Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/51828/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 21 August 2014	**On 3 September 2014**
Prepared 21 August 2014	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

EDWARD OPOKU AGYEMAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Awal, Legal Representative instructed by Law Clinic (Birmingham)
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant a national of Ghana, date of birth 28 October 1972, appealed against the Respondent's decision dated 20 November 2013 to refuse to issue a residence card with reference to Regulation 7 and 8(5) of

the Immigration (European Economic Area) Regulations 2006 (the 2002 Regulations).

2. An appeal against that adverse decision was made and came before First-tier Tribunal Judge Hanley, the judge, who, on 11 June 2014, dismissed the appeal under the EEA Regulations and decided that no anonymity order should be made.

3. Permission to appeal the judge's decision was granted by First-tier Tribunal Judge Osborne on 30 June 2014. There was, although its contents were in effect of no assistance, a reply under Rule 24 of the Upper Tribunal (Procedure) Rules from the Secretary of State and for the reasons given within that letter it is clear why there was the general objection but no more or less than that.

4. Mr Awal submitted that the grounds of appeal disclosed errors of law by the judge in dealing with the validity of the double proxy marriage performed in Ghana on behalf of the Appellant and his Dutch national wife, Dorothy Amar Duker. Their marriage, said to have taken place on 25 November 2012, was attended in Ghana by, it would seem, the members of their respective families. Mr Awal says that the evidence demonstrated that there was, together with the supporting documents a valid customary marriage. The marriage was lawful because the Appellant's first marriage had been dissolved on 30 October 2008, there was appropriate evidence of that fact and thus he was free to marry.

5. The judge rejected the Appellant's case on the primary basis that the Appellant had not adduced evidence to show that a double proxy marriage is a valid marriage in the law of the member EEA state, namely the Netherlands. At paragraphs 44 to 46 of the determination the judge identified parts of the judgment of Kareem [2014] UKUT 24 (IAC), although paragraph 18 which was not cited was also material, and concluded that

there was no evidence to show that the EEA national sponsor was exercising free movement rights nor that the law of her country demonstrated that there was a recognised marriage under Dutch law.

6. The judge also in looking at this matter addressed the question of whether or not there was a subsisting relationship which was durable and brought the Appellant within Regulation 8(5) of the 2006 Regulations.

7. His findings on that matter are contained in paragraph 51 of the determination and there is no challenge in the grounds of appeal or in the submissions made to the findings made or the conclusion the judge derived there from. As Mr Awal candidly accepted, the case had essentially been argued by reference to the validity of the Ghanaian marriage in 2012 and the dissolution of the earlier marriage in October 2008.

8. It is clear from the judgment in Kareem, particularly paragraph 18, where the Tribunal led by a Vice President stated:

> ...”Therefore, we perceive EU law as requiring the identification of the legal system in which a marriage is said to have been contracted in such a way as to ensure that the union citizen’s marital status is not at risk of being differently determined by different Member States. Given the intrinsic link between nationality of a Member State and free movement rights, we conclude that the legal system of the nationality of the Union citizen must itself govern whether a marriage has been contracted.”

9. It is of course to be noted that in the head note and to the summary at paragraph 68 that it might be read as being disjunctive in the sense that once a valid marriage was established in Ghana then there was no need to consider the issue of the recognition of the marriage under the laws of the EEA country of the EEA national.

10. However it is clear from paragraph 18 of the decision in Kareem that it is not in fact constrained on a disjunctive and separate basis.

11. Mr Awal helpfully identified that before the judge and before me there is nothing as yet by way of any evidence to show that the marriage, assuming all other things being equal and it was being a valid marriage in Ghana, had been one that was or would be recognised under Dutch law.

12. In the circumstances therefore I find the judge in the original Tribunal made no error of law in the assessment of that issue: Accordingly the appeal was doomed to fail. The issues raised in relation to Kareem were further considered by the Upper Tribunal in the case of T & Others (Kareem explained) Ghana [2014] UKUT 316 (IAC). From that again it is clear as expressed by Senior Immigration Judge O'Connor that it was difficult to see how the conclusion could have been made clearer in Kareem, that when consideration is given to whether an applicant has undertaken a valid marriage for the purposes of the 2006 Regulations, such consideration has to be assessed by reference to the law of the legal system of the nationality of the relevant union citizen. On the cases recited by Mr Awal I see no reason not to follow the cases of Kareem or TA.

13. The gravamen of the second basis of the appeal grounds, on an alternative basis, was the question of whether the Appellant had undergone a dissolution of his first marriage; said to have been recorded on 30 October 2008. It is common ground that if such a court order was made but it has not been produced. What has been produced is in effect the product of representations being made to the Circuit Court in Kumasi-Ashanti in a suit number A11/308/13 seeking the court's confirmation that the marriage was dissolved on 30 October 2008.

14. That document was obtained by a joint affidavit of the Appellant's father, Opoku Agyeman and the mother of the Appellant's ex-wife used in support

of an ex-parte motion seeking confirmation of the order of the dissolution of marriage. The form therefore identifies that those persons making the affidavit were heard although whether they were actually heard in a hearing is difficult to say. On the basis of the court order it was confirmed that the marriage contracted was validly dissolved on 30 October 2008 and that either party to the marriage was then at liberty to marry anyone else thereafter.

15. The judge said of this document:

> "I also find it unsatisfactory that the document refers to a marriage in 2003 without any more precise date, which contradicts the Appellant's evidence that the 2003 marriage was registered. I am not satisfied that I have been provided with any good explanation as to why the court order of 30 October 2008 cannot be produced and in the absence of that order I am not satisfied the Appellant is divorced. What the consequences of that are under Ghanaian law are wholly unclear."

16. The confirmation obtained by the court order of 15 February 2013 was therefore, it would seem, in all likelihood, in the possession of the Appellant or his representatives at an early date in 2013 yet for reasons which are unexplained no one has returned to the original court or the court records the dissolution of the marriage on 30 October 2008 to produce a record or copy which would have been contemporaneous with the dissolution. Nor was there any explanation why, between February 2013 and May 2014 such a document was not produced. It may be that someone thought that was good enough and that the order of the court from 15 February 2013 was sufficient. In the relatively short time since the judge's decision in May 2014 that has not led to either any request so far as I am aware to that court for a copy of the court records relating to 30 October 2008. Nor was I informed as to why there was no document

provided previously or in support of the grounds, bearing in mind the point taken by the judge.

17. In the circumstances it seems to me that when the issue was raised in the appeal, putting aside whether the marriage by the Appellant to Ms Duker was one that has been lawfully entered into in Ghanaian law, it seemed to me that the judge was entitled to take that point. Provided, as he did, he gave reasons for the conclusion he reached was entitled to take the view that that was a subsisting issue and that he could not conclude on the documentation provided that the Appellant was free to marry.

17. I might well have reached a different decision on that point but it is not open to me to interfere with another judge's decision in the First-tier Tribunal simply because I might have come to a different view. On the face of it the judge's findings does not demonstrate in relation to the reasoning any material error of law.

18. The original Tribunal's decision stands. The appeal is dismissed.

Signed Date 27 August 2014

Deputy Upper Tribunal Judge Davey