



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

Appeal Number: HU/12085/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 5 September 2017**

**Decision & Reasons
Promulgated
On 12 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

and

**KWADWO OPOKU AGYEMANG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer
For the Respondent: Mr N Garrod, Counsel, instructed by Justice and Law Solicitors

DECISION AND REASONS ON ERROR OF LAW

1. The appellant is the Entry Clearance Officer, who appeals with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal Fox who, in a decision promulgated on 11 May 2017, allowed the appeal of Mr Agyemang against the decision dated 18 August 2015 to refuse his application for entry clearance to join Ms Afia Dansoa Aboagye, a British citizen, in the UK as a spouse. Mr Agyemang appealed on the

ground that the decision breached Article 8 of the Human Rights Convention.

2. It is more convenient to refer to the parties as they were before the First-tier Tribunal. From now on I shall refer to Mr Agyemang as “the appellant” and the Entry Clearance Officer as “the respondent”.
3. I was not asked to make an anonymity direction and I saw no reason to make one.
4. The salient facts are as follows. The appellant is a citizen of Ghana. He married Ms Aboagye in Ghana by proxy. That is to say, Ms Aboagye did not attend the ceremony. The appellant’s case was that his marriage was valid according to Ghanaian law and therefore ought to be regarded as valid in the UK. However, the respondent was not satisfied that a valid marriage had taken place. The notice of decision stated as follows:

“I note from your solicitor’s letter that your marriage was by proxy and that your sponsor was unable to attend the ceremony due to work commitments. I also note in your custom that it is not uncommon for the bridegroom to be in another place as the ceremony can proceed without him. A marriage by proxy is one where one or both partners are not physically present at the ceremony. Marriages taking place under United Kingdom law are not valid if they are by proxy. However, United Kingdom law may in some circumstances consider a proxy marriage to be valid if both of the partners are ‘domiciled’ in a country which recognises marriages by proxy. As your sponsor was domiciled in the UK at the time of the wedding and you were residing in Ghana I do not accept that a valid marriage has taken place.”

5. The respondent also found against the appellant in respect of the genuineness and subsistence of the marriage and the intention of the parties to live together permanently. Furthermore, some of the documents required to demonstrate that the maintenance rules were met were missing from the application.
6. The grounds of appeal argued strenuously that the respondent’s analysis of the validity of the marriage was erroneous and was indeed contrary to the respondent’s own guidance on Ghanaian customary marriages. There was no reference in the guidance to the question of domicile. The grounds relied on the case of *CB (Validity of marriage: proxy marriage) Brazil* [2008] UKAIT 00080, which stated in the head note that the validity of the marriage was governed by the *lex loci celebrationis* and there was no reason in public policy to deny recognition to a proxy marriage.
7. The Entry Clearance Manager reviewed the decision but maintained it. It seems that the grounds of appeal were submitted separately to the notice of appeal and the arguments made in them were not taken into account.
8. Judge Fox dealt with the matter in the following way. He obtained a concession from the Presenting Officer that the documents submitted satisfied the requirements of the Rules with regard to maintenance. He

reasoned that the issue of the genuineness and subsistence of the relationship flowed from the decision on the validity of the marriage and therefore would stand or fall with his decision on the validity point. The judge's consideration of the validity point was as follows:

“9. The [Presenting Officer] and [Counsel for the appellant] also drew my attention to the recent case of *Awuku v SSHD* [2017] EWCA Civ 178 (“*Awukwu*”) which I familiarised myself with prior to the hearing. [The Presenting Officer] stated that the issue of proxy marriage could no longer be pursued by the respondent in light of *Awuku*.

13. As stated above the respondent's decision was flawed in relation to the issue of proxy marriage and the subsequent conclusions relating to the quality of the marriage. Although [the Presenting Officer] has no instructions to withdraw the respondent's decision or concede he made no attempt to maintain the respondent's decision.”

9. In this way, the judge allowed the appeal. It was not also necessary to consider Article 8 of the Human Rights Convention separately. It is clear the judge recognised that the fact the rules were met could only mean that the decision was disproportionate and therefore not in accordance with section 6 of the Human Rights Act.

10. The grounds seeking permission to appeal argued that the parties to the appeal and the judge fundamentally misunderstood the legal issue at the heart of the appeal and, as a consequence, the judge accepted a concession that was wrong in law. The judge had erred by failing to address the central issue, which was whether the marriage was valid given the domicile of the sponsor was in the UK.

11. Permission to appeal was granted by Judge of the First-tier Tribunal Chohan because

“the judge's findings are set out in two very short paragraphs and there does seem to be a lack of adequate reasoning. It is not clear absolutely as to what concession was made and the concise findings have not helped matters. The matter needs to be explored.”

12. In discussions at the hearing before me, it became apparent that the parties were in effect in agreement that there was no material error of law in the decision of Judge Fox and I am grateful for their assistance. It follows that I find there is no error in the decision of the First-tier Tribunal and the decision is upheld.

13. For the avoidance of doubt, the case of *Awuku* held that the case of *Kareem* was wrongly decided and it is not necessary to consider the law relating to the validity of proxy marriages in the EEA national's country. This is not an appeal in which a proxy marriage has taken place to an EEA national. However, the court's discussion of this issue began as follows:

“15. In the law of England and Wales the general rule is that the formal validity of a marriage is governed by the law of the country where the

marriage was celebrated ('the *lex loci celebrationis*') (Dicey, Morris and Collins on the Conflicts of Laws, 15th Ed., (2012), Rule 73). The editors of Dicey, Morris and Collins explain (at 17-004) that a marriage celebrated in the mode or according to the rites or ceremonies required by the law of the country where the marriage takes place is, as far as formal requisites go, valid. In general the law of a country where a marriage is solemnised must alone decide all questions relating to the validity of the ceremony by which the marriage is alleged to have been constituted. (*Sottomayor v De Barros* (No.1) (1877) 3 P.D. 1, 5 (CA)) A marriage by proxy will be treated as valid in England if recognised by the local law, even if one of the parties is domiciled and resident in England and the power of attorney authorising the proxy to act is executed in England. The transaction is not contrary to public policy (Dicey, Morris and Collins 17-012). In *Apt v Apt* [1948] P. 83 the Court of Appeal upheld the decision of Lord Merriman P. at first instance ([1947] P. 127) where he stated (at p. 147):

'The celebration of marriage by proxy is a matter of the form of the ceremony or proceeding, and not an essential of the marriage; that there is nothing abhorrent to Christian ideas in the adoption of that form; and that, in the absence of legislation to the contrary, there is no doctrine of public policy which entitles me to hold that the ceremony, valid where it was performed, is not effective in this country to constitute a valid marriage.'

16. In *CB (Validity of Marriage: proxy marriage) Brazil* [2008] UKAIT 00080 the Upper Tribunal rejected a submission that different rules should be applied to the legal framework governing validity of marriage when the issue arose in the context of immigration law. The Tribunal reaffirmed that the formal validity of a marriage is governed by the *lex loci celebrationis*. It upheld the decision of the Immigration Judge that since the *lex loci celebrationis*, Brazilian law, recognised proxy marriages, the marriage of the appellant and his wife was valid under the law of England and Wales and, as a consequence, the relevant requirements of the EEA Regulations were met."

14. The submission of the Presenting Officer to the judge that he could not pursue the argument about the sponsor's domicile in the light of *Awukwu* could equally have been based on *CB (Brazil)*. The marriage was not invalid under UK law. The respondent's appeal is dismissed.

Notice of Decision

The Judge of the First-tier Tribunal did not make a material error of law and his decision allowing the appeal is upheld.

No anonymity direction is made.

Signed

Date 11 September 2017

Deputy Upper Tribunal Judge Froom

