

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



Appeal Number:

IA/45035/2013

THE IMMIGRATION ACTS

Heard at Field House

On 24 July 2014

Determination

Promulgated

On 21 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DRABU CBE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MISS AYOBAMI KOMOLAFE

Respondent

ANONYMITY DIRECTION NOT MADE

Representation:

For the Appellant: Ms K Pal, Senior Presenting Officer

For the Respondent: Mr A Otchie of Counsel instructed by A Vincent, solicitors.

DETERMINATION AND REASONS

1. The Secretary of State has brought this appeal against the decision of Judge J J Maxwell, a First Tier Tribunal Judge who allowed the appeal of Miss Komolafe, a citizen of Nigeria for grant of Residence Card as confirmation of a right of residence in the United Kingdom. Her application for Residence Permit had been refused because the Secretary of State (the appellant in this appeal) averred that Miss Komolafe had failed to prove her proxy traditional marriage complied with registration requirements set out in the Nigerian statute. Having refused to accept that the marriage is valid under English Law, the appellant went on to find that the respondent had failed to prove she is a party to an enduring relationship with an EEA partner. It has been the case of the respondent that she entered a tradition-backed marriage by proxy in Nigeria and that she is a party

to an enduring relationship with her husband who is exercising his Treaty rights. Judge J J Maxwell after hearing and seeing evidence concluded that the respondent (appellant before him) did satisfy the requirements for the issuance of a Residence Card as according to the Judge the proxy marriage that parties had entered into in Nigeria was valid. In the circumstances the Judge said, "in the light of my findings...I do not need to consider the alternative of the appellant being party to an enduring relationship outside marriage."

2. The Secretary of State sought and obtained permission to appeal the decision of Judge J J Maxwell. Permission to appeal was granted by Judge Cheales, a Judge of the First Tier Tribunal. The grounds in support of the application for permission were found to be arguable in establishing that the Judge had erred in not having had regard to the decision in **Kareem [2014]UKUT 24**.
3. At the hearing before me, I heard arguments from Ms Pal and Mr Otchie. Ms Pal asked me to find that the determination is fundamentally flawed in law as the Judge should have but did not address his mind to the issue of validity of the marriage in Netherland. She drew attention to Paragraph 14 of the decision in Kareem and Paragraphs 11, 19 and 20 of the decision of the Upper Tribunal in **TA (Kareem explained) Ghana [2014]UKUT 00316**.
4. Mr Otchie pointed out that the Secretary of State had not raised this issue at the First tier Tribunal. According to him the respondent has lived in the United Kingdom since 2008 and has acquired domicile of choice here. Her husband had come to the United Kingdom in 2012 and their marriage by proxy had taken place in Nigeria in accordance with the laws and traditions in Nigeria. He argued that the Judge should have allowed the appeal on grounds of permanent relationship between the parties. His failure to consider the alternative route had left the respondent in this difficult situation.
5. In her response Ms Pal accepted that the Judge should have but had made no findings on whether the respondent's relationship with her Dutch spouse was a lasting and durable relationship. She asked that either I should make such a finding myself or remit the matter to the First tier Tribunal who can after consideration of previous and fresh evidence make a finding on durability of the relationship and the domicile of the appellant at the time of her proxy marriage to her Dutch national.
6. I concluded that the decision of Judge J J Maxwell was in material error of law for the reasons advanced by the appellant in her grounds of appeal as well as oral submissions. In the circumstances I directed that the appeal be remitted to First tier Tribunal for a fresh decision on issues of durability of relationship and if necessary on the domicile of the appellant at the time of her proxy marriage.

7. The appeal is allowed to limited extent of a re-hearing before First tier Tribunal.

ANONYMITY DIRECTION

None has been sought and circumstances of the case do not warrant such direction.

Judge Drabu

Judge of the First Tier Tribunal sitting as Deputy Judge of the Upper Tribunal.

18 August 2014