



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

Appeal Number: IA/14590/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 November 2013  
Extempore judgment**

**Determination  
Promulgated  
On 8 November 2013**  
.....

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**BISMARCK OBENG-POKU**

Respondent

**Representation:**

For the Appellant: Mr O Popoola, Legal Representative

For the Respondent: Ms J Isherwood Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State against a decision by First-tier Tribunal Judge Davies on 12<sup>th</sup> September 2013 allowing the appeal of Mr Obeng-Poku (hereafter the claimant), a Ghanaian citizen born on 14 November 1982 against the refusal of the Secretary of State to issue him

with a residence card as the spouse of a Belgian national exercising treaty rights in the UK. The date of the decision is 19 April 2013.

2. Judge Davies states that he has considered the documents and the submissions and was satisfied that there was a customary marriage. He does not address the specific reasons put forward by the respondent in refusing the residence card, in particular the reference to the Ghana Customary Marriage and Divorce (Registration) Law 1985. He fails to give adequate information in the determination as to the nature of the documents that he has taken into account in reaching his decision and fails to give any or adequate reasons for reaching the decision he did by specific reference to those documents. This is particularly important in this case because the decision was reached on the basis of papers before him, and the documents that were produced for that paper hearing had not been produced to the Secretary of State.
3. I am satisfied that there is an error of law in the reaching of that decision such that the decision needs to be set aside to be remade.
4. Both parties had submitted additional documentation to the Upper Tribunal. Neither party had complied with the Upper Tribunal Procedure Rules in seeking permission to produce those documents. The claimant's solicitors confirmed that the bundle that they had submitted was the same as the bundle submitted to the First-tier Tribunal but with the addition of the reported case of **NA Ghana [2009] UKAIT 0009**. Ms Isherwood sought permission to adduce a document of a report of a visit by the Home Office to Ghana in January 2012. In the absence of an application under the Rules for admission of such document, I refused to admit that report.
5. In the papers before me there are two affidavits, one from the Head of Mission Mr Quantson of the Ghana High Commission here in the UK, and one from Mr Yahaya-Iddi of the Legal and Consular Bureau, Ministry of Foreign Affairs and Regional Integration, in Ghana. Those two affidavits certify that the signatures on the statutory declaration signed by Mr Isaac Frimpong and Daniel Kumi were genuine signatures. Those affidavits do not testify to the validity of the statutory declaration. They testify as to the validity of the signatures on that statutory declaration. Those affidavits do not confirm that a customary marriage took place, they confirm that the statutory declaration signed by Mr Frimpong and Mr Kumi took place.
6. That statutory declaration states that they are the fathers of Mr Obeng-Poku and his claimed Belgian wife, Ms Kumi. Subsequent paragraphs of the declaration say that those two men have the right to represent Mr Obeng-Poku and Ms Kumi. They then go on to say that a marriage was contracted between the couple in the presence of elders of both parties. The Statutory Declaration does not state who those elders were. The declaration states that the marriage was contracted by representatives of

the couple, but it does not state who those representatives were. It states that principal members of the two families were present, but it does not state who those principal members were. It also states that the necessary rights precedent to the validity of the marriage had all been complied with, but it does not state what those necessary rights were. There is no affidavit from either the claimant or Ms Kumi. There is no affidavit from the witnesses who are named on the marriage certificate. There is no explanation how a marriage certificate appears to bear the signature of the claimant, may or may not have the signature of Ms Kumi, has signatures of two witnesses, appears to have been completed on 11 September 2010 at Kumasi, appears to have been endorsed and stamped by the Registrar of Marriages in Kumasi. There is no explanation how all of those events can have been done on the same day when the claimant and Ms Kumi were not present in Ghana. There is no witness statement from any of those people whereas it would have been reasonable to expect such statements given the requirement for evidence that a marriage had indeed taken place.

7. The case of **McCabe [1994] 1FLR 410** is relied upon by the claimant. That is a case which looks at marriage in accordance with Akan customary law in Ghana where the parties were not present at the ceremony. There is no evidence before me that the customary marriage claimed by this claimant was an Akan marriage. The case of **McCabe** quotes from the case of **Yaotey v Quale [1961] GLR 573** which is a decision of the High Court in Accra which reviewed decisions on the requirements for a customary marriage. Those include agreement by the parties to live together as man and wife. There is no evidence to that effect before me so far as this claimant and Ms Kumi are concerned. **McCabe** continues

“Consent of the family of the man that he should have the woman to his wife, that consent may be indicated by the man’s family acknowledging the woman as the wife of the man; consent of the family of the woman that she should be joined in marriage to the man, that consent is indicated by the acceptance of drink from the man or his family, or merely by the family of the woman acknowledging the man as the husband of the woman. Consummation of the marriage, i.e. that the man and woman are living together in sight of all the world as man and wife”.

Although there is a statutory declaration it does not specify that any of those events have actually taken place. There is nothing in the papers before me that this couple are living together in the sight of the world as man and wife.

8. **McCabe** confirms that there is not a higher standard of proof for a marriage with a non-Ghanaian but the court

“...would require very clear evidence that the foreigner had consented to be married in such a ceremony but he did not have to actively participate.”

Ms Kumi is a Belgian national and there is no evidence from her that she has agreed to participate in this form of marriage. **McCabe** considers how a customary law marriage could be evidenced. There is reference to the preservation of tangible evidence and the evidence of impartial witnesses. There is no such evidence before me.

9. **McCabe** states that

“...in the absence of writing or registration there must be credible evidence of the consents of the parties and the families, which in almost all cases will not be available to satisfy a court in the absence of impartial witnesses. “

Although there is before me what purports to be a marriage certificate, I have already indicated the shortcomings in that certificate in terms of lack of witnesses and lack of explanation as to how that document came about.

10. I am therefore not satisfied that there is adequate evidence of the procedure by which this purported marriage took place. The declaration does no more than state that the marriage was contracted by unnamed representatives in an unspecified manner. I am not satisfied, given that the burden of proof is upon the claimant to show that he is married to Ms Kumi, that he has discharged the burden on him to the balance of probabilities. I therefore dismiss the appeal.

## **Conclusion**

I find there is an error of law in the First-tier Tribunal determination and set aside the decision to be remade.

I allow the appeal of the SSHD; the appeal of the claimant against the SSHD's decision stands dismissed.

Signed

Date 7<sup>th</sup> November 2013

Upper Tribunal Judge Coker