



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

Appeal Number: IA/37507/2013

THE IMMIGRATION ACTS

Heard at Field House

On 18th June 2014

**Determination
Promulgated**

On 27th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR OLALEKAN OLUMIDE AROYEHUN
(NO ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance

For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, Mr Olalekan Olumide Aroyehun, date of birth 6th April 1982 is a citizen of Nigeria.
2. I have considered whether any of the parties to the present proceedings requires the protection of an anonymity direction. Taking account of all the circumstances I do not consider it necessary to make an anonymity direction.
3. There was no attendance by the Appellant or anyone acting on his behalf. The notice of hearing had been sent to the Appellant and to his solicitors,

Chancery CS Solicitors, on 25th May 2014. The notice of hearing had been sent to the Appellant at the address he had given. No notification had been of any change of address. No contact had been received from the solicitors to explain the non-attendance of the parties. I am satisfied that the notice of hearing has gone out in accordance with the requirements of the Procedure Rules.

4. There was no explanation for the non-attendance of the Appellant or his legal representatives. I considered the papers carefully and determined that the appeal could be justly determined on the basis of the papers and submissions lodged as the Grounds of Appeal. I therefore determined that it was in accordance with the Procedure Rules to proceed with the hearing in the absence of the Appellant or his legal representatives.
5. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge Agnew promulgated on 17th December 2013. The Appellant had applied for a residence card as evidence of a right to reside in the United Kingdom as a family member of a Dutch national who was exercising treaty rights. The Appellant was claiming that he and the Dutch national were married.
6. The Grounds of Appeal allege that the judge, in making the decision that he did and in failing to accept the evidence as a whole, has acted unfairly, irrationally and unreasonably. It is alleged that the judge in finding that the Nigerian customary marriage was not valid had failed to take account of the evidence and as a result fallen into legal error. It was alleged that as per the Country of Origin Information Report customary marriages are recognised in Nigeria and as such the judge should have on the basis of the background information recognised the marriage between the Appellant and the Dutch national. The marriage therefore between the Appellant and his Sponsor, a Dutch national, is therefore valid and the appeal should have been allowed..
7. As an alternative it is suggested that the evidence submitted was sufficient to show that there was a durable relationship between the Appellant and the Sponsor. The judge has failed to take account of such evidence and by reason thereof there is an error of law as to whether there was a durable relationship..
8. Consideration is given to proxy marriages and their validity in the case of Kareem (Proxy marriages - EU law) [2014] UKUT 24. The case points out that in order for a marriage to be valid it has not only to be validly performed according to the law of the place of performance but also in an EU context to be valid according to the national law of the EU Sponsor.
9. This matter was determined on the basis of the papers submitted by the Appellant. The judge found on the basis of the papers lodged that the EEA national was exercising treaty rights in the United Kingdom. It was accepted that the EEA national was a qualified person.

10. The Appellant and Ms Withley Xaviera Wijnstein, a national of the Netherlands, married by proxy in Nigeria on 10th November 2012. The issue for the judge was whether or not that had been proved to be a valid marriage.
11. There were documents in the form of affidavits from the High Court in Nigeria and other documents to attest to the validity of the marriage.
12. The background reports confirm that a proxy marriage can by customary law be recognised in Nigeria. However it was necessary to prove how the marriage was carried out, what the requirements of the customary law were; and whether those requirements were met. There was a lack of evidence as to whether or not the requirements of customary law had been met. The affidavit evidence merely stated that the Nigerian High Court considered the marriage to be valid. The judge was entitled to consider whether the requirements of customary law had been proved. The evidence did not satisfy the judge that the requirements of customary law had been met. The judge has given reasons for finding that that did not satisfy him as to the validity of the marriage.
13. Further there was no evidence as to how the Netherlands law would treat this marriage. To an extent the matter may have been capable of being determined because of the decision in Kareem but there were no documents or evidence presented to the Tribunal on the issue.
14. It was necessary to prove that the marriage would be recognised in the law of the Netherlands. The judge concluded on the basis of the evidence that he was not satisfied that they had proved that the marriage would be recognised in the Netherlands.
15. The obligation was on the Appellant with regard to Dutch law to show that the marriage would be valid according to the laws of the Netherlands. There was no evidence with regard to that. The evidence as to the validity of the marriage in Nigeria was also problematic in the sense that there was no evidence that the customary requirements of the law had been carried out. Whilst otherwise there was evidence that it was according to affidavits from the High Court, it was still a matter for the judge to look at the evidence to determine whether or not the same was valid. The judge having looked at all the evidence came to a conclusion based on the facts.
16. With regard to there being a durable relationship the judge has considered the evidence presented and has given valid reasons for finding that the Appellant had not proved that there was a durable relationship. The relationship at the time of the hearing before the judge was only of some 12 months duration or 18 months at most since the date the parties met. The judge has carefully looked at the evidence presented including the documentation and give reasons for not accepting the documentary evidence. The judge has considered whether there was a durable relationship and on the evidence concluded that there was not. That was a finding of fact that the judge was entitled to make on the evidence.

17. The conclusions by the judge are extremely brief. However the judge has given reasons as to why he is not satisfied that the marriage is valid and that the appellant had not proved that there was a durable relationship. Those were findings of fact that were available to the judge to make on the basis of the evidence presented.
18. There is no error of law within the determination and that the decision to dismiss this matter on all grounds stands.

Signed

Date

Deputy Upper Tribunal Judge McClure