



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/03092/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27 August 2013

Determination Promulgated  
On 28 August 2013

Before

UPPER TRIBUNAL JUDGE PITT

Between

OLUWAGBENGA SUNDAY IFABUNMIYI

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Ms Ikiriko of Melrose Solicitors

For the Respondent: Mr Walker, Senior Home Officer Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Nigeria and he was born on 1 January 1980.
2. The appeal is against the decision dated 9 April 2013 made on the papers by First-tier Tribunal Judge Foudy which dismissed the appeal against the respondent's decision of 11 January 2013 to refuse to issue a residence card as confirmation of a right to reside in the United Kingdom (UK) as the spouse of an EEA national exercising Treaty rights.

3. The appellant maintains that he and the sponsor, Ms Cornelie Aidy, a French national, underwent a customary marriage in Nigeria by proxy on 3 February 2013.
4. The respondent did not accept that the marriage was valid, relying on the United States State Department Reciprocity Schedule which stated as of 17 October 2011 that both parties to the marriage had to be present to sign marriage documents and that proxy marriages had ceased to be valid but still occurred. The respondent also considered that the photographs of the couple had little probative value and that the couple having failed to attend two interviews was further evidence that the marriage was not genuine or subsisting.
5. I had little hesitation in finding that the determination of the First-tier Tribunal disclosed material errors of law such that it should be set aside and re-made. It was not open to the judge to reject the affidavit dated 3 February 2012 of the Grade C Customary Court because of the use of the words "consummate" and "consanants". The judge was also incorrect at [11] to state that no explanation had been given for the failure to attend interviews with the respondent. The witness statement of the appellant and sponsor both contained explanations.
6. I proceeded to re-make the appeal with the assistance of submissions from Ms Ikiriko and Mr Walker and the evidence that was before the First-tier Tribunal and the new materials for the appellant provided under a cover letter dated 19 August 2013.
7. The appellant submits that the country evidence relied upon by the respondent to show that proxy customary marriages are not valid in Nigeria related to civil marriage not customary marriage, so was not relevant. The couple were not required to be present at a proxy customary marriage. The respondent's Country of Origin Information Report (COIR) dated 6 April 2011 confirmed that customary marriage was still valid in Nigeria. The documents from the Oyo Customary Court showed that the proxy customary marriage of the appellant and sponsor had been recognised as lawful in Nigeria so should be recognised as lawful in the UK.
8. The COIR from June 2013 states as follows on proxy customary marriages in Nigeria:

"Proxy marriage

Users should note that sources quoted below appeared to provide inconsistent information on the legal status of proxy marriages in Nigeria.

23.26 The US State Department Reciprocity Schedule, in an undated section on marriage certificates in the country, accessed 4 December 2012, recorded that: ... both parties to the marriage technically must be physically present at the same location with witnesses to sign certain marriage documents, proxy marriages have ceased to be valid but still occur.'

23.27 However a letter from the Foreign and Commonwealth Office to the UK Border Agency of 1 February 2013, provided by the British High Commission following consultation with their honorary legal adviser, observed in response to the following questions:

'Are proxy marriages recognised as being legal by the Federal Government of Nigeria?

Proxy marriage is a fairly common practice amongst communities in Nigeria. It is recognised under Nigerian customary law as a form of customary law marriage. A marriage is by proxy where the presence of the bride and groom is not required at the ceremony. In most cases, it is celebrated by the immediate and extended family of the bride and groom... Proxy marriages find their origin in the fact that under customary law, marriage creates a relationship not only between the parties to the marriage but also between their families. Because customary law marriages are legally binding and recognised as one of the types of marriages in Nigeria, proxy marriages which form part of customary law marriages are also legally binding where celebrated in accordance with the native law and custom of the particular community.

'If proxy marriages are legal, what process is followed in order to obtain legal recognition of the marriage?

One of the functions of local governments in Nigeria is to register all marriages. This is provided for in the Fourth Schedule to the 1999 Constitution of the Federal Republic of Nigeria. As a result, some local governments have bye-laws for the registration of customary law marriages... Some of these bye-laws make registration of customary law marriages compulsory and prescribe a penalty for failure to register such marriage. In addition to the foregoing, the Birth, Deaths etc (Compulsory Registration) Act Cap.B9, Laws of the Federation of Nigeria, 2004 (the —Act) also stipulates that a customary law marriage be registered within a specific period after its celebration. Specifically, section 30 of the Act provides as follows:

"Notwithstanding anything contained in any enactment every customary marriage is to be registered within sixty (60) days in the area court or customary court where the marriage was contracted.

The foregoing provision of the Act presupposes the statutory and therefore legal recognition of customary law marriages. The Honorary Legal Adviser is therefore of the opinion that so called proxy marriages, as an aspect of customary law marriage, are legal; and legal recognition is conferred by registration in an area or customary court.' "

9. The US State Department Reciprocity Schedule maintains that proxy marriage is not valid in Nigeria and that the parties to the marriage have to be present. The second, slightly more recent source, is a letter from the Foreign and Commonwealth Office (FCO) to the UK Border Agency of 1 February 2013. In my view the FCO letter is more detailed and the source of information clearly indicated. I prefer it for those reasons and find that a proxy customary marriage is recognised under Nigerian law and thus can be recognised in the UK.
10. I should stress that I make this finding on the evidence that was before me and that I am conscious that a reported decision on this matter is awaited from a Vice-Presidential panel of the Upper Tribunal. It is very likely that the panel will have

substantially more evidence on this point and more detailed legal submissions. My decision is limited to this appeal alone, therefore, and other judges in both the First-tier Tribunal and Upper Tribunal will reach their own decision if required to do so before the reported case is published.

11. It was not my view that even if the appellant had shown a Nigerian proxy customary marriage is valid that he had shown that *his* proxy customary marriage was validly conducted.
12. The head note to **NA (Customary marriage and divorce - evidence) Ghana [2009] UKAIT 00009** states:
 

“The onus of proving either a customary marriage or dissolution rests on the party making the assertion. It is normally for the appellant to prove that a marriage is valid. Where this involves proving that a previous customary marriage has been dissolved, it is reasonable to expect the appellant to produce the best available evidence to support this assertion.”
13. **NA** indicates that good evidence is needed to show that a customary marriage has been dissolved. It appeared to me that the same principle must apply to showing that a valid proxy customary marriage had taken place.
14. The evidence relied on by the appellant does not set out the Yoruba customs that were followed or indicate that any of those details were confirmed to the Customary Court such that the authorities would be prepared to issue a certificate of registration of the marriage or affidavit confirming that the marriage had been contracted. The documents suggest that the appellant’s mother acted for him in the proceedings in Nigeria but there is nothing to show who was authorised to act as a proxy for the French sponsor or how or when that authority was given. The appellant’s witness statement at [8] states that an affidavit from the sponsor’s parents was required for a proxy customary marriage to proceed but such an affidavit from them has never been produced.
15. The grounds of appeal to the Upper Tribunal maintain that original certificate of registration and original affidavit sworn by the officer of the customary court were before the First-tier Tribunal. They were not. Only copies were provided. I found that less weight had to accrue to any of the documents relied upon where the appellant could be expected to provide originals. The marriage documents all arose from a ceremony in February 2012 and there was no coherent explanation as to why all of the originals could not have been before the First-tier Tribunal and, certainly, before me.
16. I was provided with an original laminated copy of a receipt of payment of the bride price. There was no copy of this document before the First-tier Tribunal. There was nothing official about it by way of headed paper, official headings or stamps. It could have been produced on any word processor.

17. I was also provided with an original copy of the affidavit from the Oyo Customary Court. The original was not before the First-tier Tribunal. Section 31 of the current COIR on Nigeria (and the reports I consulted going back to April 2011) evidenced extensively the endemic corruption and widespread availability of forged official documents in Nigeria. Having considered the documents provided by the appellant relating to the proxy customary marriage that he maintains took place in Nigeria in the round, I found that little weight could be placed on them; Tanveer Ahmed\* [2002] UKIAT 00439 applies.
18. There were other matters that indicated to me that even if proxy customary marriage is recognised in Nigeria and falls to be considered as valid in the UK, this particular marriage was one of convenience. The appellant and sponsor failed to attend two interviews arranged by the respondent to obtain further information about the application. The appellant and sponsor addressed the failure to attend the interviews in their witness statements. Their explanations are assertion only, however, with no documentary evidence to confirm that the sponsor's mother was unwell in November 2012. There was nothing to confirm their evidence that the sponsor returned to work only on 3 December 2012 and was refused a day off on 5 December 2012 for the second interview. There was nothing to support the evidence that the appellant's wife was sacked shortly afterwards because of an argument about whether she could attend the interview on 5 December 2012. The payments into her bank account that appear to be from another employer cannot confirm the events she claims led to her failing to attend two Home Office interviews. Having stated at [13] of his witness statement that he was willing to attend an interview alone, the appellant does not explain why he did not attend the second interview even if his wife could not. I did not find that these explanations were credible and the failure to attend two interviews to have the marriage investigated by the respondent undermines the assertions of the appellant and sponsor that the marriage was genuine and not one of convenience.
19. The letter dated 15 April 2012 from the sponsor's employer raises further credibility problems for the appellant and sponsor. In addition to a number of grammatical and punctuation errors, the letter clearly states that the sponsor was working as a catering assistant. In her witness statement at [3] she states that "I have *always* worked as a care staff and also as a self-employed hair dresser and wedding make-up artist (my emphasis)", none of which occupations comes close to being a care worker. The same inconsistency arises at [14] and [15] of the appellant's witness statement. This somewhat stark inconsistency strongly indicated to me that the appellant and sponsor were not at all reliable witnesses and that all of their documentary evidence must be regarded with some circumspection.
20. Other aspects of the appellant's case additionally undermine his credibility and that of the sponsor. The appellant maintains that he could not return to Nigeria to get married. He states that this was because the respondent had his passport. There was nothing to prevent him obtaining his passport and returning to Nigeria with the sponsor to get married there, or going to France as a fiancée to marry there, however.

The couple maintain that they could not pay a lawyer to come to an oral hearing but that did not prevent them attending in person to confirm their evidence.

21. The evidence of bank statements and utility bills in the names of the appellant and sponsor sent to the same address is limited and is not sufficient to show that the relationship is genuine. The photographs of what was said to be a marriage ceremony could have been taken anywhere or at any marriage ceremony. The photographs of the portraits of the appellant and sponsor placed together are shown in separate photographs and not so as to confirm that they were in the room where the purported ceremony is taking place. These photographs would have been available since February 2012. It was not clear to me why they were not before the First-tier Tribunal. Deciding to have a paper appeal was not a matter that in any way precluded evidence available from February 2012 being submitted for an appeal lodged in January 2013.
22. All of these matters indicated to me that the respondent was correct to submit that the marriage was one of convenience in line with the guidance set out in **Papajorgji (EEA spouse - marriage of convenience) Greece [2012] UKUT 00038(IAC)** and that, considering all of the evidence in the round, the appellant had not met the concerns raised above.
23. In short, even if a Nigerian proxy customary marriage can be accepted as valid by the authorities in the UK, this marriage is one of convenience and the appeal must fail.

#### Decision

24. The decision of the First-tier Tribunal contains an error on a point of law and is set aside. I re-make the appeal as refused.

Signed:  
Upper Tribunal Judge Pitt

Date 27 August 2013