

The validity of 'non marriages' – Akhter v Khan

14th February 2020

Court of Appeal decision addresses the validity of 'non-marriages'.

Case Summary

This note addresses the validity of "non-marriages", which was raised as an issue in first-instance proceedings before Mr Justice Williams (reported as *Akhter v Khan* [2018] EWFC 54) and subsequent appeal proceedings before the Court of Appeal (Sir Terence Etherton, the Master of the Rolls, and Lady Justice King and Lord Justice Moylan), who heard the appeal in November 2019.

The Issue

The law recognises three categories of marriage: a valid marriage, a void marriage and a non-marriage. A valid marriage may be ended by a decree of divorce. A void marriage may be ended by a decree of nullity. A non-marriage, as the name suggests, cannot be ended by legal means, for it never existed as a matter of law at all.

The key issue arising from this is that the ending of a valid or void marriage by divorce or nullity proceedings allows a claim for a financial remedy. A non-marriage does not entitle a former spouse to any such claim.

A non-marriage arises in circumstances where a couple have a particular type of religious marriage – in this case an Islamic marriage – but do not subsequently marry under the civil law.

Anecdotal evidence suggests that this "loophole" is being utilised because a non-marriage "for one party brings distinct advantages in seeking to protect their assets in any way. Sadly, it also serves as a distinct disadvantage to a party who cannot then make any financial remedy application following the breakdown of their Muslim marriage"[1]

3 members of 4 Paper Buildings appeared in the Court of Appeal for the First Respondent: Charles Hale QC, Harry Langford, and Michael Edwards, along with Victoria Roberts of 7 Harrington Street, Liverpool, all of whom were instructed by BLM Law.

The case

Mr Justice Williams decided the following facts of the case:

at the time that the parties underwent a Nikah ceremony, it was understood by both the husband and wife that they were embarking on a process which was intended to include a civil ceremony in which the marriage would be registered;
the wife's understanding and the husband's expressed position was that a civil ceremony was to follow shortly after the Nikah ceremony;

the failure to complete the marriage process was entirely down to the husband's refusal after the Nikah ceremony had been undertaken to take action to complete the marriage process by arranging the civil ceremony;

the wife thereafter frequently sought to complete the marriage process by seeking to persuade the husband to undergo a civil ceremony;

the nature of the ceremony which was in fact undertaken bore all the hallmarks of a marriage in that it was held in public, witnessed, officiated by an Imam, involved the making of promises and confirmation that both the husband and wife were eligible to marry; and

following the Nikah ceremony the parties lived as a married couple for all purposes; and went on to have a number of children.

The Decision

Mr Justice Williams, in an innovative decision in the first-instance proceedings (in which the Attorney General acted as an intervener) considered that the Human Rights Act 1998 and the European Convention on Human Rights changed the way that courts had previously considered this area of law, because of the consequences of any decision for the couple (in societal, moral, religious and financial terms) and for any children.

Mr Justice Williams decided that on the facts of this case, taking this approach, that there was a void marriage rather than a non-marriage.

The judge also decried the use of the term "non-marriage", which he suggested may be considered insulting in the modern day (drawing the comparison between the parties in a case such as this and actors "marrying" for the purposes of a film. The judge therefore chose to use the term "invalid marriage", saying that "In my view the expression non-marriage should be reserved only to those situations such as acting or children playing where there has never been any intention to genuinely create a marriage."

Following the judge's decision, the underlying proceedings were compromised. Ms Akhter and Mr Khan therefore played no part in the appeal proceedings.

The Appeal

The Attorney General appealed this decision. The Court of Appeal granted permission to appeal to the Attorney General, and appointed an Advocate to the Court to argue the case. The Court of Appeal also allowed a person in a similar position as Ms Akhter to intervene represented by Charles Hale QC, Victoria Roberts, Michael Edwards and Harry Langford to intervene into the appeal proceedings; along with the Southall Black Sisters Pressure Group.

The Law Commission is currently undertaking a review of the law relating to marriages and the formal legal requirements to get married.

The Court of Appeal is due to hand down its judgment on 14 February 2020.

Read the full Court of Appeal judgment in HMAG v Akhter, Khan & ors [here](#).

[1] See Raffia Arshad's article Muslim marriages: Financial Remedies [2019] Fam Law 517,