Non-Qualifying Ceremonies: The Futility of Foreign Registration of Islamic Marriages under English Law

This blog note is kindly provided by Dr. ***Muhammad Zubair Abbasi*** *(Lecturer, School of Law, Royal Holloway, University of London; zubair.abbasi@rhul.ac.uk).* *It follows the author's previous post on this topic, which was published earlier* ***on this blog****.*

Introduction

In *MA v WK* [2025] EWFC 499, three women had undergone Islamic marriage (*nikah*) ceremonies in England. Each argued that subsequent registration of her marriage in Pakistan had converted it into a valid foreign marriage entitled to recognition in England and Wales. The Family Court rejected this argument because the *lex loci celebrationis* is fixed at the place and moment of the ceremony; no later act of registration in another jurisdiction can alter it.

The more important question is why the argument was made at all. Each applicant had already accepted that her ceremony was a non-marriage or non-qualifying ceremony (NQC) under English matrimonial law. Each had therefore been excluded, by the rule established in *Attorney General v Akhter & Others* [2020] EWCA Civ 122 from the financial remedies that the Matrimonial Causes Act 1973 would otherwise have provided. The argument from Pakistani registration was, in substance, a desperate attempt to find through private international law a route that domestic law had closed. It was always going to fail but the fact that it was attempted is itself instructive. When the law systematically denies recognition to a form of marriage that a significant part of the population regards as valid, litigants will look for whatever route remains open. *MA v WK* is a record of one such attempt, and it is unlikely to be the last as long as the existing legal framework remains unreformed.

The Facts

There were three female applicants, each of whom had celebrated a *nikah*-only in England and sought to rely on subsequent registration in Pakistan. The first, MA, had celebrated a *nikah* with WK in Oxfordshire on 1 April 2013. She produced a Pakistan Marriage Registration Certificate recording both the marriage date and entry date as 1 April 2013, with an issue date of 26 August 2024. The second, TM, had celebrated a *nikah* with MM at a mosque in England on 19 January 1992. She produced a Pakistan Marriage Registration Certificate, but the entry date was 2 October 2025 — thirty-three years after the ceremony and after MM had already remarried in Pakistan in 2017. The third, AM, had celebrated a *nikah* with RK in England in 2005. No evidence of registration was produced.

Non-Qualifying Ceremonies and Private International Law

The formal validity of a marriage is governed by the *lex loci celebrationis*, as restated by Moylan LJ in *Tousi v Gaydukova* [2024] EWCA Civ 203. All three ceremonies took place in England; all three applicants accepted that none had complied with the Marriage Act 1949. Each was therefore a non-qualifying ceremony (NQC). The question was whether subsequent registration in Pakistan could convert them into valid foreign marriages capable of recognition in England and Wales. The court held that it could not: the *lex loci* is determined by the place of celebration, not by any later administrative act. There is no authority for the proposition that registration can substitute for, or supplement, the ceremony for the purposes of legal recognition.

The applicants advanced two arguments. First, that registration is the operative event for *lex loci* purposes, deriving from *Sottomayor v De Barros (No 1)* (1877) 3 PD 1, a principle elevating it to the “pinnacle” of matrimonial law [para 16]. That reading does not survive examination: in *Sottomayor* ceremony and registration happened simultaneously at an English register office, and their coincidence does not make registration the constitutive event. The three further authorities relied upon, *Boughajdim v Hayoukane* [2022] EWHC 2673; *Entry Clearance Officer v Firdous* [2018] HU/04562/2016 (Upper Tribunal); and *Farah v Farah* 16 Va. App.

329 (Va. Ct. App. 1993), each turned on where the ceremony, or its dominant elements, had taken place. None held that registration of an English ceremony abroad could shift the *lex loci*; they are authority for the opposite proposition.

The second argument assumed what it needed to prove. The principle in *Berthiaume v Dastous (*Quebec) [1929] UKPC 73, that a marriage valid where celebrated is valid everywhere, operates in favour of a marriage validly formed at its place of celebration. It avails nothing where the ceremony was not valid there in the first place. A further difficulty lay in Pakistani law itself. On the expert evidence, accepted in *Rana v Manan* 2011] EWHC 2132 and applied here, registration under section 5 of the Muslim Family Laws Ordinance 1961 is directory rather than mandatory: it is the *nikah* contract that creates the marriage. What Pakistani law had done in registering these marriages was not to create new Pakistani marriages, but to record marriages that Pakistani law treated as having taken place in England.

On the presumption of marriage, the answer was straightforward. The presumption, as Evans LJ explained in *Chief Adjudication Officer v Bath* 1999] EWCA Civ 3008 at [31]–[32], fills evidential gaps; it does not operate where there is positive evidence of non-compliance with the statutory formalities. The circularity this produces is uncomfortable. A party who wishes to argue for recognition of her marriage must disclose to the court the circumstances of the ceremony; and once she has done so honestly, she will typically have foreclosed the only doctrine that might have assisted her.

Commentary

The judgment in this case is the latest in a sequence that has progressively narrowed the legal options available to parties in religious-only or a nikah-only marriages. Until *Attorney General v Akhter & Others* [2020] EWCA Civ 122, the courts had available to them a range of tools: the "hallmarks of marriage" test from *Gereis v Yagoub* [1997] Fam Law 475; the presumption of marriage from long cohabitation from *Chief Adjudication Officer v Bath*1999] EWCA Civ 3008; and a generally flexible approach to the non-marriage category, which had been applied in reported cases almost exclusively to polygamous unions (*A-M v A-M (Divorce: Jurisdiction: Validity of Marriage)* [2001] 2 FLR 6; *Gandhi v Patel* [2002]

1 FLR 603; *Shagroon v Sharbatly* [2012] EWCA Civ 1507; and *El Gamal v Al-Maktoum* [2011] EWHC B27.

The Court of Appeal's introduction of the NQC category in *Attorney General v Akhter & Others* [2020] EWCA Civ 122 changed the landscape. A court asked to classify a religious-only ceremony now asks a single, decisive question: did the ceremony comply, at least to some degree, with the statutory requirements? If the answer is no, the ceremony is outside the regulatory framework entirely, and neither the hallmarks test nor the presumption can operate to bring it back in. The present case is a private international law application of the same logic: the question is what happened at the ceremony, assessed as at the date of the ceremony, and later events, including registration abroad, are irrelevant.

The choice of jurisdiction made no difference to that conclusion. The applicants sought declarations of marital status under section 55(1) of the Family Law Act 1986, which enables a person to apply for a declaration that a marriage was at its inception valid, or that it subsisted on a particular date. That jurisdiction is declaratory, not constitutive: it identifies the status that the law recognises, it does not create one. The argument from foreign registration was in substance an invitation to the court to use the section 55 jurisdiction to confer a status that English law does not recognise. It was always going to fail, not because of any deficiency in the evidence or any technical point of procedure, but because the declaratory jurisdiction cannot be deployed as a means of circumventing the requirements that the Marriage Act 1949 imposes.

None of this is a criticism of the applicants, who were doing what people in their position typically do: looking for whatever route the law might offer. It is a comment on the law itself. The Attorney General had foreshadowed a public policy objection under section 58(1) of the 1986 Act had the court found in the applicants' favour, an indication that the state's interest in maintaining the integrity of the marriage framework is regarded as sufficiently strong to resist even a successful argument from foreign registration [para 30]. That the argument failed means the public policy point did not arise, but its potential invocation confirms that the current framework is not one the courts are inclined to look for ways around.

Conclusion

The decision in *MA v WK* is easy to justify on the law as it stands. The *lex loci celebrationis* is not a rule that administrative convenience in another jurisdiction can displace, and the section 55 jurisdiction does not exist to remedy the deficiencies of the Marriage Act 1949. But the case is a reminder that when domestic law closes every available door, litigants will look elsewhere.

The failure in this case is not one of private international law. The Marriage Act 1949, built on foundations laid by Lord Hardwicke's Clandestine Marriages Act 1753, which transformed the private marriage contract into a public act requiring the sanction of the church-state — was not designed with cultural and religious diversity in mind. The Government has committed to reform. But the proposed changes are prospective. They will not assist the three women in this case, nor the many others in the same position. Until Parliament addresses that gap, family courts will continue to turn away women whose marriages are real to everyone except the law.