



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

**Appeal number: OA/01537/2014  
OA/01538/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On December 17, 2014**

**Decision & Reason Promulgated  
On December 23, 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**THE ENTRY CLEARANCE OFFICER**

Appellant

**and**

**MS LATIFA HUSSEIN  
MASTER ZEINAB ABDULHAMED AHMED**

Respondent

Representation:

For the Appellant: Mr Duffy (Home Office Presenting Officer)

For the Respondent: Mr Slater, Counsel, instructed by MA solicitors

**DETERMINATION AND REASONS**

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellants, born March 7, 1980 and August 24, 2007 respectively are citizens of Kenya. The first named appellant submitted an application on

December 4, 2013 for entry clearance as a spouse. The second named appellant is the first-named appellant's daughter from a previous relationship and she applied for admission as her dependant.

3. The first-named appellant married the sponsor, Abdul Rahman Mohamed Juma, in Mombasa on October 18, 2013 having last seen him on September 15, 2013. The marriage is said to be a proxy marriage. The respondent refused their applications on December 23, 2013.
4. The respondent refused the first-named appellant's application because she was not satisfied that proxy marriage are legal in Kenya and her application was refused under Section EC-P.1.1(d) of Appendix FM of the Immigration Rules. The second-named appellant's appeal was refused because his mother's appeal had been refused and his was refused under Section EC-C.1.1(d) of Appendix FM.
5. The respondent also refused the applications under article 8 ECHR.
6. The appellants appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on January 21, 2014. The respondent reviewed the grounds of appeal on April 7, 2014 but maintained her decision. On September 22, 2014 Judge of the First Tier Tribunal Pacey (hereinafter referred to as the "FtTJ") heard their appeals and in determination promulgated on October 2, 2014 she allowed their claims under the Immigration Rules.
7. The respondent appealed those decisions on October 9, 2014. Judge of the First-tier Tribunal Hodgkinson granted permission to appeal on the grounds the decision under the Rules and article 8 were arguably flawed.
8. The matter came before me on the above date and on that date the sponsor was in attendance.

### **ERROR OF LAW SUBMISSIONS**

9. Mr Duffy submitted that whilst there may be some circumstances where proxy marriages are valid this was not one of those occasions. The FtTJ had erred by relying on the evidence presented because the Mohammedan Marriage and Divorce Registration Act did not cover absent bridegrooms. The evidence produced did not demonstrate that proxy marriages are valid. He further submitted the FtTJ's assessment on family and private life was defective because she had based her assessment on the children's interests only and had not had regard to the fact the Rules were not met.
10. Mr Slater submitted the FtTJ had had full regard to the available evidence. She had listened to the respondent's submissions but decided that the evidence adduced by the appellant showed the marriage was valid. The FtTJ pointed to the various documents that she said addressed the

respondent's concerns and that there was no error in law. As regards the family and private life issue he submitted that the FtTJ was entitled to make the findings she did.

### **ERROR OF LAW ASSESSMENT**

11. The key issue in this appeal is whether the FtTJ was entitled to make the finding she did on the validity of the marriage. This finding has to be right otherwise the whole decision is defective. If the decision is correct then there clearly would be no error in law and the arguments about article 8 would be immaterial.
12. The background to the marriage is the first named appellant was previously married and she was divorced from her first husband, by consent, on December 16, 2008. The second appellant is in the custody of the first-named appellant. According to the sponsor's declaration he also was previously married but his first marriage was dissolved on October 7, 2013. He had found the first-named appellant through a website and they first met in July 2012. The sponsor last saw the first-named appellant on September 15, 2013. They married on October 18, 2013 by proxy in Kenya and the marriage was registered. A marriage certificate was provided indicating that the first-named appellant had signed the certificate and the two witnesses also signed the certificate, as did the deputy registrar. An agent signed on behalf of the sponsor.
13. The refusal letter questioned the validity of the marriage because it was a proxy marriage. The respondent raised the issue of validity in the refusal letter and submissions and the appellant addressed the issue by providing various documents including an order of the Kadhi's court dated January 8, 2014, a letter dated January 8, 2014 from the Registrar General, a copy of CAP155 and CAP156.
14. These documents, Mr Slater submits, persuaded the FtTJ that proxy marriages are valid.
15. This is not an EEA case but paragraph [64] of Kareem (Proxy marriages-EU Law) [2014] UKUT 24 states,

"The relevant law of the United Kingdom that would apply to this appeal were it not a matter of EU law would be the law of England and Wales (the laws of marriage in the United Kingdom being different in its constituent jurisdictions). The proper approach under the law of England and Wales has been set out by the Tribunal in CB (Validity of marriage: proxy marriage) Brazil [2008] UKAIT 00080 and there is no need for us to repeat it. In summary, a proxy marriage would be regarded as valid under English and Welsh law if it was valid according the law of the place where it took place, recognising that the marriage took place where it was celebrated."
16. For a proxy marriage conducted abroad to be valid in the United Kingdom a number of conditions have to be met including the fact the marriage

ceremony must be recognised as a form of valid marriage by the law of the place of celebration. In short, if the country allows proxy marriages and other legal requirements are met then the United Kingdom would recognise the marriage as well.

17. The FtTJ was satisfied the marriage was legal and nothing submitted by Mr Duffy alters the situation. Despite Mr Duffy's submissions he has not produced anything to suggest the FtTJ has erred in law. Mr Duffy accepted proxy marriages can take place and the CAP155 point raised by Mr Duffy does not invalidate the marriage itself for the reasons given by the FtTJ.

### **DECISION**

18. There is no material error in law and the original decision shall stand.
19. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me

Signed:

Dated: **December 23, 2014**

Deputy Upper Tribunal Judge Alis

### **TO THE RESPONDENT**

I make no alteration to the fee award decision previously take.

Signed:

Dated: **December 23, 2014**

Deputy Upper Tribunal Judge Alis