This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court

Neutral citation number: [2022] EWFC 114

No.BV20D17396

IN THE FAMILY COURT SITTING AT THE ROYAL COURTS OF JUSTICE

B E T W E E N :

XO Applicant

- and -

YO First Respondent

- and -

AA LIMITED Second Respondents

Mr Justin Warshaw KC and Mr Joshua Viney (instructed by Farrer & Co LLP) appeared on behalf of the Applicant Wife.

Neither the First Respondent Husband nor the Second Respondents appeared or were represented.

WRITTEN JUDGMENT OF HIS HONOUR JUDGE EDWARD HESS SITTING AS A DEPUTY HIGH COURT JUDGE HANDED DOWN TO THE PARTIES ON 22nd SEPTEMBER 2022

Introduction

1. This case concerns the financial remedies proceedings arising from the divorce proceedings between XO (to whom I shall refer in this judgment as "the wife") and YO (to whom I shall refer in this judgment as "the husband"). AA Limited (to whom I shall refer in this judgment as "AA Limited") have been joined as the Second Respondents in circumstances which I shall describe further below.

2. This final hearing in the financial remedies proceedings came before me over three days on 20th, 21st and 22nd September 2022.

3. The wife attended the hearing and appeared before me by Counsel, Mr Justin Warshaw KC and Mr Joshua Viney (instructed by Farrer & Co LLP).

4. The husband did not appear before me, nor was he represented at this hearing, although he did appear and was represented in earlier parts of these proceedings and he was well aware of the hearing proceeding in his absence. I shall discuss below in detail his lack of engagement with these proceedings, and also his lack of compliance with previous court orders, and I shall consider what flows from his failures in this regard.

5. AA Limited were, on 9th August 2022, on the wife's application, joined by me to these proceedings as Second Respondents. On 23rd August 2022 they made certain applications, including an application for dis-joinder, via their Solicitors Taylor Rose MW. On 5th September 2022 I heard representations from Counsel (Mr Dominic Cooper) on their behalf at an urgently convened hearing of their applications; but I declined their application for dis-joinder. Since then (and notwithstanding my directions to engage them with the current hearing) they have taken no further steps, they have ceased instructing their Solicitors and disengaged from the proceedings. They neither appeared nor were represented at this hearing, although were well aware of its proceeding in their absence.

6. I shall first set out in a little detail a history of the events which have led up to this hearing.

The marriage

7. The husband was born in Nigeria on 5th April 1962 and is, therefore, now aged 60. His father was ZO, a successful businessman in Nigeria. His own father, AO, had much earlier invented and successfully marketed a medicine which is to this day very popular in Nigeria for those feeling unwell, and had built a family business around it, which in due course came to be owned by ZO. The husband's step-mother was BO (who also features in this story). As a result of this family business, the husband was born to a family of some wealth and was brought up against this background. His parents owned real properties in England and the USA as well as business and property interests in Nigeria. He was educated in England, at least for part of his education, at a private school and then Cambridge University. Having completed his English education, the husband returned to Nigeria and worked in the family business and, in due course, as we shall see, acquired ownership of the family business from his parents. He continues to

live in Nigeria. He had a first marriage in Nigeria which ended in Divorce and there is one (now adult) child from that marriage.

8. The wife was born also in Nigeria. Her date of birth is 28th September 1973 and she is, therefore, now aged 48, very nearly 49. She describes her upbringing as comfortable rather than wealthy, but she accepts that, as she entered adulthood and as she entered the marriage, she had little wealth and what wealth she has, has come from financial activities during the marriage. She was, however, university educated in Nigeria and (before and after meeting the husband) had remunerative employment, working for an airline and for an international body in Nigeria. On her case she has also played a significant part in the development of the family business in Nigeria during the marriage; but she was also a home-maker and the primary carer for her children and in recent years she has been attracted by life in England with them and has been living in England since 2018 and hopes and expects to remain (and it is unlikely that there are any substantial impediments to this from an immigration law perspective).

9. The husband and wife met in the year 2000 and married (for the husband a second marriage) on 27th March 2002. They married in Lagos, Nigeria and, for many years, that is where they largely lived, although they did engage in a good deal of international travel. My impression is that the marriage was a happy and loving one, for a period at least, but sadly appears to have deteriorated over the subsequent years.

10. There were two children of the marriage:-

    (i) CO, who was born in 2004, and is now aged 18. She attended a school in England and she has just commenced a university course in England.

    (ii) DO, who was born in 2006, and is now aged 15. He attends a boarding school in England.

    (iii) Sadly, relations between the husband and both the children are at a low ebb, though it may be that the stresses of this litigation have not helped that situation. From what I have read, the children have not seen their father since 2018, a significant period of time.

11. By at least 2018, the marriage was plainly in very real difficulty. There was an incident on 6th March 2018 which was, on any view, a bad-tempered one and an unpleasant one. I do not think it is appropriate for me, in the context of this application and this hearing, to make any particular findings about what happened; but whatever happened certainly triggered the separation and really from shortly after that moment the marriage had ended and the parties went their separate ways. They have not lived together since then and have spent very little time together since that day.

12. Shortly after that, in April 2018, the wife moved to England. That did not come out of the blue because both the parties had always spent a great deal of their time travelling around the world, often the USA, but more particularly in England. They had access to pleasant homes in Nigeria, USA and England, so they were able to do that. From April 2018 the wife has spent almost the whole of her time in England and there has been little contact between her and the husband. The last time that they were together at all was, I believe, in February 2019.

The Divorce

13. Notwithstanding the breakdown of the marriage in March 2018, and the fact that the wife was spending almost all of her time thereafter in England, the divorce proceedings did not get underway for quite some time.

14. The first step was the issue of divorce proceedings by the wife in England on 13th October 2020. In early 2021 the husband challenged this divorce application by issuing a jurisdiction and *forum conveniens* challenge, opposing any involvement of the courts of England and Wales, and he issued his own divorce proceedings in Nigeria. The husband's applications went through various interim/directions hearings, at some of which *inter partes* costs orders were made against him; but for the most part the husband and his legal team were properly engaged in these proceedings and filed a number of statements and other documents.

15. These applications came before me and, after hearing evidence and submissions, I delivered a judgment on 5th November 2021 in which I rejected the husband's jurisdiction and *forum conveniens* challenge and ruled that the divorce and financial remedies proceedings should continue in England and Wales (a full transcript of my judgment on 5th November 2021 is available in which I explain my reasons for this decision). The husband did not appeal this decision, indeed I was told that he had accepted it, and he began to engage in the linked financial remedies proceedings.

16. A pronouncement of Decree Nisi quickly followed in the English proceedings on 8th November 2021 and a Decree Absolute was ordered on 14th January 2022, thus ending the marriage.

The financial remedies proceedings

17. On 30th November 2020 the wife issued a Form A, seeking financial remedies within the English Divorce. In its early stages the husband engaged with these proceedings and instructed Solicitors (Setfords, Solicitors) and Counsel (Ms Suzanne Syme).

18. On 26th February 2021 a direction was made (notwithstanding the ongoing jurisdiction dispute) for the exchange of Forms E and this direction was (to an extent anyway) complied with – the husband producing a Form E on 9th April 2021 and the wife on 12th April 2021.

19. Since the jurisdiction hearing in November 2021 I have been the allocated judge for these financial remedies proceedings. This was initially as a Circuit Judge in the Central Family Court. On 25th March 2022 (with the approval of Mr Justice Peel) I re-allocated the case to be dealt with at High Court level and Mr Justice Peel allocated me to deal with it as a Deputy High Court Judge. I have accordingly dealt with directions and interim hearings on 6th December 2021, 25th March 2022, 19th July 2022 and 5th September 2022.

20. At the hearing on 6th December 2021 (at which the husband was fully represented by Solicitors and Counsel and in relation to which the husband had filed a full statement dated 2nd December 2021 in response to the wife's statement dated 15th November 2021) I delivered a judgment (a full transcript of my judgment on 6th December 2021 is available) and accordingly made various directions and orders, including the following:-

    (i) I made a legal services payment order (LSPO) against the husband in the sum of £60,000.

    (ii) I made a maintenance pending suit (MPS) order against the husband in the sum of £15,000 per month.

    (iii) I made a school fees order requiring the husband to pay the children's school fees (past and ongoing).

    (iv) I timetabled the case on the basis that there would be a private FDR in June/July 2022.

    (v) I directed the answering of questionnaires (as amended by me).

    (vi) I made some valuation directions, anticipating a two stage process, the intention of which was to limit costs expenditure.

(vii) I listed the case for a further directions hearing on 25th March 2022 (in which it was proposed to review the progress of the initial directions, in particular the valuation directions).

(viii) I made an *inter partes* costs order reflecting the positions taken on the LSPO and MPS issues.

(ix) I made an order for updating disclosure in the standard form.

21. Shortly after this order was made the husband disengaged from the financial remedies proceedings. His Solicitors went off the record and nobody replaced them. He gave no further disclosure. He did not answer the questionnaire. He did not cooperate with the valuation directions. He did not cooperate with the arrangement of a private FDR. He made none of the payments required by my order or the earlier costs orders against him.

22. The husband surfaced briefly, just before the hearing on 25th March 2022, to ask (in writing, and as a litigant-in-person) for an adjournment of that hearing; but he did not appear at the hearing to argue for its adjournment and I was not at all satisfied that there were good reasons to grant the adjournment. At that hearing, however, I made timetabling directions which gave the husband the opportunity to re-engage. If he did re-engage then the case would proceed to a private FDR in June/July 2022, after which a further directions hearing would be listed. If he did not re-engage then the case would be dealt with at a three day final hearing in September 2022. There was, at this stage, hope that he might re-engage; but an anticipation that he would not. In addition, I made a further LSPO order against the husband in the sum of £120,000.

23. I need to say something at this stage about a property in Miami (to which I shall refer in this judgment as "the Miami property"):-

(i) It is common ground that the Miami property was, during the marriage, used as a luxury holiday property by the husband and the wife and that its legal title is currently held, and since 2013 has been held, in the joint names of the husband and the wife. The financial remedies proceedings had initially moved forward, apparently uncontroversially, on the basis that the Miami property was owned beneficially, as well as legally, by the husband and wife. The husband had expressly supported this proposition in writing a number of times, including in his Form E.

(ii) On 6th December 2021 the husband gave the court an undertaking that he would continue to pay all the outgoings, including the mortgage and utility bills, on the Miami property. Alongside all his other non-compliance with the court orders, he failed to honour this undertaking and the wife has had to meet these obligations. On 25th March 2022 I converted the undertaking into an order, adding the obligations to the existing MPS order.

(iii) On 25th March 2022, in the light of the husband's non-compliance with the earlier LSPO order, and in anticipation of the likelihood that the husband would probably not comply with the new LSPO order either, I made a conditional order for sale of the Miami property pursuant to Matrimonial Causes Act 1973, Section 24A(1) with the intention, inter alia, of ensuring the husband's LSPO obligations could be honoured via the sale proceeds.

(iv) On 24th May 2022 (or possibly 12th or 13th May 2022 – the documentation is ambiguous and probably nothing turns on it) AA Limited issued a 'complaint' or 'action' in Florida (more precisely in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida) in which they sought to assert themselves as 100% beneficial owners of the Miami property and asked for the legal title to be transferred to them. The 'verified complaint' document takes the form of what in England would be called a pleading or statement of case, so it is possible by reading this document to see how the case is put in legal terms. It may be that one of the legal consequences of this issue is that, the claim over the property having gained the status of *lis pendens*, my order for sale of the Miami property could not, at least for the time being, be enforced. As far as I am aware, the complaint by AA Limited in Florida has not yet proceeded further than its issue.

(v) I shall deal in more detail below with AA Limited and their claim; but note at this stage that AA Limited is a corporate entity in Nigeria which is almost entirely owned by the husband and, I have no doubt at all, is controlled by him. The wife was herself removed as a director on 23rd May 2022.

(vi) The Solicitors representing the wife in due course became aware of this action and on 19th July 2022 issued an application in England for the joinder of AA Limited to the financial remedies proceedings and for directions for the issues over the beneficial interests in the Miami property to be determined within the financial remedies proceedings in England. The application was supported by a statement from Mr John Davies, a Solicitor at Farrer, dated 18th July 2022, and a draft order. The wife's application (and supporting statement and draft order) was forthwith served on the husband and on AA Limited. On 9th August 2022, on a without notice basis, I approved the draft order (my order bears the date of 19th July 2022, the date of its presentation, but the date of approval was the date on the stamp, which is 9th August 2022). I gave liberty to AA Limited to apply to discharge my order.

(vii) On 23rd August 2022 AA Limited duly made an application to discharge my order of 9th August 2022. The application was accompanied by a statement from Mr Paul Onifade, a Solicitor of Taylor Rose MW LLP Solicitors in England. I heard their application on 5th September 2022 at a hearing at which they were represented by Counsel, Mr Dominic Cooper. I rejected their attempt to discharge my order of 9th August 2022 and made further directions to enable me to determine the Miami property issues within the final hearing of the financial remedies application. I gave full reasons for this decision in an *ex tempore* judgment on 5th September 2022. As far as I am aware there is not yet any

transcript of this judgment in existence, but my decision of 5th September 2022 has not been appealed. AA Limited have subsequently disengaged from the proceedings, taken no steps to comply with my directions, and Taylor Rose MW LLP have gone off the record. AA Limited have not appeared or been represented before me in the current hearing.

(viii) I propose to determine the Miami property issues within this judgment, of which more detail below.

24. In contrast to the husband's non-engagement, the wife has filed answers to the husband's questionnaire dated 22nd April 2022 and a full narrative Section 25 statement dated 2nd September 2022.

25. The final hearing of the financial remedies proceedings has accordingly taken place over three days on 20th, 21st and 22nd September 2022 (the hearing was put back by one day as a consequence of the bank holiday on 19th September 2022 resulting from the funeral of HM the late Queen). Because of the non-engagement and non-appearance of the husband and AA Limited, and the limited amount of oral evidence resulting from that, there has been time within the three day time estimate for me to write this judgment, which I will be handing down on the afternoon of the third day of the hearing.

26. The hearing has been an attended final hearing in the Royal Courts of Justice. I have been presented with a core bundle running to 896 pages, a supplemental bundle (mainly the statements in the jurisdiction proceedings) running to 106 pages, an authorities bundle and various other documents, including a letter from Mr Manuel Farach dated 15th September 2022.

27. I want also to record that, notwithstanding his general non-engagement and non-appearance at the hearing, on the first day of the hearing on 20th September 2022 the husband sent me a number of emails in which he made various assertions about certain matters arising in the case. I have decided to treat these emails as being admissible and I have read them and noted their contents. I am bound to say, however, that in deciding what weight to attach to these documents I need to bear in mind the substantial absence of normal cooperation and engagement from the husband, his failure to answer the questions put to him in the questionnaire and his failure to attend the court to be cross-examined or to cross-examine the wife.

28. I made the decision to proceed with the final hearing, notwithstanding the absence of both the husband and AA Limited. I made this decision because both of them have been well aware of the final hearing, have had ample opportunity to prepare for and be represented at the hearing and, in both cases, have made a positive and deliberate

decision not to attend or be represented and not to engage in proceedings or comply with directions orders. No reason, certainly no adequate reason, has been advanced as to why they have both decided to conduct themselves in this way. The overriding objective in FPR 2010 Rule 1 requires me to deal with cases expeditiously and fairly and in a way which saves expense for the parties and which takes into account the need to allot a fair share of court resources both to the present case and to other cases. It would in my view be unfair to the wife, and would certainly increase her costs significantly, for me not to proceed to determine the case in the three days allotted to this case. It would certainly introduce more delay and be less expeditious for me to adjourn. In so far as proceeding in the absence of the husband causes him any unfairness, this is entirely of his own making. An adjournment would waste precious court resources and potentially affect future listings of other cases if this case had to be relisted. None of this absolves me from making a proper judicial determination of the outcome on the facts as I find them. It is my duty and task to scrutinise the facts and arguments put forward on behalf of the wife and this I propose to do; but it would be quite wrong for me not to proceed with the hearing.

General law on financial remedies applications

29. In dealing with the financial remedies applications, I must, of course, consider the factors set out in Matrimonial Causes Act 1973, Sections 25 and Section 25A, together with any relevant case law.

30. Matrimonial Causes Act 1973, Section 25, reads as follows:-

> *(1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A or 24B above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.*
>
> *(2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24, 24A or 24B above in relation to a party to the marriage, the court shall in particular have regard to the following matters:-*
>
> > *(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;*
> > *(b) the financial needs, obligations and responsibilities which each*

of the parties to the marriage has or is likely to have in the foreseeable future;
(c) the standard of living enjoyed by the family before the breakdown of the marriage;
(d) the age of each party to the marriage and the duration of the marriage;
(e) any physical or mental disability of either of the parties to the marriage;
(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

31. Matrimonial Causes Act 1973, Section 25A, reads as follows:-

(1) Where on or after the grant of a decree of divorce or nullity of marriage the court decides to exercise its powers under section 23(1)(a), (b) or (c), 24 or 24A or 24B above in favour of a party to the marriage, it shall be the duty of the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the grant of the decree as the court considers just and reasonable.

(2) Where the court decides in such a case to make a periodical payments or secured periodical payments order in favour of a party to the marriage, the court shall in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party.

Application of the general law to the facts of this case

32. Accordingly, I bear in mind that I must give **first consideration to the welfare while a minor of any child of the family who has not attained the age of eighteen**. In this case, one of the children of the family, DO, is under 18. His welfare is therefore to be factored in as a 'first consideration'. The needs and welfare of CO, although she is no longer a minor, remain a circumstance of the case. Any order I make needs to ensure that both children are reasonably suitably housed, educated, fed and generally looked after until they respectively cease their tertiary education.

33. In relation to the "**property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future**" a large number of issues arise and I shall now endeavour to make findings, albeit in the context of the limited disclosure and valuation exercise which has taken place in this case.

34. I start with the property in **South East England**. This is the wife's current home in England and was used by the family as a base when they visited England for some years before that. The property was formerly owned by ZO, the husband's father, and BO, the husband's step-mother. On the death of ZO in June 2005, his interest passed to BO and she became the sole owner. On her death on 26th May 2008 the property effectively passed to the husband as the sole beneficiary of BO's Will. Documents produced for this case show that the changes in ownership have not yet been executed at HM Land Registry, but it has not been in dispute in this case that the husband could call for the transfer of the legal and beneficial title to himself as sole beneficiary if he so wished and, accordingly, it is appropriate for me to proceed on the basis that the husband is, in effect, the sole legal and beneficial owner of this property. The property was valued (by Purple Bricks) at £2,000,000, a figure which was not controversial at the stage when the husband was engaged in the proceedings and there is no reason for me to take any different view now. It is unencumbered by borrowings. For my purposes I shall proceed on the basis that the net value of this property is £2,000,000 less sale costs at 3%, i.e. £1,940,000. It seems likely that there will be some Capital Gains Tax (and/or query Inheritance Tax) to pay on any formal disposal of this property; but the husband has not at any time sought to calculate or otherwise put forward a figure and, for the purposes of this judgment I can do no more than note the likelihood of some unidentified liability.

35. I have been invited to include in an asset schedule the real property currently occupied by the husband as a home in **Lagos, Nigeria**. The only figure I have for the value of this property is the wife's assessment that it is worth N600,000,000. The husband has not cooperated with the valuation directions and has produced no other figure. For this purpose, and for all other conversions of Nigerian currency (Naira or N), I shall use the conversion rate of N1 = £0.002 or N1,000,000 = £2,000. Accordingly, assuming the above value, this property is worth £1,200,000. Whilst noting that this is the husband's

home, I do not think it is appropriate to include this on the asset schedule as the husband's asset because it is not owned directly by him, rather it is in fact owned by a company, BB Limited, albeit that this company is owned as to 75% by AA Limited and another 24% by the husband himself. I shall in due course be making an assessment of the value of the husband's corporate interests and I do not think it would be appropriate for me to double count this asset as if it was his personal asset, albeit that it is his home and he is, for all practical purposes, the controller of what happens to the property.

36. I now turn to **the Miami property** and wish to make the following comments and findings:-

(i) It is common ground that the Miami property is an attractive and luxurious holiday property. It is spacious and is set on a waterfront with a swimming pool. The family have used it for some years for holidays.

(ii) As far as its current value is concerned, the evidence is not very satisfactory as the valuation directions were never executed, largely because of the husband's disengagement. The wife's Form E suggested a figure of $3,105,695. The husband's Form E suggested a figure of £3,774,498 (at the then exchange rate of £1 = $1.21 this would have been $4,567,143). The wife's narrative statement records that she has recently been told by an estate agent in Miami that the value is more like $9,000,000. I queried whether this figure was likely to be correct, given the much smaller estimates by both sides in the Forms E. Mr Warshaw, I think appropriately, suggested that I should accept the later figure because (however vague it is) it is the 'best evidence' available and that it was probably against the wife's interests for the value to be over-estimated rather than the reverse. For these reasons I shall adopt the figure of $9,000,000 or £7,964,602 (at the current exchange rate of £1 = $1.13).

(iii) The property is incumbered by a secured mortgage with an outstanding balance of £292,773 and it is, very broadly, suggested (and I accept) that I should deduct c.£1,750,000 for current purposes by reference to potential tax and costs of sale liabilities arising from a disposal. I shall therefore assess the net equity in the Miami property at £5,921,829. In making this assessment I recognise that it is the broadest of assessments and is not backed up by very much evidence, but it is the best I can do in the circumstances.

(iv) Until the events which I have described above, and the intervention of AA Limited, it appeared to be common ground that I would be dealing with the Miami property on the basis (in English legal terms) that it is currently held by the husband and wife as joint legal owners on trust for themselves as joint beneficial owners. It was anticipated that the wife would seek a property adjustment order in her favour of the Miami property and (whilst the matter was contested on the facts) there did not appear to be any jurisdictional hurdle to such a course. The information obtained by the wife's legal team was that such a property adjustment order, if made, would be likely to be enforced by the courts in Florida (certainly no evidence to the contrary was produced) and the case seemed to fall

within the established case law permitting such a course: see *Hamlin v Hamlin* [1986] 1 FLR 61.

(v) There then followed the intervention in May 2022 of AA Limited and the steps which I have described above which occurred between May and September 2022. In essence AA Limited seek to argue that, notwithstanding that the legal interest in the Miami property is held by the husband and the wife, AA Limited are the 100% beneficial owners of the property and ask for the legal title to be transferred to them.

(vi) Although AA Limited are no longer engaged in the case, and the husband has not, as far as I am aware, expressed a view on AA Limited's intervention, I need to deal with the issues raised by AA Limited's intervention and for this purpose I have considered the skeleton argument prepared by Mr Warshaw and Mr Viney for this hearing and also reminded myself of the points made by Mr Cooper in his skeleton presented on 5th September 2022. I have also carefully read the opinions expressed by Mr Manuel Farach, a lawyer based in Miami, in his report dated 15th September 2022. In reading this I have reminded myself that he is instructed by the wife and is not an independent SJE, but it does not follow from this that I should not attach appropriate weight to it if I consider that it is fair so to do. In the circumstances of this case, where AA Limited disengaged and were therefore not cooperative with the investigation of Florida law in this respect, I take the view that it is fair and appropriate for me to admit this document and attach such weight to it as I consider fit.

(vii) I have reached the conclusion that the court in England has the jurisdiction to determine a claim in respect of immovable property situated outside of England where the claim is based on equity: see Dicey, Morris & Collins on *The Conflict of Laws (15th edition) at paragraph* 23R-022, *Companhia De Mocambique v British South Africa Co.* [1893] AC 602, HL and *Razelos v Razelos (No 2)* [1970] 1 WLR 392 and I am satisfied that this is, in reality, what I am being asked to do here.

(viii) I have been addressed on the issue of whether, in making such a determination, I should apply English or Florida law. I have considered the Hague Convention on the Law Applicable to Trusts and on their Recognition 1985, Articles 4 and 7, which was imported into domestic English legislation through the Recognition of Trusts Act 1985, Schedule 1. Although, on the facts of this case, there is possibly some difference in this context between assessing whether a trust arises at all and determining what are the beneficial interests under the trust, I have in the end concluded that this issue is properly decided under Article 7, which reads: "*Where no applicable law has been chosen, a trust shall be governed by the law with which it is most closely connected. In ascertaining the law with which a trust is most closely connected reference shall be made in particular to: (a) the place of administration of the trust designated by the settlor; (b) the situs of the assets of the trust; (c) the place of residence or business of the trustee; and (d) the objects of the trust and the places where they are to be fulfilled*." In my view this conclusion takes us firmly towards a decision that I should apply Florida law. The most significant 'connection' feature here is the location of the property and I am persuaded that the principle of *lex situs* should be given precedence here within an analysis of Article 7.

This is certainly consistent with a number of authorities on the point: see *Americhip Inc v Dean* [2015] NZHC 700, *Martin v Secretary of State for Work and Pensions* [2009] EWCA Civ 1289 and *Webb v Webb* [1991] 1 WLR 1410.

(ix) In case I am wrong about this I shall also consider what the result would be under English law, the *lex fori*. As shall be seen below, I am satisfied that the result would be the same under English or Florida law.

(x) The background to the legal ownership of the Miami property is that it was built in the year 2000 and was originally owned by ZO and BO. In 2005 ZO died and BO became the sole owner of the Miami Property. After her death in 2008 the Miami Property was, under her Will, to devolve to her sole heir, the husband. Although we are missing some of the documentation it appears from the papers we do have (mainly the probate file arising out of BO's death) that the Miami property was, in late 2008, conveyed into the sole legal name of the husband and later, by January 2013 (the Quit-Claim Deed dated 9th January 2013 confirms this, but it could have taken place earlier) it was further conveyed into the joint legal names of the husband and the wife.

(xi) In essence, AA Limited's claim in relation to the Miami property is that "*having paid for its acquisition, its maintenance, taxes, insurance and substantially all mortgage payments since its purchase through 2021*" against the background of a promise by ZO and BO that the property would be owned by AA Limited but held in their legal ownership, thus creating "*a confidential relationship which has been abused…which would result in the (husband and wife's) unjust enrichment at (AA Limited's) expense...and that…under the circumstances, it would be grossly inequitable for the for the (husband and wife) to retain title to the property without appropriately compensating (AA Limited).*"

(xii) Before turning to the question of whether AA Limited should succeed in that argument it is worth recording a number of relevant facts which I find, on a balance of probabilities, are established in the papers.

(xiii) AA Limited is almost wholly owned and controlled by the husband. He owns all but one of the 20,000,000 shares in the company (or possibly all but one of the 16,000,000 issued shares in the company, according to a different document) and said in his statements of 13th April 2021 and 19th July 2021: "*I am Managing Director of AA Limited, a group of companies. AA Limited is a sophisticated company with many in-house functions, all the work done by locals, trained and developed by myself. I am hands on in management and on the shop floor often working in excess of 12 to 15 hours a day including weekends… I run AA Limited in its entirety from the operations stage to the administrative stage*". Although it is correct to observe that the husband and AA Limited are two separate legal entities, and any order or decision I make must respect that fact and not inadvertently pierce the corporate veil, it is also appropriate to observe that the husband is overwhelmingly likely to be the person making any decision as to what AA Limited might do at any time, including to have made the claim in Florida in May 2022. This fact would indeed have been true in 2008, in 2013 and in 2022.

(xiv) Whilst it is perfectly possible that AA Limited did advance some or even most of the money used to acquire and upkeep the Miami property, no evidence has been put forward by AA Limited as to how these payments were treated in their accounts and the ceasing of the mortgage payments coincided with the husband's disengagement from the legal process. No assistance on this point can be derived from the one set of AA Limited accounts which we do have.

(xv) It is clear from the documentation that at no point during the probate process did AA Limited assert an interest in the Miami Property or make any claim against the estate of BO or in any way seek to alert anybody to any interest they might have. The probate documentation shows the decision to transfer the Miami property to the husband as "*the sole heir of the estate"* and notes that no creditors of the estate came forward within the statutory three month period.

(xvi) At no point have AA Limited put forward any evidence of how and in what circumstances and in what terms any relevant promise might have been made by ZO or BO, nor is any reason advanced as to why the legal interests would need to be held differently from the beneficial interests.

(xvii) During the course of these proceedings, both the husband and the wife have consistently asserted joint legal title and joint beneficial ownership. Most relevant in this context are the husband's assertions. His Form E dated 9th April 2021 records his beneficial interest as 50% of the whole. Further, in his statement dated 18th May 2021, he deposed: "*XO and I jointly own the Miami property. I would add, I voluntarily transferred percent interest as further proof of my commitment to her. Originally I was the sole owner arising from my Probate from my later step mother." Further, in his statement* dated 19th July 2021, he deposed to the following in respect of the Miami Property: *XO and I jointly own a holiday home, the Miami property. I inherited the property from my late parents and in 2013, I transferred 50% of my interest to XO*". At no stage within these proceedings has the husband said anything which supports the position of AA Limited.

(xviii) Against these facts, how should a court apply the Florida law? In this regard I do find myself assisted by the detailed opinion of Mr Farach dated 15th September 2022. On the face of it, the claim made by AA Limited falls into four heads being: (a) Quiet Title; (b) Partition; (c) Constructive Trust; and (d) Declaratory Relief. In reality, all the claims apart from constructive trust are either derivative of that or misconceived or both and, in my view, the claim is in substance one of constructive trust and stands or falls on that assertion. Mr Farach has sought to summarise how a court in Florida would deal with a constructive trust application:-

"A constructive trust under Florida law is not an express trust, but a trust imposed by a Florida court using its equitable powers. Constructive trusts are not governed by the Florida Trust Code and instead are imposed on a case-by-case basis by a trial judge using his or her equitable powers. Constructive trusts are sometimes called involuntary

trusts (or trusts ex maleficio), and are imposed to achieve a fair and equitable result. If the court finds that the person holding the property is, in fact, holding title as trustee for the benefit of those equitably entitled to the property, then a constructive trust will be declared. Constructive trusts are creatures of equity and are traditionally within the chancery jurisdiction of the court. The principle underlying constructive trusts is the avoidance of a result that allows a party to be unjustly enriched through abuse of confidence, duress, or fraud, whether the fraud is actual or constructive. Such trusts will arise where there is actual fraud, constructive fraud, or the application of some equitable principle not involving fraud. Florida case decisions on constructive trusts are not clear in that some decisions speak of a fraud requirement while others state it is not required. Constructive trusts have two objectives: to restore property to the rightful owner and to prevent unjust enrichment…There is no definition under Florida law as to what constitutes a "confidential relationship," but the concept is similar to a fiduciary relationship. The seminal Florida Supreme Court case of Quinn v. Phipps described a fiduciary relationship as follows: "The relation and duties involved need not be legal; they may be moral, social, domestic or personal. If a relation of trust and confidence exists between the parties (that is to say, where confidence is reposed by one party and trust accepted by the other, or where confidence has been acquired and abused), that is sufficient as a predicate for relief. The origin of the confidence is immaterial". Since the concept is based on equity, the Florida courts have not established a precise definition as to what is necessary to establish a constructive trust. Florida courts have stated that where one, through a confidential relationship, acquires an advantage which one should not, in equity and good conscience retain, equity will convert the individual into a trustee and direct the individual to restore that which was unjustly acquired. Real estate transactions have furnished constructive trust cases but are subject to the same rules…It should be noted throughout this discussion, but especially on this claim, that the benefit was allegedly given to the Husband's parents many years ago and the Plaintiff did not seek to have the money returned or impose a constructive trust until presently. Likewise, Plaintiff did not seek to record a mortgage (a simple matter under Florida law) to publicly declare its interest in the Miami property nor make a claim for the allegedly outstanding funds during the probate proceedings of the Husband's parents. It will be a challenge for the Plaintiff to establish under Florida law that the son and daughter-in-law should be charged with returning money when so much time has passed and no claims were made until present. Under Florida law, the claim will face significant legal challenges…In my opinion, the facts as set forth in paragraph 17 to 25 of XO's s25 statement constitute a substantial and significant defense to the claim. Furthermore and based on paragraphs 17 – 25, there are sufficient facts to determine the case in favor of Wife."

(xix) I see no reason not to accept Mr Farach's opinion on the legal test to be applied in assessing whether a constructive trust arises in Florida law. I need to make my own assessment of the facts against this legal test. I do not regard myself as being in any way bound by the conclusion Mr Farach has reached as to the merits of the case, but as it happens I entirely agree with him. On the facts of the case as I have set them out to be (which are in essence the same facts which Mr Farach is referring to which are to be found within paragraphs 17 to 25 of the wife's narrative statement) the claim by AA

Limited is simply not made out. There is no abuse of confidence. There is no unjust enrichment. There is no advantage which should not in good conscience and equity be retained. I have no hesitation in dismissing the claim made by AA Limited for the equitable remedy of an imposition of a constructive trust.

(xx) If I had been minded to apply the *lex fori* rather than the *lex situs*, and had decided to apply English law to the same facts, then I would have reached exactly the same conclusion. Whilst expressed in slightly different terms, a court applying English law would be considering not dissimilar issues in the context of whether a common intention constructive trust is established. What were the actual or imputed intentions of those who acquired the property and did those change over time? In addition, the English court would be likely to take a starting point that the beneficial interests follow the legal interests (see *Stack v Dowden* [2007] 2 AC 459 and *Jones v Kernott* [2011] UKSC 53) and would be likely to note: "*The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon*." It is my view that AA Limited must fail on these tests as well. There is no evidence of any actual common intention that AA Limited were the true beneficial owners and it would be very difficult indeed on the facts of this case to impute it. Further, the person who was the owner and controller of AA Limited, i.e. the husband, not only executed a transfer to himself and the wife, but also deposed on three occasions in 2021 to the fact that they were their joint beneficial owners.

(xxi) It follows from all the above that I should place the Miami property in the joint column in my asset schedule at the net value of £5,921,829.

37. I now turn to a property owned by the wife in Nigeria at **Lagos, Nigeria**. This was asserted by the wife in her Form E to be a property worth N76,500,000, now £153,000. This is really just an assertion by the wife, but there is no better evidence and I propose to adopt it. Likewise in very broad terms a 10% deduction is proposed to reach net equity, possibly to include any costs of sale and tax arising on a disposal. Again, I have no better evidence, and I propose to adopt the figure and will place a net equity figure of £137,700 in my asset table.

38. The wife owns shares in a number of companies in Nigeria, England and the USA in which the husband is not involved:-

(i) The wife owns **70% of the shares in DD Limited**. She has, in her Section 25 narrative statement, sought to analyse the situation with this company and the difficulties it has encountered. She has placed a net value (after tax and disposal costs) on these shares of £2,205,000. I found the explanation persuasive and the husband has, by reason of his disengagement, not challenged this figure and I have no reason not to accept it.

(ii) The wife owns **70% of the shares in EE Limited**. She has, in her Section 25 narrative statement, sought to analyse the situation with this company and the difficulties it has encountered. She has placed a net value (after tax and disposal costs) on these shares of £36,614. I found the explanation persuasive and the husband has, by reason of his disengagement, not challenged this figure and I have no reason not to accept it.

(iii) The wife owns **99% of the shares in FF Limited**. The wife has placed a net value (after tax and disposal costs) on these shares of £161. The husband has, by reason of his disengagement, not challenged this figure and I have no reason not to accept it.

(iv) The wife owns **shares in GG Limited**. The wife has explained that she values this interest at £200,000. Again, the husband has, by reason of his disengagement, not challenged this figure and I have no reason not to accept it.

(v) The wife owns **100% of the shares in four companies carrying the names HH One LLC, HH Two LLC, HH Eleven LLC and HH Twelve LLC**. The wife has executed a calculation of the net value of these interests, relying in part on some valuation evidence from Mr David Gomez, a professional valuer. The total suggested is £1,355,311. I found the explanation persuasive and the husband has, by reason of his disengagement, not challenged this figure and I have no reason not to accept it.

39. If I turn to the **other assets** owned by the wife and debts to which she is subject, the situation is relatively straightforward, and I am content to adopt the figures put forward:-

    (i) The wife's Form E deposed to her having one motor car, a Porsche Cayenne said by her to be worth £20,000. There is no contrary evidence and I am minded to accept this figure.

    (ii) The wife's updating disclosure shows cash assets of £222,776.

    (iii) The wife has a costs liability of £219,388 (this is what is left outstanding from legal costs bills now totaling £515,526).

40. I now turn to my assessment of the husband's wealth. This is a much more difficult assessment to carry out because the husband has been very obstructive and unhelpful in his disclosure.

41. Largely as a result of the work of the wife and her legal team (who have plainly made a huge effort in their investigative work on this) I have been presented with a schedule which contains details of the ownership of a very large number of companies in Nigeria (also some in England) in which the husband has an interest. Some of the companies are broadly part of what is loosely termed the II Group, in which II Group Limited holds an interest, sometimes a controlling interest. Others are part of what is loosely termed the

CC Group, in which AA Limited holds an interest, sometimes a controlling interest and sometimes a 100% interest. Some of this work resulted in the production of two organograms, which the wife annexed to her Form E and the husband appeared to adopt them, or at least confirm their broad correctness, by annexing them to one of his later statements.

42. As far as the headline companies are concerned:-

(i) The husband (probably) owns 19,999,999 out of 20,000,000 shares in AA Limited and the wife owns the other 1 share. (On another document the division is 15,999,999 out of 16,000,000 shares owned by the husband and 1 share by the wife, but this does not make a material difference to the assessments).

(ii) The husband (probably) owns 9,999,996 out of 11,000,000 shares in II Group Limited with the wife owning 1,000,000 shares and the children 2 shares each. (There is a document with a different presentation, but I find that this most likely not to be accurate and that the above presentation is more likely to be accurate).

43. The underlying companies are identified as performing a very diverse collection of business activities. The husband personally owns shares in many of them. The wife personally owns some shares in others of them. In a few the children hold a small interest or a third party has an interest.

44. One striking feature of the husband's Form E of 9th April 2021 is that it contains very little information indeed about the asset values or the income accruing from these corporate interests.

45. The wife's MPS statement of 15th November 2021 flagged up the deficiency, and flagged up the sort of figure she would be contending for, when she said:-

"I do not know the total value of the Nigerian entities, or the total profit they generate. However, what I can say is that throughout the marriage these entities were extremely profitable and we wanted for nothing. I am confident that remains the case. My view is that it is likely that the total value of the business assets, including the underlying properties (which include business premises such as investment properties, numerous plots of land and factories) will be in the hundreds of millions of pounds, but I await YO's full disclosure."

46. By the time of the MPS hearing on 6th December 2021, there had really been no further information. I commented in my judgment on 6th December 2021, which would have further flagged up to the husband broadly the allegations which he was likely to be facing which he needed to deal with:-

"The Wife has suggested to me that the Husband must be earning at least £1 million a year. I am not sure whether it is stated that that is net or gross of tax, but I suspect she has in mind £1 million coming into the family kitty net per year. Certainly, a large sum of money funding a very expensive lifestyle. I have asked Ms Syme on her instructions whether that is about right, and she has not certainly suggested to me that that is an absurdly high figure. She has rather put a barrier up to giving any information on the subject at all. It seems to me that on the information that I have and with the absence of very much information from the Husband at all on this subject in comparison with quite a lot of information from the Wife on the subject, it seems to me that I can and should make the robust assumption that that is the sort of level of income that we are dealing with. If that turns out in due course not to be correct and to be an exaggerated figure, and the Husband as a result suffers interim payments of more than he thinks is fair, then he really has himself to blame to a significant extent for that by not really making much of an effort to inform the court about what the situation was. Likewise, the Husband has produced almost no information about the company revenues or balance sheets or what they pay to him in terms of expenses or dividends. It seems that he owns most of the shares of most of the companies. It seems inexplicable that he has not been able to give some sort of assessment, even if it was a very broad one, of what we are talking about here. Again, I have only therefore the Wife's assertion that the value, when it comes in, will be measured in the hundreds of millions of pounds. I do not know whether that is right. I cannot be sure that it is right, but it is pretty much all I have got to go on at the moment. The Husband has not attempted to put forward any figure at all or give any meaningful response to this assertion".

47. It was with these thoughts in my mind that I made the valuation and questionnaire directions on 6th December 2021. By disengaging from the proceedings shortly after that the husband has effectively prevented and thwarted any meaningfully detailed investigation into his corporate asset base and sustainable income.

48. Mr Warshaw has thus properly and helpfully reminded me about the well established law in relation to adverse inferences. As far back as in the case of *J v J* [1955] P 215 Sachs J (as he then was) said:-

"In cases of this kind, where the duty of disclosure comes to lie upon the husband; where a husband has – and his wife has not – detailed knowledge of his complex affairs; where a husband is fully capable of explaining, and has the opportunity to explain, those affairs, and where he seeks to minimise the wife's claim, that husband can hardly complain if when he leaves gaps in the court's knowledge, the court does not draw inferences in his

favour. On the contrary, when he leaves a gap in such a state that to alternative inferences may be drawn, the court will normally draw the less favourable inference – especially where it seems likely that his able legal advisers would have hastened to put forward affirmatively any facts, had they existed, establishing the more favourable alternative."

49. More recently the law in relation to adverse inferences was considered by the Court of Appeal in *Moher v Moher* [2019] EWCA Civ 1482 where Moylan LJ held as follows:-

"My broad conclusions as to the approach the court should take when dealing with non-disclosure are as follows. They are broad because, as I have sought to emphasise, non-disclosure can take a variety of forms and arise in a variety of circumstances from the very general to the very specific. My remarks are focused on the former, namely a broad failure to comply with the disclosure obligations in respect of a party's financial resources, rather than the latter…(i) It is clearly appropriate that generally, as required by section 25, the court should seek to determine the extent of the financial resources of the non-disclosing party; (ii) When undertaking this task the court will, obviously, be entitled to draw such adverse inferences as are justified having regard to the nature and extent of the party's failure to engage properly with the proceedings. However, this does not require the court to engage in a disproportionate enquiry. Nor, as Lord Sumption said, should the court 'engage in pure speculation'. As Otton LJ said in Baker v Baker, inferences must be 'properly drawn and reasonable'. This was reiterated by Lady Hale in Prest v Petrodel, at [85]:"… the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities, in deciding what the facts are. (iii) This does not mean, contrary to Mr Molyneux's submission, that the court is required to make a specific determination either as to a figure or a bracket. There will be cases where this exercise will not be possible because, the manner in which a party has failed to comply with their disclosure obligations, means that the court is 'unable to quantify the extent of his undisclosed resources, to repeat what Wilson LJ said in Behzadi v Behzadi. (iv) How does this fit within the application of the principles of need and sharing? The answer, in my view, is that, when faced with uncertainty consequent on one party's non-disclosure and when considering what Lady Hale and Lord Sumption called 'the inherent probabilities' the court is entitled, in appropriate cases, to infer that the resources are sufficient or are such that the proposed award does represent a fair outcome. This is, effectively, what Munby J did in both Al-Khatib v Masry and Ben Hashem v Al Shayif and, in my view, it is a legitimate approach… This approach is both necessary and justified to limit the scope for, what Butler-Sloss LJ accepted could otherwise be, a 'cheat's charter'. As Thorpe J said in F v F, although not the court's intention, better an order which may be unfair to the non-disclosing party than an order which is unfair to the other party. This does not mean, as Mostyn J said in in NG v SG, at [7], that the court should jump to conclusions as to the extent of the undisclosed wealth simply because of some non-disclosure. It reflects, as he said at [16(viii)], that the court must be astute to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligations."

50. I propose to follow the above approach in this case.

51. In making an assessment against these principles, there are a number of features of this case which, as Mr Warshaw has suggested, enable me to approach the matter from a position of at least some information which removes my assessment from falling into Lord Sumption's forbidden category of "*pure speculation",* and allows me to make inferences which are "*properly drawn and reasonable*":-

(i) It is an agreed fact between the parties that the wife was an active participant in the businesses from 2009, being appointed Group Managing Director and Brand Manager in the same year. It is further agreed that following W's appointment a whole new management team was rebuilt from the ground up. Thus, the wife has more information than many wives in her position might have and this information, although not obviously of the quality which one might expect from an independent SJE accountant, is still helpful in the context of an otherwise blank canvass and, of course, the husband has not done what he could and should have done if he thought the wife was over-egging her claims, come to court and cause the wife to be cross-examined about what she was saying. He had the opportunity to do that; but chose not to take it.

(ii) The husband has at least given us a broad and upbeat assessment of the business, albeit declining to put any figure on its value. In his statement dated 19th July 2021 he said: "*CC is a 100 year old manufacturing business started by my grandfather AO, inherited by my father and who then bequeathed my majority shareholding (99%) to me through my step-mother. The family group of companies were first incorporated in 1984 and is now a complex operating company with approximately 500 staff. It is engaged in the regulated Pharmaceutical, Engineering, Construction, Development, Manufacturing and Real Estate. The company and a few of its subsidiaries acquired a number of properties many years prior the marriage, with one such being the residence where I live*".

(iii) The II Group Staff Handbook from 2010 (albeit some years ago) identifies that one of the companies (JJ) has an annual turnover of well in excess of N1.5bn Naira (i.e. c. £3,000,000) with the expectation of increasing "*production by 50%*" and that CC (a) Limited is the "*undisputed quality leader in the…sector*" with door production exceeding "*20,000 sets annually*". The wife has commented that these companies were just two elements of a chain of successful businesses within the structures and that in later years JJ was turning over N250,000,000 to 300,000,000 per month (c.£5,900,000 to 7,200,000 per year).

(iv) The wife "has been told by people in the business" and believes that the business is currently selling 50,000 cartons of product per month at £104 per carton, and has said: "*Based on my experience of working in the business this would indicate profits of 55%, in other words profits of £34.32m".*

(v) The wife believes and has suggested that the companies hold real property worth in excess of £15,000,000 and she believes her knowledge of this is incomplete.

(vi) The wife has produced a schedule of vehicles held by AA Limited in 2009, which number 113, including at least 9 held for the husband. The wife suggests that AA Limited has spent nearly £2,000,000 on cars in the last five years or so, many of which are used by the husband.

(vii) The wife's assessment of the cost of her annual expenditure during the later part of the marriage is c£850,000, which was (she suggests) paid out of income from the businesses.

(viii) The wife has said: "*Based on my own knowledge of the business in my capacity as director…and given the lavish lifestyle we led that was funded directly by the companies, I believe that the Nigerian business structures (excluding EE Ltd) are worth approximately £200 million*".

(ix) The husband knew that he was facing the assertion that the corporate interests were worth hundreds of millions of pounds and yet did nothing to challenge the wife putting her case in this bracket.

52. Mr Warshaw has accordingly advanced the wife's case on the basis that it is reasonable to assert that the husband's corporate assets (including the minority holdings owned by the wife or others) are worth c £200,000,000. Her case is that I should deduct 10% from this figure to represent disposal costs and make a finding that the corporate interests are worth a net figure of £180,000,000.

53. Mr Warshaw accepted that there was no mathematical calculation behind this figure. It is rather a broad assessment, taking into account all the matters I have set out above. He suggested that, if the husband had really believed that this was an outrageously high figure, he would have engaged with the court process to prove that he was correct. It is, he suggests, broadly consistent with the lifestyle of the parties during the marriage and the relatively small pieces of information which we do have. He has suggested that, applying the 'cheat's charter' principles discussed above, this value should be accepted by the court.

54. I should say, before reaching a conclusion on this, that in his email to me of 20th September 2022, the husband strongly took issue with Mr Warshaw's valuation suggestion, saying: "*According to the applicant the total assets in the case is worth £196,000,000 (without even scant documentation or proof). I am perplexed as to how many businesses in Nigeria are worth even £5,000,000. I shall neither admit nor deny whatever assertions the applicant may have cooked up from her imagination*". The

difficulty for me in placing any significant weight on this assertion is that it is made by somebody who has chosen to ignore and/or obstruct almost all of my disclosure and valuation directions and chosen not to come to court to cross-examine the wife or challenge any of her assertions in the proper way. He is absolutely the obstructive non-discloser that the judgments set out above on adverse inferences were designed to meet. He only has himself to blame if he considers the assessment to be incorrect.

55. In all the circumstances discussed above I have been persuaded that I should accept Mr Warshaw's broad analysis of the value of the husband's corporate interests at a net figure of £180,000,000 and I shall place this figure in my asset table.

56. The husband's Form E deposed to his personally having three **motor cars** (two Porsches ands a Mercedes) worth a total of £70,000. In her recent narrative statement the wife has asserted that he may in fact own cars worth more than £2,000,000. I note this comment, but my feeling is that the wife's assessment runs the risk of conflating personally owned cars with company owned cars (which should properly be included in the corporate assessment I have carried out above and should not be double counted). On this issue I am proposing to give the husband the benefit of the doubt and I propose to place in my schedule only the £70,000 worth of cars included in the husband's Form E.

57. I shall also include in my schedule the **cash at bank** which was disclosed in the husband's Form E in the sum of £63,790.

58. The husband has asserted that the wife owes him the sum of N80,000,000. This fact has not been established before me and I do not propose to include this within my asset schedule.

59. Having made these determinations I am now able to set out my assessment of the assets and debts for potential distribution in this case. The situation can be summarised as follows:-

ASSETS/DEBTS

Joint

Net equity in the Miami property	5,921,929
TOTAL	**5,921,929**

Wife

Property in Lagos, Nigeria	137,700

Motor car	20,000
Bank accounts in sole name	222,776
Outstanding Legal Costs	-219,388
70% of the shares in DD Limited	2,205,000
70% of the shares in EE Limited	36,614
99% of the shares in FF Limited	161
100% of the shares in the 4 HH companies	1,355,311
Shares in GG Limited	200,000
TOTAL	**3,958,174**

Husband

Net equity in the property in South East England	1,940,000
Net value of corporate assets	180,000,000
Motor cars	70,000
Bank accounts in sole name	63,790
Outstanding Legal Costs (none suggested)	0
TOTAL	**182,073,790**

60. In relation to "**the income, earning capacity…which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire**" and "**whether it would be appropriate to require periodical payments to be made or secured only for such term as would in the opinion of the court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of his or her financial dependence on the other party**" I have the following observations:-

(i) There was very little attention paid to this aspect of the case in the course of the hearing, but I need to make some observations on this subject.

(ii) The analysis and findings above in relation to the capital value of the husband's corporate interests can assist in an assessment of his likely income from those interests. The figure which I used in the MPS analysis (£1,000,000 per annum net) is no less appropriate as a broad estimate of the husband's income now than it was in December 2021. Again, he simply hasn't engaged in the effort of seeking to show why this figure, which is commensurate with the other parts of my analysis, is incorrect. Again, there is very little evidence to support it in any mathematical way, but there is very little evidence to contradict it either. I propose therefore to adopt this figure as likely to be broadly accurate.

(iii) As far as the wife's income is concerned, she is currently unable to engage in paid employment under the terms of her visa. While this may change in due course, it is likely to be the situation for a period. She is able to receive income from the renting out of the

'HH' properties (said by her to be $9,572 or £8,470 per month, no doubt subject to some expenses and tax) and she also receives £9,000 per annum from renting out her property in Nigeria. I accept that the EE business in Nigeria is not producing any income at present and doesn't look like doing so in the foreseeable future.

61. There is an issue in this case as to the extent to which the wife's claims against the husband should be approached on **sharing principles or on needs principles**.

62. I need to analyse the extent to which the husband's corporate assets should be treated as matrimonial property (to which the sharing principle should strongly apply) or as non-matrimonial property (to which the sharing principle should apply less strongly or not at all).

63. As far as the law is concerned the principles are well established. I need to bear in mind the principle that fairness and equality often ride hand in hand. As was said by Lord Nicholls in *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24:-

"This 'equal sharing' principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals…The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasise the qualifying phrase: 'unless there is good reason to the contrary'. The yardstick of equality is to be applied as an aid, not a rule."

and by Mostyn J in *JL v SL* [2015] EWHC 360:-

"Matrimonial property is the property which the parties have built up by their joint (but inevitably different) efforts during the span of their partnership. It should be divided equally. This principle is reflected in statutory systems in other jurisdictions. It resonates with moral and philosophical values. It promotes equality and banishes discrimination."

64. On the other hand, if assets are from an external source, this can be a good reason to depart from equality, depending on the facts of the case: see *Charman v Charman* (No 4) [2007] 1 FLR 1246; *Miller v Miller; McFarlane v McFarlane* [2006] 1 FLR 1186. The court should approach the assessment of the sharing principle in a flexible way, with the degree of particularity or generality appropriate to the facts of the case. The extent to which assets from an external source should be shared: '*depends on questions of duration and mingling'*: *N v F* [2011] 2 FLR 533.

65. Mr Warshaw has argued, and I broadly accept his analysis, that "*the process of mingling can occur in a number of ways:-*

(i) by literal co-mingling, merger or mixing of matrimonial property with non-matrimonial property;

(ii) by the property becoming part of the "economic life of the marriage …utilised, converted, sustained and enjoyed during the contribution period"; or

(iii) by an acceptance by the parties that it should be treated as matrimonial property notwithstanding its origin."

66. I also accept Mr Warshaw's proposition that: "*The impact of the twin factors of mingling and duration on the treatment of assets brought into a marriage from an external source is an exercise which is both (a) 'evaluative' and (b) 'discretionary' viz 'the weight he considers just' (per Lord Nicholls in Miller; McFarlane) or a 'fair overall allowance' (per Wilson LJ in Jones v Jones [2011] 1 FLR 1723). The discretionary element can be introduced by the Judge either at the stage when the court is divining the matrimonial and non-matrimonial property or later when determining the weight to be attached to the fact that assets were derived from an external source: Martin v Martin [2019] 2 FLR 291."*

67. In considering the **sharing principle**, the assets which arguably fall outside the category matrimonial property are, of course, the husband's business assets, which I have just assessed as having a net value of £180,000,000. The following matters seem to me to be relevant in making a decision as to the extent to which I should regard these assets as non-matrimonial:-

    (i) The headline fact here is that it is common ground that the substance of the business assets derived from inheritances from his parents and have, at first glance, the appearance of non-matrimonial property, albeit that the inheritances came to him during the marriage. The husband worked in the business for some years prior to 2005; but became its owner as a result of an inheritance of approximately 70% of the shares from ZO on his death in 2005 and a subsequent acquisition of the further 30% from BO in 2006 (under an agreement which had some ongoing obligations, but these ceased when BO died in 2008).

    (ii) This headline fact is rather blurred by a number of other facts. First, it is common ground that the wife, in 2009, was employed by the business as 'Group Managing Director and Brand Director'. In this sense she did make a significant work **contribution** to the marriage (in addition to what she did as a home-maker and primary child-care giver). Secondly, the wife has asserted that in that role she very dramatically turned around the company's fortunes. Although I think I have to treat this assertion with an element of caution because there is not very much

figurework provided to support that proposition and some of the evidence I have read, including some of the evidence provided by the wife, suggests that the substance of the business was already well established by that point; at the same time the wife's assertion that she made a major contribution to the fortunes of the business has not been challenged by cross-examination, which it could have been. Thirdly, it is correct that the wife received some shares in some of the underlying businesses and the family lived off the companies and, to an extent, this suggests that the husband was treating the business as a joint operation, a mingled operation. Fourthly, some of the business operations, including the II Group entities, were developed by investments made in the course of the marriage.

(iii) I note also that the husband appears to have made some substantial capital provision in the course of the marriage for the wife, indeed the majority of her current wealth derives from what the husband has provided for her and might be seen, to an extent, as a proper remuneration for her contribution towards the family business.

(iv) I note in this context the length of the marriage – on any view it was a long marriage.

68. Mr Warshaw has invited me to agree with his conclusion: "*The wife acknowledges that there was a non-matrimonial origin to the assets in the case and as such she discounts her sharing claim immediately to 30% of the assets in the case*". As with many other figures in this case, the 30% suggestion is not based on any mathematical calculation, but a broad assertion of fairness; but that is the currency of this case because of the absence of any proper accountants' evidence by reason of the husband's litigation conduct.

69. My overall conclusion on this point, in trying to reach a fair and balanced result, is that I should discount the value of the husband's business assets by 50%. For me this gives a fairer recognition of the initial source of these assets, though I acknowledge that it is no more mathematically based than Mr Warshaw's figure. On the basis that the wife transfers to the husband all the shares that she retains in what are effectively the husband's businesses (i.e. specifically not including the shares that I have entered on the asset table separately as the wife's own shareholdings, but including all other shareholdings) I have concluded that I should treat the wife as having a strong sharing claim to 50% of the husband's business assets.

70. I want now to identify how that outcome would look, before cross-checking this outcome against my needs analysis and other factors. If I were to include a 50% discount in the husband's business assets my asset table would read as follows:-

ASSETS/DEBTS

Joint

Net equity in the Miami property	5,921,929
TOTAL	**5,921,929**

Wife

Property in Lagos, Nigeria	137,700
Motor car	20,000
Bank accounts in sole name	222,776
Outstanding Legal Costs	-219,388
70% of the shares in DD Limited	2,205,000
70% of the shares in EE Limited	36,614
99% of the shares in FF Limited	161
100% of the shares in the 4 HH companies	1,355,311
Shares in GG Limited	200,000
TOTAL	**3,958,174**

Husband

Net equity in the property in South East England	1,940,000
Net value of corporate assets	90,000,000
Motor cars	70,000
Bank accounts in sole name	63,790
Outstanding Legal Costs (none suggested)	0
TOTAL	**92,073,790**

71. An equal division of assets on this table would be achieved by:-

(i) my ordering a transfer to the wife of the Miami property;

(ii) my ordering a transfer to the wife of the property in South East England (her current home); and

(iii) my ordering the husband to pay a lump sum of £39,156,843 in return for (and simultaneously with) the wife transferring to him all her shares in his businesses (as above).

72. The following table sets out the outcome from such an exercise:-

	Wife	**Husband**
Matrimonial property		
Own Assets	3,958,174	92,073,790
Transfer of the Miami property	5,921,929	0

Transfer of the property in South East England	1,940,000	-1,940,000
Lump sum	39,156,843	-39,156,843
TOTAL Matrimonial property	**50,976,946**	**50,976,947**
Non-matrimonial property	0	90,000,000
OVERALL TOTAL	**50,976,946**	**140,976,947**

73. I need to cross-check this outcome against a needs assessment in the context of the "**financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future**", which of course has to be considered in the context of the **standard of living that the parties jointly enjoyed during the marriage, the ages of the parties, the duration of the marriage.** I have the following observations:-

    (i) The wife's claim advanced by Mr Warshaw starts from the proposition that the standard of living during the marriage was *"very high - She outlined the properties, the staff, the clothing, the holidays, cars and private education - she gave the markers of a very high standard of living*". I am persuaded that this was the case and I do not read the husband's evidence (such as it is) as mounting much of a challenge to this.

    (ii) Mr Warshaw has translated this into a need for a house in England worth £8,500,000 plus the costs of purchase, the retention of the Miami property as a holiday home plus the taxes and costs involved in the transfer to the wife and the redemption of the mortgage, plus spousal periodical payments of £495,000 per annum capitalised at £12,840,000, a fighting fund of £2,000,000 to aid enforcement applications, plus child periodical payments capitalised at £137,295. Mr Warshaw has suggested that these figures added together produce a total of "*just below £32 million*".

    (iii) I propose not to make any particular findings in relation to the quantification of need. Plainly, in one sense, these figures would produce a lifestyle very much higher than most people would regard as one which met anything which could be described as 'need'; but these figures are broadly commensurate with the standard of living enjoyed during the marriage by the wife and children. In any event, even if I accepted the whole of this analysis, the total figure would fall below what I have assessed to be the sharing claim and I do not consider that I need to make any adjustment to my 'sharing' analysis by reference to a 'needs' analysis.

74. I want to deal now with some allegations of **conduct**. There are a number of different categories of conduct allegations which I need to address.

75. I shall first deal with the sequence of criminal activity complaint allegations which are made in each direction and which are perhaps two different sides of the same coin. The husband believes and has asserted that the wife (in concert with her sister and brother-in-law) has removed certain monies from the husband's businesses, dishonestly and without proper authority. He has reported these allegations to the Police in Nigeria and they are, apparently, being investigated. Amongst other things which have happened, the wife's brother-in-law has been arrested and has had his passport confiscated and is being held in Nigeria against his wishes. The wife is concerned that the allegations against her may make it difficult for her to return to Nigeria in that she might be subjected to similar treatment as her brother-in-law if she returned. The wife believes that these allegations have been made maliciously and that the husband has the ability to influence police behaviour in a dishonest and corrupt way. Mr Warshaw has invited me specifically to determine these issues in the wife's favour, but I decline to do so, save to say that neither of these allegations has been established in the course of this hearing to the requisite standard of proof, that I do not need for my purposes to investigate these matters or make any findings, and that I do not propose to adjust my order on the basis of these allegations.

76. I next deal with the category of conduct allegations which could be described as non-compliance with court orders to make payments to the wife or for her or the children's benefit. Mr Warshaw has listed and quantified this non-compliance as follows:-

(i) HHJ Evans Gordon's costs order dated 6th September 2021: £19,290.

(ii) My costs order dated 5 November 2021: to pay W's costs (to be assessed if not agreed).

(iii) My order dated 6th December 2021:-

- (a) Paragraph 18 - an undertaking to meet the costs of the Miami property.
- (b) Paragraphs 19 - 20 - a LSPO order for £60,000;
- (c) Paragraph 21 - an order for interim maintenance of £15,000 paid monthly;
- (d) Paragraph 22 - an order for payment of the children's school fees that she had paid as at 6 December 2021 of £11,904;
- (e) Paragraphs 23 - 25 - an order for the payment of the children's future school and university fees;
- (f) Paragraph 35 - an order that H pay W's costs to the sum of £32,000.

(iv) My order dated 25th March 2022:-

- (a) Paragraph 13 - a further LSPO order for a further sum of £120,000.

(b) Paragraph 15 - an order for payments of interim maintenance equivalent to the running costs of the Miami property.

77. Mr Warshaw has calculated that the husband owes the wife "*over £400,000*" in unpaid maintenance, legal services orders and unpaid costs orders from the above orders.

78. I see no reason why my order should not include a calculation of the precise figure in this regard, declare it as a figure which is outstanding and order that it should be paid. It should be paid in addition to the lump sum I have referred to above. I invite the wife's legal team to propose a precise figure for insertion in my order.

79. I next deal with conduct allegations which relate to the husband's litigation misconduct. As I have set out in some detail above the detail of the husband's non-engagement with this litigation, which is almost total from December 2021 to the present. In my view it is reasonable for me to reflect this conduct by adding on to the lump sum referred to above a costs order for a portion of the wife's legal costs bill (said to be a total of £515,526) which can be said to be attributable to the husband's failures. Taking a broad approach, and noting that some costs would have been incurred anyway, and that some costs and LSPO orders have already been made which are included in the figure above and should not be double counted, I propose to add a costs order of £150,000 on to the lump sums referred to above.

80. I shall say for completeness that neither **pensions** nor **disability** play a role in this case.

Details of my order

81. I have been provided with a draft order by Mr Warshaw and Mr Viney for me to consider.

82. I first comment that (although the lump sum I propose to order is smaller than that contended for which appears in the draft order, and will need to be changed) the broad structure of the order is consistent with the orders that I have indicated above that I propose to make; but I want to make a number of comments about the detail.

83. Counsel have addressed me in writing on the issue which we discussed orally on 20th September 2022, that is the extent to which it is relevant or important for me to make a finding that the husband 'submitted' to the jurisdiction of England and Wales. This issue arises in particular in the context of the obvious fact that the wife will need to enforce a

substantial part of this order in Nigeria. Given the husband's lack of cooperation with the proceedings in England it is reasonable to anticipate that enforcement in Nigeria is likely to be resisted as far as is legally possible. In this context the wife's English lawyers have sought assistance from the wife's Nigerian lawyers and been informed:-

"The Reciprocal Enforcement of Judgments Ordinance 1958 provides that one of the grounds on which an application for the registration of a foreign order/judgment can be refused is where the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of the foreign Court."

This proposition originates from Foreign Judgments (Reciprocal Enforcement) Act 1933, Section 4(2)(a)(i) (as amended by Civil Jurisdiction and Judgments Act 1982) which reads:-

"For the purposes of this section the courts of the country of the original court shall, subject to the provisions of subsection (3) of this section, be deemed to have had jurisdiction—
(a)in the case of a judgment given in an action in personam—
(i)if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings… "

84. The draft order provided invites me to make a finding that, in this context, the husband did submit to the jurisdiction of the English court by voluntarily appearing in the proceedings. The draft includes a number of examples of the husband's engagement in these proceedings, all of which are accurate. I am content to make the finding sought and include the recital proposed.

85. The draft order suggests that the lump sum should be paid by 1st January 2023, just over three months away. Whilst it is correct that the husband has not made any particular representations about the date of payments, I consider that the requirement to raise a very large sum of money so quickly may be unreasonable. To deal with this, I propose to order that one half of the main lump sum (and the whole of the costs and arrears based lump sums) should be paid by 1st January 2023 with the remaining one half to be paid buy 1st April 2023.

86. The draft order suggests that, in addition to transferring the property in South East England and the Miami property to the wife, the husband should pay the entirety of any costs or tax arising out of the transfers. Given the way I have dealt with the assets I do not think this appropriate. My order should say that the parties should cooperate to minimise such costs or tax arising, but any such costs or tax should be paid equally. For the same reason, the mortgage on the Miami property (on my mathematical logic) should fall to the wife not the husband.

87. The provisions for the signing of documents by the court (i.e. me) need to be amended to follow the proper procedure under Senior Courts Act 1981, Section 39: see *Welch v Welch* [2017] EWFC B32. An order can only be made once the documents which are required to be signed have been sent to the husband and he has failed to sign them. At that point the court can order him to sign them or in default a without notice application be made to the court.

88. I need to be persuaded that paragraph 23 of the draft order (relating to the Anchor Bank mortgage) and paragraph 33 (relating to interest on non-payment of maintenance) are appropriately drawn.

89. The interim orders I have made for MPS/interim maintenance should specifically come to an end on the making of the new order; but I agree that it is appropriate for a fresh order to be made for spousal periodical payments pending the payment in full of the lump sum order (or death, remarriage or further order). I agree that the proposed figure of £180,000 per annum is appropriate for these purposes.

90. I am content to make a child periodical payments order which includes CPI linked payments of £15,255 per annum per child until the end of tertiary education, including a gap year. This figure should be paid two thirds to the child and one third to the wife as a 'roofing allowance' from the end of secondary education (in CO's case this has already occurred). I am content to add to this the payment of school fees or university costs in the way drafted. I have decided not to include any provision in my order for the capitalisation of the child periodical payments. These payments should ordinarily be made on an ongoing basis to reflect the payer's ongoing commitment to the child. I recognise that, in this case, the husband has been non-cooperative at a high level and that enforcement issues are likely to arise and that there is little or no father/child contact taking place; but I have, on balance, decided not at this stage to capitalise these payments. My hope and expectation of the husband is that (whatever he may think about the wife) he will acknowledge his duties to his children and that the situation will move forward to a position whereby some mutual trust can be rebuilt between the husband and the children.

91. I note the provision of paragraph 39 in relation to disclosure of the order, including to the wife's Member of Parliament. I have no difficulty with this, but I am thinking that this judgment should, in any event, be published and I seek any submissions on the issue of whether it should be published in a redacted or anonymised way.

HHJ Edward Hess
Sitting as a Deputy High Court Judge
Royal Courts of Justice
22nd September 2022