



**Upper Tribunal
(Immigration and Asylum Chamber)
EA/00736/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 6 October 2017

**Decision & Reasons
Promulgated**

On 16 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MR MARCUS SARKODIE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Awal, Counsel instructed by Mahmood & Co Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from First-tier Tribunal Judge Lodge, which bears the date 13 March 2016, although the date of promulgation does not appear on the face of the copy in the file. The appellant is a citizen of Ghana, born on 16 May 1986, who challenges the refusal of the Secretary of State to provide him with a residence card as confirmation of his right to reside in the United Kingdom. It is unfortunate the appeal before Judge Lodge was decided on the papers with no representation either from the appellant or from the respondent.

2. Central to the judge's determination was a factual matter, namely the validity of the claimed proxy-marriage between the appellant and a Dutch national. It is a trite principle of private international law the lawfulness of certain events, such as marriage, is to be judged by the law of the jurisdiction where the event takes place. That uncontentious statement was affirmed recently in the appeal of **Albert Awuku v Secretary of State for the Home Department [2017] EWCA Civ 178** which in paragraph 17 makes direct reference to the *lex loci celebrationis* concerning the local law where a marriage is celebrated.

3. The judge made findings which on the face of the determination are unimpeachable and those findings were based upon the judge's understanding of Ghanaian law. For convenience I read them into the record:

"8. I have before me a Ghanaian marriage certificate which states that the Appellant was married to his EEA national spouse in Ghana on 4th April 2013. Looking at Ghanaian law under Section 3(1) PNDC (Provisional National Defence Council) Law 112 Customary Marriage and Divorce (Registration) Law 1985 the registration of a marriage must be accompanied by a valid statutory declaration and both parties to the marriage must be either Ghanaian citizens or must demonstrate their parents are or were Ghanaian citizens.

9. The Appellant has supplied a copy of his passport and his birth certificate. I have not, however, been supplied with evidence that his partner is a Ghanaian or of Ghanaian descent. All I have is a provisional licence and its counterpart. I am satisfied on the evidence the Appellant has not established that his EEA spouse is either a Ghanaian national or that she has familial links to Ghana.

10. Moving on, the Appellant states that he was represented at the customary marriage by his father Joseph Kwado Annor. I have a birth certificate showing that individual to be the Appellant's father. The EEA spouse was represented by a friend Kwaku Achemapong. She is no relation to the EEA Sponsor and accordingly under Ghanaian law unable to represent the Appellant's spouse.

11. The marriage certificate has been stamped by a person claiming to be a registrar. The Respondent contends that no evidence has been produced to confirm that George Kom is a registrar. In fact there is a document that purports to be a High Court document confirming George Kom is a registrar. I have only copies of the document and not the original. I am not in a position to verify the document's legitimacy. However on the basis that I find the Sponsor has not established she is Ghanaian and that her friend Kwaku Achemapong is not entitled to represent her I find that I cannot be satisfied that the claimed customary marriage is in accordance with Ghanaian law. It is therefore necessary for me

to consider whether the marriage stamp [sic] has been signed and properly authorised by the registrar.”

I suspect that is a typographical mistake as it should be marriage certificate, not marriage stamp.

4. Mr Tarlow, who acts for the Secretary of State, tells me he unaware of what material may have been before the judge which led him to summarise Ghanaian law in the way he did. When I asked Mr Awal what material the appellant had placed before the First-tier Tribunal, he conceded that no expert evidence had been submitted concerning Ghanaian customary law.
5. The fallback position which Mr Awal eventually adopted was that the copy marriage certificate should be treated as valid and conclusively determinative of the issue of validity under local law. Because it is not an original, nor a duly authenticated copy of the original, its claimed content cannot be dispositive of this appeal. Nonetheless, the approach of the judge in the court below did amount to a material error of law because the judge’s understanding of Ghanaian customary law was apparently not based on evidence before the Tribunal but derived from some other, unspecified, source.
6. It may be that the copy marriage certificate is valid, and that a duly authenticated version might prove dispositive of the matter in dispute. I cannot make that determination in the absence of evidence of, or agreement between the parties as to, Ghanaian customary. The matter needs to be set aside and remitted in its totality for it to be re-heard in the First-tier Tribunal.
7. The second issue which the judge had to determine, in the alternative, was whether there was a durable relationship. Contrary to a misleading paragraph in Mr Awal’s skeleton argument, the judge below did not find that the couple were living together or cohabiting. He merely found that they were both living at the same address. He concluded that the existence of a durable relationship had not been proved.
8. These two issues cannot sensibly be separated. It would be artificial to preserve certain facts and not others. The entire appeal to be decided afresh in the First-tier Tribunal.

Notice of Decision

- (1)The appeal is allowed and the decision of the First-tier Tribunal is set aside.
- (2)The matter is remitted to be heard afresh by a judge other than First-tier Tribunal Judge Lodge.
- (3)No anonymity direction is made.

Signed *Mark Hill QC*

Date

13 October 2017

Deputy Upper Tribunal Judge Hill QC