagos", dated 17 July 2018, which purports to be a letter from S. B. Kasali "Chief Registrar of Marriages, Ikoyi, Lagos". That letter states that:

> "I ... reconfirm my earlier position of 11th December 2015 that the marriage certificate number 04872/2006 does not exist in any of our records."

17 The letter then says that, later, some error was made which "is highly regretted". The letter continues:

> "In view of the above, I affirm that the marriage certificate number 04872 of 30th December 2006 is not valid (as it is not in any of our records) and confirmation of 2nd February 2018 is invalid and should be disregarded... Thanks, the error/contradiction is highly regretted for any inconvenience it may have caused you."

18 Attached to that letter there is yet another photocopy of the certificate of marriage, upon which somebody has written at the top "not valid", and at the bottom:

> "This marriage certificate number 4872/2006 does not exist in any of our records. The certificate number 4872/2006 is far above the last celebrated marriage certificate number 3139/2006 of the same day (30/12/2006)."

19 Beneath that, there is a signature which again seems to resemble earlier signatures of S. B. Kasali. There is then a rubber stamp “Kasali S. B. Federal Registrar of Marriage” and a handwritten date “17/7/2018”.

20 So it can be seen that the evidence, such as it is, from Nigeria in relation to this matter is very contradictory and, frankly, very unsatisfactory. As I understand it, although I have not heard any oral evidence from either party, the respondent is adamant that a ceremony of marriage was conducted between her and the applicant on 30 December 2006 in Lagos, and that the certificate of marriage is a genuine document which evidences it. The applicant is no less adamant that he, at any rate, never attended any such ceremony at all, and that there never was a marriage between him and the respondent.

21 I mention that within some of the statements, and also as elaborated in the position statement for today’s hearing prepared by the respondent’s solicitors, CW Law Solicitors, there is reference to an alleged earlier customary marriage between these parties in Nigeria, said to have taken place during January 2006. I say nothing whatsoever about that alleged customary marriage, since there is no application before me in relation to it and, in any event, before a court in England and Wales could find that a valid customary marriage had taken place, it would need not only proof of the facts, but also expert evidence that whatever is found to have taken place does amount to a lawful customary marriage under the law of Nigeria. There is no such evidence before me.

22 I have narrated those background facts and circumstances at a little length so as to set the context for the present application. However, I now turn to the relevant statutory provisions, and on the basis of those provisions, I intend to dismiss this application. It seems to me that although the application purports to be one for a declaration of marital status made under Part III of the Family Law Act 1986, it is not, in fact, one that falls within the provisions of

that part. Section 55 of the 1986 Act is headed "Declarations as to marital status". It then provides as follows:

"55

(1) Subject to the following provisions of this section, any person may apply to the High Court or the family court for one or more of the following declarations in relation to a marriage specified in the application, that is to say—

(a) a declaration that the marriage was at its inception a valid marriage;

(b) a declaration that the marriage subsisted on a date specified in the application;

(c) a declaration that the marriage did not subsist on a date so specified;

(d) a declaration that the validity of a divorce, annulment or legal separation obtained in any country outside England and Wales in respect of the marriage is entitled to recognition in England and Wales;

(e) a declaration that the validity of a divorce, annulment or legal separation so obtained in respect of the marriage is not entitled to recognition in England and Wales..."

23 I will return to those listed declarations in moment. However, I turn next to section 55(2) which prescribes the alternative bases upon which a court shall have jurisdiction to entertain an application under section 55(1). They include at (b) that either of the parties to the

marriage to which the application relates has been habitually resident in England and Wales throughout the period of one year ending with that date. As I understand it, the applicant has been habitually resident in England and Wales for many years. So the jurisdictional requirements under section 55(2) are satisfied and, in principle, this court does have jurisdiction.

24 I return, however, to the listed categories of declaration under section 55(1). This applicant does not seek a declaration that the marriage was, at its inception, a valid marriage under paragraph (a). He does not seek a declaration that the marriage subsisted on a date specified in the application under paragraph (b). He does not seek a declaration that the validity of a divorce is either entitled to recognition or not entitled to recognition under paragraphs (d) or (e). He certainly does not seek a declaration that the marriage was, at its inception, a valid marriage, since his contention is that there never was a marriage. The only conceivable subparagraph upon which the application might be founded is (c), namely, for "a declaration that the marriage did not subsist on a date so specified". Indeed, part 5 of the formal application form has been cast in that language so that it begins:

> "I seek a declaration that the marriage, which the respondent alleges took place on 30th December 2006, did not subsist on that date or on any subsequent date..."

25 In my view, the word "subsist" connotes the continuation of something which did previously exist. If it is not in issue that there was, at a certain time, a valid marriage, then one can use the language of "subsist" to describe whether or not that valid marriage was still continuing to exist on some later date. But, in my view, it is impossible, in ordinary English language, to use the word "subsist" in relation to a fact or status which is alleged never to have taken place at all. The gravamen of the applicant's story and claim is that there never was, even for a particle of a second, any marriage at all between him and this respondent, and his claim

simply does not fall within the language of "a declaration that the marriage did not subsist on a date… specified" even if the date specified is the very date upon which the marriage is alleged to have taken place. It follows that, in my view, there is simply no declaration sought on the present application that falls within any of paragraphs (a) to (e) of section 55 of the Act.

26 One then has to turn to section 58 which also falls within Part III of the Act. That is headed "General provisions as to the making and effect of declarations". Section 58(3) provides that:

> "A court, on the dismissal of an application for a declaration under this Part, shall not have power to make any declaration for which an application has not been made."

27 Section 58(4) provides that:

> "No declaration which may be applied for under this Part may be made otherwise than under this Part by any court."

28 Section 58(5) provides that:

> "No declaration may be made by any court, whether under this Part or otherwise—
>
> (a) that a marriage was at its inception void..."

29 It seems to me that the combined effect of those provisions of section 58 completely prohibits and prevents me from making any declaration at all on the present application. As I have said, it is an application which purports to be made under section 55, but that which the applicant asks me to declare does not fall within any of paragraphs (a) to (e) of section 55(1). Section 58(3) expressly provides that on the dismissal of an application for a

declaration under this Part, the court shall not have power to make any declaration for which an application has not been made. Further, section 58(5) expressly provides that:

> "No declaration may be made by any court, whether under this Part or otherwise—
>
> (a) that a marriage was at its inception void..."

30 It is, of course, true that the underlying case of this applicant is that there was simply no "marriage" or any kind of ceremony or event at all between these parties on 30 December 2016 in Nigeria. So the applicant is not contending that there was a marriage that was, for some reason, a "void" one, but, rather, that there simply was not a marital event at all. Nevertheless, it seems to me that of all the provisions in Part III in point in the present case, the one that the present application comes nearest to is seeking a declaration that the marriage was at its inception void. I am expressly forbidden by statue from declaring that. It seems to me, therefore, that I must dismiss completely the present application on the simple grounds that it does not fall within any of the forms of declaration that I am empowered to make under section 55(1), and that the provisions of section 58 to which I have referred completely prohibit me from making some alternative form of declaration that falls outside the scope of section 55(1).

31 For those reasons, I will completely dismiss the application in Form D70 which was signed by this applicant on 6 December 2017 and which I have been prepared to treat as having been issued by him. I wish to stress that my decisive reasons for dismissing the application are, as I have explained, that it simply does not fall within anything which the court is empowered to declare under Part III of the 1986 Act.

32 Although earlier in this judgment I described the somewhat conflicting material from Nigeria, I have not heard any oral evidence from either of these parties, I have no view

whatsoever, and express no view whatsoever, on the question whether or not an event did take place in Lagos, Nigeria, on 30 December 2006 which constituted a valid marriage between them. That is an issue which could be considered by this court on an application made to it by the present respondent, whose case it is that there was a marriage on 30 December 2006 which was, at its inception, a valid marriage between these parties. But she has not made any application for a declaration, and I could not possibly make a declaration to that effect (even if justifiable on the evidence) in the context of the present application by the present applicant, since that is expressly forbidden by section 58(3) of the Act which I have quoted above.

33 Before I finally part with this case, however, I wish to record that it seems to me that the only place where the truth or otherwise of whether or not there was a valid marriage in Lagos, Nigeria on 30 December 2006 could reliably be determined is in Nigeria, by the courts of Nigeria. That is where the alleged event happened, and the courts of Nigeria are far better equipped than the courts of England and Wales, at a distance, to try to get to the bottom of the true state of the marriage register, and whether or not a relevant event took place on 30 December 2006, and, if so, the status and consequences of that event. However, for the reasons I have given, the present application is simply dismissed.

CERTIFICATE

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