THE HIGH COURT

FAMILY LAW

Record No: 2015/9 M

IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996

IN THE MATTER OF THE FAMILY LAW ACT 1995

IN THE MATTER OF THE DOMICILE AND RECOGNITION OF FOREIGN DIVORCES ACT 1986

BETWEEN

M.Y.

APPLICANT

AND

A.A.

RESPONDENT

JUDGMENT of Ms. Justice Bronagh O'Hanlon delivered on the 25th day of January, 2017

1. This case came before the Court by way of special summons seeking a decree of divorce and ancillary orders issued by the applicant on 3rd February, 2015.

2. The applicant seeks the reliefs set out in her amended special summons dated 5th November, 2015 as follows:

- An Order pursuant to section 29(d) of the Family Law Act 1995 that the divorce obtained by the respondent on 26th April, 2015 in Libya is invalid and not entitled to recognition and other declaratory relief regarding the validity or otherwise of the Libyan divorce and the circumstances surrounding how it was obtained.
- An Order pursuant to section 5(1) of the Family Law (Divorce) Act 1996 and ancillary orders under the 1996 Act.
- If necessary, Orders pursuant to Part III of the Family Law Act 1995.

3. The High Court (Abbott J.) granted an order on an ex parte basis granting the applicant leave to seek relief following a foreign divorce pursuant to Part III of the Family Law Act 1995 "in so far as the same did not provide for maintenance by lump sum or periodical payments, orders including in respect of the children of the parties or for a pension adjustment order in respect of the intended respondent's Irish pensions". The date of that order was 15th June, 2015.

4. The respondent brought a motion seeking to strike out the proceedings on 17th June, 2015 on the basis that this Court did not have jurisdiction. The respondent later accepted that this motion was brought on the mistaken translation by him of one of the Libyan court documents.

5. The applicant brought a motion dated 5th November, 2015 seeking interim maintenance. On 11th March, 2016, this Court made an order directing the respondent to pay interim maintenance to the applicant on the basis of an agreed sum of €2,500 per month.

6. This Court facilitated a hearing for these proceedings over a period of seven days in October and November, 2016.

Summary of the Evidence

7. The applicant and the respondent were married on 5th May, 1996 at El-Berka, Benghazi, Libya. A certified translation of the marriage certificate was before the Court along with the original Libyan marriage certificate. The parties were both born in Libya and moved to Ireland in 1998. The applicant is a practicing Muslim. The respondent has stated that he ceased practicing as a Muslim five years ago. They met one another in medical school and made a joint decision to marry. They have five children. The eldest child is 18 years old (date of birth 26th November, 1998) and is at university in the UK and is being supported by the respondent. The second child is 16 years old (date of birth 3rd April, 2000) and resides in a boarding school in England and the respondent pays these fees. The other three children (dates of birth: 10th June, 2002, 21st October, 2004 and 18th November, 2008) live with their mother and attend schools in Ireland. All of the children are dependent within the meaning of the Family Law Acts. All of the children were born in Ireland and are Irish citizens.

8. The parties first separated in 2008, and finally in 2009 and that is not disputed. The applicant gave evidence that the marriage was not a happy one and she was not permitted by the respondent to be independent. She alleged that the respondent was generally controlling and she described him as going into "tirades of rage".

9. The respondent pronounced Talaq divorce on three occasions; December, 2008, December, 2009 and 19th January, 2015. The Arabic term "talaq" literally translates to "I divorce you". The applicant accepted in evidence that she understood this Arabic tradition by which the respondent said "I divorce you" to her. The applicant gave evidence that the third Talaq could not be valid within the Islamic tradition as she did not hear it and it was not pronounced in front of her as the purported pronouncement was over the phone from Ireland while she was in Libya. The applicant asserts that, to be a valid Talaq, the third pronouncement would have had to be in her presence. No expert evidence was provided by either party in this case in relation to what constitutes a valid talaq divorce although this third talaq was accepted by the Libyan Court after it heard evidence from the respondent.

10. The respondent asserts that after the third pronouncement of Talaq he issued the aforesaid proceedings before the Libyan Court on 25th January, 2015. The respondent contends that there were discussions in relation to divorce proceedings in Libya from at least December 2014. The respondent further contends that the applicant was served with the Libyan divorce proceedings on 2nd February, 2015. There was a legal procedure in the Libyan Court to confirm the Talaq divorce on 3rd February, 2015 and on further dates including 8th March, 2015 and 19th April, 2015. On foot of the Libyan divorce, the Libyan Court granted the applicant a right to reside in a property at A. Street, Libya for her life subject to her not remarrying and that property was valued by the applicant at

€390,000. The applicant stated that she did not seek this right of residency. The applicant gave evidence that she was under intense pressure and that she was in fear of militants active at that time in Libya. The applicant was of the view that the respondent was opportunistic and used the civil unrest situation in Libya to his advantage to obtain a divorce there and prevent her from obtaining a divorce in Ireland. She stated that she did not agree to what was put before the Libyan Court and that her father signed the "memorandum of agreement" without her consent. The applicant gave evidence that her father felt under "cultural pressure" to agree.

11. The applicant gave evidence that she was subjected to threats of violence and intimidation towards her and the children during this period by members of the respondent's family in order to force her to agree to this Libyan divorce. She stated that she made a complaint to the police in Libya because of a threat to her life from the respondent's brother although nothing more came of that report. She stated that she wanted to alert the police in case something happened to her although she stated that she did not think that they had the power to do anything and they were under a lot of pressure as it was a time of conflict in Libya. It was put to the applicant in cross examination that her story in the police report was different to the account in her affidavits before this Court. She explained that she was answering different questions in the police station to that content in the affidavits.

12. The issue of the dowry was also raised. She was paid 48,750 Libyan Dinars around the time of the Libyan proceedings which is the equivalent of approximately €32,500 as of current exchange rates. The applicant accepted that she received the second portion of her dowry although she denied that this meant that she had agreed to the divorce. She contended and this was not disputed that many women receive that portion of the dowry when they are happily married.

13. She stated that she left Libya and she issued divorce proceedings in Ireland on 3rd February, 2015. She contends that she commenced divorce proceedings in Ireland prior to the respondent's commencement of proceedings in Libya. She outlined that she then returned to Libya to collect the children and then applied for multiple jobs in Ireland and enrolled the children in school in Ireland. It was put to her that the Libyan proceedings issued on 25th January, 2015 which was prior to her issuing the Irish proceedings and that she was independently legally represented and could have objected on the basis of jurisdiction at the time in Libya. The applicant contended that she made everyone aware that she had Irish proceedings ongoing and that she refused to consent to any Libyan proceedings.

14. The parties owned a family home at L. in this jurisdiction which was bought in 2000 and sold in 2007 with a profit in terms of equity of €212,000. It was in the joint names of the parties although the applicant stated that she does not recall signing any documentation regarding this property. After the applicant moved to Libya she lived with the children lived in a property at J. Street from 2009 to 2012. This property has since been demolished, some redevelopment has occurred and the applicant believes that the respondent plans to further develop the site. The applicant and the children then resided in a property at A. Street, Libya which was purchased in 2013; this is the property that she has been given a right of residence in on certain terms. The applicant stated that the parties also owned a property at A. Road, Libya which was bought in 2004 and that property is no longer owned by them. The applicant believes that it was purchased for approximately 100,000 Libyan Dinars and was renovated and sold in 2013 for 1,150,000 Libyan Dinars. The applicant asserts that no money came to her from the proceeds of that sale. A London apartment worth £675,000 was sold by the respondent in 2015. The respondent produced a document to the Court in the course of the hearing outlining that this apartment was sold on 11th December, 2015 and the net proceeds of the sale were £251,955.73. The applicant asserts that none of this money came to her. Two of the respondent's affidavits of means did not account for the proceeds of sale of this London apartment although it is now accepted that the sale did occur and that he received this money. The respondent gave evidence that he sent the aforesaid sum to a Libyan man in Canada through an Isle of Mann company to pay this man for building work allegedly carried out in Libya. The applicant never had knowledge of the existence of the apartment in London and did not accept the explanation of how the net proceeds were used.

15. The applicant currently rents a house and is a doctor with a non-consultant status in a hospital in Ireland. The applicant has a small and recent HSE pension and arising out of her employment as a senior registrar in obstetrics and gynaecology. She has set out that she earns the net figure of €3,150 per month from the HSE and she did overtime to the value of approximately €1,000 per month which she stated stopped recently. She receives child allowance for the three children residing with her although she gave evidence that she was over paid previously and is currently repaying this debt resulting in a net monthly income from the child allowance of €320 per month.

16. The applicant gave evidence that the parties always planned to stay in Ireland. She described her work history in Ireland and the difficulties in obtaining sufficient continuous experience while raising her five children. She felt that the respondent advanced his career while they were living together in Ireland but that she did not have the same opportunities and that he did not support her in her pursuit of a career similar to his. The applicant gave the example that the respondent went to Canada in 2006 for one year for overseas experience while she remained in Ireland taking care of the children.

17. She went to Libya in July, 2008 with the children. She gave evidence that this was to gain further training and work experience in order to progress her career. However, she stated that she always intended on returning to Ireland for the children's education. She gave evidence that she was not paid a salary for portions of her time while in Libya but would receive a small amount of money per patient seen by her. She lived in the property on J. Street, Libya between 2009 and 2012 with the children. The applicant described the respondent as visiting occasionally and giving her some money which she believed was inadequate in the sum of approximately €160 per month. The applicant gave evidence that Libya descended into war and she was very concerned about her safety and the safety of her children.

18. The applicant stated that she then moved into the respondent's parents' home in Libya. The applicant gave evidence that there were great difficulties around getting schooling for the children in Libya during this period. The applicant described that the period from October, 2014 until she left Libya was the worst time for her as she was locked up in the respondent's family home. She indicated that she had been applying for jobs in Ireland from 2013. The applicant gave evidence that she had been looking to return to Ireland for many years prior to her actual return but was prevented from doing so by the respondent since 2009. She gave evidence that the respondent was refusing to pay for flights to Ireland and obstructing her return here. She asserts that she was eventually offered a job in Ireland in January, 2015. The applicant left Libya on 25th June, 2015 having finished all of her training and having worked there for some period of time earning approximately €2,000 per month.

19. The applicant stated that she believes that the respondent took advantage of the fact that there was a war in Libya to commence divorce proceedings. She stated that she did have a lawyer in Libya but this lawyer was frightened. She further explained that there were no functioning civil courts in Benghazi at the time of the Libyan divorce. The applicant indicated that because of the unrest she felt that she could not speak up against the Sharia Law being used in relation to the dissolution of her marriage. The applicant gave evidence that the court used was 100km away from Benghazi in Almar District Court in order for the Libyan divorce proceedings to be dealt with. She further alleged that she was being threatened by the respondent and his family and that his mother

threatened her that she would be shot if she did not agree to the Libyan divorce. The applicant asserted that she never intended to sign any document regarding a divorce in Libya. She indicated that she felt considerable cultural pressure and that the men of the family, including from her side of the family, were insisting on her accepting the arrangement in Libya. The applicant stated that she felt that the Libyan divorce was very unfair and that she would not get her rights. She explained that she wanted to get a divorce in Ireland.

20. The applicant accepted that she went to Kuwait to work for the months of June and July, 2015 and that she was paid a significant amount of money for this work. She indicated that she used this money to pay her legal fees.

21. She did not accept that she owns property in Libya and she asserted that the property referred to in cross examination is owned by her mother. A document stating that property is in the ownership of her mother was before the Court. It was put to her that the document did not refer to a specific property and was intentionally vague. She did not accept that it was intentionally vague but did accept that it did not refer to an address. The property was an apartment and was then used as what the applicant referred to as a "limited clinic". The applicant further denied running a business while in Libya. A document that was put to her as showing electricity usage that would be in accordance with the running of a business from her home in Libya but this document was successfully challenged as having a portion of it missing. The applicant denied owning medical equipment and stated that she has documents to prove this. The applicant confirmed that she had waived her "stake" in her mother's company although she indicated that the company had no value. She asserted that there was no money value in what she transferred to her sister.

22. It was also put to the applicant in the course of cross examination that the respondent had tried to persuade her to return to Ireland while she was living in Libya. She rejected this contention and stated that there were various plans and options including moving to the UK under discussion at that time but that she always intended to return to live and work in Ireland and for the children to attend school in Ireland. The applicant denied telling the respondent that she would prefer to move to Canada or the UK.

23. The applicant gave evidence that the respondent was very controlling of her. She alleged that, during the course of the marriage, he had been physically violent and psychologically, emotionally and sexually abusive towards her. She stated that the respondent threatened her that if she returned to Ireland she would have to work in the home and would not be permitted to pursue her career. She further stated that the respondent was violent towards her and that he hit her many times. The applicant gave evidence of a particular incident in June 2000 when they were having an argument and she says that he was beating her and that he attempted to strangle her and she went to the Mater Hospital as a result of injuries sustained after she fell and hit her head on a piece of furniture during this particular incident. The applicant stated that she reported the respondent to An Garda Síochána.

24. The applicant pointed to a further incident when the respondent was screaming at her in the street after a court hearing as part of the within proceedings and she says that she was concerned that she could have been hit by a car in her efforts to avoid the respondent. The applicant's solicitor, Ms. Geraldine Shanley gave evidence of what happened after the interim application before this Court on 11th December, 2016. She was approached by the respondent and he was agitated and shouting at them about the consequences of what had happened in Court. She received a phone call from the applicant in which she was distressed about an approach from the respondent.

25. The applicant stated that she wants to remain living in Ireland and she hopes that she will obtain a consultant's post within the next five years. She further stated that she hopes to buy a house in Ireland wherever she gets a permanent post and that the children will be able to live with her. The applicant emphasised that she has no intention of returning to Libya. She noted that she became an Irish citizen in 2009 and that all of her children were born in Ireland and they are all Irish citizens.

26. The respondent gave evidence that he is a Libyan national born in 1970 and that he is one of ten children. He is now an Irish citizen, as are all of his children. He described the parties marrying in 1997 and moving to Ireland. He accepted that there were some gaps in the applicant's career when the children were born and while they were young. He does not accept that he prevented her from pursuing her career although he did not think it was fair for the children to have to move regularly for either of their careers. The respondent stated that he paid all of the bills while they were living in Ireland despite the applicant having some income which she kept solely for herself. He also gave evidence that he believed he has always paid at least 90% of the expenses relating to the children and that he has made the majority of the financial contributions to the household throughout the marriage. He did not accept that she made financial contributions to the marriage.

27. The respondent gave evidence that he has been living and working in Ireland for nineteen years. He stated that he is very grateful for the opportunities he has had here and his children have been well educated. He indicated that he has integrated into Irish society and that he has made friends and socialises with the other medical professionals. However, he stated that he has always intended to return to Libya which he referred to as "home". He explained that all of his assets are in Libya, that he has kept a bank account open there and that he has always wanted to retire to Libya.

28. The respondent stated that their first property in Ireland at L. was sold for €212,000 and he accepted that the parties were joint owners and that the applicant should have been consulted in relation to this sale. In relation to the J. Street property, the respondent explained that the proceeds of the L. property sale went into the purchase but that the applicant never made any contributions to the mortgage. He explained that the properties in Libya were not put in joint names although he stated that the applicant was happy with these purchases. The respondent accepted that he bought the A. Road property in 2004.

29. The respondent agreed that the applicant went to Libya in 2008. The respondent gave evidence that while the applicant was living in Libya he bought her a car, assisted in furnishing the property, paid the school fees and bought groceries at least once a month. He described going to visit the applicant and the children in Libya for eight to ten day periods and staying with them. However, the respondent stated that they argued and that it was very difficult for him travelling so regularly. He stated that he was not objecting to his daughters going to the British school in Libya and that he agreed that all of the children should be in the same school. He noted that the daughters attended the Arabic school at first but then went to the British school. The respondent stated that the cost of educating all of his children while they were in Libya was very high. He estimated that it cost the equivalent of US$75,000 a year in private school fees although this figure was challenged by the applicant who felt it was greatly exaggerated. The respondent gave evidence that he also paid for a driver and house help for some of the time while the applicant and the children were living in Libya.

30. The respondent stated that he was very close to moving back to Libya at that point because it was difficult being so far away from his children. He described helping the wounded in Libya as a doctor during the unrest. The respondent gave evidence that the applicant did not want to return to Ireland. He described the applicant as shouting and screaming at him that she did not want to discuss returning to Ireland. The respondent stated that Libya was very dangerous during this time and he gave the applicant the choice of living with his family or allowing the children to go to school in England away from her. The respondent contended that his

parents looked after the applicant and their children very well while they were living in their home in Libya.

31. The respondent gave evidence that the applicant told him that she was building a clinic in Libya and that she wanted him to be a shareholder in her business but he refused on the basis that he did not want to have that financial commitment to her. It was put to him under cross examination that he changed the electricity bill to make it seem as if the applicant was running a business in Libya. He acknowledged that the bill he produced to the Court did not have all the details on it but he did not accept that he changed it. He stated that his translation of this document was correct but that a portion of the bill with the heading "residential usage" was missing. He maintained that the applicant has a business of some sort in Libya and that she has bank accounts and considerable assets there that she has not disclosed to the Court. The respondent admitted that he was able to get the said electricity bill document even though, at that time, he was divorced from his wife in Libya.

32. He described there being some difficulties in the marriage. He particularly noted that there were problems from the beginning around the dowry. The respondent confirmed that the parties mostly lived apart since 2008. The respondent believed that the applicant was agreeable to the Libyan divorce. The respondent explained that the law in Libya requires that a mother remain in the family home with the children until they reach their majority even after a divorce. When asked by the Court what happens to a wife in Libya after that point the respondent replied that he honestly did not know.

33. The respondent further explained the process of Talaq divorce whereby the husband pronounces the divorce three times to end the marriage although he stated that the wife can object in a civil court. He explained that he was not a practicing Muslim any more and he is not very familiar with the Talaq process although he asserted that this is the way that divorces occur in Libya and this is why he sought to divorce his wife in this way. He stated that he did not view himself as divorced until after the Libyan court had ruled on the case.

34. The respondent indicated that negotiations were entered into between himself and the applicant's father on her behalf and he believed that an agreement had been reached on 10th January, 2015. However, the respondent asserted that the applicant then resiled from this agreement and he issued proceedings before the Courts of Libya on 25th January, 2015 and that those proceedings were served on the applicant personally on 3rd February, 2015. The applicant denies this. The respondent produced a document confirming service by the Bailiff of the First Instance Court of Southern Benghazi on the applicant wife at 12.00 o'clock on 3rd February, 2015.

35. The respondent stated that the applicant instructed lawyers who represented her in relation to the Libyan proceedings. He further stated that there were no threats or pressure placed upon the applicant to agree to the Libyan Court proceedings. He did agree that there was unrest in Benghazi at the time and that they had to travel to a different city in order to access a civil court. The respondent asserted that the case came before the Libyan Court on 8th March, 2015 and it was agreed that the suitable jurisdiction to deal with the breakdown of the marriage was Libya. He was questioned in relation to his affidavit dated 28th April, 2015 which asserted that the applicant was present in the Libyan Court on 8th March, 2015 and he corrected that to say that he meant that her legal representative was present acknowledging under cross examination that his wife was not physically present in the Libyan court on that date.

36. The respondent asserted that an agreement was reached on 17th April, 2015 when the applicant and the respondent met along with their legal representatives and this was ruled upon by the Libyan Court on 19th April, 2015. The responded presented a translated document entitled "Court Session Report" to this Court which outlined the acknowledgement by the Libyan Court of a "memorandum of agreement" which gave custody of the children to the applicant and allowed her a right of residency in the family home for her life subject to her not remarrying. It appears from this document that the respondent gave evidence to the Libyan Court as to the three occasions on which he pronounced talaq. This document also states that the parties agreed that there were three pronouncements of divorce and that it is "an irrevocable divorce".

37. There was some conflict around the translation of this document at para. 7. The respondent furnished the following translation of the document to the Court:-

> "The two parties consider this agreement an end to all the lawsuits especially regarding the alimony case in Ireland."

However, the applicant relies upon a translation which reads as follows:-

> "The two parties consider this minutes as ending all that between them except for the accumulated and urgent alimony filed in the Republic of Ireland. [sic]"

The respondent later conceded that the issue of maintenance for the children was not dealt with in the Libyan Court and there was an agreement that it would be dealt with in the Irish Courts. The respondent accepted that the correct translation was "except" and not "especially".

38. The respondent is currently an anaesthetist working in a private hospital in Ireland. He operates his own company through a clinic. He gave evidence that he is working to the limit of his capacity at the moment in terms of hours and is entirely self reliant in his company. The respondent accepted that he has a new partner in Ireland who is a nurse. He explained that he was good friends with this woman for a long time but that they started a relationship approximately two years ago. He accepted that he gave her some money as she had previously lent him money. He stated that she was very helpful with the children. He explained that he wanted to move to Libya with this woman and that it was his intention that they would get married. He gave evidence that he would accelerate a marriage proposal with this Irish nurse if she were prepared to go and live in Libya with him upon his retirement.

39. His current net income was the subject of some disagreement between the parties. The respondent has three pensions with Irish Life with a total value of €325,000 and he may have an extremely small HSE pension also. It was explained that the respondent is not a HSE consultant per se and he receives less than 5% of his income from the HSE as he only works 9 hours per week for the HSE. He accepted that he is making large private pension contributions every month although he did not accept that they are as high as €57,000 per year as was put to him in cross examination. This Court notes that the respondent paid in over €100,000 across the three private pensions in the last two years.

40. The respondent was asked a number of questions in relation to his various affidavits of means. His first affidavit of means dated 9th December, 2015 indicated that he had an income from his company of €7,800 and expenditure of €9,237. He accepted that this did not give the full picture. The third affidavit of means dated 1st March, 2016 showed an income of €12,533 which the respondent stated was his true income. He stated that he had not understood until the forensic accountant had explained it to him that he had to declare the entirety of his company's income and not just the sum that he withdrew from the company. He accepted that his

original affidavits of means had not shown the entirety of his income. The fourth affidavit was sworn on 6th September, 2016 and also shows income of €12,533 per month. It shows the respondent's expenditure to be €12,101.24. The respondent indicated that this was due to the increase in maintenance being paid to the applicant as ordered by this Court. The respondent stated that he is now aware of his obligation to disclose all of his assets.

41. It was put to the respondent that he received approximately £250,000 in December 2015 from the sale of an apartment in London and this was not included in his affidavit of means sworn at that time. He accepted that he had not told his wife or the Court about this property or the sale of it and that he should have done so and was now including it. He explained that this money was used to pay debts for the development of the site in Libya. He accepted that this money went into the account of a man he knows in Canada who is associated with the construction company. He asserted that he only has a professional relationship with this man although he accepted that this man lent him the money for the dowry payment. The respondent gave evidence that he did not rent the London apartment out as he was concerned about his tax bill if it was considered an investment property. It was put to him under cross examination that there was income marked "rent" in one of his accounts.

42. The respondent stated that his eldest son was not eligible for a student loan and therefore the respondent paid approximately £9,000 per year for the son's fees to attend university in the UK. The son may become eligible for a loan depending on his residency in the UK.

43. The respondent stated that he believes that the applicant's disposable income is 80% more than his. The respondent stated that he was struggling to keep up with various payments. He further stated that he was obliged to purchase a seven seat motor vehicle in 2015 in order to have space for all the children. He indicated that he is paying back the loan on this car. He explained that he wants to sell this vehicle and use the money to pay some of his legal fees. He stated that he has also borrowed money to pay legal fees.

44. The respondent also gave evidence that there has been some trouble in relation to one of the children who is seventeen years old and attending boarding school in the UK. The respondent stated that he had been contacted by the school and told that the child would have to seek alternative accommodation. The school agreed that they would allow the child to sit his final exams. The respondent attempted to seek alternative accommodation for the child so that he could remain in the UK and finish the school year. The respondent felt that the applicant did not assist sufficiently with this problem despite her role as the child's mother. He wanted to return the child to the care of the applicant in Ireland at one stage and she refused to take the second son. The respondent brought him over to the UK to sit his exams.

45. In relation to the incident in June, 2000 that led to the applicant being brought to the Mater Hospital, the respondent explained that he did not mean to hurt her. The respondent gave evidence that they were having a heated argument and that she tripped over the coffee table and hit her face. He stated that he apologised to the applicant immediately and that he had offered to pay for her to have cosmetic surgery so there would be no scar. He indicated that he regretted this incident. He accepted that he sometimes lost his temper although he stated it was his view that everyone gets angry sometimes. While under cross examination it was put to the respondent that, after this Court ordered him to pay interim maintenance that there was an incident outside the court buildings. He accepted that he had been frustrated with the court order and shouted at the applicant and her legal team and waived his hands. He apologised for this incident while in the witness box although he said that he was not as threatening or intimidating as was suggested.

46. The respondent conceded during the case that he was now willing to transfer his entire legal and beneficial interest in the property at A. Street in Libya despite the previous wording of the memorandum of agreement. This property has been valued on behalf of the applicant at approximately €390,000 and the applicant currently has a right of residency in it. His preference was that the property should be sold to enable the applicant to purchase a property in Ireland for the benefit of herself and the children. The respondent has not produced a valuation for this property or for the property at J. Street. He gave evidence as to the difficulty in transferring money out of Libya to Ireland and the difficulty around exchanging large sums of the Libyan currency.

47. Zahia Qasim Al Hawari affirmed an affidavit on 28th September, 2016 as the lawyer retained by the respondent in relation to his divorce application heard in Libya under record number 89/2015. The first point he makes is that the court was not at the applicant's residence as it was 100 kilometres east of Benghazi as the work of the court is Benghazi was suspended due to the security situation in the city.

48. This lawyer certified that the applicant had received the divorce case notice from the Bailiff of South Benghazi Court and she signed a receipt thereof. He notes that the defendant in those proceedings could have refused to receive the divorce case notice but that she accepted it and instructed a lawyer to act on her behalf before the Libyan courts. This lawyer avers that she had the freedom of choice to continue with the case or not and to challenge the jurisdiction of the El-Marij Court on the basis of residence per the Libyan Civil and Commercial Procedures Law. However, she did not object through her attorney at the first hearing and thus the court accepted the case as a result of non-objection to jurisdiction and therefore a divorce was accredited.

49. This document confirms that the deferred dowry was paid in accordance with the text of Article 19 of the Libyan Personal Affairs Law which sets out that the husband is obliged to pay dowry in the form of money or whatever takes its place to the wife in a valid marriage contract. The divorce deemed by the husband's lawyer under Article IV of the aforementioned minutes of the divorce as binding before the court because of her approval of it via the power of attorney granted by her to her father which she signed of her own free will and thus is legally binding.

50. This lawyer also certifies that the "defendant" wife has obtained the best settlement that can be reached before the Libyan judiciary which lies in receiving her dowry in full and also the family home for her lifetime because of the fact that in accordance with Libyan law the family home is provided only to the age of majority of the children. This lawyer then acknowledges that the Irish judiciary was not mentioned except when in discussions about alimony which the defendant had requested to be decided by the Irish judiciary and that his client did not oppose that condition.

51. In this case, the Court is mindful of the fact that relief post a foreign divorce has been sought and an interim order granting liberty to process such an application has been granted by order of Abbott J. dated 15th June, 2015. Abbott J. refers to the order for divorce made in Libya on 17th April, 2015 and/or on 26th April, 2015 in proceedings between the parties under record number there of 89/2015 insofar as same did not provide for maintenance by lump sum or periodical payment orders including in respect of the children of the parties or for pension adjustment orders in respect of the intended respondents Irish pensions.

52. The affidavit grounding the said ex parte application was sworn on 15th June, 2015 by Emmajane O'Halloran, solicitor for the applicant. As appears from para. 14 of the said affidavit the applicant is described as seeking liberty to seek relief post foreign divorce and the main ground on which she seeks relief is on the basis that "the two parties consider these minutes as ending all that between them except for the accumulated and urgent alimony filed in the Republic of Ireland". This affidavit shows the difficulties which her

solicitor in Ireland had in trying to ascertain what the actual position was.

53. What has emerged since this affidavit is that, in fact, the Libyan proceedings pre-date the Irish proceedings herein even though the actual final order after a number of court appearances in Libya was only made in Libya with both parties present in April, 2015. This Court accepts the plea at para. 22 that the applicant had jurisdiction to seek such relief in Ireland on the basis that the respondent was resident within this State for the year prior to the commencement of the proceedings and satisfies the statutory requirements and indeed he had been so ordinarily or habitually resident for approximately eighteen years prior to this application. It is pleaded at that point that the applicant was living in difficult circumstances in Libya in light of her financial position, the state of affairs in the country and from pressure she was under from her in-laws and she requires maintenance for the upkeep of her children. The applicant's circumstances have changed to the extent that she arrived back in this jurisdiction in 2015 with her entire family and having managed to obtain employment here and is renting a house where she is living with the three younger children.

Summary of the Financial Evidence
54. Mr. Liam Grant, Forensic Accountant, was instructed on behalf of the applicant in this case, he gave evidence on 2nd November, 2016 and he provided a report to the Court which he adopted as part of his evidence. He summarised the assets of the respondent as being:

- the family home at A. Street, Libya in which the applicant has a right of residence but is in the respondent's name (€390,000),
- the investment property at J. Street, Libya in respondent's name (€877,500),
- the respondent's proceeds of the sale of the apartment in London (£251,955)
- the respondent's proceeds of the sale of the property at A. Road, Libya (1,150,000 Libyan Dinars)
- the respondent's business assets minus estimated taxes (€31,817)
- the respondent's car (€45,000)
- bank accounts held by the respondent (€13,878)
- the respondent's pensions (€322,970)

55. Mr. Grant outlined that the liabilities of the respondent amounted to €61,814 and the liabilities of the applicant including a variety of loans to family members amounted to €242,973.

56. In his evidence-in-chief, Mr. Grant was brought through the schedule of differences. One of the major differences surrounds the two properties in Libya which turn on the valuations. The applicant provided translated valuations from Libya for those properties and the respondent did not. No evidence was called in relation to the valuations by the respondent or the applicant.

57. There is a disagreement about the amount in the respondent's business bank account although that comes down to the methodology between the two accountants. There is a difference of €6,000 in relation to a loan purportedly owed by the applicant to her brother. There is also a conflict around whether the applicant would be liable for any university loan drawn down for the eldest son who is studying in the UK although this has been challenged as this son was not granted a loan. It was accepted that the liability in relation to this university loan of €10,700 should be removed from the calculation of the applicant's liabilities. Mr. Grant also included the applicant's liability of a loan of €15,000 drawn down from AIB in September 2016 for the purpose of paying legal fees and this was contested. There is conflict around the debt in relation to legal fees on either side that are likely to rise. It was agreed that the respondent has a private pension fund of €322,970 as well as a small HSE pension. .

58. There was a difference in the calculation of the respondent's monthly income. Mr. Grant explained that he used updated figures in the management accounts up to August 2016 and projected forward and he believes that it includes an increase in the respondent's overall income. Mr. Grant also deducted the pension contributions prior to calculating the total taxable earnings. It was put to Mr. Grant in cross examination that this extrapolation on the basis of the August figure could give an unclear figure which does not take account of seasonal changes although he believes that it gave the most realistic and up to date figure. Mr. Grant assessed the respondent's net monthly income to be approximately €13,742. He stated that the applicant's net monthly income is approximately €5,967 including interim maintenance currently being paid by the respondent. He noted in evidence that the applicant indicated to him that her overtime payments have now ceased although no payslips proving this were before the Court.

59. It was put to Mr. Grant that the respondent is spending at his limit on the children and interim maintenance while the applicant has much more discretionary spending money. Mr. Grant did not accept this. It was further put to him that the respondent actually has quite a modest lifestyle after the expenses relating to the children although Mr. Grant noted that there was an element of choice around the spending by the respondent.

60. Ms. Jacqueline McShane, Forensic Accountant was instructed on behalf of the respondent. She provided a report to the Court and also gave evidence on 2nd November, 2016. She explained that the respondent's income is accessible through the use of a company incorporated on 13th December, 2013. The company invoices the various patients and health insurers for the services provided by the respondent. The company then pays the expenses incurred. The net profit figure is available as income for the respondent subject to the monthly cash flows of the company. Ms. McShane stated that the net profit figure in the year leading up to 31st January, 2016 was approximately €328,126. She has estimated that the respondent's approximate net monthly income is €12,625. Ms. McShane explained that the difference between her figure for income and Mr. Grant's figure was down to the fact that she used the accounts up to January 2016 whereas he used the management accounts up to August 2016 and projected the respondent's income on that basis. She also noted that the respondent is already working the maximum hours that he could and there would be no way for him to generate any more income in her opinion.

61. Ms. McShane's report contains the outgoings incurred by the respondent including for maintenance, rent, insurance, car loan, and the children's school fees. These figures came from the respondent's bank accounts and his affidavit of means and Ms. McShane believes that these are accurate figures. She found that this amounts to €12,048. It was the view of Ms. McShane that the respondent has certain cash flow difficulties and he had to borrow from friends in order to keep up with his monthly expenses as his income is not consistent.

62. Ms. McShane indicated that the Libyan bank account details supplied by the applicant seem to show that she had other bank accounts and possibly another source of income. She indicated that she has not been able to compile a full report on the applicant's income and assets as she believes that some information is being withheld. She calculated the applicant's net monthly income including her salary from the HSE, the children's allowance and maintenance from the respondent to be €6,940. That calculation is higher than the figure reached by Mr. Grant which is due to the difference of optimism in relation to the applicant's overtime payments. Mr. Grant was instructed that the applicant is no longer getting overtime hours and he calculated the income on that basis. This Court accepts the applicant's evidence on this issue when she explained that the hospital was giving people time off instead of overtime payments in order to save money. Ms. McShane was of the view that the applicant could apply for a further tax credit of €200 per month as the carer of the three younger children. Ms. McShane set out her view that the applicant's set monthly expenses amount to €2,323 when expenses actually paid by the respondent are excluded from the applicant's affidavit of means.

63. Ms. McShane also set out the major assets in the case. She agreed that the respondent has three pensions amounting to €322,970. Ms. McShane accepted that the respondent is making large pension contributions of around €35,000 each year. She also accepted that the respondent could technically change his levels of pension contributions within his company structure. She indicated that she did not believe that the respondent could access his pension fund in advance of a set date. She set out the respondent's net bank balance including the company bank account as being €31,524. Ms. McShane accepted that the respondent's bank accounts show payments going in and out to the respondent's new partner over a two year period and the partner appears to be approximately €10,000 up. She did not put any value on the two Libyan properties at J. Street, which she describes as a "site" and A. Street. Ms. McShane accepted that a lot of money has been spent on the J. Street property although she noted that she was not a valuer and certainly could not put a value on properties in Libya.

64. Ms. McShane noted that there was a new car bought for €45,000 with a loan of €6,534. Ms. McShane also noted a debt that the respondent owes amounting to €23,700 in relation to the site in Libya. Ms. McShane agreed that there was £251,955 in profit from the sale of the London apartment however the vast majority of this money (£194,517.32) went to a man in Canada in relation to the Libyan site at J. Street. However, this Court notes that there is no documentation to show what this money was used for.

The Legal Issues

The Libyan Divorce
65. The Domicile and Recognition of Foreign Divorces Act 1986 regulates whether or not the Libyan divorce may be recognised in Ireland. Section 5 of that Act provides:-

> "5.—(1) For the rule of law that a divorce is recognised if granted in a country where both spouses are domiciled, there is hereby substituted a rule that a divorce shall be recognised if granted in the country where either spouse is domiciled."

The term domiciled is defined in s. 5(7) as meaning "domiciled at the date of the institution of the proceedings for divorce".

66. The applicant's position is that the Libyan divorce is not valid in Ireland. Counsel for the applicant submitted that, to satisfy the requirements of s. 5, the respondent must establish that he was "granted" a divorce in proceedings instituted for that purpose and that one of the parties was domiciled in Libya at the date of institution of such proceedings.

67. The applicant does not accept that the respondent was "granted" a divorce in Libya rather that he pronounced the Talaq divorce on three occasions prior to the institution of proceedings. It was submitted that the agreement placed before the Libyan Court simply confirmed the prior divorce pronounced by the respondent and that the court endorsed that agreement. It was submitted on behalf of the applicant that this Court should use a strict interpretation of the term "granted". Counsel for the applicant contrasted the English statutory provisions with the Irish statutory provisions and he submitted that the absence of a reference to "other proceedings" and the use of the words "granted" and "proceedings for divorce" in s. 5 of the Irish Domicile and Recognition of Foreign Divorces Act 1986 suggests that recognition is confined to divorces granted by a court in proceedings for divorce. Counsel for the applicant emphasised the English case of *Chaudhary v. Chaudhary* [1985] Fam. 19 where Cumming Bruce LJ. held that a bare Talaq divorce was not recognised as a divorce "obtained by means of judicial or other proceedings" for the purpose of the English Recognition of Divorces and Legal Separations Act 1971.

68. The second requirement under s. 5 of the 1986 Act is that it must be established that one of the parties was domiciled in Libya at the date of the institution of the proceedings. The applicant does not accept that either party was domiciled in Libya at the time of the Libyan proceedings.

69. Counsel for the applicant submitted that even if the Court holds that one or other of the parties was domiciled in Libya and that a divorce was "granted", the Court may still refuse to recognise the Libyan divorce on other grounds. S. 5(6) of the 1986 Act provides as follows:-

> "(6) Nothing in this section shall affect a ground on which a court may refuse to recognise a divorce, other than such a ground related to the question whether a spouse is domiciled in a particular country, or whether the divorce is recognised in a country where a spouse is domiciled."

Counsel for the applicant relied on the case of *L.B. v. H.B.* [1980] I.L.R.M. 257 where Barrington J. refused to recognise a French decree of divorce where the parties had colluded together to bring a false case before the French court even though that court had jurisdiction to grant the decree by reason of the husband's French domicile. This is one of the few cases in this jurisdiction that deals with this issue and Barrington J. cited the English case of *Middleton v. Middleton* [1966] 1 All E.R. 168, among others, where Cairns J. set out the common law position as follows:-

> "(i) If a decree of divorce has been pronounced in the court of a foreign place where the parties were not domiciled, the English court will treat it as valid provided it would be recognised as valid by the courts of the place where they were domiciled
>
> (…)
>
> (iii) If a decree of divorce has been obtained in a foreign court contrary to natural justice, the English court must treat it as invalid (…)
>
> (iv) The English court has a discretion to refuse to recognise a foreign decree which offends against English ideas of substantial justice."

Counsel for the applicant submitted that, were this Court to find that one party was domiciled in Libya and that the Libyan divorce was "granted" there remains a discretion, analogous to the one described by Cairns J. above to refuse to recognise the Libyan divorce on the basis of Irish ideas of natural and substantial justice.

70. The applicant alleges that, at the time of the Libyan divorce, she was subjected to threats of violence and intimidation in relation to herself and her children. She believes that she did not receive a proper, balanced and fair hearing and she was unable to properly and effectively consent to the application before the Libyan court. Counsel for the applicant submitted that this Court should refuse to recognise the divorce even if it holds that the Libyan divorce was "granted" and that one of the parties was domiciled in Libya as it was obtained in a manner contrary to natural justice and Irish ideas of substantive justice due to the threats and intimidation. It was further submitted that Benghazi was effectively a "warzone" at the time of the Libyan proceedings and that this should be taken into account.

71. It is the respondent's position that the Libyan divorce should be recognised by this Court. Counsel for the respondent submitted that a broad and purposive approach should be taken to the interpretation of the term "granted" in s. 5(1) of the 1986 Act due to the changed legal and social landscape in Ireland. It was submitted that the divorce in Libya was "granted" by the Libyan Courts on foot of proceedings that had issued. The applicant was served with a document instigating proceedings entitled "case to confirm the divorce from one party submitted to El-Marij District Court Department of Personal Status" seeking confirmation from the Libyan Court of the three occasions of Talaq. The parties appeared before the Libyan Court at a later date and presented a memorandum of agreement accepting that there had been an irrevocable divorce and setting out the terms upon which the parties were going to separate. It should be noted that the applicant herself was not in attendance during the first application by the respondent to the Libyan Court although she was represented by a lawyer as described in the outline of the evidence above.

72. Counsel for the respondent submitted that the evidence substantiates the view that both the applicant and the respondent were domiciled in Libya at the time of the Libyan divorce. It was submitted that both the applicant and the respondent have a domicile of origin in Libya and it is for the applicant to prove that the parties acquired a domicile of choice in Ireland. Counsel for the respondent cited Budd J. in the case of In *re Sillar; Hurley v. Wimbush* [1956] I.R. 344 where he held that the court must be satisfied that the "person in question has shown unmistakably by his conduct, viewed against the background of the surrounding circumstances, that he has formed at some time the settled purpose of residing indefinitely in the alleged domicil of choice". Counsel for the respondent also cited the case of *T. v. T*. [1983] I.R. 29 in which the Supreme Court held that a British citizen who had been living and working in Ireland for two and a half years with his Irish wife had not acquired a domicile of choice in Ireland. Counsel for the respondent cited the case of *K.(A) v. K.(J)* [1996] 1 Fam.L.J. 22 where McGuinness J. stated that the authorities "stress the strength and tenacity of domicile of origin as opposed to the domicile of choice". It was submitted that the case of *D.T. v. F.L.* [2003] IESC 59 further shows how difficult it is to prove that a person has acquired a domicile of choice. In that case, the Supreme Court upheld Morris J in his decision that residence is not sufficient and that a party must have an intention to abandon their domicile of origin. It was submitted that the applicant was domiciled in Libya at the time of the Libyan proceedings as she had been living in Libya since 2008 and she did not intend to leave Libya until pursuing this application before the Irish courts. It was submitted that the respondent was also domiciled in Libya as he has all of his property in Libya, he visited Libya regularly and has always intended to return to Libya on retirement.

73. Counsel for the respondent submitted that the approach of this Court should be guided by the international comity of courts. Counsel for the respondent also submitted that this Court should be respectful of the Libyan Court by recognising the Talaq divorce. It was further submitted that it is in the public interest to avoid the possibility of creating "limping marriages" where parties are considered to be married in one jurisdiction and divorced in another.

74. It was submitted on behalf of the respondent that the Libyan divorce in this case was not a "bare Talaq" divorce. A bare Talaq was described as providing that a husband can divorce his wife by simply saying "I divorce you" three times, no reasons are required, the presence of the wife is not necessary and no notice is necessary. The parties in this case then went on to have that process recognised as a divorce in the Libyan Court and is therefore not a "bare Talaq" divorce. It was emphasised that the respondent did not consider himself to be divorced until the Libyan Court had sanctioned the Talaq divorce. Counsel for the respondent cited the English Court of Appeal judgment in *Russ v. Russ* [1962] 3 All E.R. 193 as having upheld a Talaq divorce from Egypt. Counsel for the respondent further highlighted the case of *Qureshi v. Qureshi* [1971] 1 All E.R. 325 where Sir Jocelyn Simon held that the lack of a judicial pronouncement of divorce was not a basis for refusal to recognise a Talaq divorce provided that the divorce was recognised in the state of the domicile of the parties.

75. It was submitted that the common law prior to the coming into operation of the 1986 Act permitted recognition of Talaq divorces, granted by non-judicial proceedings and the 1986 Act did not change that position, nor was it intended to by the legislature. Counsel for the respondent submitted that the provisions of the Act requiring proceedings to be instituted in the domicile of one of the parties is not limited to judicial proceedings and includes non-judicial proceedings as this was the position prior to the enactment of the Act.

76. It was further submitted on behalf of the respondent that there is no public policy reason to deny the recognition of this divorce that was granted in Libya. Counsel for the respondent submitted that, in circumstances where the English common law has recognised Talaq divorces, the process in Libya did not offend any notions of substantive or natural justice or involve any unfairness. The respondent denies any allegations that the applicant was under duress or subjected to threats of violence in order to agree to the process in the Libya Court. It was submitted that there were inconsistencies in relation to the evidence about the threats received by the applicant. It was further submitted that the issue of consent is not relevant to the granting of a divorce and if the applicant was under threat or had concerns she should have raised them with the Libyan Court. Counsel for the respondent submitted that if there is any concern about the justice or fairness of the Libyan divorce it can be remedied through relief after foreign divorce orders and such potential injustice is not sufficient to render the Libyan divorce unrecognisable in this jurisdiction.

Relief post Foreign Divorce

77. If the Court finds that there is a valid and recognisable Libyan divorce then the applicant may obtain relief pursuant to Part III of the Family Law Act 1995. Counsel for the applicant submitted that if the Libyan divorce is found to be valid, the Court is empowered to make orders providing for periodic maintenance, lump sum orders, property adjustment orders, pension adjustment orders and orders in respect of Succession Act rights. It was submitted on behalf of the applicant that the jurisdictional requirements to obtain relief pursuant to Part III are set out in s. 27(1) of the 1995 Act in that at least one of the parties was domiciled or habitually resident in Ireland on the date that the order granting leave to seek a relief order was granted pursuant to s. 23(3), the 15th June, 2015. This Court finds that both parties were habitually resident in Ireland on that date but that both parties have and had retained their domicile of origin in Libya as of the date of institution of the Libyan proceedings.

78. Section 23 of the 1995 Act applies to a marriage which has been dissolved on the basis of a divorce granted under the law of a country or jurisdiction other than the State which is entitled to be recognised as valid within the State. It applies accordingly to the

Libyan divorce which is the subject of these proceedings as recognised by this Court. Section 23 provides as follows:-

> "(2)(a) Subject to the provisions of this Part, the court may, in relation to a marriage to which this section applies, on application to it in that behalf by either of the spouses concerned (…) make any order under Part II (…) (in this Act referred to as a relief order) that it could have made if the court had granted a decree of judicial separation in relation to the marriage"
>
> (b) Part II shall apply and have effect in relation to relief orders and applications therefore as it applies and has effect in relation to orders under Part II and applications therefore with the modifications that—
>
> (i) subsections (4) and (5) of section 8 , section 10 (1) (c) and section 13 shall not apply in relation to a marriage that has been dissolved under the law of a country or jurisdiction other than the State (…)
>
> (c) Section 16 shall apply in relation to a relief order subject to the modifications that—
>
> (i) it shall be construed as including a requirement that the court should have regard to the duration of the marriage,
>
> (ii) the reference in subsection (2)(k) to the forfeiture of the opportunity or possibility of acquiring any benefit shall be construed as a reference to such forfeiture by reason of the divorce or legal separation concerned, and
>
> (iii) the reference in subsection (3) to proceedings shall be construed as a reference to the proceedings for the divorce concerned or, as the case may be, for the legal separation concerned" (…)
>
> "(3)(a) An application shall not be made to the court by a person for a relief order unless, prior to the application, the court, on application to it ex parte in that behalf by that person, has by order granted leave for the making of the first-mentioned application and the court shall not grant such leave unless it considers that there is a substantial ground for so doing and a requirement specified in section 27 is satisfied"

These proceedings meet the requirements specified in s. 27 as the respondent was ordinarily resident in the State throughout the period of one year ending on the date that the ex parte order granting leave to seek relief post foreign divorce was made.

79. Section 26 of the 1995 Act provides that the Court shall not make a relief order unless it is satisfied that it is appropriate that such an order should be made and the Court shall have regard to all the circumstances but in particular:-

> (a) the connection which the spouses concerned have with the State,
>
> (b) the connection which the spouses have with the country or jurisdiction other than the State in which the marriage concerned was dissolved or in which they were legally separated,
>
> (c) the connection which the spouses have with any country or jurisdiction other than the State,
>
> (d) any financial benefit which the spouse applying for the making of the order ("the applicant") or a dependent member of the family has received, or is likely to receive, in consequence of the divorce or legal separation concerned or by virtue of any agreement or the operation of the law of a country or jurisdiction other than the State,
>
> (e) in a case where an order has been made by a court in a country or jurisdiction other than the State requiring a spouse, or the spouses, concerned to make any payment or transfer any property for the benefit of the applicant or a dependent member of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with,
>
> (f) any right which the applicant or a dependent member of the family has, or has had, to apply for financial relief from a spouse or the spouses under the law of any country or jurisdiction other than the State and, if the applicant or dependent member of the family has omitted to exercise any such right, the reason for that omission,
>
> (g) the availability in the State of any property in respect of which a relief order in favour of the applicant or dependent member of the family could be made,
>
> (h) the extent to which the relief order is likely to be enforceable,
>
> (i) the length of time which has elapsed since the date of the divorce or legal separation concerned.

All of these subsections have been applied to the facts of the instant case in this Court's conclusions at para. 98 below.

80. When considering the making of relief post foreign divorce orders the Court is required to have regard for the twelve factors set out in section 16(2) of the 1995 Act as follows:-

> (a) the income, earning capacity, property and other financial resources which each of the spouses concerned has or is likely to have in the foreseeable future,
>
> (b) the financial needs, obligations and responsibilities which each of the spouses has or is likely to have in the foreseeable future (whether in the case of the remarriage of the spouse or otherwise),
>
> (c) the standard of living enjoyed by the family concerned before the proceedings where instituted or before the spouses separated, as the case may be,
>
> (d) the age of each of the spouses and the length of time during which the spouses lived together,
>
> (e) any physical or mental disability of either of the spouses,
>
> (f) the contributions which each of the spouses has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution made by each of them to the income, earning capacity, property and financial

resources of the other spouse and any contribution made by either of them to looking after the home or caring for the family,

(g) the effect on the earning capacity of each of the spouses of the marital responsibilities assumed by each during the period when they lived together and, in particular, the degree to which the future earning capacity of a spouse is impaired by reason of that spouse having relinquished or foregone the opportunity of remunerative activity in order to look after the home or care for the family,

(h) any income or benefits to which either of the spouses is entitled by or under statute,

(i) the conduct of each of the spouses, if that conduct is such that in the opinion of the court it would in all the circumstances of the case be unjust to disregard it,

(j) the accommodation needs of either of the spouses,

(k) the value to each of the spouses of any benefit (for example a benefit under a pension scheme) which be reason of the decree of judicial separation concerned that spouse will forfeit the opportunity or possibility of acquiring,

(l) the rights of any person other than the spouses but including a person to whom either spouse is remarried".

These factors are applied to the case at hand by this Court when coming to its conclusions in relation to what orders for relief may be made below.

81. Counsel for the applicant submitted that it is appropriate to make relief orders in this case given the circumstances of the Libyan divorce and the terms of that divorce. It was submitted that the Libyan Court effectively recognised the future role of the Irish courts by leaving over the issue of maintenance and refraining from dealing with the Irish and UK assets of the parties. Counsel for the applicant cited Quirke J. in the case of *M.R. v. P.R.* [2005] 2 I.R. 618 at para. 122 as follows:-

> "The statutory relief is not intended to compensate the applicant for past financial or other hardship or inequality. It is intended to alleviate present inequitable financial or other hardship or reduced circumstances caused by seemingly unjust outcome resulting from divorce proceedings in another jurisdiction where no comparable remedy is now available to the applicant. It is intended to do so in a just and equitable fashion."

Quirke J. outlined that it is quite clear that there is a significant restriction on the exercise of the court's discretion to grant the reliefs which have been sought in proceedings such as these as follows:-

> "1. the court must hear and determine an application made ex parte by the applicant for leave to make an application for relief;
>
> 2. the court may not grant such leave unless it considers that there is a substantial ground for so doing; and
>
> 3. having granted such leave the court may not grant the relief sought unless and until satisfied that in all the circumstances of the particular case it is appropriate that such an order should be made by the court."

82. It was submitted by counsel for the applicant that the practical result of such relief orders may be the same as would arise through proper provision under a new Irish divorce. This Court accepts that this may be the situation in the instant case.

83. Counsel for the respondent highlighted the factors to which the court must have regard before determining whether the applicant is entitled to relief after foreign divorce under the 1995 Act. It was submitted that Quirke J. held in the case of *M.R. v. P.R.* [2005] 2 I.R. 618 that ancillary relief should only be granted in exceptional circumstances where a marriage was dissolved by the spouses outside of Ireland. It was further submitted that Quirke J. made it clear that the burden is on the applicant to demonstrate hardship, inequality and injustice before the Irish Court will exercise its jurisdiction to grant ancillary relief. Counsel for the respondent submitted that the applicant is not entitled to the relief claimed apart from maintenance for the dependent children. It was submitted that she consented to the financial arrangements made in Libya and that she has not demonstrated any hardship or injustice. This Court does not accept this contention.

84. It was accepted by the respondent in the course of these proceedings that the Libyan divorce order actually allowed for the involvement of the Irish courts in relation to what was referred to as "alimony".

85. In relation to what orders this Court should grant it was submitted that maintenance should be reduced to €1,500 per month. Counsel for the respondent made submissions to the effect that there should be fairness on both sides in any order and that almost all of the respondent's current income goes to the children through maintenance, health insurance and their school fees. Counsel for the respondent also emphasised that when the children are with him he has to provide for them in much the same way as their mother does. It was further submitted that the applicant has her own independent income and that it should not be necessary for the respondent to provide maintenance for her.

86. Counsel for the respondent highlighted what she referred to as one of the major difficulties in this case that they have not been able to definitively discover what assets the applicant may or may not have in Libya. While it was accepted that early affidavits of means from the respondent's side did not show the complete picture it was submitted that there remains a lack of information around the applicant's assets. It was submitted that it would be unfair to take account of the assets owned by the respondent without taking account of assets allegedly owned by the applicant. Counsel for the respondent submitted that this Court should note that the applicant received a life interest in the A. Street property and approximately 48,750 Libyan Dinars in a dowry payment as part of the Libyan divorce settlement. The issue that the Libyan banking system is in difficulties and it may be impossible to exchange Libyan dinar for euro was also raised as a complicating factor. It was submitted that it is not possible for the respondent to generate a lump sum.

Conclusions

Entitlement to Recognition of the Libyan Divorce

87. The first issue this Court will consider is whether the Libyan divorce is entitled to recognition in this jurisdiction. The central issues around recognisability, as presented by counsel, are domicile, whether the divorce was "granted" and whether there is a residual

discretion to refuse recognition in the interests of justice. While the issue of EU regulations, in particular Council Regulation (EC) No 2201/2003 known as Brussels IIa, was discussed, it was submitted by both parties that EU law did not apply in this particular case as it involves a divorce which occurred in a jurisdiction outside the EU and the conflict of jurisdictions is between one EU country and one non-EU country.

(a) Domicile
88. Both parties in this case have a domicile of origin in Libya. They were both born in Libya, married in Libya and lived there until they completed their medical training. Shortly after that, they decided that Ireland was a good place to earn their living and so they travelled to Ireland. In their decision to move to Ireland they took into account that they saw Ireland from what they had understood from their friends, as being a country which would be receptive to them. The onus of proof is on the applicant to prove that either party had a change of domicile of choice to Ireland. As appears from the case law cited earlier in this judgment at para. 70, a high threshold is required to be met in order for a court to make a finding that a domicile of choice has been established.

89. This Court finds that the respondent maintains his domicile of origin in Libya through his stated intention to retire to Libya, through his regular visits to Libya and through the fact that while initially a family home was purchased in Ireland, same was sold in 2007 and any property he now owns is outside of this jurisdiction. His family of origin are numerous and live in Libya, his parents are still alive and live there and he has a very strong connection with Libya. For economic reasons, primarily, he has decided to live his working life in Ireland where he has built up a significant income through his professional work. It may be noted that the respondent applied for and successfully obtained Irish citizenship, as has his wife and children, all of whom were born in this jurisdiction. There is no evidence before this Court to suggest that the respondent had in any way changed his domicile of origin which is in Libya to a domicile of choice in Ireland as his intention to stay in Ireland is not a permanent one. The applicant has not established that the respondent had an intention to abandon Libya as his domicile.

90. Turning to the position of the applicant, this Court cannot come to a conclusion that she changed her domicile of origin which is Libya to one of choice in Ireland. She had returned to Libya with the children in 2008 even before the Irish State granted her Irish citizenship in 2009. On her return to Libya she chose to remain there until 2015. This Court views this move and stay in Libya as being a very significant one over a lengthy period of time. She did not leave Libya even when the respondent asked her to when the civil unrest broke out in Libya. The applicant argues that from 2009 on she was trying to get back to Ireland but that the respondent refused to give her the means of returning. This Court takes the view that it was open to the applicant to have left Libya at an earlier stage. This Court notes that there is a culture on both sides of borrowing from family members and friends if and when monies are necessary. This Court can infer that, had the applicant really wished to return to Ireland in the intervening years between 2008 and 2015, she would have been able to procure the means.

(b) Was the divorce "granted"?
91. This Court will now turn to the issue of whether the proceedings in Libya can be regarded as constituting the "granting" of a divorce within the meaning of s. 5 of the Domicile and Recognition of Foreign Divorces Act 1986. The most telling document presented to the Court in relation to the proceedings in Libya was the "Court Session Report". This document shows that a hearing took place on 17th April, 2015 before a judge, both parties were represented by their lawyers and they presented a memorandum of agreement to be approved by the Libyan Court as follows:-

> "1. The two parties agreed about divorce pronounced by the husband [A.A.] to his wife [M.Y.] on 19th January, 2015, a three-time divorce; an irrevocable divorce.
>
> 2. The two parties agreed that the mother shall have right in custody to the children from her divorced husband. The children named (…) are to be in the custody of the mother during the legal period of custody in the previous marital home (…) forever unless she gets married.
>
> 3. The attorney for the defendant admitted that her client received a paid and deferred dowry, and that she has had all the legal rights caused by the divorce.
>
> 4. The two parties agreed that the mother shall have the right of custody over the aforecited children who must be with their mother. The residence of the children shall be with their mother whether inside the country or abroad.
>
> 5. The two parties agreed that the father can visit his children when he goes back to Libya whenever he wants. He also has the right to be in their company inside or outside Libya.
>
> 6. The two parties agreed that the divorced husband shall bear the legal costs."

There was some controversy about the translation of the seventh clause of the agreement although this was later resolved as set out at para. 37 of this judgment. It was accepted that the issue of "alimony" was left to be resolved by the Irish Courts.

92. The respondent produced an affidavit from his Libyan lawyer which outlined the proceedings in Libya which has been summarised earlier in this judgment and sets out the applicant's awareness of proceedings there along with the rights she had to challenge those proceedings. The applicant, by contrast, was not able to provide any affidavit of laws nor did she provide an affidavit from her own Libyan lawyer.

93. In relation to the issue as to whether what happened in the Libya Court can be regarded as constituting the "granting" of a divorce within the meaning of s. 5 of the Domicile and Recognition of Foreign Divorces Act 1986, this Court is persuaded by the submissions of behalf of the respondent that a purposive approach should be taken to the interpretation of the term "granted". The term should be seen in the context of a very different legislative picture along with considerable societal change in Ireland since 1986. This Court takes a similar approach to that of the English case law that what is referred to as a "bare talaq" would not be recognised in this jurisdiction. Some element of judicial ruling or administrative intervention is required in the country of domicile where the divorce occurred in order for it to meet the requirement of being "granted" in proceedings for divorce. As court proceedings did occur in Libya, the international principle of the comity of courts requires this Court to show respect for the decision of the Libyan Court and to recognise this divorce.

(c) Discretion
94. The final question in relation to the recognition of the Libyan divorce is whether this Court has a discretion to refuse to recognise a divorce despite that divorce being "granted" in a country where one of the parties was domiciled. It is the view of this Court that, in certain circumstances, a discretion to refuse recognition may well exist but that in circumstances where relief post a foreign divorce is available to her, here and now, any lack of justice can be remedied in this jurisdiction.

95. The applicant's contention in relation to problems she encountered in Libya included cultural problems where she felt under pressure to agree to the Libyan divorce and she felt that her father felt under social pressure. The applicant's contention has been that she was under such pressure because of the unstable political unrest in Libya at the time and because of pressure including what she said were intimidation and threats from her husband's family that she could not object to this divorce. The respondent's counsel has submitted in this regard that the place in which she should have objected therefore was in the Libyan court. This Court concludes that the applicant suffered from a lack of autonomy and that, while she articulated a strong opposition to the Libyan divorce, she was unable to prevent same proceeding as a result of this lack of autonomy. While noting these difficulties, this Court is of the view that the justice of the case can be achieved through orders for relief post a foreign divorce and therefore any lack of justice does not reach the standard required for a court to refuse to recognise a divorce granted in the court of the parties domicile. This Court takes reassurance from the existence of the statutory scheme enabling relief post a foreign divorce through which any lacuna can be remedied in terms of the applicant's request that justice be done.

96. Therefore, this Court declares that the divorce granted by the Libyan Court is valid and entitled to recognition in the State. The Court will now turn to the question of relief post foreign divorce pursuant to Part III of the Family Law Act 1995.

Relief Post Foreign Divorce
97. The jurisdiction of this Court to make orders in relation to relief post a foreign divorce is based upon the respondent's ordinary residence in Ireland. This Court acts within the remit of the *ex parte* order of Abbott J. permitting the applicant to seek relief post foreign divorce.

98. This Court will now analyse the relevant elements of the legislation in relation to relief post foreign divorce. With reference to Section 26(a) of the 1995 Act as set out above, both parties have a significant connection with this State, having spent a considerable number of years from the date of their marriage until 2008 ordinarily resident here and in this State all of their children have been born. They are now all Irish citizens as are their children. The applicant in these proceedings came back from Libya in 2015 and now is ordinarily resident in this jurisdiction with her children, where she is gainfully employed as a medical professional. In relation to s. 26(b), it is quite clear that the parties have a very strong connection indeed with Libya where they married and indeed where their marriage significantly was dissolved. Subsection (c) does not appear to apply to this case. In relation to subsections (d) and (e), this Court will take into account the sum of 48,750 Libyan Dinars paid to the applicant by the respondent prior to the Libyan proceedings as part of a dowry payment and the right of residence which the applicant was given in the family home in Libya.

99. With regard to subsection (f), on the husband's case, the applicant had a right to apply for financial relief from her husband under the law of Libya however her lack of autonomy which continued throughout the marriage prevented her from being able to keep herself in this regard. In relation to subsection (g), there is no available property in this jurisdiction in respect of which a relief order in favour of the applicant could be made. The respondent in this case has however offered to transfer to the applicant his entire legal and beneficial interest in the property in which she was given a life interest on terms in the Libyan arrangement.

100. Turning to s. 26(h), the respondent indicates that, given the financial situation in Libya that it would be very hard to obtain euros out of the sale of any property there or to realise its full value. This Court is appreciative of his consent to transfer the said property in accordance with his proposal and his wish would be that the said property would be sold by his wife to assist her buying a permanent property here. The view of the court is that the enforceability of such an order in terms of the realities of the situation on the ground in Libya could not be guaranteed although the court can enforce a consent in such circumstances. In relation to subsection (i), it is clear from the papers that the applicant has moved quickly to apply to this Court for relief post a foreign divorce and that not much time at all has elapsed since the date of the divorce.

Findings of Fact
101. This Court assesses the evidence of the applicant in the following manner; the applicant described a situation where at a very early stage in the marriage even the money she earned was taken from her by her husband and she was left with extremely little money at all material times. The respondent provided food stuffs for the family. He controlled this entirely and the applicant did not appear to have the capacity to remedy this, from very early on in the relationship between the parties. This Court considers the provision to be inadequate for the needs of the family which left her struggling throughout but of great relevance, struggling very significantly on her return to Ireland in 2015.

102. It is clear that there was an incident of violence which caused her to be taken to hospital and it is telling that at that time the respondent offered to pay for plastic surgery if a mark had been left as she suffered an injury to her face and eye area. While the respondent disputes the actual facts of this incident and he suggests that she fell and hit her head while they were having an argument, her case was that he had a bad temper and could fly into a rage and that she had gone at an early stage in the marriage to a women's group who give her advice as to how to avoid triggering this type of anger or rage. Indeed, during the course of these proceedings this Court actually had to hear evidence from the wife's solicitor Ms. Geraldine Shanley who described the situation following the making of a maintenance order in favour of this applicant. The order made was actually varied by the parties downward to the sum of €2,500 being maintenance for the children without prejudice to the main action.

103. The applicant described the burden of having five children over a short number of years and of facilitating the respondent's career in medicine particularly in 2006 when he travelled to Canada for a year to undertake a particular course, which later enabled him to achieve his present very lucrative position as a specialist in medicine. The respondent was unhappy that the children be moved every six months to facilitate the six month rotation which she as a junior doctor was faced with and the applicant found it impossible for herself therefore to pursue her career in medicine to the point where she would be sufficiently experienced to be able to apply for and obtain a consultant position in her chosen area of speciality in medicine. She felt obliged to return to Libya to try and gain that block of training or experience which would enable her to return and seek such a post. Having worked without payment initially in Ireland for some time she had done some work her but it was not giving her sufficient experience ever to progress to fulfil her own goal. She has now returned to this jurisdiction and says that she is hopeful of obtaining such a consultant position within the next five years. The Court accepts her evidence regarding the above matters and despite the claims to the contrary, the Court does not believe that she was able to make any significant monies in Libya at all. She did some work at an extremely low pay in a small clinic and she signed off any paper interest in any asset which her mother had before she left Libya. The Court does not believe that the contention that she had huge business interests or a clinic in Libya were made out on the evidence as no concrete evidence was produced to the court to sustain such a claim.

104. Indeed notwithstanding the issue of the divorce decree in Libya, the respondent actually went to the trouble of producing a document which he admitted that he obtained from the electricity supply company in Libya even though he was no longer a spouse of the applicant, which certainly had significant omissions and he agreed that it had such an omission and it attempted to portray that she was using her apartment as a workplace in Libya by attempting to show a higher usage of electricity than would be normal for a residential apartment.

105. It is the view of this Court that the applicant was very much under the dominant power of the respondent in this case. When he travelled to Libya to visit, while he said he filled freezers and bought food supplies, her evidence to this Court which I accept, was to the effect that he only give her between €150 and €160 a month as cash to run this family. This meant that the applicant found herself under continuous pressure in the form of financial pressure. While the respondent was willing to pay for education there was a dispute between the parties where the wife believed that he was not willing to pay for private education for the girls although he was very determined that his sons would receive such an education. With her having applied considerable pressure on the respondent in this regard the girls were admitted to the same school as the boys in Libya. It is the view of this Court that the respondent grossly exaggerated the cost of that private schooling but it is clear from the evidence that the parties had they both been living and working in Libya at that time would not have been able to fund such private education from their salaries in Libya which would have been much lower had they taken that path.

106. The Court finds that the applicant was the main care giver of the children and made significant sacrifices in terms of her career and lifestyle to ensure that their needs were met. This is of particular relevance when considering any orders to be granted and will have an effect on the conclusions of the Court with regard to s. 16(2)(f) and (g). There is no dispute between the parties but that both parties love all of their children dearly. Both parties are agreeable that there would be a joint custody order in relation to all of the dependent children with day to day care and control to the applicant and access from time to time as may be agreed between them with the respondent.

107. This Court is mindful of the case of *M.R. v. P.R.* [2005] 2 I.R. 618 where Quirke J. held in refusing to set aside the grant of leave to seek relief following a foreign divorce and in granting the relief sought by the applicant, that:-

> "an Irish court should not interfere with, supplement or adjust an order of divorce obtained in a foreign court save in exceptional circumstances, and only when satisfied that the outcome of those proceedings had been unfair or unjust and that no remedy was available to the applicant in that jurisdiction."

108. The applicant in these proceedings received no more than the second half of a dowry worth 48,750 Libyan Dinars. This Court appreciates that the matter was hard fought between the applicant and the respondent during the negotiations in respect of this matter and accepts that the applicant was not prepared to return the said monies even though she was dissatisfied. The respondent gave evidence that he would have been prepared to apply for a divorce in this jurisdiction or in Libya and that having entered into this agreement he then resiled from it. The applicant's evidence on this was that she was under considerable pressure and threats that her father felt under social pressure to accept and she felt that the respondent had been opportunistic in seeking to use the talaq divorce at a time when there was such civil unrest in Libya. The applicant felt that the respondent had taken advantage of her plight. On the respondent's case, the applicant could have applied for interim relief in Libya and while she does not specifically give a reason why she did not exercise that right her general position has been that she was hampered in seeking relief and was fearful of seeking relief given the political situation in Libya at that time. In this State there is no property in respect of which a relief order can be made in favour of the applicant.

109. The matter of contract between the parties and a consent order to that effect in relation to the respondent being directed in accordance with his consent to transfer the Libyan property specified into the applicant's sole name it is open to the applicant to enforce such rights if the respondent does not carry out his stated wish and agreement.

110. Less than one year has elapsed since the date of the divorce concerned and it has to be said that the applicant moved expeditiously to seek relief post a foreign divorce as soon as she possibly could in the view of this Court. It was held in the High Court by Quirke J. in *M.R. v. P.R.* [2005] 2 I.R. 618 that there had to be exceptional circumstances and only when satisfied that the outcome of the proceedings had been unfair or unjust and that no remedy was available to the applicant in that jurisdiction, can this Court then proceed to consider that issue. Quirke J. also held that the court should have regard to the circumstances at the date of the grant of the relief and not at the date of the divorce. He also held that the statutory relief was not intended to compensate the applicant for past financial or other hardship or inequity, but instead was intended to alleviate present hardship caused by a seemingly unjust outcome resulting from foreign divorce proceedings, where no comparable remedy was available in that jurisdiction.

111. Turning then to whether or not the applicant can come within the above legal framework it is quite clear that the applicant's present circumstances are causing her hardship given the great disparity between her income and the respondent's. Taking into account the fact that the respondent has to pay for the two older children who are costing quite a bit of money in full time education in England, notwithstanding that it seems to this Court that the outcome is unjust taking into account all of the factors where there does not seem to be a comparable remedy available in that jurisdiction.

112. Turning to the respondent's evidence; it is quite clear that this case was well under way for many, many months and the respondent had instructed a solicitor at all material times, when it emerged that a number of false affidavits of means had been sworn by the respondent. It was only in September, 2016 through the process of engaging with a forensic accountant that an affidavit of means was produced which showed a net income in the order of €5,000 higher than the three first affidavits had indicated in terms of net monthly income. This Court does not accept the respondent's explanation of this where he argued that the company he began in 2013, into which his income was paid, was the reason for his lack of alleged misunderstanding of the situation concerning his income. This Court takes the view that the respondent hid his income from this Court for a considerable period of time during the course of these proceedings. He was forced by the exercise carried out by his own very able forensic accountant to face up to the fact that he had not properly disclosed his income in these proceedings.

113. It is clear that the respondent was dishonest in relation to the issue of his ownership of a valuable asset in the form of an apartment in England which he purchased and then sold during the course of these proceedings, without reference to either his wife or to this Court. Net proceeds of sale in the order of £250,000 were secreted away by him through an Isle of Man company, to a Libyan or acquaintance of his in Canada, allegedly to repay this person a debt concerned with his building project in Libya. This action shows utter disregard for this Court and utter disregard and lack of respect towards the applicant. In the light of the fact that the first family home of the parties was sold with a net profit of €212,000 by the parties in 2007 and in the light of the fact that the applicant never received any tangible benefit from these monies it is clear that those monies were held on trust for her by the respondent when he applied those monies as seed capital to a series of investment projects in Libya. The respondent argues that he has made the vast majority of direct contributions to this family and the applicant was clearly the main care giver to the family at a significant cost to her own earning capacity.

114. At this stage given the reality of the situation it is necessary in terms of a just outcome to try to alleviate the present hardship caused by a seemingly unjust outcome resulting from the said foreign divorce proceedings where no comparable remedy appeared to be available in that jurisdiction post divorce. This coupled with the respondent's propensity to misrepresent and the purported translation of documents on more than one occasion puts his credibility seriously in issue. These documents include the record of

Libyan court proceedings and the applicant's electricity bill which the respondent subsequently admitted were incorrect. With regard to s. 16(2)(d) of the 1995 Act, the applicant is now 45 years old and the respondent is 46 years old and the parties have been married for twenty years although they have been separated since 2009 at least.

115. With regard to s. 16(2)(a) in terms of income, this Court considered the very expert report of Ms. McShane forensic accountant for the respondent and her calculation of the respondent's income is based on figures to the year ending January, 2016 rather than figures on a projected basis from figures in the management accounts up to August, 2016 as was Mr. Grant's calculation in his report on behalf of the applicant. This Court takes the view that it is highly probable that Mr. Grant's figures are fairly correct while showing great respect for the expertise always shown by Ms. McShane in these cases. This is carefully considered by the court on the basis of desirability of having an up to date figure even though normally this Court would prefer with actual accounts rather than management accounts in such circumstances. Given the propensity of the respondent to under-disclose and given the careful analysis of Mr. Grant on this occasion this Court takes the view that it prefers the evidence of Mr. Grant. This means that the net monthly income is deemed to be €13,720 as against €12,625 on Ms. McShane's estimate.

116. Without overtime this Court accepts the figure of approximately €3,500 per month as the actual income of the applicant including HSE income and children's allowance but accepts Ms. McShane's point that she would be able to claim a further €200 per month as a sole parent in line with Ms. McShane's advice to this Court on the matter.

117. For some reason best known to the respondent he has failed to put any value on the two properties in Libya while the applicant has put formal valuation of approximately €390,000 for the property in A. Street and €877,500 for the property in J. Street. The evidence of the valuations of the Libyan properties stands unchallenged but must be viewed with some caution given that the court accepts the respondent's evidence that it is particularly difficult to transfer money out of Libya and to exchange Libyan dinars for euro.

118. In order to alleviate the hardship suffered by the applicant this Court takes the view that there should be an immediate transfer of the said property by the respondent to the applicant and that the respondent ought ensure that he facilitate in every way said transfer within a period of one month from today's date.

119. Given that the applicant has sought maintenance for a limited period of five years or until she attains a position as a consultant obstetrician and gynaecologist, whichever is the earlier, this Court deems it appropriate that the respondent pay to her €1,700 per month for that period, said payment to commence on 1st of February and to continue on each day thereafter pending cessation two months after she attains a post as a consultant obstetrician and gynaecologist or at the end of a five year period from the date of this judgment whichever is the earlier.

120. This payment is to alleviate hardship in terms of the day to day running of her house which she at the moment has to rent and this Court takes into account that she has not had a motor vehicle for a considerable period of time and this is causing her continuing hardship. In respect of the children's maintenance this Court deems it appropriate that the sum of €2,100 per month be paid by the respondent to the applicant for maintenance for the three children who live with her to be in equal shares to commence on 1st March, 2017 by payment into her bank account (details to be handed in) and to continue monthly thereafter during the minority of each of the three children so long as they continue in full time education and/or training. In addition the respondent shall pay for private health care for the three children and furnish also documents to the applicant and shall set this in place within one month of today's date (details to be handed in to this Court). In addition the respondent shall pay for all school and college fees for the three children as required.

121. This Court deems it appropriate that a small lump sum be paid to the respondent to the applicant again to alleviate hardship and to assist her in getting proper, secure and settled accommodation suitable for the needs of the family given that she has indicated that in her evidence that the present property occupied by them is very small. The said sum of €75,000 to be paid within six months of today's date. The respondent has claimed that he has an inability to pay the aforesaid sums but this Court notes that it is possible for him to suspend his very large pension contribution for a few years and then he can greatly increase same when the children are perhaps not quite so dependent and the applicant has obtained the post she requires.

122. The respondent's credibility has been affected by the fact that he produced several affidavits of means that did not show the full picture in terms of his income. He claims that this is due to a misunderstanding around what he needed to declare. His credibility was also affected by the issues of translation around two documents; the record of the Libyan Court proceedings and the applicant's electricity bill which he subsequently admitted were incorrect. It has been alleged that the applicant has or had properties and a business in Libya. While this has not been proven, there is evidence that she had a share in her mother's company and at least the use of an apartment purchased by her mother which the applicant has since relinquished.

Pensions

123. On examination of the complete solutions bond for personal pensions plan number 12215602 with a start date of 22nd July, 2010 and a maturity date of 13th August, 2030. Since 2010, the respondent's contribution to the Irish Life fund has been in the region of €87,000 and it now has a current value of €173,562.45 and a transfer value somewhat less in the sum of €172,873.30.

124. In rounded figures therefore the respondent has been in a position in the last six years to pay approximately €23,000 per year into this fund. It is a non-assigned fund.

125. The second plan type complete solutions personal plan number 12237854 with a start date of 29th October, 2013 and a maturity date of 13th August, 2035 with total premiums paid in the sum of €57,500 and a yearly payment being €28,750 with a current value of €71,059.56 and a transfer value of €68,927.77. This is not an assigned plan.

126. The third plan type complete solutions company one plan 12311546 with a start date of 30th January, 2015 and a maturity date of 13th August, 2035 with the total premiums paid in the sum of €88,500 and a monthly payment of €2,625 paid to date and it has a current value of €98,611.52 and a transfer value of €93,680.93. This is not an assigned plan. The monthly payments being made on this policy over the last two years have been €2,625 a month.

127. The single public pension service scheme annual statement year ending 31st December, 2016 shows a pension referable amount of €707.72 and a lump sum referral amount of €2,415.80.

128. The applicant has joined the single public service pension scheme on 11th September, 2015 and the date of valuation of her interest in this scheme is 7th December, 2016. She is described as having current pensionable remuneration of €60,375 and 100% work pattern and the period of contributions as of the date of valuation is 48. And her lump sum is described as amounting to 3.7% of

all pensionable remuneration and an annual pension is described at 0.58% of all pensionable remuneration up to 74 times the state pension contribution (SPC) plus 1.25% of the pensionable remuneration greater than 1.74 times the SPC and the pension retirement is described as the sum of the person's pensionable referable amounts increased by consumer price index during the members career.

Final Conclusions

129. The applicant currently has a right of residency in the A. Street property as granted in the agreement that was ruled upon by the Libyan Court. The respondent has stated that he is agreeable to transferring that property into the applicant's name and hopes that she would use the proceeds to purchase a property in Ireland for the use of herself and the three younger children. This Court reflects this consent and receives same and makes same a rule of court. This Court receives his consent to facilitate the applicant in selling that property should she choose to do so. The reason for this is down to the direct and indirect contributions made to the family home as traced back to the property at L. in Ireland and to alleviate her hardship and inequality and to avoid substantial injustice to her.

130. The court has had the benefit of seeing the private pension of the respondent with an amount in it of €322,970. This Court having taken into account the fact that the applicant has received 48,750 Libyan Dinars by way of a second part of a dowry that she should receive a transfer of Personal Pension Plan number 12215602 at a transfer value of €172,872.30 from the said pension fund so that she can transfer same into a pension, given her age and the fact that she has just recently begun a pension herself. There should be nil / minimal pension adjustment orders made in respect of the pension benefits other than the aforesaid one stated which each party has with the HSE. The respondent has paid €100,000 into private pensions in the last two years and can suspend such payments in the short term.

131. With regard to maintenance, the respondent is currently paying the applicant €2,500 per month in maintenance for herself and the three children in her care on an interim agreed basis. This Court is of the view that the respondent should pay €1,700 per month to the applicant for her own maintenance for a period of the next five years or until the applicant obtains a consultancy post, whichever occurs first. This Court further orders that the respondent pay the applicant €2,100 per month for the maintenance of the three children which amounts to €700 per child. These figures are based upon the significant difference in income between the parties and the fact that the applicant's earning capacity has been limited or at least delayed by her focus upon the rearing of the children.

132. This Court further orders that a lump sum be paid by the respondent to the applicant of €75,000 within eight months. The reason for this includes the fact that the respondent has had several properties during the marriage including the apartment in London and the A. Road property in Libya that had a high value and considerable monies were spent without any consultation with the applicant.

133. The above terms are designed to alleviate the clear inequality and hardship endured by the applicant since she returned to Ireland. A huge disparity is evident between the provision the respondent makes for the two older sons and his provision for the applicant and their three other children. This Court considers that the above, if implemented, will go to redress the poor circumstances which the applicant finds herself in as a result of the divorce in Libya.