TRANSCRIPT OF PROCEEDINGS

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IN THE FAMILY COURT

[2020] EWFC 105

Royal Courts of Justice
Strand
London
WC2A 2LL

Before MR JUSTICE MOOR

IN THE MATTER OF

AA

Applicant

-v-

AHM

Respondent

MR MICHAEL GLASER QC and MR GILLON CAMERON appeared on behalf of the Applicant
MR HARRY OLIVER and MR MAX TURNELL appeared on behalf of the Respondent

JUDGMENT

26th FEBRUARY 2020, 15.18-16.07

MR JUSTICE MOOR:

1. I am dealing with an application that is made by the respondent to the proceedings, although he is obviously the applicant today, Mr AHM, to set aside a grant of permission to the applicant, Mrs AA, to make an application for financial remedies following an overseas divorce pursuant to Part III of the Matrimonial and Family Proceedings Act of 1984.

2. There are two aspects to this case that I must deal with. The first concerns the appropriate venue for such an application. The second concerns the merits of this particular case. I will deal with both in turn.

3. There is no doubt that these parties are Kuwaiti. I will refer to the parties as the husband and the wife simply for the purposes of convenience. I of course accept that they have been divorced in Kuwait. I mean no offence to either of them by calling them the husband and the wife.

4. The husband is a 47 year old businessman. The wife is a 44 year old consultant dermatologist. They married in Kuwait on 14th March of 2002. They have three children:- M, a boy aged 14; D, a girl aged 13; and S, a girl aged eight.

5. There is a dispute as to the point at which they separated. The wife says it was December 2017. The husband says it was significantly before that. In any event, there was a divorce in Kuwait with the equivalent of financial remedy proceedings. An order was made in the Kuwait court on 25th June 2018. It is clear that both parties appealed that order. Eventually, a final judgment was given on 23rd April 2019. I will set out the details in due course.

6. There were, however, three properties in London. As I understand it, they are all in the joint names of these two parties, but there is a very significant issue as to the beneficial ownership of those properties. It is clear that, in February 2019, the wife brought ToLATA proceedings in the Chancery Division for declarations that the beneficial interests were equal. She also applied for orders for sale of the three properties. Those proceedings are heavily contested. As I understand it, the

husband defends them on the basis that she has no beneficial interest in the properties. There are arguments about powers of attorney that she granted to him, as well as issues about the amounts of money that he has raised to pay off mortgages. I do not need to go into any further detail in relation to that.

7. Eventually, it became clear to the wife that those proceedings were mired in disagreement. She therefore decided to apply in the Family Court for permission to make this application pursuant to Part III. The application was dated 29th June 2019. Her solicitors headed it as being in the High Court Family Division, with the Royal Courts of Justice, Strand, London as the venue. An unknown officer of the court, crossed that out and headed it in the Central Family Court, 42-49 High Holborn, London, WC1V 6MP. It was listed before HHJ O'Dwyer in the Financial Remedies Court at First Avenue House. The hearing was, pursuant to the rules, listed as being without notice to the respondent. The wife filed a statement in support of her application, dated 29th June 2019. She stated her address correctly, namely her rented property in Kuwait.

8. She says that she considers the court has jurisdiction to entertain her application on account of the joint ownership of two former matrimonial homes in London. I will describe these as the Marble Arch property and the Charing Cross property respectively. She accepts that a third property in Covent Garden, London, which I will describe as the Covent Garden property, although owned jointly by the parties as to the legal title, cannot be described as a matrimonial home. It is therefore not included as part of the application.

9. She states that the parties married in Kuwait and that they have three children. At paragraph 5, she says they separated in December 2017, although, she says: "The respondent claims that we separated some time before this."

10. She then deals, at paragraph 6, with the divorce proceedings in Kuwait. She refers to the fact that proceedings involving child support and alimony, child custody and obedience have been finalised. She says her divorce proceedings for damages are still going on. She adds that, "*If I win this I can take the proceedings to civil courts*

for damage, compensation with money, albeit with very limited awards for damages." She says that the respondent has filed a case demanding that she returns the jewellery and the watches that he gifted her during the course of the marriage and that dispute is still ongoing.

11. She says that the husband issued his own application for divorce, which was finalised on 25th June 2018. She attached a translated copy of the order that was made in respect of provision for her and the children. She says: "The court will see that I was not provided with any assets in my name."

12. She sets out details of the ToLATA proceedings and the claims that she has made in the business and property courts, as I have already outlined.

13. She proceeds to set out the various factors which she believes are relevant to this court's consideration of whether she should be granted permission to bring this application. They broadly mirror the criteria in section 62 of the 1984 Act. She deals with the parties' connection with Kuwait. I accept the submission that is made to me by Mr Glaser QC, who appears on her behalf with Mr Cameron, that in reading it, there is not much doubt that these parties are Kuwaiti and that their main home is in Kuwait. She deals with the property that she says the husband owns in Kuwait ("the Kuwait property").

14. She then talks about the parties' connection with England. She says that, although she was born and brought up in Kuwait, she came here to study for her Bachelor's degree in Newcastle. She says she remained living in the UK for a seven year course in medicine and general surgery, before completing her training, for a short time, in the Czech Republic.

15. The husband makes much of that. He says that she did not complete her training in Newcastle. She did not stay here for seven years. In my view such matters are entirely irrelevant to the applications that HHJ O'Dwyer and now I have to determine.

16. She says that, whilst she was working in a hospital in Kuwait, she met the respondent, and, shortly after meeting him, arrangements were made for a formal proposal and then their marriage on 14th March 2002.

17. She then says that, as a family, they frequently came to London. She says that the respondent's father had a flat in Marylebone, London, which, she says, the husband helped his father purchase. But she says that, in around 2012, there was a major disagreement with his family. This had significant consequences involving them moving away from his family in Kuwait, and her husband resigning from working for the family companies, and taking extensive legal proceedings against them. She adds that, at that point, they decided they needed a home of their own in London. She says moving to London on a more permanent basis had always been an idea for them both. They wanted to spend long periods here during holidays, with a view to moving here permanently in due course. She says she would have been very happy had they done so. She often felt that she belonged more in London that in Kuwait.

18. She then sets out the history of the various properties. Marble Arch was purchased in January 2013. She says that the furnishings were purchased in Kuwait and shipped over to London, and that some old furniture, including dining furniture from their house in Kuwait, was also sent here, along with some paintings and ornaments from Kuwait.

19. She then says that the property was used as the family home in London and that "*In school holidays we would come and live here*". The property was never rented out when they were not here. It was solely maintained as their family home.

20. She then says they outgrew Marble Arch, and, therefore, in February 2016, purchased Charing Cross, a semi detached house which had been set up as a show home. Again she says that Charing Cross was never rented out but was used solely as their London home.

21. At paragraph 28 she makes a statement that is subject to very significant criticism by Mr Oliver, who appears with Mr Turnell on behalf of the husband. She says *"As*

stated above we would usually come to London for the Summer school holiday from about June to August and then again for the Spring holidays. We would also come over in December as well. We spent many months each year in London and are very familiar with it. To assist the court I have set out to the best of my ability all of the dates since June 2012 to June 2017 when we have been living in London". She attaches this as Exhibit AA1.

22. As I have already noted, there is criticism of this. It is suggested on behalf of the husband that all those dates added together would come to some three hundred and ninety seven days, whereas, says Mr Oliver, it was in fact two hundred and ninety five days. He is particularly critical of the comments that they came regularly at Christmas and Spring holidays, saying that this was very unusual, perhaps once each.

23. The wife then goes on to say that the husband denies that Marble Arch or Charing Cross were purchased in order to be matrimonial homes. It is his case that Marble Arch was purchased primarily as an investment, and merely served as a property where they stayed when they visited London from 2013 to 2015. He denies living in London, saying at paragraph 13 of his statement, that: "Our discussions about moving to London were just for a temporary period", and asserts that the reason they did not do this was because he did not want to. He adds there was never a joint plan to move permanently to London.

24. The wife then deals with the financial benefit which she or the children are likely to receive under the divorce in Kuwait. She says that, in the Kuwait order, she got rent for her home of £2,591 per month. She received alimony, from the date she filed the case until the divorce, of £518 and she receives £181 per calendar month as a wage for being the custodian of the daughters. She says child support is paid at the rate of £1,164 per month per child, and she got a one off payment for furniture expenses of £5,182 and £207 per month towards the monthly wages of a maid. She says she also got a one off payment of £15,546 for a car, although that was paid in instalments of £259 per month, plus £207 towards the monthly wages of a driver. These provisions continue until the children have either, in the case of her son, his

own source of income, or, for the daughters, until they are married or have their own source of income, whichever comes first. Her claim for school fees was rejected on the basis that it is a luxury and the husband was claiming he could not afford it.

25. She then deals with the availability of property and assets in this country. She sets out the three properties here. She states the current mortgages on them. She says that Marble Arch is worth £2.35m but is mortgage free. Charing Cross is worth £5.2m but has a mortgage on it of £3.35m and that Covent Garden is worth £2.8m with a mortgage of £1.82m.

26. She then says at paragraph 36 that the husband's case is that, although the properties are in joint names, because of the cultural background, they were to be held for his benefit. She then deals with the powers of attorney and the fact that he has provided schedules of all the money that he has spent. She sets out, briefly, her case as to that.

27. Finally, she deals with what has happened to her career. She says the following: "I had sole responsibility for our children during the marriage, and sacrificed my career in order to raise them, while the respondent worked and controlled our finances." Mr Oliver makes significant complaint about that. It is in fact not true that she does not work, although I accept that the statement does not specifically say that she does not work. She has a good job and a significant income from the job.

28. The husband has filed one statement in response to the application and his application for permission to set aside the grant of permission. In that statement he says a number of things. In the application he says the divorce was in Kuwait. He complains that there was no interim allocation pursuant to rule 15(2), as, he says, is required by the case of *Barnet v Barnet* to enable HHJ O'Dwyer to deal with the case. He says the judgment of HHJ O'Dwyer was significantly deficient; that there were material facts that were omitted entirely; that the wife's evidence was erroneous or misleading; and the two properties were not matrimonial homes.

29. In his statement, which is dated 18th December 2019, he says that the wife breached her duty of candour. The properties were not matrimonial homes. He is a qualified doctor, but he has since worked in a medical services business. The wife has worked full time in Kuwait with leave of no more than 45 days per annum. He says they separated much earlier than December 2017. He says the wife did not disclose her full income, which including her earned income on which there is no tax. This income and the maintenance that she gets totals £195,303 net per annum.

30. He stresses the connections to Kuwait. He says the children attended one eight week summer school here, plus two or three further two week periods. He says their only matrimonial home was the Kuwait property where he continues to live, and he refers to various statements in Kuwait that the wife owns no property.

31. He says that Marble Arch was purchased for investment purposes. They only sent surplus furniture to London, which they did because the quotation they obtained here for furniture was too expensive. He says he tried to sell Marble Arch and Covent Garden, but there was a problem with the air conditioning at Marble Arch and the wife refused to accept the discounted offer.

32. He says he had to sell shares to discharge the mortgage, accumulating losses of $738,763. He says that the wife was only named on the title for inheritance tax purposes and they both always understood the properties were owned by him.

33. He says they had separated by late 2014. He adds that they only stayed twice together in Charing Cross, and then in separate bedrooms. He says the wife accepts they did not share a bedroom for three years prior to 2017.

34. He says they only ever holidayed here, or came here for medical treatment for their son, who has autistic spectrum disorder. He says that 102 days of the time that the wife claims they spent here were actually spent overseas. He opted against long rentals to make the properties attractive to buyers, whereas he did rent the Covent Garden property as he had no offers to buy that property.

35. The first aspect that I have to deal with is the question of the jurisdiction of HHJ O'Dwyer. I should perhaps say that, in an attempt to correct the position after the wife discovered the husband's case in relation to that, she made a second without notice application to Newton J on the 27th of November of 2018. He also granted her permission to apply pursuant to Part III. I do not intend to deal with that any further because I am quite satisfied that it was unnecessary and the first application was the one that was appropriate. Indeed, it is the first application that I must consider whether I should set aside.

36. It is entirely right that the allocation directions in the Family Court, (Composition and Distribution of Business) Rules 2014, do say that proceedings under sections 12 and 13 of the Matrimonial and Family Proceedings Act 1984, where one of the parties does not consent to the grant of permission or, the parties consent to permission being granted but do not consent to the substantive order sought, should be dealt with before a judge of High Court level.

37. At first sight, that would suggest that the application to Judge O'Dwyer was incorrect. However, that ignores a significant number of factors. First, in 2014, the case of *Barnett v Barnett* [2014] EWHC 2678 came before Holman J, and he was of the clear view that these applications should not be dealt with by High Court judges in the run of the mill situation. At paragraph 21 of his judgment, he said that, speaking for himself, he could not see any reason why, in routine applications for leave under section 13 of Part III, applicants or their solicitors should not apply first to the Family Court sitting at some convenient and appropriate local venue, for a District Judge at that venue to make a decision as to whether or not the requirement to apply for leave to a High Court judge, generally here in London, is unnecessary because of application of rule 15(2) of the 2014 Rules. I agree with Holman J that such a procedure is eminently sensible and will save a considerable amount of time, costs and general inconvenience.

38. I remind myself that rule 15(2) is the provision that says that allocation to High Court level is subject "*to the need to take into account the need to make the most*

effective and efficient use of local judicial resource and the resource of the High Court bench that is appropriate given the nature and type of the application".

39. There is some suggestion that the judgment of Holman J requires there to be an allocation decision at the outset. Whilst I can just about see why that is submitted to me, in fact, as I will make clear, it is now entirely irrelevant.

40. Holman J went on to suggest that the Family Procedure Rules 2010 Rule 8.26(a), which referred to the hearing of the application being by a judge but not a district judge, should be amended, arguing that it was an anomaly that the Rules' Committee should consider. There is no doubt that they did so, because in the Family Procedure Amendment Number 4 Rules, 2014, Statutory Instrument 2013 Number 3296, Rule 8 made provision that, in rule 8.26(a), the words "*by a judge, but not a district judge*" should be removed and that is what happened.

41. Mr Oliver, on behalf of the husband, at the commencement of the case this morning, argued that does not mean that the distribution rules that require these cases to be heard by a judge of High Court level does not still apply. Over the lunch time adjournment, I managed to find the President's Guidance in relation to the jurisdiction of the Family Court and the allocation of cases within the Family Court to High Court Judge Level and the transfer of cases from the Family Court to The High Court, dated the 28th February 2018. Paragraph 25 applies and reads "*Although rule 15(1) and schedule 1 paragraph 4(a) of the Family Court (Composition and Distribution of Business) Rules 2014 state that proceedings under Part III of the 1984 Act, sections 12 and 13 (both permission and substantive applications) should normally be allocated to a judge of High Court level, rule 15(2) provides that this principal is "subject to the need to take into account the need to make the most effective and efficient use of local judicial resources and the resource of the High Court bench that is appropriate given the nature and type of the application." Unless such a case has some special feature, or complexity, or very substantial assets, it should be allocated to a district judge for the permission decision, as well as substantively: see Barnett v Barnett [2014] EWHC 2678 (Fam)".*

42. I therefore make it absolutely clear beyond any lingering doubt that these applications for permission are, in general, to be made by judges of the Financial Remedies Court, usually a District Judge, although sometimes a Circuit Judge and should only come before a High Court Judge if they are of an exceptionally complex nature. In other words, they have some special feature, complexity or very substantial assets. That is now abundantly clear and I intend to put this judgment on Bailii, so there is no doubt about it one way or the other.

43. It follows that HHJ O'Dwyer definitely had jurisdiction to deal with this case. As his order was made with jurisdiction, the only application that I have to consider is the husband's application to set it aside.

44. Turning to that, I have to consider the law briefly. I remind myself that leave is required to make an application pursuant to section 13 of the 1984 Act, which provides that at (1) that "*No application for an order for financial relief shall be made under this Part of this Act unless the leave of the court has been obtained in accordance with the rules of court, and the court shall not grant leave unless it considers that there is substantial ground for the making of an application for such an order".* Subsection (2) says "*the Court may grant leave under this section notwithstanding that an order has been made by a court in a country outside England and Wales, requiring the other party to the marriage to make any payment or transfer any property to the applicant or a child of the family".* Subsection (3) says that *"leave under this section may be granted subject to such conditions as the court thinks fit".*

45. Before returning to the cases on the subject, I should just set out the jurisdiction at section 15. That section provides at (a) that there is jurisdiction if either of the parties to the marriage are domiciled in England and Wales on the date of the application for leave. Neither of these parties is so domiciled, so that does not apply. There is also jurisdiction at (b), if either of the parties to the marriage was habitually resident in England and Wales throughout the period of one year ending with the date of the application for leave or was so resident throughout the period of

one year ending with the date on which the divorce, annulment or legal separation obtained in the overseas country took effect in that country. Once again, that sub section is not established in this case.

46. The only possible jurisdiction here is pursuant to (c), namely either or both of the parties to the marriage had, at the date of the application for leave, a beneficial interest in possession in a dwelling-house situated in England or Wales which was, at some time, during the marriage a matrimonial home of the parties to the marriage. That is the sub-section on which permission was granted by HHJ O'Dwyer.

47. There was an attempt in the husband's application to set aside to rely on his contention that these properties were not matrimonial homes. I have been absolutely clear that that is something that will have to wait for determination at the substantive hearing, if I refuse his application to set aside.

48. I am satisfied, without wishing to say anything about the merits of the case, that the wife has, at the very least, established a prima facie case that these two properties, as opposed to the third property, were matrimonial homes. They were purchased in joint names. The parties definitely stayed in them whilst they were husband and wife. They stayed there with the children. The properties were not rented out. I say no more than that. Of course, it will be open to the husband at the final hearing, if I refuse his application to set aside, to contend that they are not matrimonial homes. If he succeeds in that, the application will fail but I am clear that it is not, at the moment, a matter that justifies setting aside the leave granted to the wife.

49. Of course, section 16 of the Act deals with the duty of the court to consider whether England and Wales is the appropriate venue for the application, and sub-section (1) requires the court to consider whether, in all the circumstances of the case, it would be appropriate for an order to be made by a court in England and Wales. If the court is not satisfied that it would be appropriate, the court shall dismiss the application.

50. Sub-section (2) requires the court to have regard to a number of particular matters. These are:-

(a) the connection which the parties have with England and Wales;
(b) the connection which they have with the country in which the marriage was dissolved;
(c) the connection which they have with any other country outside England and Wales;
(d) any financial benefit which the applicant or a child of the family has received or is likely to have received in consequence of the divorce in Kuwait;
(e) where an order has been made by another country outside England and Wales, the extent to which it has been complied with or is likely to be complied with;
(f) any right which the applicant has or has had to apply for financial relief from the other party under the law of any country outside England and Wales and if she has not done so the reason for that omission;
(g) the availability in England and Wales of any property in respect of which an order under this part of this act could be made;
(h) the extent to which any order made under this act is likely to be enforceable; and
(i) the length of time which has elapsed since the date of the divorce, annulment or legal separation.

51. Section 17 sets out the orders that can be made on a final hearing. Section 18 deals with the matters to which the court is to have regard in exercising its powers.

52. The law is, in my view, very clear. *Agbaje v Agbaje*, [2010] UKSC 13 is the authority that is binding upon me and any other judge that deals with such an application. Lord Collins, in giving the lead judgment of the court set out the following at paragraph [33]:

> *"In the present context, the principal object of the filter mechanism is to prevent wholly unmeritorious claims being pursued to oppress or blackmail a former spouse. The threshold is not high, but is higher than "serious issue to be tried" or "good arguable case" found in other contexts. It is perhaps best expressed by saying that in this context "substantial" means "solid." Once a judge has given reasons for deciding at the ex-parte stage that the threshold has been crossed, the approach to setting aside leave should be the same as the approach to setting aside permission to appeal in the Civil Procedure Rules, where (by contrast with the Family Proceedings Rules) there is an express power to set aside, but which may only be exercised where there is a compelling reason to do so: CPR r 52.9(2). In practice, in the Court of Appeal, the power is only exercised where some decisive authority has been overlooked so that the appeal is bound to fail, or where the court has been misled: Barings Bank plc v Coopers & Lybrand [2002] EWCA Civ 1155; Nathan v Smilovitch [2007] EWCA Civ 759. In an application under section 13, unless it is clear that the respondent can deliver a knock-out blow, the court should use its case management powers to adjourn an application to set aside to be heard with the substantive application".*

53. I have been referred to a number of other authorities as well, including, in particular *Traversa v Freddi* [2011] EWCA Civ 81 at paragraphs [30], [31] and [54]. At paragraph [30], Thorpe LJ said that it was "*clear that the section 13 filter is there to exclude plainly unmeritorious cases and, although, in the evaluation of substance, regard must be paid to overall merits, it does not call for a rigorous evaluation of all the circumstances that would be considered once the application has passed through the filter*".

54. He added that, "*at the hearing of the Section 13 application, the judge will, of course, be conscious of the fact that, once through the filter, the applicant will have to clear a number of fences that the following sections erect. Unless it is obvious that the applicant will fall at one or more of the fences, his performance at each is better left to the evaluation of the trial judge*".

55. And at paragraph [54], Munby LJ said that "*the application for leave should be listed ex parte for a hearing which can be appropriately brief, as can the judgment either giving or refusing leave. Those minded to apply to set aside the grant of leave should be mindful of what Lord Collins said. Such an application, if nonetheless pursued, should be given an appropriately short listing to enable the respondent to demonstrate, if he can – and it will not take all that long, which is why the listing can be appropriately short – that he has some "knock-out" blow. Unless the respondent can demonstrate that, his application, if not dismissed there and then, should be adjourned to be heard with the substantive application*".

56. I have also been referred to some first instance decisions, including that of Moylan J, in *AA v AB* at paragraph [86], where he said that he had "*no doubt that I would grant the wife leave to make an application for financial remedy orders in the circumstances of this case, as they now are. It is undoubtedly a claim which is substantial in the sense explained in Agbaje. It is clearly not an unmeritorious claim, given, crucially, that the Slovenian court has no jurisdiction to deal with non-Slovenian assets, which appear to be very substantial in themselves*". And he adds at paragraph [87] that "*picking up point (c) in Sedley J's judgment in Hertsmere Borough Council -v- Harty, I am not persuaded that the deficiency or the deficiencies are such that leave would not have been given if the court had been aware of the true circumstances. Indeed I am satisfied of the opposite*".

57. Finally there has been reference to the recent decision of Cohen J in *Potanin v Potaninia* [2019] EWHC 2956. I have to be slightly cautious in relation to this, given that it is subject to a potential appeal, and I do not want to say anything that could lead to this case also being subject to a potential appeal. It is, however, right to note that at paragraph [17], Cohen J said that there is a very high duty of candour imposed upon an applicant at an ex-parte hearing. He adds at paragraph [19] that it is thus essential that any presentation at an ex-parte hearing is one in which the applicant presents the case on a "warts and all" basis. At paragraph [61], he deals with the test for applying. He says that the phrase "knock out blow" is often used as the test of what a respondent needs to be able to show to be able to secure the revocation of leave.

58. I consider there is good reason for the phrase “knock out blow” being used. It is the test that the Supreme Court has set down for all judges to apply. It is said that "knockout blow" is no different from "compelling reason". Cohen J thought the latter to be a more helpful phrase.

59. It is right that Cohen J goes on to wonder if there is any real difference between "compelling reason" and being able to show that there is "no solid ground" for the bringing of an application.

60. I make it clear that the decision that I have come to in this case is based on the Supreme Court’s judgment in *Agbaje.* I have a number of matters to consider. The first one is my view of this application and the disclosure that was given to HHJ O’Dwyer. Mr Oliver sets out, in his case summary, five specific matters about which he says that the wife was misleading and/or deficient about in her application.

61. First, he says she overstated her links to England and Wales. Second, he says she understated her links to Kuwait, including but far from limited to failing to put before the court full information as to the proceedings between the parties in Kuwait and her reliance on the Kuwaiti court process. Third, he says she withheld important information about her financial circumstances, specifically as to her employment and income. Fourth, she gave no evidence on any of the section 25 criteria, which, he argues, is the very yardstick against which solidity has to be judged. Finally, he says she failed to put before the court sufficient particulars of the potential weaknesses of her case that could be gathered from other proceedings the husband and wife were involved in both in Kuwait and in the Chancery Division.

62. I have come to a clear conclusion in relation to all five points. First, it is stated that she overstated her links to England and Wales. I accept that the husband has a point that she may have set out some incorrect dates for the times that she was here, and that she may have implied that she came every holiday rather than just some

holidays, but I do not consider that she overstated her links to England and Wales in a way which was material to this application and sufficient for the application to be discharged or the permission revoked.

63. I am clear that she has given a broad account of what she says the position is in relation to these properties; the way in which they were used; the way in which they were purchased; the fact that they were not rented out; how they were furnished; and the like. I consider that the amount of time that she spent in them is far less important than the fact that these are properties, that are legally in joint names. At the very least, these are assets of this husband's that were not dealt with in Kuwait. I consider those points to be magnetic features of this case. I therefore reject Mr Oliver's first point.

64. Second, he argues that she understated her links to Kuwait, including, but far from limited to, failing to put before the court full information as to the proceedings between the parties in Kuwait, and her reliance on the Kuwaiti court process. I reject that. In my view her document sets out fairly the position in Kuwait and there is nothing material that she has omitted that could have made any difference to HHJ O'Dwyer.

65. Third, it is said that she withheld important information about her financial circumstances. I accept that the important information in this regard was her income. I further accept that the statement was inaccurate in that regard. I am critical of her for the way in which she did not deal with that matter. I am, however, clear that the failure to disclose her income, and to suggest that she had given up her career for the children, was not a material factor to the grant of permission, which was about these matrimonial properties and the equity in them. It is clear to me that, in so far as her income is relevant to that, it is something that will be dealt with at the substantive hearing. I remind myself that because the only jurisdiction comes from the matrimonial properties, any award which she achieves in this country is limited to the equity in those properties.

66. Fourth, it is said that she gave no evidence on any of the section 25 criteria. Mr Oliver made much of this in his submissions. He said that HHJ O'Dwyer should have had his attention drawn to sections 17 and 18 of the Act, and that there should have been a full addressing of the issues under section 25. I cannot accept that submission or even come close to accepting it. I have done numerous applications for permission pursuant to Part III. I do not think that I have ever been through the section 25 criteria with the applicant during the without notice application. I have always devoted particular concern and diligence to section 16 of the Act and the criteria that are set out thereunder.

67. I of course accept that a judge is not going to give permission to bring such applications if the applicant does not have at least an arguable case that he or she will get an order at the end of a fully contested hearing. That is certainly something that I would have taken into account had I been hearing this permission application, but I reject the suggestion that, in each case, it is necessary to pour through sections 17 and 18. I equally reject the suggestion that an applicant needs to take the judge through all the authorities that deal with that aspect of the case, and in particular make specific reference to paragraphs 70 to 73 of *Agbaje* which deal with the approach to a final hearing. These applications are, as both Thorpe and Munby LJJ pointed out, to be dealt with on a much broader brush approach than that.

68. Finally, it is said that the wife failed to put before the court sufficient particulars of the potential weaknesses of her case that could be gathered from other proceedings that the husband and wife were involved in in Kuwait and the Chancery Division. Again, I simply cannot accept that submission. I take the view that such points are effectively nit picking and that, if the disclosure had to be as great as is suggested by Mr Oliver, then we would never finish any of these ex-parte hearings, and every single one would be subject to potential challenge by way of application to set aside.

69. I am clear that when *Agbaje* refers to the need for a "knock out blow" it was to discourage this type of application. I am quite clear that if I had been HHJ O'Dwyer, I would have given permission to this wife to make her application and

that I would not have been doing so in reliance on her telling me that she had given up her career for the children. I would have been doing so on the basis that there are two properties in this country that are in joint names, that may be matrimonial homes, and that were not dealt with in Kuwait. I would have taken some comfort from the fact that there are proceedings in the Business and Property Court that are dealing with those very properties, so it is not as though I would have been launching or permitting the launch of proceedings in this jurisdiction where there would not otherwise have been any proceedings here. I know Master Marsh is dealing with those proceedings. I agree with him that these two applications must be heard together, but I am going to leave it entirely to him as to how he deals with that.

70. I am therefore clear that applications such as this to set aside are to be discouraged. They really are only to be successful where there is a "knock out blow" that means that an applicant will fall at one of the fences at the final hearing. That is what was intended by *Agbaje* and that should continue to be the position.

71. I am not going to make any particular comment in relation to *Potanin*, but if an applicant comes along and tells the court that she received $40m in Russia but actually got $80m that involves pretty fundamental non disclosure and may well make *Potanin* a very different case to this. It follows that this application is dismissed.
