Case No: H10CL045

CENTRAL LONDON CC BPL LIST SITTING AT
THE MAYOR'S AND CITY OF LONDON COURT

Guildhall Buildings
City of London

Date: 08/06/2023

Before :

HHJ PARFITT

- -

Between :

Yetunde Odularu	**Claimant**
- and -	
Ibukunolu Oluseye Odularu	**Defendants**
Olusegun Stephen Odularu	

- -
- -

Okechukwu Ngwuocha of **Carl Martin Solicitors** for the **Claimant**
Abimbola Badejo (instructed by **Bloomfield Solicitors**) for the **Defendants**

Hearing dates: 22 to 24 May 2023

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Approved Judgment

This judgment was handed down remotely at 11.00am on 8 June 2023 by circulation to the parties or their representatives by e-mail

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HHJ PARFITT

HHJ Parfitt :

Introduction

1. The Claimant says she is the widow of the Defendants' late father ("the Deceased"). The Deceased's will appointed the Defendants, his sons by his late first wife, as executors of his English estate ("the Will"). The only significant asset is his property at 1 Solon Road, Brixton, SW2 5UU ("the Property"), which is the Claimant's home. The Claimant may have been left a £50,000 gift by the Will.

2. The parties have various issues between them. In summary, the Defendants want the Claimant to leave the Property so it can be sold, the Claimant contests the validity of the will and makes a claim under the Inheritance (Provision for Family and Dependants) Act 1975 ("the 1975 Act") and the Defendants dispute the validity of the Claimant's marriage to the Deceased.

3. It is common ground that a marriage took place in the UK on 5 September 2012 between the Claimant and the Deceased, but the Defendants' put the Claimant to proof that this marriage was valid in circumstances where the Claimant was previously married to a Mr Richard Olubunmi Oladiran ("the Marriage Issue" and "the Oladiran Marriage"). The marriage certificate for the 5 September 2012 marriage says that the Oladiran Marriage was dissolved.

4. The only issue addressed in this judgment is the Marriage Issue because it is common ground that the other issues are dependent on the validity of the will and the parties have not been able to obtain access to that will for the appointed expert to be able to give an opinion on the Deceased's signature. It is hoped that this will be sorted out shortly. In the meantime, the parties have sensibly cooperated to enable this trial date not to be lost.

5. The Claimant's case, as a matter of pleading, is set out in a letter from her solicitors dated 20 July 2022 responding to a request for further information. The 20 July 2022 letter said that the Oladiran Marriage was a customary marriage which came about at a meeting of the respective families of the Claimant and Mr Oladiran on 30 September 1993 and that the Claimant brought it to an end when she left the matrimonial home, after being abused by Mr Oladiran and his new wife, with the intention of not resuming cohabitation.

6. The Defendants' case is that the Claimant's evidence on this issue is a tissue of lies. They point to a series of fake documents which the Claimant has relied on, the witness evidence submitted by the Claimant, which is entirely contrary to the customary marriage case in the letter of 20 July 2022, and the lack of any detailed factual narrative substantiating the assertions about the circumstances of either the marriage or its alleged termination.

7. In this judgment I summarise briefly the relevant law (English and Nigerian) and then address the evidence, the submissions and discuss the basis for my final decision.

The Law

8. Section 11(b) of the Matrimonial Causes Act 1973 states that a marriage shall be void if "at the time of the marriage either party was already lawfully married…". The Defendants' case is that the Claimant's marriage to the Deceased is rendered void by this provision.

9. **Dicey, Morris & Collins**, 16th ed ("Dicey"), rule 74 sets out that a marriage will be valid if it "is celebrated in accordance with the form required or recognised as sufficient by the law of the country in which the marriage was celebrated".

10. Dicey, in rules 99 and 101 summarises, as relevant, the Family Law Act 1986 provisions under which the English courts will recognise the validity of an overseas divorce obtained through judicial or other proceedings (rule 99) or otherwise than through such proceedings (rule 100) subject to certain conditions. It is not alleged by the parties that any of these conditions are relevant. In summary, the parties' arguments have assumed that if the Oladiran Marriage was validly dissolved under the laws of Nigeria, the dissolution must be recognised by this court.

11. The Claimant referred me to *N v D* [2015] EWFC 28, Peter Jackson J, as an example of the English courts accepting that a customary law marriage which took place in Nigeria had been proved.

12. In his closing submissions, Mr Badejo, for the Defendants, raised the question of the Claimant's good faith belief in her being free to marry the Deceased in September 2012. Mr Badejo's argument was that the Clamant lacked such a belief. It seems to me that the potential relevance of this is in regard to the extended definition of wife under section 25(4) of the 1975 Act. This would include the Claimant if she entered into a void marriage with the Deceased "in good faith". I return to this in the final section of the judgment.

Relevant Nigerian Law

13. A joint expert report was prepared by Mr Oba Nsugbe KC dated 17 August 2022. It is a comprehensive and detailed document. A relevant summary of the applicable law of Nigeria drawn from Mr Nsugbe's report is as follows:

    i) Marriages can be created and dissolved under both customary law and statutory law. A customary marriage is polygamous (polygamy is not excluded). A statutory marriage is monogamous (polygamy is excluded).

    ii) Marriages governed by statutory law will be reflected in statutory government records. Likewise, dissolution of statutory marriages will require formal proceedings and a court order.

    iii) A customary law marriage is carried out with less formality but "is an institution with strong traditional roots and is indigenous to the culture of the people…it does not only involve the union of a man and a woman...it also embodies the coming together of two families".

iv) The essential requirements for a customary marriage are: (i) parental consent; (ii) consent of the parties; (iii) capacity to marry; (iv) bride-price; (v) formal handing over the bride at a marriage ceremony.

v) Customary marriages can be dissolved extra-judicially, judicially or because of death.

vi) Extra-judicial dissolution can take place by agreement or unilaterally.

vii) In an agreed situation, what is essential is that the two families have determined that the differences between the married parties is irreconcilable and then the parties will agree to terminate the marriage before witnesses or relatives and all or part of the dowry will be refunded.

viii) In a unilateral situation, this can take place after one party abandons the other so as to evince an intention not to return and then the remaining party terminates the marriage on that ground. The act of termination will ordinarily require the return of the dowry. An example would be where the husband ejects the wife from the home and then tells a meeting of the two families that he is terminating the marriage. In those circumstances the dowry would not be returned unless the wife's parents chose to do so.

ix) "As a customary marriage is as much a union of families as it is of individuals, extra-judicial dissolution will invariably involve the families, first in attempts at reconciliation and then in dissolution, which is usually carried out before representatives of both families, and the dowry returned. The position taken by most of the authoritative Nigerian family law texts is that the return of the bride-price formally signifies the end of the marriage."

General Comments About the Evidence

14. The only witness called was the Claimant. On the Claimant's side this presents some evidential difficulties because one of the ways in which a customary marriage and its dissolution might be proven would be the evidence of the family members who participated in either the wedding or its dissolution. This is referred to extensively in Mr Nsugbe's report. It is also reflected in one of the Claimant's witness statements which referred to her family being responsible for bringing her marriage to an end. It was a notable feature of *N v D*, stressed by Mr Ngwuocha for the Claimant, how much evidence was received by the court proving the customary marriage (some ten witnesses present at the relevant event and over 100 photographs). The Claimant's witness statements say almost nothing about the facts of her marriage or its dissolution and there is no other evidence.

15. The Claimant wished to give evidence with an interpreter. This was surprising, since the four witness statements from the Claimant in the trial bundle were all in English. I did not permit the interpreter to be used and this proved correct because the Claimant was clearly well able to give evidence in English. The Claimant had no difficulty in understanding the questions that were put to her and had no difficulty in clearly reading out parts of her witness statements and other documents the Claimant was taken to. I had the clear impression that this clarity of reading reflected a full understanding on the Claimant's part of the meaning of the words being read out.

16. On the other hand, in general terms, the Claimant was a poor witness. This was not because of the performative aspects of her giving evidence but because across her various witness statements and solicitor's letters, written on and containing her factual instructions, there were inconsistencies such that it was not possible for all her factual assertions to be true. The Claimant would not accept this and so could offer no explanations. Nobody could – the inconsistencies were irreconcilable opposites. I take account of the possibility that the Claimant may be of poor understanding, although that was not my general impression of her, when I consider the detail of her evidence below. The Claimant told me she had limited schooling. My impression was the Claimant had understanding but no sophistication.

17. The Defendants were not called to give evidence. This was the correct choice: neither Defendant had witnessed anything relevant to the Marriage Issue. The First Defendant's statements included conjecture and argument but nothing of evidential relevance.

18. There was also relatively little documentary evidence. In particular, no documentary records to evidence the Oladiran Marriage or its dissolution. I am not referring here to statutory records but photographs and letters and the like left behind from whatever events took place to bring about the marriage or, although such documentary artefacts are in the nature of things less likely, to end it.

19. The sparsity of the documentary record means that rather than address the factual history as a narrative chronology of the relevant facts, a coherent and relevant account can only be given by focusing on the emergence of the Claimant's case regarding the Oladiran Marriage relative to the occasions on which she has needed to consider and explain it.

20. It is a useful starting point to bear in mind the factual case asserted by the Claimant's solicitors on her behalf in the letter of 20 July 2022: a customary marriage at a coming together of the two families on 30 September 1993 at 13 Ogedengbe Street, Alapere, Lagos State; a dissolution of the marriage when the Claimant was "forced out of the matrimonial home by Mr Oladiran who had married a new wife…he and his wife then subjected our client to domestic abuse, threats and neglect…Mr Oladiran had ended cohabitation with our client through domestic abuse and neglect".

21. This is striking in its clarity and raises immediate concerns about the welfare of the Claimant, as a potential victim of abuse, and how it might impact on her ability to recall the details of what took place. However, that she was forced to leave and that there were no judicial proceedings, must have been clear and obvious to her at all times, if this description of events was correct.

22. The other relevant general comment is that the factual case set out in the letter of 20 July 2022 does not appear in the Claimant's various witness statements and no request was made for permission to adduce a new witness statement. For the purposes of this trial, it is a case which is not evidenced, save for one or two conclusory sentences during the Claimant's oral evidence.

The Claimant's Factual Narrative

23. The Claimant and the Deceased's marriage certificate dated 5 September 2012 contains the first documentary reference in the bundle to the Oladiran Marriage: "Previous marriage dissolved".

24. The Claimant did not address in her witness evidence how that came to be written or what, if any, information she provided to enable that to be written. The Claimant does say that she did not have in her possession any of the purported Nigerian decrees at that time and so did not offer them to prove the dissolution of the Oladiran Marriage. The Defendants' statements of case speculated that the 2010 Decrees (defined below) might have been relied on. The Claimant denied this and I cannot make any reliable findings absent any submissions about what the Registrar would have required before making such an entry within the marriage certificate. I do find that the Claimant was the source of whatever information would have been provided that led to this entry.

25. The Claimant said in oral evidence that the Deceased was in Nigeria in 2013 and obtained from a family member of the Claimant a decree nisi and a decree absolute dissolving the Oladiran Marriage dated 28 January 2010 and 27 April 2010 ("the 2010 Decrees").

26. The 2010 Decrees describe the Oladiran Marriage occurring on 30 October 1993 at the Koshofe Marriage Register.

27. In the 2010 Decrees the Claimant is the petitioner and the Claimant is stated to have given evidence in support of the petition at a hearing in Nigeria while being questioned by her barrister, Ayoola Jacob Esq. on 28 January 2010.

28. Before the parties' first claim was issued, the Claimant's then solicitors and the Defendants' then solicitors exchanged correspondence. Mr Ngwuocha pointed out that from the selection of this correspondence included in the bundle, it appeared that the Defendants already had copies of the 2010 Decrees before the Claimant's solicitors sent them to the Defendants. The provenance of the Defendants' copies is not explained. But as the Claimant's evidence was that the Deceased had them from 2013 and since the Claimant also said the 2010 Decrees were used during the Claimant's immigration applications during 2014, in which the First Defendant gave evidence, there are various potential opportunities for access, either before or after the Deceased's death.

29. On 20 August 2019 the Defendants' solicitors wrote to the Lagos State Judiciary office with copies of the 2010 Decrees and asked if they were authentic. On 12 September 2019, the Lagos Chief Registrar wrote back and said that there was no record of the 2010 decrees. Mr Nsugbe KC caused searches to be carried out in the relevant Registry and no record of any divorce proceedings or the 2010 Decrees could be found. At trial it was common ground that they were false documents.

30. In any event, and presumably as a forensic gambit, on 18 September 2019 the Defendants' solicitors asked the Claimant's solicitors for proof that the Oladiran Marriage had been dissolved. The Claimant's solicitors replied on 19 September 2019 enclosing copies of the 2010 Decrees (I assume because the attachments were not included in the bundle or described in the letter). The Defendants' solicitors then sent

a "gotcha" letter dated 23 September 2019 enclosing the letter they had received from the Lagos Registry.

31. On 4 October 2019, the Claimant's solicitors responded, having taken instructions, and provided a narrative explaining what had happened and enclosing copies of different decrees nisi and absolute. These documents were dated 17 June 2008 and 17 September 2008 respective ("the 2008 Decrees"). The 2008 Decrees also referred to a marriage on 30 October 1993 at Koshofe Marriage Registry. In the 2008 Decrees, Mr Oladiran was the petitioner.

32. The solicitors' explanation had the following steps:

    i) The Claimant had lost contact with Mr Oladiran after she left Nigeria but knew that, in 2007, he had started divorce proceedings against her but did not hear anything from the ex-husband's lawyer "after that".

    ii) The Claimant did not know, therefore, that her divorce had been made final on 17 September 2008.

    iii) Accordingly, the Claimant asked a friend in Nigeria to instruct a lawyer on the Claimant's behalf to file for her divorce. No approximate date was put on this instruction.

    iv) Her friends (presumably including the one who was instructed, but this is not clear) then provided the 2010 Decrees to the Claimant. The letter does not say when this happened.

    v) Once the Claimant received the Defendants' solicitors letter of 19 September 2019, she asked the same friends ("an enquiry with her friends in Nigeria") and obtained the 2008 Decrees.

33. No explanation was given as to when the Claimant's friends got the 2008 Decrees or how they came by the 2010 Decrees.

34. On 3 December 2019, the Defendants' solicitors asked the Claimant's solicitors whether the Claimant had been able to obtain evidence that the 2008 decrees were genuine.

35. On 9 December 2019, the Claimant filed her first witness statement in this dispute. This was in opposition to the Defendants' possession claim.

36. The 9 December 2019 witness statement explained that the Claimant met the Deceased on 31 December 2006 after which she became his carer. From 2009 a romantic relationship began leading to their marriage. The Claimant said that Mr Oladiran started divorce proceedings after she left Nigeria and she had no means to contact the local courts there. She was unsure whether the divorce was final and so in 2010 asked her friend to help her get a divorce. She got the 2010 Decrees from this friend (nothing is said about how or when) but then, once she got the solicitor's letter of September 2019, obtained from her friends the 2008 Decrees. The Claimant explained that she was scammed over the 2010 Decrees and given false documents which were forwarded to her on the words of the person who made the documents and

the Claimant paid money for those documents. No facts are given about how these matters came about.

37. The Claimant added that Mr Oladiran and she had long been separated with no hope for resolution and that she was sure that when she got married to the Deceased that she had divorced Mr Oladiran. No facts were given to support the conclusion of divorce.

38. The Claimant said in this 9 December 2019 witness statement that Mr Oladiran sent the original 2008 Decrees to a relative in 2011 but because "of the unpopularity of social media" her relative was not able to send it and that the relative had since died. It was not explained why the documents could not be put in the post or how this information had come to the Claimant's knowledge.

39. The Claimant continued that the distance between Mr Oladiran and herself had hindered the finalisation of the complete divorce papers and this prompted Mr Oladiran to carry on without her consent "due to his need for remarriage and quickly after divorce he got married". I note that this further marriage was said to occur after the divorce.

40. The Claimant concluded on this issue about the 2008 Decrees and 2010 Decrees that she had been able to get the 2008 Decrees from Mr Oladiran by the intervention of a third party. No facts were provided about this process.

41. This witness statement of 9 December 2019 was not put to the Claimant in examination in chief but she confirmed that it was true at the outset of her cross-examination.

42. The gist of this version is that the 2008 decrees are true: the Oladiran Marriage was solemnised at the Koshofe Marriage Registry on 30 October 1993 and was brought to an end by Mr Oladiran's divorce proceedings, which the Claimant knew about but did not participate in, leading to the 2008 decrees. In this version the Claimant's marriage must have been statutory.

43. The next time the Claimant addressed this aspect of her case was in the reply dated 9 June 2020. At paragraphs 21 and 22 of their defence to the Claimant's claim to revoke the Deceased's will, the Defendants asserted the Claimant's marriage to Mr Oladiran and required the Claimant to prove that she was free from the Oladiran Marriage at the time she married the Deceased. Express reference was made to section 11(b) of the Matrimonial Causes Act 1973.

44. The Claimant did not raise a positive case by way of reply. In particular, the Claimant did not assert the basis of the Oladiran Marriage (i.e. statutory or customary and the essential facts in support) or the basis of the dissolution of that the Oladiran Marriage. All that was said was that "any legal question relating to the formal validity of her marriage to the deceased must be answered by reference to Nigerian Law", which was correct but did not go anywhere absent some facts being pleaded (both as to the relevant Nigerian Law and as to the essence of what happened).

45. In addition, but not in particular response to paragraphs 21 and 22 of the Defence, the Claimant asserted that she was not aware whether the Defendants had commenced

any proceedings in Nigeria against her for the determination of the questions whether she was lawfully married to Mr Oladiran, and if so, whether the marriage had subsequently been dissolved. Again, this was beside the point and irrelevant – the issue was being raised in these proceedings in this jurisdiction.

46. It was the inadequacy of the Reply that led to the exchange of letters seeking further information and which, after a court order, led to the Claimant's solicitor's letter of 20 July 2022: which asserted that the Claimant was married to Mr Oladiran. This was apparently common ground at the trial, certainly on the witness statements and statements of case, but, as I address in more detail below, Mr Ngwuocha's closing submissions at least flirted with the proposition that there was insufficient evidence to prove the existence[1] of the Oladiran Marriage.

47. The Claimant next addressed the Oladiran Marriage issue in her witness statement dated 5 January 2021. This was the only one of her witness statements which the Claimant relied on for the purpose of her evidence in chief.

48. At paragraph 5, the Claimant said that she was given in marriage to Mr Oladiran on 30 October 1993 in Nigeria. At paragraph 6, the Claimant explained why she did not have possession of her "marriage certificate". The Claimant said that the single signed copy given at the time of the marriage was retained by Mr Oladiran. The Claimant said the Oladiran Marriage was dissolved in Nigeria on 17 September 2008 and that the decree nisi was given her by her family in Nigeria.

49. This statement and so the Claimant's own evidence in chief at trial, was that the Oladiran Marriage was a statutory marriage which was formally dissolved by the 2008 decrees. This conclusion necessarily follows from the Claimant's statement "My first marriage was dissolved in Nigeria on 17 September 2008". The dissolution on 17 September 2008 is that contained in the 2008 decrees. If that dissolution was required to dissolve the marriage, then it must have been statutory, entered into in accordance with the 2008 decrees.

50. In her oral evidence, the Claimant was cross-examined about the reference in the 5 January 2021 witness statement to a "marriage certificate". The Claimant said this was not intended to refer to a marriage certificate but to a letter about the marriage which was read out by a family member at the customary marriage ceremony, having been prepared by or handed to the master of ceremonies at the wedding. I reject this evidence about what the witness statement was intending to say. The reference to the marriage certificate and the reference to the decree absolute are consistent and can only be referring to a statutory marriage. This is what was meant by the Claimant's witness statement, the truth of which she asserted when she signed the statement, and when she agreed to its being true at the outset of her evidence in chief at trial.

51. In her answers in cross-examination about the marriage certificate, the Claimant was trying to reconcile the irreconcilable: the existence of a marriage certificate and the assertion of a purely customary marriage. It does seem to me that it would have been

[1] The draft judgment used the word "legality" not "existence". The change was sought by Mr Ngwoucha and since my words were describing Mr Ngwoucha's argument, I made it. Nevertheless, it is a curious one since it suggests a separation between the Claimant, whose evidence for a marriage is consistent, and her lawyer, who wants to question the existence of the marriage. All in a context where the factual case of being married was stated in the 20 July 2022 letter.

better for the Claimant if she had not been placed in this position but the source of that problem was the evidence in her witness statement and, at least for present purposes, that is something for which she is responsible (not least because she signed it before it was served on the Defendants and swore to it being true in the witness box).

52. The most recent witness statement in which the Claimant addressed her marriage was made for the 1975 Act claim and was dated 20 November 2021. In paragraph 17, the Claimant said that she arrived in the UK on 19 December 2004 and had to rely on her extended family "to obtain evidence of the termination of my previous marriage". The statement continued that as marriage was the union of two families, it was her extended family "who directed the whole process and were in a position to provide evidence of the divorce". The Claimant said that she could not challenge the Defendants' evidence that "the divorce decrees that I had presented in good faith" were not issued by the courts in Nigeria but neither could she prove her previous marriage because "I do not hold any proof of the celebration of the marriage in Nigeria" but the Claimant was certain that her previous marriage was not subsisting by the time she left Nigeria and that her former husband had remarried.

53. On an objective analysis, this statement is consistent with the earlier statements. The Claimant said that she presented the divorce decrees in good faith. Consequently, she must have expected that the process to terminate her marriage would involve court proceedings. This must be the divorce process being referred to, of which the decrees were evidence. All of this is only consistent with the Claimant understanding that her marriage was statutory. This conclusion gains support from the evidence about Mr Oladiran having remarried and that demonstrating that the marriage was "no longer subsisting by the time I left Nigeria". As Mr Nsugbe states: only a statutory marriage carries with it the requirement of monogamy.

54. Notwithstanding these witness statements, all of which the Claimant said were true when she was asked about them in the witness box, in her oral evidence the Claimant said that her marriage was customary and was celebrated on 30 October 1993 before elders and in her families' home in Nigeria, when the two families came together. The Claimant explained nobody certified the wedding.

55. The Claimant was asked about the 2010 Decrees and her evidence that she accepted these documents in good faith as being accurate. The Claimant said that the 2010 Decrees had been handed to the Deceased in 2013 by her family in Nigeria. This evidence was contrary to that in her witness statements which had asserted the 2010 Decrees were obtained from friends.

56. In closing, Mr Badejo referred the court to a witness statement from the Deceased which was used in one of the Claimant's immigration appeals. The Deceased said that he had not been back to Nigeria for 30 years. I was asked to accept this over the Claimant's oral evidence on this issue. The Claimant was not cross-examined on this point (which Mr Badejo fairly and properly pointed out to the court) but in any event I do not regard the Deceased saying in that witness statement for the immigration appeal that he did not go back to Nigeria as carrying much weight in the context of a different and particular question about whether the Deceased obtained the 2010 decrees from the Claimant's family.

57. The Claimant was cross-examined about the contents of the 2010 Decrees. The Claimant said that she had told her friend that she needed an affidavit and the 2010 Decrees were then given to the Deceased and she received them in 2013. I have no doubt that the Claimant would have looked at the decrees to make sure they were what was required for her immigration appeal. This assumes that the 2010 Decrees were first given in that context rather than to prove the dissolution of the Oladiran Marriage prior to the 5 September 2012 marriage but either way I am satisfied the Claimant would have looked at them and/or discussed them to make sure the documents achieved their purpose. This engagement with the 2010 Decrees would have occurred whenever the Claimant first made use of them and, this was why she received them, so she could make use of them.

58. In giving the 2010 decrees even the most cursory glance, the Claimant would have seen: (i) that the decrees were court documents dissolving the Oladiran Marriage; (ii) that the Claimant had petitioned the court; (iii) that the Claimant had been examined by her barrister, Mr Jacob, at a court hearing on 28 January 2010; (iv) that the marriage was solemnised at the Koshofe District Registry on 30 October 1993; (v) that the Claimant was domiciled in Nigeria at the time the divorce proceedings were commenced.

59. If the Claimant's assertions in cross examination about a customary marriage are true then she would have known that none of the matters I set out in the paragraph above were true: (i) there was no need for court proceedings (I recognise it is possible the Claimant was ignorant of this); (ii) the Claimant had never brought proceedings or instructed a lawyer to bring proceedings in Nigeria; (iii) the Claimant was not examined by a barrister on 28 January 2010 or otherwise and knew nothing of Mr Jacob; (iv) the Claimant did not get married at Koshofe District Registry either on 30 October 1993 or at all; (v) the Claimant had not been domiciled in Nigeria since 2004 or 2005.

60. Nevertheless, the Claimant was prepared to rely on the 2010 Decrees in the immigration proceedings and when she first instructed lawyers in this dispute.

61. The Claimant explained, in her oral evidence, that after the Defendants sent the letter from the Lagos Registry that indicated the 2010 decrees were false, the Claimant requested from her family that they obtain the 2008 Decrees. When it was pointed out to her that a customary marriage was inconsistent with these type of documents, the Claimant said that she had told her lawyer that in 2019, but the lawyer wanted her to obtain the 2008 decrees. This was a previous lawyer. The Claimant changed to her current solicitor in December 2019.

62. It would have been immediately obvious to the Claimant, if her marriage was customary, that the 2008 decrees were also false because, like the 2010 decrees, these documents refer to the marriage being entered into at the registry office in Koshofe on 30 October 1993. Nevertheless, these documents were relied on throughout these proceedings by the Claimant in the witness statements which I have described and in her evidence in chief.

Submissions

63. Mr Badejo's starting point was that the Claimant had been married previously but had not addressed with any consistency the type of marriage that she had entered into, what was done to bring that marriage into existence nor what was done to bring that marriage to an end. Mr Badejo said that the Claimant's understanding of English was good but she continually in the witness box asserted the truth of necessarily inconsistent positions. Mr Badejo suggested that with no actual evidence to substantiate the Oladiran Marriage coming to an end, the Claimant had just made it up and that this process likely started when it was necessary to demonstrate that the Oladiran Marriage had been "dissolved" for the purpose of the Claimant's marriage to the Deceased on 5 September 2012. It was not until July 2022 that there was a clear indication from the Claimant that her marriage was customary and that should not be accepted as truth given its lateness and its total inconsistency with everything that has gone before. There is nothing complex in the difference between getting married in a registry office and getting married as a result of a large gathering of two families: anybody would know what had happened to them and be able to explain that to their lawyers and in their witness statements. The court was asked to find that the Claimant was dishonest in her evidence about the Oladiran Marriage and its status.

64. Mr Ngwuocha pointed out that the marriage certificate dated 5 September 2012 stated that the earlier marriage was "dissolved" and that this official document deserves weight. He accepted and asserted that the 2008 Decrees and the 2010 Decrees were fakes and said the researches of the Nigerian Registries instigated by Mr Nsugbe, which had turned up no evidence of any marriage, proved that there was no statutory marriage. Mr Ngwuocha emphasised the nature and extent of the evidence heard by the court in the *N v D* case and contrasted that with the lack of evidence about the customary marriage in the present case. It was suggested that the court could not be satisfied on this evidence that the Claimant was married to Mr Oladiran at all. Mr Ngwuocha stressed that the voiding condition in the 1973 Act was for the Oladiran Marriage to have been "lawful", if the court could not be satisfied of that then there was no room for the application of section 11(b) of the 1973 Act and the 5 September 2012 marriage should stand. Alternatively, it was sufficient and in accordance with Mr Nsugbe's report for the Claimant to have dissolved the Oladiran Marriage by walking out of the matrimonial home with the intention of not returning and that would have brought the customary marriage to an end by her unilateral act.

Discussion

65. I agree with Mr Badejo for the reasons which follow.

66. My starting point is the assumptions I can make about the general position of the Claimant over the course of the relevant history. The Claimant had a life in Nigeria. In about 2004 or 2005, the Claimant left that life to make a new life for herself in the United Kingdom. I have no doubt that whatever the circumstances behind that decision, it was momentous and difficult.

67. In some way or other and at some time, the Claimant says as lover, wife and companion, the Defendants say as carer only, and the parties dispute the timing, the Claimant moved into the Property with the Deceased and made her home there. The Claimant remains living there and, she says, largely survives on benefits and limited

income and has health difficulties (I make no findings about these aspects which might be relevant if the 1975 Act claim continues).

68. The Claimant's marriage to the Deceased, her battles with the immigration authorities and the present dispute all threaten the security of the Claimant's life in the UK. In my view protecting and maintaining this security is an essential good so far as the Claimant is concerned. It matters more than anything else.

69. In contrast, the Oladiran Marriage is something which the Claimant long left behind. In the Claimant's mind it is irrelevant to her life in the UK and belongs to the past which is where it should stay. I suspect that it is devastating for the Claimant that the Oladiran Marriage might be able to continue to impact the security of her present life. In that context, it is wholly unsurprising that the Claimant might lie to protect her security and not be concerned about what documents or witness statements she might produce for the purposes of keeping the Oladiran Marriage where it belongs – in the past and something irrelevant to her life in the UK.

70. It is not unusual for a witness to give false evidence in order to protect a larger truth. In my view this is what the Claimant has done. Her evidence before the court is hopelessly inconsistent and I can give it no weight. I have no doubt she was prepared to rely on the 2010 Decrees and sign witness statements and rely on the 2008 Decrees knowing that the information provided was at least in part false. For the Claimant this did not matter, so long as she was protecting her life in the UK. I suspect included in this willing reliance was some comfort from the Claimant thinking that this is what her lawyers wanted her to do. However, the underlying falsity of these documents and at least some of the assertions contained in them and the Claimant's knowledge of those things remains regardless of the involvement of lawyers.

71. It is possible that had the Claimant given a full and frank account of her situation to one of her lawyers that her position might be much improved. It is equally possible that such an account would have demonstrated that the Oladiran Marriage was still subsisting. This court cannot know the truth because the Claimant has lied throughout the proceedings, including in the witness box, where her attempts to maintain the truth of necessarily inconsistent positions makes her evidence generally false.

72. Since I regard the Claimant's evidence as wholly unreliable I cannot make any findings about the circumstances in which she stopped having a relationship with Mr Oladiran. This was not addressed in her various witness statements but only in the July 2022 solicitor's letter (which itself did not provide the facts behind the explanations which it set out). There was no evidence otherwise beyond the brief reference during cross-examination to having ended co-habitation before she left Nigeria in September 2005 (one of her witness statements said she arrived in the UK in December 2004) and a statement drawn out of the Claimant at the end of her re-examination that Mr Oladiran was a violent man and shooed her away because he wanted a male child with a different woman.

73. Given what went before, this is not sufficient to establish what happened let alone attempt to draw conclusions as to its legal consequence. There is too great a likelihood that this version of the Claimant's history is being given because it is regarded as the best way to protect her current life, now that the other attempts, by obtaining and using the 2010 Decrees and the 2008 Decrees, have failed.

74. I remind the parties that the Court's role is to judge the cases that the parties choose to put forward: "In the adversarial system of litigation in this country, the task of the courts is to do justice between the parties in relation to the way in which they have framed and prosecuted their respective cases, rather than to carry out some wider inquisitorial function as a searcher after truth" (*Sainsbury's Supermarkets Ltd v Visa Europe Services LLC* [2020] UKSC 24 at [242] and quoted by Lewison LJ at [12] of *McCarthy v Jones* [2023] EWCA Civ 589). The Claimant's case in the 20 July 2022 letter was a customary marriage and a customary dissolution of that marriage. This case fails on the evidence and I dismiss it.

75. This brings me to Mr Ngwuocha's submission based on the lack of any evidence about any sort of marriage (whether statutory or customary) and the suggestion that in those circumstances the court should reject that the Claimant was legally married other than to the Deceased.

76. This may be a superficially ingenious argument but it fails at every level. The starting point is what the Claimant's case is before the court. In all her witness statements, the Claimant said she was duly married to Mr Oladiran. However, if there was any doubt about the Claimant's case this was laid to rest by the 20 July 2022 solicitor's letter, containing a statement of truth signed by Mr Ngwuocha on behalf of the Claimant. The Defendants asked if the Claimant married Mr Oladiran and the Claimant answered: "yes".

77. It follows that it was for the Claimant to establish that at 5 September 2012 she was free to marry the Deceased. Another way to encapsulate this is to start, as Mr Ngwuocha did in his closing submissions, with the 5 September 2012 marriage certificate: this asserted that the Claimant's marriage to Mr Oladiran had been dissolved and so the Claimant was free to enter into the marriage with the Deceased. In this action it was necessary for the Claimant to prove that.

78. If the Claimant wanted to run a case which started from the proposition that she was never legally married to Mr Oladiran then that needed to be made clear in her statements of case, in particular the Reply, and the response to the requests for further information contained in the letter of 20 July 2022. It would have been possible to run a case in the alternative: the Claimant's case is she was not legally married to Mr Oladiran but if she was then there was a dissolution of that marriage by the following facts.

79. This was not done. The Claimant's case was "yes", I was married to Mr Oladiran.

80. In order to prove that the Oladiran Marriage was dissolved, the Claimant needed to prove that relevant steps took place that led to the dissolution. The expert report establishes that as a matter of Nigerian law different steps need to be taken depending on whether a marriage is statutory or customary.

81. It was therefore necessary, in order for the Claimant to prove her case that the marriage was dissolved, for the Claimant to prove what type of marriage she entered into. This was an essential part of establishing that the marriage was dissolved: it would be no use proving that there had been a customary dissolution, if the marriage was statutory and vice versa.

82. Mr Badejo, in a single sentence reply submission, suggested that Mr Ngwuocha's "no evidence to establish any legal marriage" submission was disingenuous (presumably in the colloquial sense of tricky and inconsistent) and I can see why.

83. The Claimant was the only person in court or involved in these proceedings who had experienced the wedding and so the only person who would be able to give evidence about it or would know what other individuals might give evidence about it or who could provide instructions about what happened which might form the basis of inquiries to lead to other expert or factual evidence. For it then to be said on the Claimant's behalf that the lack of evidence about the Oladiran Marriage should lead to the Claimant being successful on the issue of the validity of her marriage to the Deceased would allow the Claimant's evidential failures to help the Claimant make good her own case. This would be wholly unfair and contrary to any forensic or procedural logic.

84. Mr Ngwuochu, in responding to the draft judgment, wanted the court to address Mr Nsugbe's conclusion, in his report, that there was insufficient evidence to prove any marriage. Mr Nsugbe's report also makes clear that matters of evidence are for the judge not the expert. This is, of course, correct. But regardless, any deficiency about the evidence of the Claimant's marriage (either its formation or its dissolution) undermines the Claimant's case that the Oladiran Marriage was dissolved.

85. However, in any event, the submission is flawed for another reason which is that the detail of the expert evidence does not establish there was no statutory marriage. Mr Nsugbe instigated searches of the Kosofe Registry (the spelling is from the report rather than that contained in the 2008 or 2010 Decrees) and the Shomulu Registry (which covered the Kosofe district prior to the Kosofe Registry's creation on 27 November 1996). Mr Akande describes his searches in a letter to Mr Nsugbe dated 10 August 2022. Mr Akande looked for a marriage that was celebrated on 30 October 1993. Mr Akande found such a marriage but it was not the marriage of Mr Oladiran and the Claimant. Accordingly, there was no record of the Claimant being married to Mr Oladiran on 30 October 1993. The other searches that were carried out related to the 2008 Decrees and the 2010 Decrees but not any other record of a statutory marriage.

86. All the search established was that there was no statutory record of the Claimant having been married to Mr Oladiran on 30 October 1993 in the registries searched. 30 October 1993 is the date for the marriage derived from the 2008 and 2010 Decrees. These documents are not a promising start to establish an accurate date. It is noticeable, but was not I think addressed before me during the trial, that the date given in the 22 July 2022 letter for the marriage was 30 September 1993.

87. Given my view about the Claimant's credibility, I cannot find that either 30 September 1993 or 30 October 1993 was the actual date of her marriage to Mr Oladiran. I would need some evidence independent of the Claimant, either an artefact nearer the time or another witness or something else credible or much more from the Claimant about the date, to give it sufficient weight to be relied upon. I cannot discount the possibility, therefore, that there might have been a statutory marriage but which the understandably limited search carried out by Mr Akande did not uncover because it was not looked for.

88. This uncertainty about the position regarding the statutory marriage destroys Mr Ngwuocha's reductionist argument, even if it was one that could be made on the Claimant's behalf.

89. Mr Ngwuocha's logic is that the marriage was either statutory or customary, the expert's report proves it was not statutory and there is none of the evidence as in *N v D* to prove that it was customary and accordingly there was no lawful marriage.

90. In short, the expert report does not prove the Oladiran Marriage was not statutory. Indeed, given how much energy over the last ten years the Claimant has put in to demonstrating that the Oladrian Marriage was dissolved on a statutory basis (the 2010 decrees, the 2008 decrees and her various witness statements), the greater probability is that there was a statutory marriage but on a different day or involving a different registry.

91. Finally, I bear in mind the following general points. The court should be slow to find that a person has entered into a marriage while being married to another person. It seems to me that in general this is an unlikely thing to happen, perhaps more so even than financial fraud when there is the motive of financial gain. It is also a finding which has necessary extreme and serious consequences going potentially beyond the actual disputes before the court: it alters the status of the individual concerned.

92. I also bear in mind that there is some likelihood that the Claimant has vulnerability. There is no evidence that establishes this but it is not so unlikely that I can discount the possibility. This has a bearing on my assessment of the Claimant as a witness. It has a bearing on my assessment of the reasons why the Claimant's case might have ended up looking like it does.

93. In short, the court should exercise considerable caution before finding against the Claimant in this case. I have exercised that caution.

94. Nevertheless, I am clear on the material before me that the Claimant's marriage to the Deceased was void because at the time she married him, she remained married to Mr Oladiran.

Conclusion

95. I will make a declaration that the marriage of the Claimant to the Deceased on 5 September 2012 was void pursuant to section 11(b) of the Matrimonial Causes Act 1973 because at the time of the celebration of the marriage the Claimant was lawfully married to Richard Olubunmi Oladiran.

96. Given my findings, it seems to me that it will be very difficult for the Claimant to establish that she married the Deceased in good faith on 5 September 2012 for the purpose of her 1975 Act Claim. However, I have not been addressed on this aspect and I will leave it for further argument with the remaining issues.