

B E T W E E N:

UD Applicant

- and -

TQ Respondent

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published, but no other.

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.

Mr Joshua Viney (Counsel instructed by Michelmores, Solicitors) appeared on behalf of the Applicant wife.

Ms Ella Cantor-Freedman (Counsel instructed on a direct access basis) appeared on behalf of the Respondent husband.

Written Judgment of His Honour Judge Edward Hess dated 26th April 2024

Introduction

1. This case concerns the financial remedies proceedings arising out of the divorce between UD (to whom I shall refer as “the wife”) and TQ (to whom I shall refer as “the husband”).
2. Both parties appeared before me by Counsel: Mr Joshua Viney (Counsel instructed by Michelmores, Solicitors) appeared on behalf of the wife. Ms Ella Cantor-Freedman (Counsel instructed on a direct access basis) appeared on behalf of the husband.

3. The court was presented with a comprehensive electronic bundle of documents for the purposes of the final hearing.
4. I have also heard oral evidence from the wife and the husband, subjected to a necessarily limited amount of cross-examination.
5. I have also had the benefit of full written submissions from each Counsel.

History of the Marriage

6. The history of the marriage is as follows:-
 - (i) The wife is aged 27, very nearly 28. She is a citizen of X country and lives in X country. Prior to meeting the husband she was a television presenter in X country. She has also been involved (to an extent) in working in a beauty salon and has done some acting and modelling work.
 - (ii) The husband is aged 28. He is a citizen of Y, currently living in England. He is a professional footballer, currently playing for Club ABC. He also plays international football for Y country. Prior to the events described below he had a relationship with MS, a Z national, with whom he had a child, LQ (now aged 5) and the husband has now reconciled with MS and is currently living with her and LQ in ABC. The husband also has a child by another earlier previous relationship in Y country, that is SQ (now aged 7).
 - (iii) The parties met and started a relationship in Spring 2019. At that time he was playing football for a team in Z country. The relationship quickly developed and they had a religious marriage ceremony in March 2020 and a civil marriage ceremony in X country on 11th June 2020. Very shortly after the marriage the husband was transferred to play for football team in V country. The wife remained living in X country and the parties therefore barely lived together, if at all, though met from time to time at different places around the world.
 - (iv) The wife then became pregnant with the husband's child and a child was born of the marriage, that is BD (now aged 3). The wife has always been the primary carer for BD and the husband has thus far had little contact with him, although the wife is in principle happy for contact to take place. On her account, the wife's childcare responsibilities have made it very difficult for her to take up remunerative employment since BD was born.
 - (v) It is common ground that in the initial period of the relationship and the marriage, the husband was financially generous to the wife. I shall discuss some aspects of this generosity below.

- (vi) In May 2022, the husband decided that he had had enough of the relationship and told the wife that he wished to end the marriage. At this time he ceased being financially generous to the wife and has left her in an impecunious state, of which more below.
- (vii) In June 2022 the husband signed a two-year contract to play football for Club ABC and shortly after that moved to live in ABC in England in a flat funded by his employers. He continues to live in this flat in ABC. This arrangement will come to an end in June 2024, just weeks away. The husband apparently has no contract to play for Club ABC or any other club after June 2024, but it does not necessarily follow that his career is reaching its imminent end and I was told that he is still seeking a new contract somewhere (no details of where or at what remuneration were provided) and continues to aspire to play for Y country as an international footballer. Plainly, however, the duration of a top level football career is very time limited and it is well known that players rarely play beyond their early to mid-thirties at a high level.
- (viii) Divorce proceedings were commenced by the wife in England in May 2023. On 30th August 2023 the husband applied for a stay of these divorce proceedings on jurisdictional and *forum conveniens* grounds and I dealt with his application on 11th January 2024, dismissing his application and permitting the wife to apply for a Decree Nisi forthwith in the English divorce proceedings. There has been no appeal against this decision. Decree Nisi was ordered on 12th April 2024. It is reasonable to assume that an application for Decree Absolute will follow as soon as the requisite period of six weeks has passed.
- (ix) I note that in Ms Cantor-Freedman's submissions received on 24th April 2024 the following paragraphs appear:-

"H did not at any time undertake not to proceed with the X country divorce proceedings...H has a firm intention to continue the family proceedings in X country. His lawyer in X country advised him that the proceedings are pending and they should be presented before a Family Judge in the near future...H intends to make an application to set aside the conditional order, it being within the 6 week period. It will be open to the family Court to assess whether the terms of the divorce are unreasonable or not in the best interest of the parties involved, especially if it goes against legal guidelines or public policy (the cost of these proceedings is exorbitant), beyond the H's financial affordability, ending in a situation where H can no longer pay his own legal costs and facing destitution within 39 days (2nd June 2024 when his contract terminates). Additionally, H would no longer be able to stay in the UK since his visa will terminate in July 2024.

It is not entirely clear to me what this means, but (so far as I am aware) no application has yet been made to the court in England to set aside the Decree Nisi.

The Financial Remedies Proceedings

7. The financial remedies proceedings chronology is as follows:-

- (i) The wife issued Form A on 25th May 2023.
- (ii) A standard Form C was sent out, timetabling disclosure by Form E towards a First Appointment on 11th September 2023.
- (iii) The wife produced a Form E on 15th August 2023. The husband did not produce a Form E. Instead, he instructed Payne Hicks Beach Solicitors and they issued an application on 30th August 2023 challenging the jurisdiction of the English court.
- (iv) On 11th September 2023 I timetabled the jurisdiction dispute to a hearing on 11th January 2024 and suspended the directions in the financial remedies proceedings, save that I made directions for an MPS and LSPO hearing to take place before me on 31st October 2023.
- (v) On 31st October 2023 I made various MPS and LSPO orders:-
 - (a) I ordered the husband to pay MPS of £4,000 per month backdated to 1st August 2023 (giving credit for certain limited payments which had been made).
 - (b) I ordered the husband to make three LSPO payments: £30,000 on 13th November 2023, £25,000 on 27th November 2023 and £25,000 by 31st December 2023.
 - (c) Neither of these orders has been appealed.
- (vi) After this hearing the husband rather disengaged from the proceedings. He dis-instructed Payne Hicks Beach. Further, he did not comply (in any way) with my MPS and LSPO orders of 31st October 2023 and the wife's solicitors had to issue an enforcement application by D50K on 22nd November 2023 as a result. This triggered a standard enforcement order requiring the husband to file a Form E1 in advance of the hearing on 11th January 2024 and to attend that hearing. He did neither of these things.
- (vii) On 8th January 2024, just before the listed hearing on 11th January 2024, the husband instructed Black Antelope Law, Solicitors, to apply to adjourn the hearing. On 11th January 2024 Mr Simao Paxi-Cato, Counsel, appeared for that firm and sought an adjournment. I heard argument on this and declined to adjourn the hearing. Mr Paxi-Cato indicated that he was not instructed to make representations on the substantive matter and took the decision to withdraw from the hearing. The husband was not himself in attendance.

- (viii) I decided to proceed with the hearing in the absence of the husband and dismissed his jurisdictional and *forum conveniens* applications on the merits. I then directed that the husband should file a Form E by 26th February 2024. I directed that there should be a First Appointment on 11th March 2024. I also made an Attachment of Earnings Order to try to enable the wife to receive some funds from the husband's considerable earnings from Club ABC. I am entirely satisfied that the husband was fully aware of the orders I made on 11th January 2024, but he chose not to comply with any of them.
- (ix) At the First Appointment hearing on 11th March 2024 the husband failed to attend and I noted that he had failed to file a Form E or comply with any of my MPS and LSPO orders (save in so far as this was forced on him by the Attachment of Earnings Order). I reached the conclusion that the husband had simply decided not to cooperate with the court, I sensed probably hoping and believing that by the time the case could be heard he would have left England and escaped the jurisdiction and enforcement powers of the English court. I therefore decided to expedite the final hearing of the case and listed the financial remedies proceedings for a final hearing on 17th April 2024. My directions included the following:-
- “The hearing on 17 April 2024 shall be a Final Hearing where final orders will be made disposing of the applicant’s application for financial remedies. In the event the respondent does engage and does provide full, frank and clear disclosure, the hearing may be used as a directions hearing at the discretion of the judge.”*
- (x) Because of the husband's non-engagement I also made a number of Third Party Disclosure Orders (against Lloyds Bank, Revolut Bank and Club ABC) which sought to extract information which the husband had declined to give.
- (xi) In the days leading up to 17th April 2024 the husband did, up to a point, begin to engage. On 12th April 2024 he produced a Form E1 (not a Form E and without exhibits) apparently signed on 1st April 2024. He also produced a document purporting to be a section 25 statement, which is signed but undated and contains really very little information of use. This disclosure fell well below the level which could be categorised as full, frank and clear – I shall give examples of this below.
- (xii) At very much the ‘11th hour’ the husband instructed direct access Counsel, Ms Cantor-Freedman, and both she and the husband did personally attend the hearing on 17th April 2024. Like Mr Paxi-Cato in January 2024, it appeared that the main thrust of Ms Cantor-Freedman's effort was to get an adjournment of the final hearing. Noting that the wife had had to spend a good deal of money instructing Mr Viney and Solicitors to prepare for a final hearing (£35,000, a very large sum in the context of the dispute, which would be wasted in the event of an adjournment), and fearing the same tactical manipulation that I had feared in January and March 2024, I sought some commitments from the husband to provide some security if I

was to allow an adjournment, but nothing significant was forthcoming from him and I made the decision to continue with the final hearing. I recognised that the disclosure process had been sub-optimal, but considered that in all the circumstances, taking into account the overall objective under FPR 2010 Rule 1, it was appropriate to continue with the final hearing. For the purposes of this hearing the wife attended remotely from X country, but the CVP link worked well and cross-examination was not impeded. The wife's legal team paid for an English/French interpreter to attend, who worked with skill and speed to interpret for the benefit of both husband and wife, who speak French, but limited English.

- (xiii) I was able to hear some oral evidence on the afternoon of 17th April 2024. Although the hearing had been listed only for an hour, I allowed in the end approximately three hours for the hearing by sitting late into the afternoon. At the end of the oral evidence I directed written submissions, indicating that I would in due course produce a written judgment, which I now do. I have received written submissions from both Counsel in the meantime, Mr Viney's arriving on 22nd April 2024 and Ms Cantor-Freedman's on 24th April 2024.

The Basic Law

8. In dealing with the claim I must, of course, consider the factors set out in **Matrimonial Causes Act 1973, sections 25 and 25A**, together with any relevant case law.
9. 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.

10. 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.

Section 25 & 25A Analysis

11. 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 BD, at age 3, most definitely falls into this category. It is therefore necessary for me to consider how his needs and interests will affect this case. Most importantly, he needs a stable home in X country with his mother and for her to be able to look after him and educate him without undue hardship.

12. 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**” and “**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**” the wife’s disclosure has in my view been clear and comprehensive (the husband’s suggestions to the contrary have not been backed up by any supporting documents and it is difficult to give his assertions any weight in view of his own inadequate presentation) and the husband’s disclosure has been very poor indeed. The wife’s legal team have done their best to produce a meaningful Form ES2, but the gaps in it in the husband’s column reflect the husband’s inadequate and opaque disclosure.

Wife’s Assets, Debts, Income and Earning Capacity

13. On the wife’s side there is real only one asset. The wife is the legal owner of an interest in an apartment (Apartment 437) in City P in X country. The arrangement with the local authority seems to be something between a shared ownership scheme and a local authority mortgage, but in broad terms the property is worth the X country equivalent of c.£150,000, subject to a mortgage £86,928. There would be an additional early redemption charge of £26,063 if the property was sold now, but (to the best of my belief) this will not apply if the mortgage is redeemed now. It has not been suggested that this property does other than meet the needs of the wife and BD at a reasonable level. She needs to pay c.£1,000 per month towards the mortgage in order to keep this accommodation available to her. Alternatively, she needs to reduce or eliminate the mortgage with a capital payment.
14. The source of money to purchase this property has been a matter of controversy in this case. The wife’s case is that in September 2020 the husband gave the wife the equivalent of c. £130,000, the purpose of which was expressed by him to be a gift to her to enable her to put a deposit down on a property in her name and also furnish it and purchase a car. She was suitably grateful and used the money for these purposes, hence the purchase of Apartment 437. The husband has challenged the wife’s ownership of Apartment 437 in an unusual way. His case in a nutshell is that he did advance money to her, but this was specifically intended to enable her to buy a property for him in his name and that she has fraudulently taken this money from him by purchasing a property in her own name. Not only has he asserted these allegations in these proceedings, but also he has commenced some sort of criminal proceedings in X country, presumably with the intention of displacing the wife from this property, both physically and in ownership terms, and possibly punishing her in addition. As part of this process it appears (perhaps surprisingly) that the X country criminal justice system allows a complainant, in this case the husband, to require a defendant to wear an electronic tag on her leg pending the determination of the dispute. The wife showed me the tag in the course of evidence and it is large and unsightly and no doubt makes many aspects of life difficult. Really the only positive part of the husband’s presentation before me on 17th April 2024 was that he agreed that he would forthwith make representations to the criminal justice authorities in X country to have

this electronic tag removed, but I note that in Ms Cantor-Freedman's submissions of 24th April 2024 that he has reneged on even this, now saying "*H is unable to make any decision until he speaks to his solicitor in X country*". Whatever else this case involves, this does seem to be a most unfortunate attitude for the husband to take to the mother of his child.

15. Having heard the two rival accounts about the advance of the money in 2020, I have no hesitation (certainly on a balance of probabilities) in accepting the wife's version. I am satisfied that the advance of money was intended to be a gift to the wife for her to purchase accommodation for herself, recognising the imminent arrival of a child. I am satisfied that the accommodation is needed by her and, in so far as the husband asserts any beneficial interest in the property, that interest should be transferred to the wife to meet her housing needs and I shall make an order to that effect. Plainly, I have no jurisdiction to make any orders within the X country's criminal proceedings, but I am content for the above conclusions to be conveyed to the appropriate judicial authorities in X country with a suggestion that it may be appropriate for the husband's claims in X country to be dismissed.
16. The wife also has debts which are listed in the Form ES2 and which total £19,548. They are a mixture of commercial loans and money borrowed from friends of family, but there has been no suggestion that these are other than hard debts which need to be repaid.
17. The wife has an outstanding costs debt. Her Form H1 notes that she has incurred £178,153, of which £57,549 has been paid, a balance of £120,604. Although these are high costs, the wife's legal team have had to work unusually hard to make any progress in this case and, if the costs are unusually high for a case of this nature, the husband's litigation conduct is the main or a substantial cause of this. By attempting to obstruct the wife's proper pursuit of her claims, the husband has caused her to incur a high level of costs. I made inter partes costs orders of £15,549 on 11th September 2023 and £19,228 on 11th March 2024 reflecting his conduct, which have not been paid (though I should be careful not to double count the costs liabilities in view of the LSPO orders).
18. In terms of the wife's income and earning capacity, I accept what the wife told me that it is very difficult for her to take up remunerative employment whilst she is caring for BD as a single mother with limited ability to afford child care. Her written statement, confirmed in her oral evidence, which I accept, says:-

"I stopped working in the television industry over 4 years ago. I have always taken pride in being a hard worker and I made a good income before I met TQ. As I explained in my statement dated 20 December 2023, the television industry is very saturated in X country and so it is extremely difficult to get work, especially if you have any sort of break in your career. In any event, it is difficult for me to find any work because I care for BD full-time. There is no state benefit system in X country. Even on the days I can take BD to creche it is 3 hours each day in traffic getting him

there and collecting him, which obviously impacts my ability to work, and I certainly wouldn't be able to work in my industry.”

19. The husband put forward some photographs which he thought suggested that the wife was now operating a beauty salon, but on a closer analysis in oral evidence I was not at all persuaded that he was correct about this and I accept the wife's evidence that at the moment she has little or no earned income. It may be that she will be able to re-establish herself when BD is rather older, but for the time being her options to earn a living are very restricted and I think likely to remain so for the next three or four years, whilst BD is very young. The husband's cutting off of financial support in 2022 has therefore left the wife in an impecunious situation and the husband's inability to respect or acknowledge this fact has been unfortunate.

Husband's Assets, Debts, Income and Earning Capacity

20. On the husband's side we have a certain amount of disclosure from him, but I agree with the thrust of Mr Viney's comments on this subject when he wrote: *“The husband is deceitful. He has ignored or disobeyed court orders. His written evidence was dishonest and actively misleading. His oral evidence was also dishonest and misleading. H's evidence was evasive.”*
21. The husband failed to file a Form E. He suggested (via Counsel) that he could not speak French, when it was plain from what he had written when legally represented by Payne Hicks Beach, and also the wife's evidence, that he can. He acknowledged that he owned real properties in Y country, but gave different answers in different parts of his evidence of how many and was wholly evasive in his evidence about the addresses of the properties, asserting the improbable proposition that properties in Y country do not have addresses, such that the wife was unable to investigate or put forward proper evidence of the value of these properties (which she suspected, from conversations during the marriage, was substantially higher than the figures put forward by the husband). He gave no documentary evidence about what was happening in a transport company in Y country in which he had made investments and in one statement described the business in active terms (although later asserting that it was dormant). He misrepresented the number of bank accounts he has in England (the Revolut account information had to be extracted by Third Party Disclosure Order and some information on the available bank statements suggests that there may well be yet undiscovered accounts). He gave no disclosure at all of statements from his bank accounts in Y country and X country.
22. Mr Viney's submissions invited me to remind myself of the Court of Appeal decision of *Moher v Moher* [2019] EWCA Civ 1482 where Moylan LJ held as follows:-

“86. 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.

87. (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;

88. (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."

89. (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.

90. (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. In that respect I would not endorse what Mostyn J said in NG v SG at [16(vii)].

91. 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."

23. It follows that, in view of the litigation conduct of the husband, my task is to identify

the established facts and “*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.*”

24. We do know that for a good number of years prior to 2022 the husband has had a good income from various football clubs, although we have very little detailed information of what this amounted to. I entirely accept that it is likely that the wife’s estimates in the early part of the case that the husband was earning or once did earn a figure of c. £3,000,000 per annum were overstated, but it is likely (taking into account what he was doing) that he was a high earner (running into the hundreds of thousands of pounds per year gross) before 2022 and it has been established that in the football season 2022-2023 the husband earned £384,000 (gross) from Club ABC and that his income in the 2023-2024 season is estimated to turn out to be in the region of £891,600 (gross). Whilst these figures are subject to significant tax deductions, this should have netted the husband a substantial surplus and we have little information as to where this surplus (both before and after 2022) went. His housing costs have been met by Club ABC since 2022 in addition to the salary so his basic costs would have been limited. It is reasonable in my view to infer that significant sums of money were transferred into as yet undisclosed bank accounts overseas and may remain there. It is reasonable to infer that sums of money measured in hundreds of thousands of pounds were used to buy real properties or other investments in Y country or elsewhere. It is reasonable to infer that the husband currently has assets running to a value of many hundreds of thousands of pounds. Beyond that, it is very difficult to make any specific findings about the husband’s assets. His limited engagement with the disclosure process has prevented this. I am left following the Court of Appeal’s suggested approach that “*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.*”
25. As for the foreseeable future, I am similarly left in the dark because the husband has given us little information as to what deal his agent is trying to negotiate with what club. It is true, and objectively verifiable, that his appearances with Club ABC have been more limited than expected in the current season and that this will no doubt not be helpful in his ongoing efforts to find a new contract after June 2024, but it does not follow that a footballer thought good enough to play for Y country internationally recently is finished and, on a balance of probabilities, it is reasonable to suppose that he will earn at a high level (perhaps a few hundred thousand pounds per year gross, but possibly more) for three or four years from now onwards. On retirement from playing football, there are often reasonably lucrative coaching or commentating opportunities, but I accept that it is difficult to make a meaningful assessment of this at this stage. In this respect I reject the husband’s case that he has virtually no future earning capacity.

Needs

26. I propose to assess the “**financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future**” 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** and the respective **contributions** of the parties. I also need to assess income needs in the context of “**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**”. Neither pensions, nor strict section 25(2)(g) **conduct** (as opposed to litigation conduct) nor **disability** play a role in this case.
27. In the context of this case it is in my view reasonable to make an award which enables the wife to stay permanently where she is living so that she can house BD in a stable manner. This will involve the transfer of any interest the husband may have in her current apartment to her (although the proper legal conclusion is that he has no such interest anyway). The parties were married and it would not in my view be appropriate to make a Children Act 1989 Schedule 1 type order which returned any property to the husband when BD has grown up – her housing needs extend beyond BD’s minority. Beyond that I should make an award which enables the wife to deal with her mortgage without undue hardship by my making a lump sum award and/or a periodical payments award which is sufficient to her (in the context of her proposed spending budget of £5,085 per month, which includes c.£1,000 per month towards her mortgage), affordable to the husband in the context of his chosen profession and which respects the fact that this was a very short marriage in which the parties barely lived together, that the wife is still young, that the majority of the financial contributions were from the husband and that it is reasonable to expect the wife to move towards financial independence of the husband within a reasonable period of time reflecting her abilities and relative youth.

The parties’ Open Positions

28. In these contexts the wife has advanced an open position which seeks that:-
- (i) To the extent that the husband has any beneficial interest in Apartment 437 this should be transferred to the wife.
 - (ii) There should be an additional lump sum of £160,000 (broadly made up of £89,040 to redeem her mortgage, £18,217 to pay off debts, £20,000 for a replacement motor car, £6,500 to replace items sold during periods of impecuniosity and £26,000 to start up a production company business).
 - (iii) There should be conditional lump sum equivalent to the cost of the X country’s fraud proceedings (inclusive of costs, fines or penalties).

- (iv) There should be global maintenance of £5,085 per month until BD attains the age of 18 or ceases tertiary education.
- (v) The husband should pay BD's nursery, school fees and University fees at such educational institutions that he attends. This might be a relatively modest sum at nursery level but could rise significantly depending on where he goes to school and university.
- (vi) The husband should pay the costs of trips for BD to visit the husband twice a year wherever he may be.
- (vii) Provision should be made for the wife's legal costs.

29. The husband's open position (which only emerged for the first time in Ms Cantor-Freedman's submissions dated 24th April 2024) is as follows:-

- (i) The wife may continue to live in Apartment 437 until BD is 18, at which point this property will be sold and the net proceeds divided equally between the parties. (No details are given as to who it is intended will pay the mortgage in the meantime, so I assume the husband intends for the wife to continue paying it for the next 15 years).
- (ii) The husband will pay BD's "*nursery and school fees and related expenditure until completion of secondary education*".
- (iii) The husband seeks a clean break (i.e. no spousal maintenance) and he has made no offers to pay any child support (beyond education fees). He also gives no assurances about what may happen in the X country's criminal proceedings.
- (iv) The husband seeks the return of the LSPO amounts taken from him by the Attachment of Earnings Order (or at least an unspecified portion of them).

30. Under the existing Attachment of Earnings Order made by me on 11th January 2024, the sums due under the LSPO order (£80,000), MPS backdating arrears (£8,340) and ongoing MPS (£4,000 per month) are to be deducted from the husband's monthly earnings from Club ABC. The normal deduction rate was set at £25,000 per month (£21,000 towards legal costs and £4,000 towards MPS) and the protected earnings rate is set at £5,000 per month. This order has extracted payments at the normal deduction rate from the husband's monthly salary for the months of January and February 2024. If it is left in place it should extract payments for the husband's monthly salary for the months of March, April, May and June (and possibly July) 2024. What happens after that depends on what footballing contract (if any) the husband enters into beyond June 2024.

31. The wife invites me to leave the Attachment of Earnings Order in place, but widen it

to include whatever provision I make in my final order and vary it so that the normal deduction rate is increased to £31,000 per month and the protected earnings rate is reduced to £4,000 per month. The difficulties of enforcing an order beyond what the husband has and/or earns in England are obvious and so the most likely form of effective enforcement is a maximal Attachment of Earnings Order.

Outcome

32. Having considered all the matters set out above I have decided that the following provision is reasonable in all the circumstances for the wife to have and affordable for the husband in view of the findings and inferences I have made about his financial position:-
- (i) To the extent that the husband has any beneficial interest in Apartment 437, my order will include a property adjustment order by which this should be transferred forthwith to the wife. My order will also encourage the husband to cease the pursuit of remedies, whether criminal or family court based, in X country, though I consider I have no jurisdiction to require this. My order will invite the court in X country to consider dismissing any live claims by the husband against the wife in X country, though I of course have no jurisdiction to order this.
 - (ii) The husband should pay a lump sum to the wife within 28 days of £105,000 (the intention of which is to enable the wife to secure her housing situation by redeeming her mortgage and paying off the majority of her debts).
 - (iii) I will not make a conditional lump sum equivalent to the cost of the X country's fraud proceedings, but I will say now that I may be persuaded to vary upwards the spousal periodical payments order if such remedies are successfully pursued against the wife.
 - (iv) I propose not to make a global maintenance order, but I will make separate spousal and child periodical payments orders as follows (because the child lives in X country the CMS cannot be involved).
 - (v) There will be a spousal periodical payments order of £2,000 per month commencing on 1st May 2024 and varying to a nominal level of 5 pence per year from 1st November 2027 with the term ceasing at the end of April 2034, without a section 28(1A) bar. I have selected these terms in the context of my best assessment of the wife making a transition to financial independence and with full cognisance of the effects of Matrimonial Causes Act 1973, section 25A, the FJC's *Guidance on Final Needs on Divorce* and case law such as *SS v NS* [2014] EWHC 4183.
 - (vi) There will be a child periodical payments order for the wife for the benefit of BD as follows:-

- (a) The husband should pay the sum of £2,000 per month from 1st May 2024 until BD attains the age of 18 or ceases full-time education, including tertiary education up to a first degree, whichever is the later. During tertiary education the payments shall be made directly to BD. Prior to that the payments shall be made directly to the wife for the benefit of BD.
 - (b) The husband should also pay BD's nursery and school fees (plus compulsory extras) at such educational institutions that he attends. The wife shall be entitled to select the nursery or school he attends, subject to any challenge in a court which is made by the husband.
- (vii) The figures in the spousal and child periodical payments orders will rise in line with UK CPI inflation on 1st May 2025 and 1st May in each year thereafter.
- (viii) I do not propose to make any provision as to the costs of the husband's having contact with BD. If he wishes to have contact with BD he needs to raise it properly with the wife and make some proposals as to how it should work in mechanical terms and how it should be funded. The husband's future geographical location is too uncertain for me to make any proper assessment of that now and sadly he has in recent times shown not much interest in pursuing it.
- (ix) Provision should be made for the wife's legal costs. I reach this conclusion, despite this being a case where the starting point of no order for costs applies under FPR 2010 Rule 28.3(5), because of the husband's litigation conduct which falls within several of the conduct exceptions in FPR 2010, Rule 28.3(7). In calculating what costs order should be made I need to take into account the total costs incurred by the wife (£178,153), but also the fact that I have already made two costs orders (£15,549 and £19,228) and also that I have made LSPO orders (totaling £80,000). The interim costs orders and the LSPO orders still stand and can still be enforced and they therefore have to be deducted from any costs order I make now to avoid double counting. I also need to take into account that, had the husband's conduct been appropriate, some level of irrecoverable costs might have occurred. In the circumstances I have decided to make a further inter partes costs order to the effect that the husband will contribute a further £50,000 towards the wife's costs, payable within 28 days.
- (x) I am persuaded that unless I retain an Attachment of Earnings Order in place the husband is likely to obstruct enforcement of my order to the detriment of the wife and BD and I will therefore do this, but widen it to include all the provision made in this order and vary the normal deduction rate to £30,000 per month. I will leave in place the protected earnings rate at £5,000 per month.
- (xi) My order should contain a provision to the effect that this judgment and the consequent orders may be disclosed to any individual or organisation

involved with the enforcement of the order.

33. These are my decisions and I now invite Counsel to produce a draft financial remedies Order and a draft Attachment of Earnings Order which match these conclusions. In the first instance I would be pleased to receive the drafts within 7 days (i.e. by Friday 3rd May 2024) or, if there are drafting disagreements, a written explanation of the different positions. I do not propose at this stage to list a further hearing in the hope that I can approve an order without the necessity of incurring the further costs of such a hearing, but I may change my mind about this if there are significant ongoing differences.

HHJ Edward Hess
Central Family Court
26th April 2024