Neutral Citation Number: [2023] EWHC 1096 (Fam)

Case No: ZC20F04122
FA-2023-000045

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

On appeal from Recorder Nice sitting at the Central Family Court in London on 3 February 2023

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 April 2023

Before :

THE HONOURABLE MRS JUSTICE ROBERTS

- -

Between :

COLLINS CHIKEZIE CHIKELUBA **Appellant**

- and –

VALERIE NWANODU CHIKELUBA **Respondent**

The appellant appeared as a litigant in person
Stephen Trowell KC instructed by A Williams & Co (Solicitors) appeared for the respondent

Hearing date: 4 April 2023

- -

JUDGMENT

Mrs Justice Roberts:

Introduction

1. This is an application brought by Mr Collins Chikeluba ("the appellant") whereby he seeks permission to appeal an order made by Recorder Nice sitting at the Central Family Court on 3 February 2023. That order made financial provision for the respondent and the younger child of the family within the context of a Part III application brought pursuant to the Matrimonial and Family Proceedings Act 1984 following divorce proceedings in Nigeria.

2. The parties are both Nigerian nationals who married in 1994 and were divorced in Nigeria in December 2019. Since October 2020, Mrs Chikeluba ("the respondent") has lived in central London in a property owned by the appellant ("the Paddington flat"). He has remained throughout at his home in Lagos, Nigeria from where he participated in this hearing via a CVP link. The respondent attended court in person with Mr Trowell KC, her barrister, and Mr Williams, her solicitor.

3. There are two children of the family, J (now 27) and Z (15). The appellant is currently in breach of a raft of orders made by Recorder Allen KC on 10 January 2022. Those interim orders were designed to provide the respondent and the younger child of the family with a secure roof over their heads at the Paddington flat and the means to run their domestic economy, pay the school fees and fund the ongoing litigation. Since the orders were made, the appellant has paid nothing in the last 12 months. The last payment to the client was on 11 March 2022. Not only has this hampered the respondent in the efficient running of her claims, it has resulted in significantly increased liabilities and, of immediate concern, the recent notice given by Z's boarding school which is likely to prevent her from returning to school for the new term at the end of the current Easter holiday. The appellant claims that pressures on his own financial situation have prevented him from complying with Recorder Allen KC's orders. Notwithstanding that he was then represented by a senior and experienced legal team (Mr Michael Glaser QC – as he then was – instructed by Harbottle & Lewis LLP), those orders have never been the subject of an appeal[1] or an application to vary their terms.

[1] I am told that the appellant sought permission to appeal but proceeded no further when permission was refused by Recorder Allen KC.

4. The appellant maintained then, as he does now in the context of the present appeal, that he has been the victim of misconceived Part III proceedings which were launched, wrongly, by the respondent in this jurisdiction after she became dissatisfied with the relief she secured in the Nigerian divorce proceedings. He has instigated parallel proceedings in at least two local Nigerian courts during the currency of the English proceedings whereby he has secured declarations and injunctions against the respondent. Those injunctions, the latest of which was secured on 16 January 2023, purport to prevent her from seeking any form of relief from the English court despite the fact that she has been granted permission to proceed with her claims in this jurisdiction.

5. The respondent's entitlement to engage the jurisdiction of the English court has been confirmed on four separate occasions prior to the substantive award made in her favour by Recorder Nice on 3 February 2023. She was originally given permission to bring her Part III claims by Deputy District Judge Hodson on 23 December 2020. Six days later, that decision was confirmed by Holman J sitting as the most senior puisne judge in the Family Division of the High Court. The appellant sought to challenge those decisions on the basis that, in the light of the jurisdictional amendments made to the 1984 Act as a result of the United Kingdom leaving the European Union, her application was out of time. That issue was resolved definitively in the respondent's favour in August 2021. The appellant then sought to appeal that determination. His appeal was dismissed by Peel J the following month. Thus, whilst maintaining the utmost respect for the judiciary sitting in the Nigerian courts, there is no doubt for the purposes of the present appeal that the jurisdiction of the English court to deal with the respondent's Part III application was lawfully engaged by the time the substantive application was heard by Recorder Nice on 3 February this year. The respondent is no longer resident in Nigeria and, as I understand the position, she has not returned to that country during the currency of these proceedings. Whilst the existence of the Nigerian injunctions and her engagement with the English Part III proceedings may provide a disincentive in relation to any future attempt on her part to revisit the terms of the original Nigerian settlement terms (a course which the appellant urges on this court as her primary source of redress), those injunctions currently lack extra-territorial reach in terms of erecting enforceable barriers to the pursuit of her Part III claims in this jurisdiction.

The Nigerian settlement award

6. In the context of their divorce proceedings in Nigeria, the parties entered into a separation agreement which was subsequently converted into an order of the court. Under its terms, the appellant was to purchase for the respondent a three bedroomed apartment in a specified suburb of Lagos. Whilst a property was identified and purchased, he was to meet the cost of renting a suitable property for her. Spousal maintenance of N300,000 per month was to be paid on a joint lives basis until her remarriage or cohabitation in addition to his meeting the costs of a nanny and driver. Child support for their two children, together with school and university costs, was down to the appellant's account in whatever sum he considered to be reasonable. Whilst I do not need to descend into the detail of the extent to which this agreement, and the subsequent order, was complied with, it is accepted that its terms were not met in full by the appellant. For example, the respondent was not provided with a home in Nigeria although she did receive a lesser sum of money than she was expecting from the appellant who told her she should use it to choose her own property. Both parties have their own accounts as to why the purchase of the original property as envisaged in the separation agreement fell through. It matters not for the purposes of this permission application although I note in passing that Recorder Nice accepted in her judgment that the appellant believed that he was purchasing the property for his former wife in compliance with his obligations under their agreement and that he provided her with the sale proceeds thereafter in actual compliance, albeit that a dispute remained in relation to whether the property was suitable in terms of meeting the specification of a "luxury" property (paragraphs 33 and 34).

7. In the course of her judgment, Recorder Nice made a number of findings about the circumstances in which the respondent 'signed up' to the terms of the Nigerian settlement (para 40):-

    (i) she was under extreme financial pressure at the time of the deed of separation and the subsequent divorce;

    (ii) she was unable to meet her outgoings and had accumulated rent arrears. Her utilities had been disconnected because she had been unable to pay the bills and both she and their daughter were at risk of eviction;

(iii) whilst she was in receipt of legal advice at the time of the agreement, she remained without interim provision from the appellant and was in the process of trying to negotiate appropriate long term provision without the basic security of a home with water and power where she was under threat of eviction;

(iv) she did not have full and frank disclosure of the appellant's financial resources at the time;

(v) the quantum of spousal maintenance bore no relation to the standard of living enjoyed by the parties during the marriage. Similarly, the value of the property which the appellant purchased 'off plan' as a suitable property for his former wife and daughter was a far cry from the detached property in an exclusive part of Ikoyi which had been their matrimonial home;

(vi) the appellant could, and should, have provided financially for the respondent and their daughter following their separation. He had the funds to do so but chose not to make that provision. There was no evidence that his lifestyle was adversely affected by the separation and his stipulation that he should be free to adjust child support in accordance with "economic realities" supported the respondent's submission that he was the dominant force in the negotiations which led to the settlement agreement.

8. In these circumstances the learned Recorder found that there were "good and substantial grounds" for concluding that an injustice would be done were the respondent to be held to the terms of the Nigerian agreement.

The Part III order: the provision made for the respondent and their younger child by Recorder Nice

9. By her order which flowed from the hearing on 2 February 2023, Recorder Nice provided that the appellant should transfer to his former wife on a mortgage free basis all his legal and beneficial interest in the Paddington flat which was then held in his sole name. Prior to her occupation of the property when she came to London following the Nigerian divorce, this had been an investment vehicle which had generated an income yield for the appellant. It was never a family home. He was to

pay a lump sum sufficient to discharge the mortgage (with any arrears) and outstanding arrears of service charge. A further lump sum of £133,000 was to be paid if he was late with the payment she was to use to discharge the mortgage and associated liabilities on the property. Spousal maintenance was capitalised at £1,044,019. Financial support for Z at the rate of £15,000 per annum (index-linked) plus her school fees at her nominated private boarding school was ordered in addition to any university fees in future years. The respondent was awarded her outstanding costs assessed on an indemnity basis in the sum of just under £385,000 out of total costs incurred of just over £430,000.

10. None of these sums has been paid. With his appeal pending, the appellant has sought, and obtained, an interim stay on an order made by Deputy District Judge Mehta on 20 March 2023. That order would have led to the court signing the documents required to effect the transfer to the respondent of the Paddington flat, albeit subject to the outstanding mortgage. The respondent hopes somehow to refinance the borrowing secured on the property and thereby stave off both the possession proceedings threatened by the mortgagee bank and the notice recently served by Z's school. Quite how she expects to achieve these ends, I know not given her lack of regular income and the absence of any visible means of support given the appellant's failure to provide financially for his family for almost sixteen months.

The Hadkinson order

11. The appellant's continuing default in relation to the interim order made by Recorder Allen KC eventually resulted in the making of a *Hadkinson*[2] order. Under its terms, he was prevented from taking any further active steps in the proceedings until he remedied the ongoing breaches in respect of payment for the outstanding maintenance, school fees, property repairs and the sums due in respect of the legal services provision orders. Recorder Nice heard the respondent's enforcement application on 1 November 2022 at an adjourned First Appointment in the Part III proceedings. At the end of June that year, at a time when he retained solicitors and leading counsel, the appellant had promised the court that he would pay to the respondent the second costs allowance of £51,600 by 5 September 2022. The Recorder accepted that assurance which was reflected in a formal consent order and

[2] Hadkinson v Hadkinson [1952] P 285

re-timetabled the First Appointment to 1 November 2022. Her order was made with the express intention that payment of that sum would enable the respondent's solicitors to prepare her updated financial disclosure (replies to questionnaire) and secure representation for the adjourned hearing.

12. The appellant subsequently applied to adjourn the 1 November hearing for a further six months. The application was dismissed. I need not descend into the reasons for that refusal. The Recorder has set these out carefully and in some detail in paragraph 14(a) to (k) of her written '*Hadkinson*' judgment, a copy of which has been included in the appeal bundle. In relation to the debarring order which she granted on that occasion, she found that:-

    (i) the appellant was in contempt in that he had not paid any sums due to the respondent (including the £51,600 promised by 5 September 2022) pursuant to the orders of Recorder Allen KC;

    (ii) that contempt was deliberate and continuing;

    (iii) as a result, the respondent's access to justice was impeded since she had no funds from which she could instruct her lawyers and nothing short of a debarring order would provide her with a realistic and effective remedy.

13. In the circumstances, Recorder Nice directed that the appellant would not be heard in the Part III proceedings unless and until he had made payment of the sum of £51,600 in respect of the respondent's legal costs. The appellant sought to appeal that order. On 24 January 2023 Mrs Justice Arbuthnot heard argument from both the appellant (who attended the hearing remotely from Nigeria) and from Mr Trowell KC. The judge refused permission to appeal the *Hadkinson* order and directed that the appellant should pay the respondent's costs in the sum of just over £30,000.

14. For the purposes of the present appeal against the substantive Part III relief granted by Recorder Nice, Mr Trowell KC has invited the court to consider whether the appellant can legitimately be heard on this appeal given that he remains in breach of the court's orders for interim relief. Given that those interim orders have now been superseded by the substantive Part III provision put in place on 3 February 2023, Mr Trowell KC concedes for the purposes of today that the appellant cannot fairly be said to be in

ongoing breach. For my part, I am less clear that this is an appropriate analysis of the position. The appellant has been found to be in deliberate and contumelious breach of an order which has never been the subject of a successful appeal. He has made no attempt to pay the sum of £51,600 as a contribution towards the respondent's ongoing legal costs despite the fact that, in responding to his current appeal, she has continued to accrue a substantial liability in respect of her own legal costs. The *Hadkinson* principle ensures that a contemnor should not be entitled to seek relief from the court and/or participate actively in contested litigation unless and until he or she has complied with obligations imposed by the court. The appellant's challenge to the *Hadkinson* order made by Recorder Nice was roundly rejected by Mrs Justice Arbuthnot on appeal. He remains in contempt. That said, the point is not one which I need to determine since I made it clear that I was prepared to hear argument from the appellant in relation to his current application for permission to appeal. Both through his written Grounds of Appeal, his discursive skeleton argument and the lengthy oral submissions which he advanced, I am satisfied that he has had the fullest opportunity to put before this court all his arguments. He has not the slightest reason to complain that his Art 6 rights to a fair hearing have not been fully engaged and observed in the context of the present appeal notwithstanding his previous failure to comply with existing court orders.

The Law

15. The rules in relation to appeals are set out in Part 30 of the Family Procedure Rules 2010. The court will only grant permission to appeal where either:-

(a) the court considers that the appeal would have a real prospect of success (r.30.3(7); or

(b) there is some other reason why the appeal should be heard.

16. Where an appeal includes a potential challenge to a finding of fact made by the court below, the appellate court should be slow to interfere and should only do so where the decision was wrong in that the conclusion reached by the trial judge was demonstrably contrary to the weight of the evidence before the court at the time of the decision or where the decision-making process is plainly defective: see *AA v NA*

(Appeal: Fact-finding) [2010] 2 FLR 1173 and *Piglowska v Piglowski* [1999] 2 FLR 763 at paragraph 784 per Lord Hoffman.

The hearing on 3 February 2023 and the appellant's Grounds of Appeal

17. I appreciate that the appellant's grounds have been prepared without legal assistance. For the purposes of this judgment I have grouped together, sometimes out of chronological sequence, the individual grounds which cover some of the same complaints or in respect of which there is a degree of elision. I deal with these below having extracted, where appropriate, additional points raised in his skeleton argument. I have not addressed each and every point he raises in his lengthy skeleton argument which, in several respects, descends into narrative and discourse. I am entirely satisfied that I have extracted and dealt with all aspects relevant to the present appeal.

Grounds 1 and 2: failure to conduct a fair trial and the absence of expert evidence in relation to Nigerian domestic law

18. The principal focus of the appellant's challenge to Recorder Nice's Part III order lies in his overarching criticism that the respondent should be required to litigate in Nigeria if she seeks a variation or enlargement of the financial provision which she secured through the divorce separation agreement. He points to the absence of expert evidence on 3 February 2023 in relation to her ability to do so thus denying him a fair hearing. In formulating his first two grounds of appeal, he purports to make good that perceived lacuna by setting out the various statutory provisions of domestic Nigerian law which would afford the respondent a gateway back to the Nigerian courts for the purposes of a variation application.

19. In the absence of any application to adduce additional evidence for the purposes of the present appeal, I place no reliance on his recitation of Nigerian law. Even if it is accurate, it is unnecessary. First, the appellant was the subject of a debarring order which, as a result of his own actions and omissions, remained in place at the time of the substantive Part III hearing. Despite that order, the judge was nonetheless prepared to consider his prior application to adjourn that final hearing. As she records in paragraphs 10 to 17 of her judgment, that application flowed from his dissatisfaction with the rejection of his proposed appeal and Mrs Justice Arbuthnot's refusal to set aside the *Hadkinson* order. To an extent that is an issue which he seeks

to relitigate in the context of the present appeal. It is not an avenue which is open to him. Recorder Nice was prepared to allow him to attend the Part III hearing notwithstanding the debarring order and his failure to purge his contempt even if the reach of the order prevented him from being heard. Despite being afforded that opportunity, the appellant declined to respond to the remote links which were sent to him. He told me he took that course because he believed that when the court became aware of the existence of the Nigerian order made on 16 January 2023, "they would obey it and not proceed" with the hearing.

20. The Recorder makes specific reference to the fact that she took a more active role in interrogating the basis of the respondent's claims precisely because the appellant was not there to undertake that role (paragraph 15 of the judgment). She reached a clear conclusion that she had heard sufficient evidence from the respondent (who engaged meaningfully with those questions) to form a view as to her reliability as a witness of the truth (paragraph 17). She concluded that the respondent had given honest answers and was genuine in her attempts to assist the court. Those were findings which were open to the learned Recorder who set out reasons for the conclusions she had reached. She recorded the fact that, in her pursuit of the overriding objective to conduct a fair trial pursuant to FPR 2010 r. 1(1), she had read the entirety of the evidence put before the court by the appellant prior to the making of the debarring order. That included the substance of his financial disclosure, albeit that he had not provided replies to the respondent's financial questionnaire.

21. Furthermore, the judge directed herself appropriately in relation to the law and principles to be drawn from the decision in *Agbaje v Akinnoye-Agbaje* [2010] UKSC 13, [2010] 1 FLR 1813 in which the Supreme Court provided guidance as to the proper approach to Part III claims under the 1984 Act. In addressing first question as to whether England and Wales was the appropriate venue for the application (s.16(1) of the 1984 Act), the Recorder was clear that she had considered the Supreme Court's guidance that the legislative gateway was not to be used to enable a spouse with English connections to supplant or augment the financial provision which had been made in another jurisdiction. She was fully aware of the fact that "mere disparity" between the award in the foreign jurisdiction and an award which would have been made here is never a sufficient reason or justification for an award under Part III and

that the court must be slow to characterise the award made in another jurisdiction as unjust (paragraph 19). In terms, she roundly rejected the fundamental plank of the appellant's case that the Part III application represented "naked forum shopping".

22. Over the course of a substantial part of her written judgment, Recorder Nice set out her reasons for rejecting that case and finding that the respondent was entitled to an award in this jurisdiction. She considered in detail the provision which had been made for the respondent under the terms of the Nigerian settlement (paragraph 28). She explored the reasons behind the appellant's failure to purchase the "luxury property" which was one its key component elements and absolved him of any wilful breach in relation to that part of the agreement despite the fact that the respondent received a reduced cash sum in lieu of a property.

23. In relation to the absence of expert evidence in relation to Nigerian law and the respondent's ability to litigate effectively in that jurisdiction, the Recorder dealt with these issues in paragraphs 41 to 46 of her judgment. The absence of expert evidence arose because of the course which was taken at the original First Appointment of this Part III application. At the time the appellant had the benefit of representation by leading counsel. I have been told, and accept, that the issue of case management (including directions in relation to the need or otherwise for expert evidence) was overtaken by a lengthy debate instigated by the appellant's counsel as to whether or not a series of preliminary issues should be heard. The appellant lost this argument. Because he then failed to make any payment under the terms of the interim orders, including the legal services provision order, the respondent was without funds to pay her lawyers. Whilst it seems they were prepared to 'carry' for the time being a substantial portion of their unpaid fees, they could not on her behalf incur the expense of instructing an expert. In circumstances where the appellant remained in what has been found to be a deliberate breach of his financial obligations at the time of the hearing on 2 February this year, he cannot now be heard to complain that the court was denied the benefit of expert evidence. That remedy lay in his own hands. The learned Recorder was quite clear in her reasons for refusing the adjourn that final hearing for a further six months when there was no evidence before the court that the appellant was likely to make good that default. It is noticeable that, even in the

context of seeking an adjournment, he did not offer to pay any part of the outstanding sums due to his former wife.

24. Permission to appeal on grounds 1 and 2 is refused.

Grounds 3 (duress), 6 (risk of injustice if respondent held to terms of the agreement), 7 (the respondent's ability to litigate in Nigeria) and 9 (error of law to make a Part III order given the respondent's limited connections with England & Wales)

25. The Recorder explored fully the competing arguments in relation to the impact of duress, or its absence, on the respondent at the time the settlement was negotiated (paragraphs 37 to 40). In some detail she analysed the circumstances in which the respondent found herself at that time. She tested the respondent's account against the contemporaneous evidence of the communications between the parties at the time and reminded herself that it was the appellant's case as set out in the 2019 messages passing between the parties that he did not have the funds to meet what she was asking for at the time. She set out her findings in paragraph 40 of her judgment, some of which are in the appellant's favour. On the issue of duress, she concluded that the respondent had established that she was under extreme financial pressure at the time and that she did not have full and frank disclosure of the appellant's financial circumstances when the agreement was concluded. She found that the appellant was responsible for the "intense pressure" to which his (then) wife was subjected. She highlighted various inconsistencies in his evidence relating to financial hardship and contrasted that evidence with the absence of any apparent change to his own lifestyle and patterns of discretionary expenditure.

26. In all the circumstances she concluded that there were good and substantial grounds for her finding that an injustice would be done if the respondent were to be held to the strict terms of the agreement embodied in the Nigerian settlement (paragraph 40(i)). That was a conclusion which was open to the learned Recorder from her analysis of the evidence. She made no error of law.

27. In relation to the respondent's ability to access further relief in the Nigerian courts, the Recorder's findings are set out in paragraphs 41 to 46 of her judgment. In particular she noted that:-

(i) the appellant's case (as it then stood) was that he had made a formal report about the respondent's conduct to the Nigerian Economic and Financial Crimes Commission ('the EFCC'). In that report he had accused her of misrepresentation and/or money-laundering in wrongfully removing from that jurisdiction the cash funds she had received from the sale of the property which had been purchased 'of plan'; and

(ii) it was the respondent's case that there was no remedy for her in the Nigerian courts in relation to set aside because of the nature of the consent order which was signed and subsequently ratified by the court.

28. For the purposes of advancing his arguments on the appeal before this court, the appellant now seeks to persuade the court that, whilst his lawyers wrote to the respondent informing her that a report had been made to the EFCC, it was never actually made. He contends that she faces no risk of criminal or other sanctions were she to return to Nigeria in these circumstances. Whether or not that is true, I can place no weight on this development in his case. It was not before the court on 2 February; indeed, his case was to the contrary. Furthermore, it ignores the fact that the respondent had definitively secured leave to bring her application and the learned Recorder ruled that her application had merit such as to justify the award which was made. If there remained any absence of clarity in relation to the respondent's ability to vary or challenge the original award made in the Nigerian settlement, that was a direct result of what I have already determined to be the appellant's litigation conduct and his failure to comply with the orders made by the English court. He has paid nothing towards the support of his former wife or his child for more than a year. There is nothing to suggest that the respondent has, or would have, the financial capacity to engage lawyers and/or to litigate in a foreign jurisdiction which is no longer her home and where she has no means to support her own or their child's domestic economy over what could be years of ongoing litigation.

29. There is no basis or substance for the challenge raised by the appellant in ground 9 that the Recorder was wrong to make a Part III order because the respondent lacked the necessary connection with England and Wales. Sub-paragraphs (a) to (f) in my judgment take this challenge nowhere. The unchallenged fact is that both the respondent and the parties' young daughter have been living in this jurisdiction, in

London, in a property owned by the appellant, since 2020. They have established lives here and Z is attending an English school. There is no evidence that the respondent intends to live elsewhere. On the contrary, all her energies are presently focussed on preserving the security of that placement.

30. In the circumstances I refuse permission to appeal in relation to grounds 3, 6, 7 and 9 of the proposed appeal.

Grounds 4 and 10: the appellant's ability to pay and his failure to provide full and frank disclosure

31. Recorder Nice was fully aware of the appellant's presentation as to his financial means. She deals with it at paragraphs 53 of her judgment where she records that he has a net worth of minus £1 million because of personal guarantees given in relation to corporate debts. She is critical of his failure to provide replies to the respondent's financial questionnaire as directed. His response to this criticism in terms is that he did not respond because the respondent's solicitors had failed to file their client's replies. In my judgment Recorder Nice was entitled to find, as she did, that there was no good reason for the appellant's failure to provide full and frank disclosure of his means. Unlike the position in which the respondent's solicitors found themselves, the appellant's solicitors remained on the record for several months after the order for further disclosure was made. His subsequent status as a litigant in person did not, and does not, justify his continuing failure to comply with his ongoing obligation to make full, frank and up to date disclosure of his means. I accept that the imposition of the *Hadkinson* order prevented him from advancing his case by way of a defence to the Part III application at the hearing on 3 February this year but he had months in which he could have chosen to make voluntary disclosure of his lack of means if the evidence was available to enable him to do so. The respondent had made a specific application to the court to excuse her from producing replies to questionnaire because her solicitors were not in funds to undertake the work. That application was granted. The appellant made no such application. He maintains that his solicitors offered to exchange responses (paragraph 11 of his skeleton argument). I am told by Mr Trowell KC that his instructing solicitors have no record of receiving such an offer but I accept that it was in any event a conditional offer which depended on the simultaneous receipt of the respondent's disclosure. It is clear to me, as it was to

Recorder Nice, that the appellant's focus in this litigation was to halt in its tracks the ongoing progress of the application and persuade the English court that it lacked jurisdiction to entertain the Part III application, alternatively that it was completely devoid of merit. He refused to recognise the essential validity of the various orders which had been made recording the respondent's entitlement to pursue her remedies here (at least to the point of final adjudication, because relief could have been refused at that point) and was found to have deliberately cut off the funds, ordered by the court, which would have enabled her to fund her lawyers for these purposes.

32. The appellant sets significant store on the influence in these proceedings of a report from Prima & Co which apparently assessed the appellant to be a man of substantial means of "at least "£27.5 million". Just as that evidence had been rejected at the earlier hearing by Recorder Allen KC as being wholly unreliable, Recorder Nice made it quite clear that she had not read the report and placed no weight on it at all (paragraph 55). Instead, she went on to analyse the evidence which was before the court (paragraph 57) and found that he was a wealthy man, notwithstanding the fact that she was unable to quantify the scale of his wealth (paragraph 58). In terms of her analysis, she took account of her findings in relation to the marital standard of living (paragraph 67) and set out carefully the basis for those findings. In terms of her approach to this aspect of the case, there is nothing before this court to indicate that the learned Recorder reached conclusions which she was not entitled to draw nor did she misdirect herself in relation to the law. Specifically, she reminded herself about the extent to which she was entitled to draw inferences and rely on her own judicial experience in relation to inherent probabilities. In this context she specifically directed herself in relation to what was said by way of guidance in the Supreme Court's decision in *Prest v Petrodel* [2013] UKSC 34, [2013] AC 415. Lord Sumption said this at paragraph 45:-

> "There is a public interest in the proper maintenance of the wife by her former husband, especially (but not only) where the interests of the children are engaged. Partly for that reason, the proceedings although in form adversarial have a substantial inquisitorial element. The family finances will commonly have been the responsibility of the husband, so that although technically a claimant, the wife is in reality dependent on the

> disclosure and evidence of the husband to ascertain the extent of her proper claim. The concept of the burden of proof, which has always been one of the main factors inhibiting the drawing of adverse inferences from the absence of evidence or disclosure, cannot be applied in the same way to proceedings of this kind as it is in ordinary civil litigation. These considerations are not a licence to engage in pure speculation. But judges exercising family jurisdiction are entitled to draw on their experience and to take note of the inherent probabilities when deciding what an uncommunicative husband is likely to be concealing. I refer to the husband because the husband is usually the economically dominant party, but of course the same applies to the economically dominant spouse whoever it is."

33. The Recorder found, without descending to the realms of pure speculation that it was inherently probable that the appellant was likely to be concealing from the court the full extent of his ownership of, or access to, financial resources. She reached clear conclusions that he was in a position to meet not only the terms of her order but thereafter to meet his own reasonable needs in the future. The appellant's criticisms of her findings are simply a restatement of the arguments which she rejected in the course of her judgment. Those findings were clearly open to her from the foot of her analysis of the evidence and this court will not intervene to disturb those findings in circumstances where there is no evidence before the court to contradict the evidence apart from the repeated assertions of the appellant. In circumstances where (a) he is, and remains, in contempt of court and (b) he has failed to make a full presentation of his financial circumstances, he cannot be heard to say, as he does, that "there is no evidence before the Court that he could afford to pay at the material time" and/or that "there is no evidence that he had the funds to meet [the respondent's] financial needs".

34. In the circumstances, there is no real prospect of success in relation to grounds 4 and 10 of the proposed appeal.

Ground 5 (findings in relation to marital standard of living)

35. Recorder Nice has set out in clear terms in paragraph 63 to 67 of her judgment the evidence before the court in relation to this couple's marital standard of living. It was for her to assess the reliability and truth of the evidence she read and heard. This court will not interfere with those findings in circumstances where there was no error of law and the judge had sufficient material before her to make an assessment both of the witness and the facts to which she was deposing. There is no evidence for the purposes of this appeal that the Recorder failed to take into account something which was plainly relevant. She accepted the respondent's evidence in relation to the number of family holidays to far-flung destinations and the occasional use of private jets for these purposes. She accepted the description of the former matrimonial home and the number of staff employed to assist the family in that home. That retinue included armed security guards, as the judge found. The parties' ability to spend freely on designer goods and expensive jewellery (regardless of whether that was the clear preference of the respondent as opposed to the appellant, as he contends) appears to be adequately borne out by the fact that the respondent has had to sell many of these personal items to fund her living expenses in London.

36. I see no sound or realistic basis for allowing permission to appeal on ground 5 since the appeal would have no real prospect of success in the light of the Recorder's clear findings.

Ground 8: delay and motive in bringing the Part III claim

37. Whilst I have included this as a separate ground of appeal, it does not appear to raise a separate, or independent, ground on which the Recorder's judgment can be challenged. The appellant complains that the Recorder did not accurately reflect in her judgment the impact of delay on the respondent's Part III claim. He points to the fact that the Nigerian settlement was put before the Nigerian court four years after it was concluded and the respondent then "rushed" to lodge her application in the English court five months after the foreign divorce. He further claims that her motive in these proceedings is "to liquidate [his] entire assets" in this jurisdiction and that she is driven purely by malice. He complains that the court should not punish him with a maintenance obligation.

38. Given the circumstances in which the respondent secured permission to pursue her application in this jurisdiction and the subsequent findings of both Recorder Allen KC and Recorder Nice in their respective judgments, there is no basis on which this court can or should grant permission to appeal on this basis. It is clear from paragraph 49 of her judgment that she addressed section 16(i) of the 1984 Act.

39. Permission to appeal on the basis of ground 8 is accordingly refused.

Ground 11: failure to consider the Nigerian injunction

40. Recorder Nice referred in her judgment, as the appellant accepts, to the Nigerian injunction obtained by the appellant on 16 January 2023 (paragraph 43). She set out its essential component elements and quoted directly the specific terms of the injunction directed in personam to the respondent. She relied on the declarations in relation to "a final resolution of all claims, rights, benefits and obligations" arising from the marriage and divorce and the cap, or limit, on any further claims as evidence of the absence of any further remedy available to the respondent in the Nigerian courts.

41. However, there was no error of law on the Recorder's part, as the appellant alleges. The respondent had applied for, and been granted, the permission of the English court to proceed with a financial claim under Part III of the 1984 Act. That Act makes specific provision for the courts in England and Wales to grant relief after a foreign divorce provided certain conditions are considered and met. I have already considered the absence of any extra-territorial effect of the Nigerian injunction on the respondent in terms of her ability to litigate, with the court's permission, in this jurisdiction where she has acquired habitual residence. I repeat that my analysis of the proper jurisdictional basis of the Part III claim must be seen in the context of this court's proper respect for, and deference to, the Nigerian courts and the overarching principle of judicial comity.

42. Ground 11 as pleaded is accordingly refused as a basis for permission to appeal.

Ground 12: the quantum of the award, including costs

43. I have already dealt with the Recorder's assessment of the appellant's ability to meet a needs-based award. It is clear from paragraph 52 of her judgment that the respondent's needs were the essential 'driver' for the judge's ultimate conclusions. Having considered the outcome contended for by the respondent, she explained in clear and coherent terms the structure of her award and the conclusions which underpinned it (paragraphs 72 to 82). Those conclusions were informed by relevant statutory considerations. She sought to meet needs whilst avoiding any attempt to replicate the standard of living which she found to have been enjoyed by the parties during the currency of their marriage. She analysed the component elements of the respondent's proposed budget and identified omissions whilst reducing the sums claimed in respect of others. She recorded her finding in relation to the appropriate annual award for periodical payments and explained why she was going to capitalise the spousal element of her order. Given the appellant's failure to adhere to previous orders to make financial provision for his former wife and family, her conclusions can have surprised no one. Her decisions in relation to the support which was to be made available for Z are entirely realistic and what will be required going forward into the future.

44. The appellant now seeks to argue that Z's paternity may be in issue and that the court was wrong to require him to make financial provision for her without directing a DNA test. Given that Z has clearly been loved, financially supported and treated as a child of this family throughout her entire life and that the appellant's case before the Recorder was that his children and their education was his "top priority" (paragraph 76 of the judgment), this late allegation does him little credit. I need say nothing further in this judgment about these matters. The learned Recorder would have had jurisdiction to make the orders she did in these circumstances and what he says now in his skeleton takes matters no further.

45. In terms of costs, Recorder Nice made her order against the appellant on an indemnity basis. She explained why she was taking that course (paragraph 78). In all the circumstances of this case, including the appellant's ongoing contempt and the manner in which the litigation had been conducted against the background of a former spouse whose financial position was described by the judge as "perilous", there can be no criticism of this basis of assessment.

46. Permission to appeal in relation to ground 12 is refused.

47. It follows that permission to appeal the order made by Recorder Nice on 3 February 2023 following the hearing on 2 February is refused. In my judgment, there is no real prospect of an appeal succeeding and there is no other compelling reason why the appeal should be heard.

Costs

48. I propose to direct that the appellant should pay the costs of this appeal. Mr Trowell KC has submitted two Forms N260 in relation to the costs of the hearings on 28 March (when directions were made in relation to both the proposed appeal and the stay application) and the substantive appeal. These total £12,780 and £17,790 respectively. If asked to assess these costs on a summary basis, I shall do so without the need for a further hearing. However, it does not seem to me to be appropriate to take that course without first affording the appellant an opportunity to make short written representations in relation to the sums claimed.

The stay

49. The temporary stay which I imposed in relation to paragraphs 5, 6 and 7 of the order made by Deputy District Judge Mehta on 20 March 2023 will be lifted with immediate effect. There is no longer any basis or justification for interfering in the operation of that order which was made in the context of the implementation of Recorder Nice's substantive Part III award. For the reasons set out in this judgment, there is no basis on which a substantive appeal against the order made on 20 March 2023 would have a real prospect of success and, insofar as the appellant seeks permission to appeal that order, it is refused.

Order accordingly