

Recognition in the UK of a marriage celebrated in Somaliland

Can a foreign marriage be recognised in the UK if the State where it was celebrated is not recognised as a State? This was the question which the High Court of Justice (Family Division) had to answer in *MM v NA*: [2020] EWHC 93 (Fam).

The Court distilled two questions: was the marriage validly celebrated and if so, can it be recognised in the UK? If the answers to both questions were affirmative, the court could give a declaratory order; if one of them were negative, the parties could celebrate a new marriage in the UK.

In assessing the **first question**, the court considered issues of formal and essential validity. It took account of the various systems of law in Somaliland: formal law (including the Somali civil code, which is still in force in Somaliland on the basis of its continuation under the Somaliland constitution), customary law and Islamic law. In matters of marriage, divorce and inheritance, the latter applies. On the basis of the facts, the Court came to the conclusion that the parties were validly married according to the law of Somaliland.

Although this would normally be the end of the matter, the Court had to consider what to do with a valid marriage emanating from a State not recognised by the UK (the **second question**). The Court referred to the one-voice principle, implying that the judiciary cannot recognise acts by a State while the executive branch of the UK refuses to recognise the State. It then considered exceptions and referred to cases concerning the post-civil war US, post-World War II Eastern Germany, the Turkish Republic of Northern Cyprus, Ciskei (one of the 'States' created by Apartheid-era South Africa), and Southern Rhodesia.

It also referred to the ICJ Advisory Opinion of 21 June 1971 on the continued presence of South Africa in Namibia, particularly its §125, which states:

“while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored

only to the detriment of the inhabitants of the Territory.”

The Court found that an exception to the one-voice doctrine is acceptable in matters of private rights. The Court also explained that it had conferred with the Foreign and Commonwealth Office of the UK Government, who would not object to the recognition of a Somaliland marriage even though that State is not recognised.

It thus gave the declaration of recognition of the marriage.

(Thanks to Prakash Shah for the tip.)