



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

Appeal Number: UI-2021-001057  
(EA/06709/2021)

**THE IMMIGRATION ACTS**

**Heard at: Manchester Civil Justice  
Centre  
On: 7<sup>th</sup> June 2022**

**Decision & Reasons Promulgated  
On: 25<sup>th</sup> July 2022**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Entry Clearance Officer**

Appellant

**and**

**Khadijat Esther Onanuga  
(no anonymity direction made)**

Respondent

**DECISION AND REASONS**

1. The Respondent is a national of Nigeria born in 1986. On the 21<sup>st</sup> September 2021 the First-tier Tribunal (Judge Forster) allowed her appeal against the Entry Clearance Officer's (ECO) decision to refuse to grant her entry clearance as a family member of a relevant EEA national under the EU Settlement Scheme. The ECO now has permission to appeal against that decision.

**Background and Matters in Issue**

2. The reason that Ms Onanuga had been refused entry clearance was expressed in the 'reasons for refusal' letter dated the 10<sup>th</sup> March 2021 as follows:

To be eligible for an EU Settlement Scheme family permit you must demonstrate that you are related to your EEA citizen. It is noted that you state that your EEA citizen sponsor is your spouse.

On 07 February 2021 you were contacted on the email address you provided with your application and asked if you could provide evidence of your relationship to your EEA sponsor.

You have failed to provide evidence of residence within the time frame given (within 10 days). On that basis I am not satisfied from the evidence and information provided, or otherwise available, that you are related to your EEA Citizen as claimed.

3. When she appealed to the First-tier Tribunal Ms Onanuga protested that she had in fact supplied the evidence required. Noting this, the First-tier Tribunal recorded:

10. The Appellant swore an affidavit on 4 June 2020, stating that she married the Sponsor by proxy on 4 April 2020 in accordance with Nigerian custom and law. She has also produced a certificate of customary marriage dated 4 April 2020. The information provided about the Appellant is consistent with the attestation of birth document. The Sponsor has provided a letter dated 10 January 2021 in which he confirms that he met the Appellant in Ghana on 13 May 2019 and they became engaged on 6 August 2019. He states that they married in April 2020.

4. That being the case, the Tribunal proceeded as follows:

11. On the evidence produced, I find that the Appellant married the Sponsor on 4 April 2020. The Appellant is the spouse of the Sponsor. I therefore allow the appeal.

5. The ECO now appeals on the ground that the decision of the First-tier Tribunal is not in accordance with the decision in Kareem (Proxy marriages - EU law) [2014] UKUT 00024 (IAC). The written grounds do not specify in what respect the decision conflicts with Kareem but in granting permission to this Tribunal Judge Murray of the First-tier Tribunal considered it arguable that Judge Forster had failed to make the relevant findings about the “mechanics of proxy marriage in Nigeria”.

### **Discussion and Findings**

6. It is in my view hardly surprising that Judge Forster failed to make findings about the mechanics of proxy marriages in Nigeria, since there was nothing at all on the face of the decision under appeal before him to suggest that this might be an issue. All the ‘reasons for refusal’ notice said was that the application was rejected for a lack of evidence. As Ms Onanuga was to subsequently show, this was itself an error, since she had sent the relevant documents back to the ECO within the specified time frame: a screenshot to this effect was supplied before Judge Forster and I note that the grounds take no issue with that assertion.

7. Now the ECO raises an entirely different issue: whether the wedding was itself legally valid according to the laws of Nigeria, and accordingly whether Ms Onanuga is therefore the family member of the relevant EEA national. I begin by noting that it is deeply unsatisfactory for this issue to be raised for the first time on appeal to the Upper Tribunal. Although the appeal to the First-tier Tribunal was on the papers (and thereby absent the oral submissions of the ECO), it was obvious from the outset that this case concerned a proxy marriage, since Ms Ononuga states in her application form:

I MARRIED TO LUWENGELEY OBISPO MARIA BY PROXY UNDER NIGERIAN CUSTOMARY LAW I. I DID CUSTOMARY WEDDING CEREMONY THAT HAS BEEN CONDUCTED IN ACCORDANCE WITH THE CUSTOMS OF THE BRIDE AND GROOM'S FAMILIES. IN NIGERIA THIS COULD INVOLVE THE PAYING OF BRIDE PRICE, GIVING OF GIFTS, ETC. MARRIAGE UNDER THE ACT IS A MARRIAGE THAT HAS BEEN PERFORMED IN COMPLIANCE WITH THE MARRIAGE ACT. IT IS REGULATED BY THE NATIVE LAW AND CUSTOM, MAKING IT COMPLETELY LEGAL IN TERMS OF THE LAW IN NIGERIA

If the ECO had reason to take issue with that last statement, it should plainly have been raised in the refusal notice.

8. That said, permission has been granted so for the sake of completeness I deal with the point.
9. Kareem was not a decision reported for what it says about the validity of customary marriages in Nigeria. On the contrary, it was reported for what it said, wrongly as it happens, about the standing of such marriages in the member states of the EU. In fact the Tribunal are unable to offer any conclusions about the relevant Nigerian law: see its paragraph 40. It is not therefore an error of law for judge to overlook what is said therein about the “mechanics” of Nigerian customary practice.
10. That said, permission has been granted so again, for the sake of completeness, I deal with the point.
11. Kareem was of course overturned by the Court of Appeal in Awuku v Secretary of State for the Home Department [2017] EWCA Civ 178 in which the court reiterated the long held principle that the general principle to be applied in England and Wales is that the formal validity of a marriage is governed by the law of the country in which that marriage is celebrated: *lex loci celebrationis*.
12. What we can glean from the decision in Kareem is that as far as Nigerian law is concerned, customary marriages are regarded as legally binding where they are celebrated in accordance with “native law and custom of the particular community”. A letter presented in evidence in that case, from the British High Commission in Abuja, indicates that a Nigerian citizen can marry a foreigner by proxy under a ceremony held in Nigeria. I note that in this case both parties are

Nigerian nationals (the Sponsor Mr Obispo holding dual Nigerian-Dutch nationality). The panel also had regard to the Nigerian Births, Deaths, etc (Compulsory Registration) Act 1992. Part V of the 1992 Act relates to the registration of customary marriages or divorces. This legislation appears to have been amended and supplemented by a Statutory Instrument in 1996. Part VII of the 1996 legislation indicates that there is a requirement that a customary marriage should be registered within sixty days and that certain details are to be provided and included in any certificate issued.

13. In this case the applicant's marriage certificate was *prima facie* registered in time, since it is stamped and signed by the Local Marriage Registry. It bears a serial number. Ms Onanuga further produces a document issued, stamped and signed by the marriage registrar bearing the names and photographs of the parties, their parents and witnesses (this apparently relates to the taxation regime for married couples). In response to the ECO's grounds she has further produced a letter from the relevant local government registry in Imeko/Afon confirming that the marriage was duly and lawfully registered after the dowry was paid and "other traditional procedures had been completed". The letter confirms that the groom could not be present due to travel restrictions imposed in response to the Covid-19 pandemic. Ms Onanuga has further sworn an affidavit attesting to the registration of the marriage in the High Court Registry. I am satisfied, on the balance of probabilities, that this marriage is one recognised by Nigerian law and that as such it must be recognised as valid according to the law of England and Wales applying the doctrine of *lex loci celebrationis*. This is a valid marriage, and Ms Onanuga is therefore the family member of a relevant EEA national, namely her Dutch husband.

### **Decisions**

14. The ECO's appeal is dismissed.
15. The decision of the First-tier Tribunal is upheld.
16. There is no order for anonymity.

Upper Tribunal Judge Bruce  
7<sup>th</sup> June 2022