



Neutral Citation Number: [2021] EWHC 2347 (Ch)

Case No: PT-2020-000680

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUINESS LIST (ChD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL  
Date: 26/8/2021

**Before:**

**MASTER CLARK**

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**Between:**

**SYED AMINUL HAQUE**  
**(as representative/member of MUTTAHIDA QUAMI**  
**MOVEMENT PAKISTAN unincorporated association)**

**Claimant**

**- and -**

**(1) ALTAF HUSSAIN**  
**(2) IQBAL HUSAIN**  
**(3) TARIQ MIR**  
**(4) MUHAMMAD ANWAR**  
**(5) IFTIKHAR HUSSAIN**  
**(6) QASIM ALI RAZA**  
**(7) EURO PROPERTY DEVELOPMENTS LIMITED**

**Defendants**

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**Nazar Mohmmad** (instructed on Direct Access) for the **Claimant**  
**Richard Slade QC** (instructed by **C M Atif & Co**) for the **First, Second, Fifth, Sixth and**  
**Seventh Defendants**

**Hearing date:** 4 August 2021  
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**Approved Judgment**

I direct that this approved judgment, sent to the parties by email on 26 August 2021, shall deemed to be handed down on that date, and copies of this version as handed down may be treated as authentic.

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## **Master Clark:**

### **Application**

1. This is my judgment on the application dated 28 September 2020 of the first, second, fifth, sixth and seventh defendants for security for costs of the claim.

### **Parties and the claim**

2. The claimant, Syed Aminul Haque, brings the claim, pursuant to CPR 19.6, as a member and representative of Muttahida Quami Movement Pakistan (“MQM Pakistan”), an unincorporated association based in Pakistan.
3. The defendants are the members of an unincorporated association based in London, which refers to itself as “Muttahida Quami Movement”, and to which I will refer as “MQM London”, to distinguish it from MQM Pakistan.
4. Both sides claim that their organisation is the continuation of the Muttahida Quami Movement (“MQM”), a political party founded by the first defendant in Pakistan in about 1984.
5. The subject matter of the claim is 6 properties and the proceeds of sale of a 7<sup>th</sup> property in Edgware and other parts of north London, the legal titles to which are in the names of the defendants. The claimant asserts that MQM Pakistan is the beneficial owner of the properties, and the defendants that MQM London is. Key factual issues in the claim include whether
  - (1) (as the defendants allege, and the claimant disputes), a new constitution of MQM was validly passed in 2015;
  - (2) (as the claimant alleges, and the defendants dispute), the first defendant resigned from MQM in 2016.
6. The 3<sup>rd</sup> and 4<sup>th</sup> defendants do not oppose the claim, and indeed have signed a consent order (which the Court declined to approve) transferring the “legal interest” in the properties in their names to a person nominated by the claimant to be held on trust for MQM Pakistan. In this judgment, I refer to the first, second, fifth, sixth and seventh defendants as “the defendants”.
7. A fuller description of the claim is not necessary for present purposes, but may be found in the judgment dated 16 October 2020 of Mr Peter Knox QC (sitting as Deputy Judge of the High Court) [2020] EWHC 2739 (Ch).

### **Legal principles**

8. The application is made under CPR 25.13(2)(a), which relevantly provides
  - “25.13— Conditions to be satisfied
    - (1) The court may make an order for security for costs under rule 25.12 if—
      - (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
      - (b)
        - (i) one or more of the conditions in paragraph (2) applies,
        - ...
    - (2) The conditions are—

- (a) the claimant is—
  - (i) resident out of the jurisdiction; but
  - (ii) not resident in a State bound by the 2005 Hague Convention, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982”

9. In *Danilina v Chernukhin* [2018] EWCA Civ 1802, [2019] 1 W.L.R. 758 at [51] Hamblen LJ (as he was) summarised the relevant principles as follows:

- “(1) For jurisdiction under CPR 25.13(2)(a) to be established it is necessary to satisfy two conditions, namely that the claimant is resident (i) out of the jurisdiction and (ii) in a non-Convention state.
- (2) Once these jurisdictional conditions are satisfied the court has a discretion to make an order for security of costs under CPR 25.13(1) if ‘it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order’.
- (3) In order for the court to be so satisfied the court has to ensure that its discretion is being exercised in a non-discriminatory manner for the purposes of Articles 6 and 14 of the ECHR – see *Bestfort* at [50]-[51].
- (4) This requires ‘objectively justified grounds relating to obstacles to or the burden of enforcement in the context of the particular foreign claimant or country concerned’ – see *Nasser* at [61] and *Bestfort* at [51].
- (5) Such grounds exist where there is a real risk of ‘substantial obstacles to enforcement’ or of an additional burden in terms of cost or delay – see *Bestfort* at [77].
- (6) The order for security should generally be tailored to cater for the relevant risk – see *Nasser* at [64].
- (7) Where the risk is of non-enforcement, security should usually be ordered by reference to the costs of the proceedings – see, for example, the orders in *De Beer* and *Bestfort*.
- (8) Where the risk is limited to additional costs or delay, security should usually be ordered by reference to that extra burden of enforcement – see, for example, the order in *Nasser*.”

10. It is common ground that the claimant is resident out of the jurisdiction in Pakistan, although I note that, contrary to CPR PD 16, para 2.2, the claim form does not include an address at which he resides or carries on business. It is also common ground that Pakistan is not bound by the 2005 Hague Convention, so that the jurisdictional basis to make an order for security is established.

11. Where this ground is relied upon, the impecuniosity of the claimant is not directly relevant:

“In so far as impecuniosity may have a continuing relevance it is not on the ground that the claimant lacks apparent means to satisfy any judgment but on the ground (where this applies) that the effect of the impecuniosity would be either (i) to preclude or hinder or add to the burden of enforcement abroad against such assets as do exist abroad or (ii) as a practical matter, to make it more likely that the claimant would take advantage of any available opportunity to avoid or hinder such enforcement abroad”

(per Mance LJ, [62] in *Nasser v United Bank of Kuwait* [2002] 1 W.L.R. 1868; [2002] 1 All E.R. 401, CA).

### **Evidence**

12. The defendants' evidence consisted of:
  - (1) the first witness statement dated 26 September 2020 of the defendants' solicitor, Mr Chaudhry Mohammed Atif ("Atif 1");
  - (2) the second witness statement dated 7 July 2020 of Mr Atif ("Atif 2");
  - (3) the fourth witness statement dated 2 August 2020 of Mr Atif ("Atif 4").
13. The claimant's evidence consisted of the second witness statement dated 28 July 2021 of his solicitor, Mr Dingyue Shi ("Shi 2"), to which are exhibited reports from two Pakistani qualified lawyers: Naeem Ahmad Khattak and Fahad Sultan.

### **Discretion**

14. The claimant, who is a minister of the government of Pakistan, has given no evidence at all about his means in the UK or Pakistan. Mr Atif in Atif 2 states that so far as the defendants are aware, the claimant has no property, money in any bank account or any assets within the United Kingdom. This is unanswered. Mr Atif also exhibits a newspaper article stating that the salary of a Pakistani government minister is the equivalent of about £1,582; and that after rent, the net amount would be about £1,169. This is uncontradicted. I proceed therefore on the basis that the claimant personally would be unable to satisfy a costs judgment against him.
15. The claimant has also given no evidence as the sources of funds available to him, or how this claim is being funded. His costs budget totals £135,000, before budget drafting and process costs and VAT (which bring the total to about £168,000). The obvious inference is that his costs are being funded by a third party. And, although the claimant's counsel made brief submissions that the claim would be stifled if security were granted, there is no suggestion of this in the evidence. There is simply no basis on which the court could conclude that to grant security would stifle the claim.
16. The factors to which the parties directed their arguments as to discretion fall under the following headings:
  - (1) Legal obstacles to enforcement;
  - (2) Political/practical obstacles to enforcement;
  - (3) The guarantee offered by the claimant.

### **Legal obstacles to enforcement**

#### *Enforcement in Pakistan*

17. It was common ground that there is a legal framework to enforce an English judgment in Pakistan. Section 44A in Part II of the Civil Procedure Code of Pakistan 1908 provides that a certified copy of a decree of any of the Superior Courts of the United Kingdom can be enforced as if it had been passed by the Pakistan District Court. The High Court of England & Wales is a "Superior Court".
18. The defendants' evidence as to this is contained in Atif 2. Mr Atif is an English qualified solicitor. He does not have any qualifications or expertise in Pakistani law, and is not put forward as an expert in Pakistani law. He exhibits and refers to extracts

from what the parties agree is the Civil Procedure Code of Pakistan 1908 (“CPC”), sections 44A, 47(3) and 13.

19. These provisions provide, so far as relevant:

**“44A Execution of decrees passed by Courts in the United Kingdom and other reciprocating territory**

- (1) Where a certified copy of a decree of any of the Superior Courts of the United Kingdom or any reciprocating territory has been filed in a District Court, the decree may be executed in Pakistan as if it had been passed by the District Court.
- (2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this Section, be conclusive proof of the extent of such satisfaction or adjustment.
- (3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of the District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

**47. Questions to be determined by the Court executing decree.**

- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

...

- (3) Where a question arises as to whether any person is or is not the representative of a party, such a question shall, for the purposes of this section, be determined by the Court.

**13. When foreign judgment not conclusive**

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except –

...

- (e) Where it has been obtained by fraud;
- (f) Where it sustains a claim founded on a breach of any law in force in Pakistan.

20. The claimant accepts that section 13 applies to this case. However, Mr Atif’s evidence as to the effect of these provisions and the way in which they would be applied in the courts of Pakistan is in my judgment inadmissible, because it is expert evidence which he lacks the required expertise to give.

21. The only admissible evidence on the defendants’ side provided by a person with the relevant expertise is from Dilber Khan Laghari, whose writing paper describes him as “Advocate Supreme Court of Pakistan”. It is contained in a letter dated 28 June 2021 to the defendants’ solicitors, which states:

“Judgment or Costs Order passed by the High Court in London in (*sic*) executable in our country (Pakistan) which can be executed/enforced from 3 to 6 months, however in special circumstances it may be extended for few months more. If such case can be filed through a Special Power of Attorney duly signed by the Embassy, it can save the time as well as travelling expenses.”

22. I note that this letter was written shortly before Atif 2 (to which it is exhibited). However, it does not address the risks of non-enforcement at all. Indeed, there is no indication in the letter that there are any risks of non-enforcement.
23. The claimant’s evidence comprises reports from two Pakistani qualified lawyers: Naeem Ahmad Khattak and Fahad Sultan. Each was asked the following questions:
  - (1) What, if any, procedures exist for the enforcement of foreign judgments granted by courts of competent authorities?
  - (2) What, if any, procedural difficulties may an applicant seeking enforcement of a foreign judgment face?
  - (3) What is the starting point of such an application for enforcement of foreign judgments or orders and the likely estimated costs and length of time?
24. Mr Khattak is an Advocate of the Lower Court of Peshawar and Advocate of the High Court of Pakistan, and a member of the Khyber Pakhtunkhwa Bar Council. He states that there are no legal or practical impediments to enforcing a foreign judgment of the English High Court within the District Courts of Pakistan.
25. Mr Sultan is an advocate of the High Court of Sindh at Karachi and a member of Lincoln’s Inn. He agrees that the relevant provision is section 44A, and sets out a passage as to its effect from an authority, *Badruddin v Grosvenor Casino Limited* PLD 1993 Karachi 449:

“... it is an independent section and it is not controlled by the provision of any other section. The moment a certified copy of a decree of any of the superior courts of the United Kingdom ... and a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted, were produced in the District Courts in Pakistan, the decree may be executed in Pakistan as if it had been passed by the District Court.”
26. As to procedural difficulties in enforcing a foreign judgment, Mr Sultan says:

“There are no procedural difficulties in the enforcement of a foreign judgement in Pakistan. They are usual legal procedures which are followed on a daily basis at the courts. I have also enforced and executed judgments that have been passed in the UK here in Pakistan without unusual difficulty. Only the normal procedures of Attestation of Judgments are required to prove its validity in the courts in Pakistan.”
27. Finally, Mr Sultan sets out the procedure for enforcing a foreign judgment, which includes a hearing at which the judgment debtor has an opportunity to show cause why the decree should not be executed against him. He concludes:

“Foreign Judgments of any nature, passed in the United Kingdom, be it Civil or Criminal, have been enforced before and are being enforced on a daily basis at the High Courts and District Courts in Pakistan provided that the parties involved adhere to all the legal procedures and formalities mentioned above.”

28. The defendants’ counsel submitted that the provisions in section 13 of the CPC gave rise to obstacles to enforcement of any judgment obtained against the claimant. He said that the Pakistani Court could use s.13 (e) and (f) as pretext to refuse to enforce the judgment for political reasons (as to this, see paras 38 to 49 below). As to (e), the claimant could, he said, say that the adverse judgment arises because the defendants lied about the adoption of the 2015 constitution and whether the first defendant resigned from MQM in October 2016. As to (f), the defendants’ counsel submitted, the defendants claim to act for a political party which is outlawed in Pakistan and prohibited from taking part in elections.

*S.13(e): judgment obtained by fraud*

29. None of the 3 Pakistani lawyers address s.13 and, as concluded above, Mr Atif’s opinions on it are inadmissible. In these circumstances, the defendants’ counsel referred me to Rule 50 of *Dicey, Morris & Collins on the Conflict of Laws* (15th edn), which states that a foreign judgment, relied upon as such in proceedings in England, is impeachable for fraud. For this purpose, fraud could, he said, include lying by the defendants about issues such as the key factual issues set out at paragraph 5 above. He relied upon the principles set out in the Comment section to Rule 50, derived from the English authorities, and submitted that these were likely to be applicable in Pakistan, as a Commonwealth jurisdiction. However, I note from the Comment section that a different approach has been adopted in Canada and by the New South Wales Supreme Court. Any conclusions as to the position under Pakistani law would be speculative, and fall far short of showing a “real risk” of substantial obstacles to enforcement, particularly when the defendants have had the opportunity to put evidence of the actual position before the court.

*S.13(f): claim founded on a breach of any law in force in Pakistan*

30. As to this, the defendants’ counsel submitted that this clause could be argued to apply because the defendants claim to act for a political party which is outlawed in Pakistan and prohibited from taking part in elections.
31. Leaving aside the lack of expert evidence as the effect of this provision, on an ordinary reading of it, it is not in my judgment, apt to prevent enforcement by the defendants of a claim to costs following success in this claim. I am not therefore satisfied that it gives rise to a real risk of a substantial obstacle to enforcement.

*Enforcement against other members of MQM Pakistan in Pakistan*

32. The defendants’ counsel submitted that the only realistic route to the defendants’ recovery would have to be by seeking to enforce against other members of MQM Pakistan. This, he said, is an additional risk and burden of enforcement which arises because the claimant is a representative claimant who does not have funds. The claimant’s impecuniosity is relevant, he submitted, because it hinders or adds to the burden of enforcement against such assets as do exist abroad.

33. As to this, again, he relied upon the English law as to the position. This was, he submitted, that it would not automatically follow that an adverse costs order against the claimant could be enforced against the other members of MQM Pakistan. CPR 19.6(4) requires the permission of the Court before any enforcement could take place. It would be open, he said, to any non-party to put forward special reasons why the costs order should not be enforced against them: *Howells v Dominion Insurance Company* [2005] EWHC 552 (QB) at [25] & [28].
34. Similar risks would, he said, affect the defendants' position in Pakistan. Any member of MQM Pakistan could try to prevent an enforcement order by saying that he had never approved the English action and/or did not have sufficient knowledge of its details or cost implications. There was a real risk that arguments along these lines might succeed before a Court in Pakistan. This was, he said, an obstacle to enforcement.
35. As to this, I do not accept that, on a proper analysis, any such difficulties in recovering costs awarded against the claimant from the members of MQM Pakistan are to be characterised as difficulties of enforcement. The barrier to enforcement in CPR 19.6(4) reflects the fact that there may be special reasons why a non-party should not be liable for the costs in question. The fact that there may be difficulties in showing that they are liable is not in my judgment a difficulty in enforcing the costs order; it is a difficulty in showing that the non-party is a person against whom the order is properly to be enforced i.e. a difficulty in establishing their liability for the costs. Such difficulties would not be, in my judgment, difficulties in enforcing an order against the claimant.
36. In any event, the defendants face a similar difficulty to that in relation to section 13. There is no evidence as to the applicable Pakistani law governing enforcement of costs orders against representative parties. Furthermore, even assuming that the framework is broadly similar, the possibility that the other members of MQM Pakistan could resist enforcement by showing special circumstances is not, in my judgement, attributable to the claimant or their being out of the jurisdiction. It arises from the representative nature of the claim, and provisions which I am asked to assume are materially identical in both countries.
37. This factor is not therefore, in my judgment, a relevant factor in exercising my discretion.

#### **Political/practical obstacles to enforcement**

38. The defendants' counsel submitted that in enforcing any costs order, they face potential public policy arguments that members of MQM Pakistan should not have to pay the legal costs of members of an allegedly illegal splinter group which (however unfairly) is branded criminal or terrorist by the Pakistan authorities.
39. As to this the defendants rely upon Mr Atif's evidence in Atif 2 at [10] that MQM Pakistan is recognised in Pakistan, whereas MQM London is not, following a crackdown on its membership by the Pakistani government in 2016. Mr Atif's evidence is that the defendants have a "serious concern" as to whether a Pakistani court would enforce a foreign judgment against a current minister. In support of this he refers (and provides a link to) the Corruption Perception Index published by Transparency International on 28 January 2021, in which Pakistan is ranked 124<sup>th</sup> out of 180 countries, and has a score of 31/100 on the perceived level of public corruption.



40. In Atif 4, Mr Atif also exhibits extracts from a report entitled “Freedom in the World 2021” published by Freedom House, described on Wikipedia as an American, non-profit NGO that conducts research and advocacy on democracy, political freedom and human rights; said to receive the majority of its funding from the United States. In its “*Rule of Law*” section, Pakistan is given a score of 1 out of 4 in response to the two questions
- (1) Is there is an independent judiciary?
  - (2) Does due process prevail in civil and criminal matters?
41. The report states:
- “The judiciary is politicized and has a history of involvement in the power struggles between the military, the civilian government, and opposition politicians and has often issued rulings aligned with the priorities of the military. ... The broader court system is marred by endemic problems including corruption, intimidation, insecurity, a large backlog of cases, and low conviction rates for serious crimes.
42. As to MQM’s position in Pakistan, the Defence pleads (at paras 2(b), 7 and 8) that MQM London has been unable to register as a political party in Pakistan, because it is no longer allowed to do so by the military establishment following a “very brutal” crackdown in August 2016. This is said to have included raids on its offices, which were then sealed and in some cases, demolished. The defendants also allege that many of MQM London’s officers and workers were forced to go into hiding to protect their lives or have been subjected to enforced disappearances, extrajudicial executions and imprisonment under politically motivated and fabricated charges. This is restated in Atif 1 at [27]. At [45] he says
- “I am informed by the First Defendant, and have no reason not to believe, that the use of certain members of the judiciary for political victimisation of opponents is regrettably not unusual in Pakistan. ... Some of the more scrupulous judges of the High Court and Supreme Court have openly accused the military’s intelligence agency ‘the ISI’ for interference in court matters and intimidation to judges and their family members.”
43. The defendants plead (at para 9 of the Defence) that, as a consequence of the above, it is not practically possible for MQM London to successfully challenge any actions in Pakistan, including because it would be impossible to find a lawyer to represent it as an “effectively outlawed” organisation. The claimant’s counsel challenged this, submitting that Mr Laghari was an example of a lawyer willing to represent the defendants in Pakistan. However, it is unclear from Mr Laghari’s letter whether he knows who his prospective clients are to be.
44. The Reply does not engage with the allegations in the Defence. Shi 2 also does not engage with either the evidence as to corruption or political interference with legal proceedings. Mr Shi asserts that reliance on that evidence is misconceived, as the claim is brought against the defendants in their personal capacities and not against MQM London, so that a judgment in their favour would be in their personal names. This is

factually inaccurate, as the defendants are sued in their capacities as trustees for MQM; and also wilfully blind to the practical realities of this case.

45. As to Transparency International's Corruption Index, Mr Shi does not deny its truthfulness, but merely states that

“No evidence of corruption in Pakistan affecting the enforcement of any order/judgement in these proceedings has been provided.”
46. The claimant's counsel submitted that the Transparency International Index was of little weight, given that the court had no evidence as to the standing of Transparency International, and the methodology used to prepare the index.
47. Atif 4, exhibiting the Freedom House report, was filed on 2 August 2021, 2 days before the hearing. The claimant did not oppose its admission, or seek to file evidence in response. That evidence is therefore unchallenged. The claimant's counsel submitted that I should give the report little or no weight. The court did not have, he said, any evidence as to the agenda of Freedom House, or the provenance of the data and information in the report.
48. As to the claimant's objections to the two watchdog organisations, both are referred to regularly in cases where the integrity of a foreign judicial system is in issue. Transparency International was described as one of several “respected international bodies” in *Pacific International Sports Clubs Ltd v Soccer Marketing International Ltd* [2009] EWHC 1839 (Ch). Perhaps more importantly, the claimant has not adduced any evidence casting doubt on the standing, methodology or reliability of the material produced by the organisations. I accept that the material has a degree of generality and is inevitably not focussed on the parties in this claim, but it is sufficient in my judgment to show a real risk of political interference in legal proceedings.
49. The claimant's counsel submitted that the defendants' assertions as obstacles and/or burdens based on political interference with judicial independence were speculative, too general and ran contrary to the expert advice. He referred me to *Kahangi v Nourizadeh* [2009] EWHC 2451 (QB), in which it was held that general allegations about the lack of judicial independence would not be sufficient. I respectfully agree with that proposition enunciated in *Kahangi*.
50. The claimant's counsel also sought to rely upon the Court of Appeal decision on an application for security for costs in *Sadrudin Hashrani v Nurdin Jivraj* [2010] EWCA Civ 183. However, he was unable to provide a report of the case (the neutral citation number being inaccurate), and only referred me to a summary in a newsletter produced by Zaiwalla & Co., a firm of solicitors. This states that Lord Justice Mummery held that it would be unjust to make an order for security for costs against a claimant resident in Pakistan, on the basis that the United Kingdom and Pakistan have a reciprocal arrangement for the enforcement of judgments of the English Courts. It continues that the applicant, Mr Jivraj, argued that the political circumstances in Pakistan, including the suspension of senior members of the Judiciary by the Government constituted an obstacle under the *Nasser* test, and this argument was rejected by the Court.

51. A summary of a case of this type is of very limited use. However, there is no indication in the summary of any political sensitivity of the parties to the case, and the reported decisions in this case (which reached the Supreme Court<sup>1</sup>) show that there were none.
52. In this case, there are specific features in the claim and in the evidence before me which take the defendant's allegations beyond mere general allegations:
- (1) the claimant's status as a government minister, in his capacity as a member of MQM Pakistan;
  - (2) MQM London's status as a political party which (for whatever reasons) is effectively outlawed in Pakistan;
  - (3) the first defendant's status as a high profile and controversial political figure, who has been accused of serious criminal offences including money laundering (and convicted in Pakistan, in his absence, of murder), as well as facing criminal charges in London pursued with the co-operation of the Government of Pakistan;
  - (4) the material from the two watchdog organisations as to the level of corruption in the court system generally, and specifically of the politicisation of the judiciary.
53. These factors are sufficient in my judgment to show a real risk of substantial obstacles to enforcement of a costs order by the defendants against the claimant.
54. I take into account that neither side's legal experts discuss political obstacles to enforcement, nor express any view on it. However, Mr Laghari does not set out the queries he was asked to answer, and, as noted, it is unclear from his letter whether he was even told who the parties to the claim were. Mr Khattak and Mr Sultan, the claimant's experts, were only asked about procedural difficulties in enforcement, not political obstacles to it. This evidence therefore takes matters no further.

#### *Guarantee*

55. Shortly before the hearing the claimant offered as security for the defendants' costs of the claim a "Certificate of Guarantee" dated 23 July 2021 ("the Guarantee") signed on behalf of the board of the Khidmat-E-Khalq Foundation. It recites:
- "KHIDMAT-E-KHALQ FOUNDATION is the charitable wing of [MQM Pakistan] and is a part of [MQM Pakistan]. The assets of the KKF are retained by the KKF for [MQM Pakistan] and its successors.
56. The Guarantee attaches evidence in its support as to Khidmat-E-Khalq Foundation's assets and funds. These comprise 16 properties in Pakistan. The claimant also exhibits bank statements for an account in the name of MQM Pakistan, showing a credit balance of Rs 7,240,323,50. Mr Atif's unchallenged evidence is that the sterling equivalent is £32,024.78.
57. The operative provisions of the Guarantee are:
- "Meeting of the KKF committee of KKF was held at the office of the party, situated at ST-7, Block-14 F.B/ Area, Karachi today on 23<sup>rd</sup> July 2021, in which, inter alia, was resolved:

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<sup>1</sup> [2011] UKSC 40, [2011] 1 W.L.R. 1872

The KKF undertakes to irrevocably guarantee the payment of any enforceable judgment arising from an order for enforcement against [MMQ Pakistan] or its members because of the action in the case against (1) Altaf Hussain (2) Iqbal Husain (3) Tariq Mir (4) Muhammad Anwar (5) Iftikhar Hussain (6) Qasim Ali Raza and (7) Euro Property Development Limited, in the High Court of England under the case number PT-2020-000680.”

58. Mr Atif’s unanswered evidence (Atif 4, [11]) is that the Khidmat-E-Khalq Foundation was established by the First Defendant with the object of carrying out charitable work for the poor and needy and for their education.
59. In addition, Mr Atif exhibits evidence that the Pakistani government has intervened in the past following the sale of vehicles by the Khidmat-E-Khalq Foundation (and exhibits a newspaper report of this).
60. The defendants’ counsel submitted that the Guarantee does not give the defendants sufficient assurance that their costs will be paid, relying on the following reasons:
- (1) The Guarantee is not addressed to anyone, and the defendants are not parties to it. Under English law it is essential to a guarantee that the creditor is a party to it: para 1.006 *Law of Guarantees* 7th edn, Andrews & Millett.
  - (2) The payment obligation is dependent upon “an order for enforcement against the MQMP or its members”. It does not expressly cover the obvious candidate against whom enforcement would ordinarily be sought, who is the claimant, and might be interpreted to mean an order for enforcement is required against all of the members of MQM Pakistan. This could be problematic for the reasons discussed above.
  - (3) In any event, after an adverse judgment in England, the claimant could simply resign from MQM to ensure that even if an order for enforcement was made against him in Pakistan, it would not be made against an existing member of MQM Pakistan.
  - (4) The trigger for enforcement of the Guarantee is an “order for enforcement” to which the political obstacles discussed above would apply.
  - (5) The guarantee may be *ultra vires* the Khidmat-E-Khalq Foundation because it is not for the benefit of the Foundation’s beneficiaries.
  - (6) Since the Pakistani government has previously intervened to stop the sale of Khidmat-E-Khalq assets, it may do so again.
  - (7) The sum in MQM Pakistan’s bank account do not belong to the claimant. Presumably they belong to all the membership. They could easily be moved. In any event, they are too low to cover an adverse costs order against the claimant.
61. As to (1), this would not be a conclusive objection in English law to a guarantee embodied in a deed. The final paragraph of para 1-006 of *Law of Guarantees* states:

“However, where the guarantee is embodied in a deed and the creditor is not a party to the deed, the creditor will be entitled to enforce the guarantee if it is plain as a matter of construction of the deed that he was intended to be the beneficiary of the promises made by the surety in the deed: see, e.g. *Moody v Condor Insurance Ltd* [2006] 1 W.L.R. 1847 ... In such a case, the contract is one of guarantee and not indemnity. The creditor, though not a signatory to the deed, is

still a party to the guarantee agreement made by the surety which is evidenced by the deed.”

62. There is, however, no evidence as to whether the Guarantee is a valid and enforceable guarantee under Pakistani law, and no basis for concluding that it is.
63. As to (2) and (3), I accept that these are matters which undermine the value of the Guarantee and potentially render it worthless. I also accept that enforcement of the Guarantee is subject to the same political obstacles as enforcing a judgment would be.
64. As to (5), the claimant has not filed any evidence contradicting Mr Atif’s evidence that KKF’s objects would render the Guarantee *ultra vires*.
65. As to (6), I have documentary evidence that the Pakistani government has intervened in the sale of vehicles and seized properties belonging KKF, and I accept therefore that this is risk that could eventuate again.
66. Finally, as to (7), the claimant did not challenge that funds could readily be moved from the bank account, and were in any event insufficient to meet the defendants’ likely costs of this claim.
67. I do not therefore consider that the Guarantee provides any or any adequate protection against the risk that the defendants may not be able to satisfy any judgment by seeking to enforce it against the claimant.

### **Conclusion**

68. For the reasons set out above, therefore, I am satisfied that there are real risks, established on objectively justified grounds, that the defendant will be unable to enforce any judgment for costs against the claimant, and that I should exercise my discretion to make an order for security for the costs of the claim. As to the amount and manner of security, I will hear counsel at the next hearing, if this cannot be agreed.