



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/05334/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 19th March 2019

Decision & Reasons Promulgated
On 20th June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

SHERIFAT ADEDOYINSOLA MAKANJUOLA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. Ariyo, Apex Solicitors

For the Respondent: Mr. McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Nigeria and she appeals against the decision of First-tier Tribunal (“FtT”) Judge Woolley promulgated on 10th October 2018, dismissing her appeal against a decision to refuse to issue an EEA family permit in accordance with the Immigration (European Economic Area) Regulations 2016 (“the 2016 Regulations”). The appeal was determined by the FtT Judge on the papers, without a hearing.

2. The appellant had claimed a right to reside in the UK as the family member of an EEA national. The appellant claims that she is the spouse of a Portuguese national, Carlos Mutar Sonco, and that their marriage took place by proxy in September 2017. The respondent noted that alongside a customary marriage certificate, the appellant provided a number of supporting documents, but the respondent concluded that the evidence provided, did not confirm the proxy marriage was valid. The respondent did not believe that the evidence produced was sufficient to establish that the appellant is married according to Nigerian law. The respondent was therefore unable to confirm that the appellant is a family member of her EEA sponsor.
3. In support of the appeal, the appellant provided a bundle comprising of a number of documents running to some 61 pages. Included within that bundle, were witness statements made by the appellant and her partner together with a number of documents to support the claim made by the appellant, that she has entered into a valid marriage according to the law in Nigeria.
4. The FfT Judge referred to the decision of the Court of Appeal in Awuku -v- SSHD [2017] EWCA Civ 178 and noted that 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*”). 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.
5. At paragraph [12] of his decision, the FfT Judge states as follows:

“There is no dispute that the appellant has been married to her sponsor in a customary marriage in Nigeria on 14th September 2017. The Certificate of Customary marriage has been provided and is not challenged by the respondent. There is a letter of attestation from the Ikeja Customary Court but this does not take matters much further as this merely confirms that a customary marriage took place. It is said that the marriage conforms with the native law and customs but this does not help as to whether it conformed with the national law of Nigeria. While the letter is stamped “Registrar” this is clearly the registrar of the Ikeja Customary Court and not a Registrar of the Nigerian Civil Court. The father

of the appellant has issued an affidavit in which he confirms that the marriage was celebrated in accordance with Yoruba native law and customs, but again this does not help as regard its validity under Nigerian national law.”

6. At paragraph [13] of the decision, the FfT Judge noted that it is Nigerian law which operates to determine the validity of the marriage. The Judge noted that he had not been provided with any expert evidence on Nigerian law, but went on to make certain deductions from the evidence provided. He stated:

“... looking at the certificate itself, the marriage appears to have been conducted purely according to local rites. There is no reference in the certificate to any Nigerian civil law statute or ordinance. There is a letter from the Ikeja Customary Court but this is simply a letter of attestation and there is no confirmation of the validity of the marriage according to Nigerian law. There is no letter of confirmation from any Registrar of the Nigerian civil courts to say that the customary marriage has been formerly registered with the State.”

7. At paragraph [14], the FfT Judge concluded as follows:

“In the light of this evidence I find that the concerns of the respondent were well founded. The lack of any confirmation from any government authority is a material factor, as without such confirmation it cannot be said that the marriage was valid under Nigerian law. I find that the appellant has not shown that she is validly married to the EEA sponsor, and therefore she has not shown that she is a family member under the terms of Regulation 6 of the 2016 Regulation. The appeal must be dismissed on this basis.”

The appeal before me

8. The appellant advances a number of grounds of appeal but they can be distilled into two grounds. First, the FfT Judge refers to the appeal as being an appeal against a decision to refuse to issue an EEA family permit in accordance with Regulation 12 of the 2016 Regulations. However, the appellant had applied for a Residence Card under Regulation 18(1) of the 2016 Regulations, and the respondent’s decision was a decision to refuse the application for a Residence Card. Second, in reaching the decision that he could not be satisfied that the marriage was valid under Nigerian law, the FfT Judge failed to make any findings or consider the letter dated 24th July 2018 issued by the Registrar of the Customary Court where the marriage had been registered, and failed to adequately engage with the material provided by the appellant, including a letter from the Ikeja Customary Court, to

support the claim that the marriage was valid under Nigerian law. It is said that the Judge erroneously failed to appreciate the parallel existence of two systems of law, customary law, and civil law, that operate in Nigeria. It is said that the Judge appears to accept that the marriage may have been conducted according to local rites, but then expected the marriage certificate relied upon, to refer to some Civil Law or ordinance.

9. Permission to appeal was granted by FfT Judge Gibb on 2nd November 2018. In doing so the Judge noted that “... *The grounds are overly long and repetitive, but they do point to legal matters that require consideration. It is arguable that the Judge erred in treating the appeal as relating to Reg 12 of the 2016 Regulations, since it related to Reg 18. The consideration of the validity issue at [12-14] shows that the judge was concerned with the absence of a document showing confirmation from a government authority, and if the ground is correct that there was such document before the Judge, then it is arguable that the Judge erred in not considering it.*” The matter comes before me to consider whether or not the decision of FfT Judge Woolley involved the making of a material error of law, and if the decision is set aside, to re-make the decision.
10. The focus of the submissions before me, was upon the Judge’s conclusion as to whether there was a valid marriage. On behalf of the appellant, Mr Ariyo submits that the Judge found that the appellant has not shown that the marriage was valid under Nigerian law. However, there was before the FfT Judge, at page 29 of the appellant’s bundle, a ‘Letter of Attestation’ issued by the Ikeja Customary Court, dated 24th July 2018. In that letter it is confirmed that the author, in line with the authority bestowed upon him, registered the customary marriage that was celebrated by proxy between the appellant and her sponsor. That letter is referred to at paragraph 11 of the appellant’s witness statement, as a letter obtained from the Registrar to rebut the assertion made by the respondent as to the validity of the marriage. He submits that in reaching the decision, the FfT Judge failed to have any regard to that letter, that clearly establishes that the marriage was registered in accordance with the law of Nigeria. The letter attests to the validity of the marriage and notes that further confirmation of the author having duly registered the

marriage of the parties, and as to the validity of their marriage certificate, can be obtained from “Local Government” by making enquiries with a reference number that is quoted.

11. On behalf of the respondent, Mr Mcveety submits that the ‘Letter of Attestation’ issued by the Ikeja Customary Court, dated 24th July 2018, that was relied upon by the appellant does not answer the concern, because that letter fails to demonstrate that the customary marriage was properly registered as a valid marriage under Nigerian law. There has been a customary marriage, and it appears that the marriage may have been registered, but it does not follow that it is a lawful and valid marriage in Nigerian law. He submits it was open to the Judge, on the evidence that was before the FfT, to conclude that the appellant has not shown that she is validly married to the EEA sponsor, and that she has therefore not shown that she is a family member as required under the 2016 Regulations.

Discussion

12. Within the bundle of documents relied upon by the appellant that was before the FfT Judge, there is a witness statement from the appellant dated 11th September 2018. The appellant sets out the background to her relationship with Mr Sonco and she states that she married her husband, by proxy, on 14th September 2017. She gives no information as to the celebration of that marriage but states that “.. *The marriage was then duly registered at Ikeja Customary Court in Lagos, Nigeria, on 26 September 2017. All documents concerning the marriage were attested, stamped and signed by the Registrar of the Court.*”. The appellant provided, at page 23 of the appellant’s bundle, a “Certificate of Customary Marriage” dated 26th September 2017, that has endorsed upon it, two stamps. One by the “Registrar, Ikeja Customary Court, Lagos State” and the other, by the “President, Ikeja Customary Court, Lagos State”. There appears to be a signature with each of those stamps, but the identity of the ‘Registrar’ or the ‘President’ cannot be made out. The ‘letter of Attestation’ dated 26th September 2017 that was at page 24 of the appellant’s bundle also bears the stamp of the ‘Registrar’ and has a signature endorsed upon it. Although the author

certifies and attests to the marriage between the EEA national and the appellant celebrated on 14th of September 2017, and to the registration of that marriage with the information listed, the identity of the 'Registrar' cannot be made out. In addition to that document, the appellant also relied upon a further document dated 26th September 2017 that was at page 24 of the appellant's bundle. That appears to be in a similar format to the 'Letter of Attestation', but is addressed "*To Whom it May Concern*" and is said to be "*Confirmation of Traditional Marriage Under Native, Law and Customs*". The document reads

"Now,

We, hereby confirmed the above mentioned persons married under the Native Law and Custom on the 14th September 2017 at No. 12 Iwalaju Close, Baruwa, Ipaja, Lagos State, Nigeria.

The Bride's father, ... moved an oral motion in the court on the 21st September 2017 to this effect suitably supported by a 12 paragraph affidavit to the court by himself.

The traditional marriage conformed with the native law and customs of the land given today, the 26th September 2017."

13. Although that document has the 'Registrar' stamp endorsed on it, and a signature, the identity of the 'Registrar' cannot be made out. The 12 paragraph affidavit that is referred to, is to be found at page 27 of the appellant's bundle. That is an affidavit by the appellant's father that confirms his support to the marriage of his daughter to the EEA national. The affidavit confirms, at paragraph 7, that "*... the marriage was conducted in absentia ...*" for the benefit of his daughter and "*... in accordance with Nigerian (Yoruba) Native Law and Custom.*". The affidavit confirms that both parties and their parents gave their consent to the marriage. I note that there appears to have been no Affidavit or statement from the parents of the EEA Sponsor, confirming their consent to the marriage. If the consent of both the appellant's parents and the EEA national's parents was necessary, it remains unclear how that requirement was satisfied and evidenced.
14. The appellant also relied upon a further document dated 26th September 2017 that was at page 26 of the appellant's bundle. That again appears to be in a similar

format to the 'Letter of Attestation', but is headed "Marriage By Proxy". The document states:

"This is to confirm the existence of the Traditional Marriage under Native Law and Custom between [*the EEA national*] and [*the appellant*].

Both parties were absent and represented by the Bride's parents/family and got married by proxy on 14th September 2017. To this effect declaration was made before the Commissioner of Oath with names, addresses and duly stamped on the Sworn Affidavit.

The marriage was celebrated here in Nigeria in the presence of relatives and family members.

Finally, the confirmation of marriage with registration number [*number*] and dated 26th September 2017 was issued in recognition of this traditional marriage."

Again, that document has the 'Registrar' stamp endorsed on it.

15. In her witness statement, the appellant states that having received the respondent's decision of 18th July 2018 refusing her application for a residence card, she contacted her father who obtained a 'confirmatory letter' from the Ikeja Customary Court where the marriage was registered which, she claims, confirms the validity of the marriage and its proper registration in accordance with the law. That letter relied upon by the appellant was at page 29 of the appellant's bundle. The author of that letter writes in his or her capacity as "*Court Registrar of Marriages celebrated under Native Law and Custom and registered at Ikeja Local Government Area of Lagos State, Nigeria*". The letter states:

".. I hereby confirm that the marriage certificate issued in respect of their marriage was issued by the competent authority upon a proper and valid registration of their marriage validity under Nigerian Native Law and Custom as applicable to the Yoruba recognized as legal spouses.

Further confirmation of my having duly registered the marriage of the parties and as to the validity of their marriage certificate can be obtained from Local Government by making enquiries with the reference number quoted above."

Again, although that document has the ‘Registrar’ stamp endorsed on it, and a signature, as with all of the other documents provided by the appellant, the identity of the ‘Registrar’ cannot be made out.

16. Mr Ariyo submits that those documents that were before the FfT Judge confirm that that neither the appellant nor the EEA national attended the celebrations, but the marriage ceremony took place in the appellant’s father's home in Ipaja, Lagos State, Nigeria by proxy. Mr Ariyo submits that the marriage was conducted in accordance with customary law and was subsequently registered by the local customary court, which issued a marriage certificate and that in support of the appeal, the appellant had provided the FfT with the marriage certificate, a letter of attestation, an affidavit from her father, and further documents from the court confirming the marriage conformed to the law and customs in Nigeria.

17. The Judge noted that the documents relied upon by the appellant confirm that the marriage conforms with the native law and customs, but they do not help as to whether the marriage by proxy conformed with the national law of Nigeria. It is right, as the appellant claims, that the FfT Judge does not expressly refer to the letter dated 24th July 2018 from the Ikeja Customary Court, in the decision. That omission is in my judgment, immaterial. As the Judge noted at [13]:

“.. it is Nigerian law which operates to determine the validity of this marriage. I have been provided with no expert evidence on Nigerian law in this appeal, but certain deductions can be made from the evidence produced. Looking at the certificate itself, the marriage appears to have been conducted purely according to local rights. There is no reference in the certificate to any Nigerian civil law statute or ordinance. There is a letter from the Ikeja Customary Court but this is simply a letter of attestation and there is no confirmation of the validity of the marriage according to Nigerian law. There is no confirmation from any registrar of the Nigerian civil courts to say that the customary marriage has been formally registered with the State.”

18. There was no evidence before the FfT Judge as to the requirements of a marriage under Nigerian native law and custom, as applicable to the Yoruba, and no evidence of the steps that must be taken to ensure that the marriage is one that is valid according to Nigerian law. There was no evidence as to whether a

“Certificate of Customary Marriage” issued by the Ikeja Customary Court, Lagos State, is evidence of a valid marriage according to Nigerian law, and no evidence as to the legal basis for such a conclusion. Furthermore, I note that the documents relied upon by the appellant from the Ikeja Customary Court have the stamp of a ‘Registrar’ but the identity of the Registrar is not apparent from the documents, and so there was no evidence that the individual who signed the document, was in fact, a registrar that is authorised under Nigerian law to sign the document.

19. The letter of 24th July 2018 confirms that the marriage certificate issued in respect of the marriage, was issued by a competent authority upon a proper and valid registration of the marriage under Nigerian native law and custom, as applicable to the Yoruba, but there was no evidence before the FfT Judge regarding the different legal systems relating to marriage in Nigeria. There was no evidence that the Ikeja Customary Court is a competent authority, or the basis upon which that Court, if it was a competent authority in Nigerian law, was satisfied that there was a customary marriage by proxy sufficient to conclude the registration of the marriage as a valid marriage according to Nigerian law. The requirements for a marriage to be accepted as having been contracted by custom and native law, varies within Nigeria. The letter of 24th July 2018 does state that *“Further confirmation of my having duly registered the marriage of the parties and as to the validity of the marriage certificate can be obtained from local government by making enquiries with the reference number quoted above.”*. No further evidence from the “Local Government” was provided by the appellant. Although customary law may well be respected under the Nigerian Constitution, there was no evidence before the FfT Judge regarding the laws that relate to marriage in Nigeria, so that the FfT Judge could be satisfied that an actual marriage, recognised as a valid marriage in Nigeria, has taken place. If the appellant’s case is that the Ikeja Customary Court is a competent authority, there was no evidence before the FfT Judge that the appellant has produced a marriage certificate issued according to the registration laws of Nigeria. It was for the appellant to establish that the marriage certificate has been issued by an authority with legal power to create or confirm the facts it attests.

20. Where there is doubt that a marriage certificate has been issued by a competent authority, then the marital relationship may be proved by other evidence but there was simply insufficient evidence before the Judge to determine whether a marriage was contracted according to Nigerian law.
21. It is the paucity of evidence confirming there to be a valid marriage under Nigerian law, that in the end, caused at the appeal to be dismissed by the FfT Judge. It was in my judgement open to the FfT Judge to conclude that the appellant has not shown that her marriage would be treated as a valid marriage in Nigeria.
22. The fact that the FfT Judge refers to the application having been for a 'family permit' and Regulation 12 of the 2016 Regulations, rather than an application for a residence card under Regulation 18 of the 2016 Regulations is also in my judgment, immaterial. Insofar as is relevant, both Regulation 12 and Regulation 18 require the applicant to establish that they are a 'family member' of an EEA national. It is clear from a proper reading of the decision as a whole that the focus of the FfT Judge and his consideration of the evidence, was whether the appellant is a 'family member' as set out in the 2016 Regulations. The focus of the decision was upon whether the appellant is the spouse of a qualified person.
23. Having carefully considered the decision of the FfT Judge, and the evidence that was before the FfT, in my judgement, it was open to the Judge to dismiss the appeal for the reasons given, and the decision of the FfT is not infected by a material error of law capable of affecting the outcome.
24. I am fortified that that is correct because under cover of a fax received by the Tribunal on 8th March 2019, the appellant sought to provide the Tribunal with further evidence, including, *inter alia*, a further letter from the Ikeja Customary Court, addressed to the Tribunal, and dated 8th March 2019. That letter states that "*The marriage of the parties has been registered in accordance with the dictates of the Birth, Deaths etc (Compulsory Registration) Decree No. 69 1992 Act Cap B9 Law of the Federation of Nigeria 2004 upon my being satisfied that the information and procedure*

