Case No: H10CL045

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

Guildhall Buildings
City of London

Date: 08/03/2024

Before :

HHJ PARFITT

- -

Between :

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

- -
- -

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

Hearing dates: 26 & 27 February 2024

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Approved Judgment

This judgment was handed down remotely at 10.00 am on 8 March 2024 by circulation to the parties or their representatives by e-mail

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HHJ PARFITT

HHJ Parfitt :

Introduction

1. The Claimant seeks relief under the Inheritance (Provision for Family and Dependants) Act 1975 ("the 1975 Act") and the Defendants, as the executors of the late Mr James Babatunde Odularu ("the Deceased"), seek possession of the Claimant's home at 1 Solon Road, SW2 5UU ("the Property") that being the only significant asset of the Deceased's estate. The Claimant's case under the 1975 Act is that she was the spouse of the Deceased having married him on 5 September 2012 in the UK and she seeks a share of the estate of up to one third.

2. In a judgment handed down on 8 June 2023 I determined that as at 5 September 2012, the Claimant remained married to a Mr Richard Olubunmi Oladiran, and that consequently the 5 September 2012 was void under section 11(b) of the Matrimonial Causes Act 1973. I made a declaration to that effect ("the declaration").

3. The definition of "spouse" under the 1975 Act extends to those parties to a void marriage "who in good faith entered into a void marriage with the deceased" subject to some irrelevant exceptions. The main issue addressed in this judgment is whether at the time the Claimant entered into her marriage to the Deceased she believed in good faith that she was no longer married to Mr Oladiran.

4. However, before addressing that issue I need to deal with some legal points made by Mr Ngwuocha for the Claimant.

Section 58(5) of the Family Law Act 1986 ("s. 58(5)")

5. In his skeleton argument for this trial, Mr Ngwuocha rightly drew the court's attention to s. 58(5): *No declaration may be made by any court, whether under this Part or otherwise – (a) that a marriage was at its inception void."*

6. The relief that I granted in my order dated 26 June 2023, following the 8 June 2023 judgment, included such a declaration. The court was not referred by either party to s.58(5) until Mr Ngwuocha's skeleton dated 26 February 2024. I also note that the Claimant has sought unsuccessfully permission to appeal the 26 June 2023 order, when her application was marked as totally without merit. I infer that the s. 58(5) point was not raised in that appeal process either.

7. Regardless of when the issue was raised, it appeared to me that Mr Ngwuocha has a good point. Mr Badejo did not raise any arguments otherwise. I suggested to the parties during closing submissions that by consent I would set aside paragraph 1 of the order dated 26 June 2023 thus removing the declaration made contrary to s. 58(5). This was agreed by both parties.

8. I have considered whether this court has any jurisdiction to amend its own orders in that way. If there is such a jurisdiction then it is most likely under CPR 3.1(7): *A power of the court under these Rules to make an order includes a power to vary or revoke the order*. The Court of Appeal considered that rule in *Vodafone Group PLC v Vodafone Limited* [2023] EWCA Civ 113, Lewison LJ, [35] to [55]. Lewison LJ referred to the case of *McWilliam v Norton Finance UK Ltd* [2014] EWCA Civ 818

when an order was set aside by consent. While expressly preferring the reasoning in *Ceredigion Recycling* about the limits to the CPR 3.1.(7) jurisdiction in relation to reopening refusals of permission to appeal, at [48], Lewison LJ emphasised that the order in *McWilliam* had been made by consent which, by my inference, suggests that the court was satisfied that <u>because it was done by consent</u> that was an available course.

9. In my view as the parties have consented to the declaration being set aside I have the power to do so and it would be in the overriding interests of justice to do so. I take into account the following factors:

   i) The parties agree that the declaration should be set aside.

   ii) The declaration was made by clear and obvious error – neither party had drawn the court's attention to s. 58(5).

   iii) The purpose of the findings which led to the declaration related to whether or not the Claimant could make a 1975 Act claim as "spouse" and so the declaration was an interim finding directed at determining the final issue before the court: if it had not been for the procedural need to adjourn the trial because of the lack of handwriting evidence, all issues would have been dealt with at one trial and the declaration would have been irrelevant and would not have been made. In this sense it is an unusual order which has some characteristics of an interim order (for example if the Claimant is right and she entered into the marriage in good faith then notwithstanding the findings in the 8 June 2023 judgment, it will have been determined that the Claimant is a spouse for the purpose of her 1975 Act claim).

   iv) It is well arguable that the impact of s 58(5) would be to render the declaration in the order of 26 June 2023 at least "legally ineffective" (see *R v County Court at Central London* [2024] EWCA Civ 94) and so removing the declaration is a proportionate response to a human error which brings the court's order into line with parliament's intentions as clearly set out in the 1986 Act.

   v) It also solves any problems created for the Claimant by the permission to appeal application having been dismissed in circumstances where this ground has not been raised. It would seem wrong and is clearly disproportionate and contrary to the overriding objective for the Claimant to have to spend time and money to find a way to have set aside a declaration that all agree should be set aside.

   vi) Removing the declaration will accord with the intention of parliament that no declaration of this kind should be made.

10. Nevertheless, I understand from Mr Ngwuocha's submissions that he considers the impact of s.58(5) is wider (or perhaps in combination with the decision of the Supreme Court in *Unger v Ul-Hasan* [2023] UKSC 22 it is wider) so that this court in determining issues under the 1975 Act cannot go behind the marriage certificate which was duly issued establishing the 5 September 2012 marriage.

11. This is an ambitious but hopeless argument. The starting point is the 1975 Act. In order to determine if the Claimant is entitled to the relief she is seeking, she must prove (unless it is admitted) that she is a "spouse" within the 1975 Act. This could be because she was married to the Deceased but can also be because she was in good faith when she entered a void marriage. It must have been anticipated in the context of the 1975 Act that the court would, when necessary, have subject matter jurisdiction to determine whether or not a marriage was void. Mr Ngwuocha's argument would exclude any such determination.

12. When Mr Ngwuocha saw this judgment in draft he asked that I note that the Claimant's case was that she was a spouse not because she was in good faith when she entered into the void marriage but because the court was precluded from finding that the marriage was void because of s. 58(5). Mr Ngwuocha said that section 25(4) of the 1975 Act would only apply where the court had to decide if an English marriage was void or a non-marriage. This makes no sense in the context of an English marriage ceremony, such as the one which took place on 5 September 2012, which would either have been a valid marriage or a void marriage. There is no room for the concept of non-marriage in relation to the marriage of 5 September 2012 because were it not void, it would be valid. Non-marriage is a description that applies to circumstances where under English law (which might apply the *lex situs*) nothing took place that might be marriage. In any event, it is a distinction which is of no assistance to the Claimant since if the 5 September 2012 was a non-marriage then she cannot make a 1975 Act claim as spouse. If Mr Ngwuocha's point is that the marriage to Mr Oladiran was a non-marriage then that is no available as an argument to the Claimant for the reasons already stated in the first judgment. In any event the first judgment has determined for the purposes of the 1975 Act claim that the 5 September 2012 marriage was void and that finding for the purpose of the 1975 Act claim remains regardless of the removal of the declaration.

13. Mr Ngwuocha has not cited any authority in support of s. 58(5) having this surprising and wide ranging impact. On the contrary, it appears to have been held not to exclude a court making a finding that a marriage was void because of a prior marriage in at least two recent Chancery cases (these were not cited to me): *Adepoju v Akinola* [2016] EWHC 3160 (Ch), Master Matthews (as he then was) at [55] while recognising at [58] that a declaration could not be granted; and, *Lattimer v Karamanoli* [2023] EWHC (Ch), Master Clark at [98] and [99] where there were pleading issues in a dispute about whether a later marriage rendered ineffective a prior will, the judge refused permission to allow an amendment seeking a declaration that would have been contrary to s.58(5) but did not exclude the validity issue as a proper factual enquiry. In a similar way but not necessary to the decision, Park J in *Gandhi v Patel* [2001] EWHC Ch 473, dealt fully with the void marriage issue in the context of a 1975 Act claim, finding the marriage was not void but a non-marriage but then going on to find that had it been void then it would not have been entered into in good faith.

14. I have also noted the recent discussion of void marriage and related issues in *Tousi v Gaydukova* [2024] EWCA Civ 203 (judgment handed down on 6 March 2024) and in particular [53] which makes clear that a void marriage is void regardless of any declaration to that effect and cites Lord Greene in *De Reneville*: "a void marriage is one that will be regarded by every court in any case in which the existence of the

marriage is in issue as never having taken place…". The existence of the 5 September 2012 marriage was in issue in this case and was determined by the judgment in June 2023.

15. Mr Ngwuocha preyed in aid of his argument *Unger*. In *Unger* the Supreme Court determined that the rights that spouses have under the Matrimonial Causes Act 1973 (for example to get divorced and seek financial remedies) are personal rights which do not transfer to and so cannot be pursued on behalf of a parties' estate. Mr Ngwuocha's point came down to the idea that since s. 11(b) of the Matrimonial Causes Act 1973 was also part of the 1973 Act then the same principles must apply and it would not be open to the estate to challenge the validity of the marriage because of an extant marriage at the date the Claimant got married to the deceased. I disagree. The Claimant must establish her claimant status under the 1975 Act. No party to these proceedings is asking the court to exercise a power or determine rights granted under the 1973 Act. Section 11(b) of the 1973 determines part of English law about what makes for a valid or void marriage, it does not create private law rights equivalent to a right to apply for divorce or financial remedies. The determination in *Unger* is irrelevant to the present case. A void marriage is a void marriage regardless of any declaration. Generally, no declaration of a void marriage can be made but a decree of nullity can be granted by an appropriate court and that can provide the basis for other remedies but none of that is relevant to this decision.

Good Faith

Background and Narrative

16. I have set out above that after the draft judgment was circulated Mr Ngwuocha made the assertion that it was not the Claimant's case before me that she had in good faith entered into the marriage to Mr Odularu (or perhaps this was what the Defendants said not what the Claimant said). I will ignore this because if that was the Claimant's position then her 1975 Act application was hopeless following the first judgment: this determined that the Claimant was married to Mr Oladiran at the time of the 5 September 2012 purported marriage to Mr Odularu. The legal consequence of that determination was that the marriage was void and so the Claimant could only be treated as a spouse for 1975 Act purposes if she entered into the 5 September 2012 marriage in good faith.

17. I turn to that issue: did the Claimant enter into the void marriage with Mr Odularu in good faith. At [96] of the 8 June 2023 judgment I commented that given my findings it would be "very difficult for the Claimant to establish that she married the Deceased in good faith" but since I had not been addressed on that aspect – and the Claimant had not been cross-examined on it – it would be left for argument with the remaining issues.

18. In the event, in the order suggested by the Defendants following the June 2023 judgment, the Defendants proposed that the Claimant should be given an opportunity to file further evidence relevant to the 1975 Act claim by 4pm 28 July 2023. So far as I understood it (this is set out in the recitals) Mr Ngwuocha did not engage with the form of the order and it was made largely in the form proposed by the Defendants. No such evidence was filed. In my view, this was a surprising and significant omission because had the Claimant wanted to set out a clear basis for her having entered into

the 5 September 2012 marriage in good faith then this would have been a good opportunity for her to have done so in the light of the findings that the court had made regarding her hopeless inconsistency and serious falsity in her various prior statements.

19. It is not necessary for me to rehearse the previous judgment and I will take it as read for the purpose of the discussion in this judgment but the most relevant findings / descriptions of the evidence were as follows:

    i) Nigerian Law. The Claimant's prior marriage in Nigeria could either have been customary or statutory (or perhaps both). If statutory it would have taken place in a registry office or equivalent and it could only have been dissolved by court order. If customary then it would have taken place at a ceremony where the bride would be formally handed over from one family to another and there would be an exchange of a bride price. Such a marriage could be dissolved judicially or extra-judicially but such dissolution, even in circumstances where one party abandoned the other, would require confirmation from the families involved and normally (but not necessarily) the return of the dowry.

    ii) 2010 Decrees. In at least 2013 or 2014 (in her Immigration proceedings) and then in 2019 (in pre-action correspondence) the Claimant relied on, as proof that the Oladiran Marriage was dissolved, Nigerian court orders dated from 2010. These documents were false and, to the Claimant at least, would have been obviously false (they refer to her being the Claimant in divorce proceedings and having given evidence in Nigeria with her barrister, Mr Jacob, on 28 January 2010 but the Claimant's evidence is that she has never returned to Nigeria after she left for the UK in 2004/2005). These 2010 documents presupposed that there was a statutory marriage on 30 October 1993.

    iii) 2008 Decrees. The Claimant's response in 2019 to it being pointed out that the 2010 Decrees were false was to rely on a different set of Nigerian court documents which evidenced that the Oladiran Marriage, again said to be a statutory marriage dated 30 October 1993, had been dissolved in 2008 following proceedings brought by Mr Oladiran. An explanation was provided by the Claimant which involved the Claimant asking friends to instruct a lawyer to file for divorce and those friends then providing the 2010 Decrees but then the same friends providing the 2008 Decrees, which may have been given to one of the Claimant's relatives in 2011 but that relative was not savvy enough with social media to send them (this is from one of the Claimant's witness statements).

    iv) The Claimant then relied on the 2008 Decrees in her witness statement in these proceedings dated 9 December 2019 in which the Claimant said she had paid money for the 2010 Decrees and had been scammed. Eventually, she said Mr Oladiran had provided the 2008 Decrees through a third party. The Claimant said she knew about Mr Oladiran taking divorce proceedings in 2007 but heard nothing further so in 2010 asked her friend to bring new proceedings and that resulted in the 2010 Decrees being provided.

v) In her witness statement dated 5 January 2021 and in her evidence in chief at the first trial, the Claimant said that she had married on 30 October 1993 and the marriage was dissolved on 17 September 2008, as set out in the 2008 Decrees. This must have been a statutory marriage as addressed in the 2008 Decrees.

vi) In a final relevant statement dated 20 November 2021, the Claimant said she presented the 2010 Decrees and the 2008 Decrees in good faith but she could not challenge the evidence that both the 2010 Decrees and the 2008 Decrees were false.

vii) At trial, in her oral evidence, the Claimant asserted that the marriage was customary and she believed it was over because she had been thrown out by Mr Oladiran and he had remarried.

viii) I found that the security of the Claimant's life in the UK mattered more than anything else and that she had lied throughout the proceedings to protect that (see [68] to [71])

ix) There was insufficient evidence about what had caused the Claimant to leave Nigeria and to leave her marriage with Mr Oladiran (although in re-examination, the Claimant said that he was violent and wanted to marry someone else to have a male child) and so there was no factual basis upon which I could find that the marriage had been dissolved [72] and [73]

x) There was no reliable evidence about the basis of the Oladiran marriage (i.e. statutory or customary) or when or how it occurred but given the false reliance on both the 2010 Decrees. before the Immigration Tribunal, and the 2008 Decrees, in these proceedings, it was more likely it was a statutory marriage because assuming some legitimacy to the Claimant's approach then those decrees were only relevant to and asserted the existence of a statutory marriage.

20. The important point for present purposes is the Claimant saying that she knew about divorce proceedings well before the 2012 marriage. It is important because on the court's findings (and indeed on the Claimant's current factual case) there were no such divorce proceedings and the Claimant would more likely have been lying about that in circumstances where the Claimant gives no factual basis for why she would not have been (i.e. establishing who told her what and when and why that was considered credible).

21. It might have been expected that given the state of the Claimant's evidence and the court's findings against her and the clear indication that good faith would be very difficult for her to establish, that a further witness statement setting out a full chronology explaining her state of mind and explaining her various choices and addressing specifically what she knew as at 5 September 2012 would have been prepared (perhaps in a different language if that was a language that the Claimant would have felt more comfortable giving evidence in (see [15] of the judgment)). This was not done and so the court is left without any detailed or focused account of the Claimant's state of mind on the relevant date. It is difficult to avoid the inference that

this was not done because it was considered that the evidential picture would not improve by a genuine attempt to set out the current alleged truth.

22. All the Claimant said, in substance, during her cross-examination on this second occasion was that once she left Nigeria she knew her marriage was over because once you say goodbye that is goodbye. Her husband had already said goodbye and so why would she go back. So far as the Claimant was concerned "law or no law" she was not married and so she told the Registrar when she was asked that she was no longer married because she had left.

Submissions

23. Mr Ngwuocha's submissions on the good faith issue were that it was a subjective test: what did the Claimant believe on 5 September 2012? She had left Nigeria in 2005 and had limited ability to understand the legal effects of the events and documents she was involved with because of her poor standard of education but nevertheless as she said in her witness statements she was fully sure that her prior marriage was over and that she was free to marry again. The various inconsistent statements merely proved the Claimant's inability to understand. It cannot be said that she would have provided the 2010 Decrees to the Registrar on 5 September 2012 because any such requirement was not introduced into the Marriage Act 1949 until 1 October 2014 (by the Immigration Act 2014). Presumably, the Deceased who was an honourable man was also satisfied that the Claimant was free to marry him and this was the view of the First Defendant who gave a witness statement in support of her during the Immigration proceedings around 2015.

24. Mr Badejo referred me to the consideration of the good faith issue in *Gandhi* and said that the key must be the material upon which the Claimant could have formed a "good faith" belief that she was no longer married to Mr Oladiran but in her various statements she indicates that she knew about the alleged divorce proceedings prior to 2012 (perhaps as early as 2005 but certainly 2007 and 2010 (when she said she asked friends to instruct a lawyer to get the divorce finalised) and if that was the case then she would have known that some formal document was required to confirm the marriage was over and either (i) she had the 2010 documents prior to 5 September 2012 and it would have been obvious to her that they were false or (ii) she did not have those documents and so she would have had no basis for believing that the divorce proceedings had concluded.

Findings

25. I take into account throughout the assertion that the Claimant has only a limited understanding and that English is not her first language. I addressed these matters in more detail in the first judgment. I do not give much weight to the assertion that the Deceased must have believed his marriage was genuine because in the absence of evidence otherwise I infer the Deceased would have been content to rely on the 2010 Decrees, perhaps without paying too much attention given he was concerned to help the Claimant with her immigration status (if the Defendants' are right) and/or secure her services as wife and carer (if the Claimant is right).

26. Park J's analysis from [51] of *Gandhi*, refers to and agrees with the Law Commission report recommending that *whether a claimant had entered into a marriage in good*

faith we think a subjective test should be applied and that the court should have regard to whether there was an honest belief in the validity of the marriage. Accordingly, Park J refined what would have been the question before him as being did she honestly believe that she was entering into a valid marriage? On the facts of that case it would have depended on whether the spouse knew that her late partner was already married (she did). In the present case the equivalent question is what grounds did the Claimant have for believing that her own prior marriage had ended and did she honestly believe those grounds were sufficient?

27. I start from recognising that in the circumstances of the present case it is not directly relevant that the court has found that the Oladiran marriage was not dissolved and that consequently there are, objectively, no good grounds upon which it could be thought that it was not dissolved: the question is subjective and so depends on what the Claimant believed and why she believed it.

28. In this respect the Claimant's oral evidence does not help her. After hearing her give evidence during the June 2023 trial, I formed the view that when the Claimant came to England she believed that she had left behind her life in Nigeria, which would include the Oladiran marriage ([69]). This was consistent with her oral evidence before me this time as well: once you say goodbye that is goodbye, she said. It follows that at best her evidence is that she believed her marriage was over in 2012 because she and Mr Oladiran had said goodbye to each other (I assume this is a metaphor expressing the idea that as between them they did not expect to have anymore to do with each other rather than literally just saying goodbye). I accept this evidence of the Clamant and I find that the only basis upon which she believed that the marriage was dissolved was that she had left the marriage behind.

29. The next question is whether the Claimant honestly believed that was sufficient to have brought her marriage to an end? I am sure she did not or at best she shut her eyes to her obvious concerns that it did not and so cannot have thought that she did not remain married in good faith.

30. The Claimant's own written evidence was that she knew about Mr Oladiran bringing divorce proceedings some time between the end of 2005 and well before 2010 because in 2010 she asked a friend in Nigeria "to help me get divorce from my previous husband in 2010" – this was only necessary because the Claimant had not heard about how her husband's case was proceeding. If this was truthful evidence, then as at 2012 the Claimant knew that more was required to bring her marriage to an end than the parties merely saying goodbye to each other. On this evidence the Claimant would have known and expected that divorce proceedings would have been required because she believed her former husband was bringing those proceedings and when she had not heard about their outcome by 2010, she asked a friend to bring such proceedings in the name of the Claimant.

31. On the other hand, if this is untruthful evidence then the only basis for lying about it would be if the Claimant believed that it was necessary for there to be some formal process by which her marriage to Mr Oladiran had ended. Otherwise, the Claimant could have given truthful evidence setting out the facts she was relying on to prove the marriage was over and then evidence that she knew such facts and relied on them as at 5 September 2012.

32. Either way, the Claimant's obtaining of the 2010 Decrees, even if they were not relied on for the purpose of obtaining the marriage certificate on 5 September 2012, strongly points to a person who understood that more was required to bring her marriage to an end. If that was her belief at the time these documents were first sought by her (and their existence is good evidence that she did ask for them at some time) then I have no evidence upon which I could find that such a belief only became apparent to the Claimant after 2012. It follows that it was something she believed as at 5 September 2012 and believing that a court process was required means she was not in good faith regarding her freedom to remarry based on having left her husband behind.

33. Furthermore, the theory that the Claimant only after 5 September 2012 realised that more was required than just leaving would be inconsistent with what the Claimant said about her understanding in a witness statement of 20 November 2021 which was that in Nigeria…*in relation to divorce it was my extended family that directed the whole process and were in a position to provide evidence of the divorce*. The Claimant puts this forward as an explanation for why at the various times she says she did, she relied on her family to obtain documents and information relevant to her divorce from Mr Oladiran. Again, this is evidence from the Claimant that she knew that more was required. The Claimant has not given evidence that this knowledge only came to her more recently than 5 September 2012 and, if so, how.

34. Given the Claimant's reliance on the 2010 Decrees and the 2008 Decrees, both of which asserted the existence of a statutory marriage, I found that it was more likely that the Claimant's marriage to Mr Oladiran was statutory – why rely on such documents if you have no need of doing so? If that finding was correct, then the Claimant knew that nothing had happened that was sufficient to bring her prior marriage to an end because as at 5 September 2012 (or at all) there was no basis for her to think that anything had happened that would have ended it. Indeed, I do not understand the Claimant's case to be that anything had happened or that she believed that anything had happened.

35. On the contrary, if I was wrong about that finding in the June judgment that it was more likely that the marriage was statutory and it was customary, then the Claimant recognises that whatever process was required to bring the marriage to a "divorce" (her word in the relevant witness statement) would have been something involving the families and so more than just her and her husband saying goodbye to each other (or one or the other walking away or her being thrown out). This belief would be consistent with the expert evidence about how to end a customary marriage in Nigeria. Again, if that was the Claimant's belief in 2012 then she would have known that she had no grounds for thinking that her prior marriage was over because she gives no evidence of her family providing any such information (on the contrary, all the Claimant says the family did, even now, is to produce the false 2010 Decrees and the false 2008 Decrees): there is no evidence of the family having done anything to bring the Oladiran marriage to an end or the Claimant believing that the family had done that.

36. The analysis above involves a degree of speculation and assumptions which the court should not have to do when considering the state of a party's mind at a particular point in time. This is because what would be usual where an issue of this kind was raised would be a witness statement from that party focusing tightly on the relevant point of time and setting out the basis upon which the witness said she was in good

faith at the material time (i.e. the relevant beliefs or state of mind and the factual or other basis for that belief or state of mind). No such statement is available from the Claimant. A short answer to the question I am discussing would be to say that the Claimant has failed to provide any evidence which would satisfy the court that she was in good faith when she entered into the marriage to the deceased.

37. However, for the reasons set out more fully above, I can go further. I am satisfied that it is more likely than not that the Claimant entered the marriage with the Deceased knowing that she was still formally married to Mr Oladiran but that she considered that such a marriage was in the past and in a different country and that she could ignore it for the purpose of her life in England. This was not good faith: the Claimant knew that more was required and knew that whatever was required had not been done.

38. It follows that I agree with how this point was formulated by Mr Badejo in his skeleton argument for this trial: at the time the Claimant told the registrar that her marriage had been dissolved so she was free to marry Mr Odularu, the Claimant had no good grounds for making that assertion and knew she had no good grounds for making that assertion.

The 1975 Act Claim

39. The 1975 Act Claim is only brought on the basis that the Claimant was a spouse as defined in the 1975 Act. This was the case on the application notice and was confirmed as being the Claimant's case by Mr Ngwuocha during the hearing. The Claimant was not a spouse within the definition of the 1975 Act and consequently her claim must be dismissed. This albeit for different primary reasons, was the conclusion reached by Park J in *Gandhi* at [49]: *It follows that Hasmita cannot fall to be treated for the purpose of the Inheritance Act as a wife of Jawahar. Given that her claim for provision under the Act is put solely on the basis that she does fall to be treated as a wife, her claim must fail*. The same is the case here.

Possession

40. The Defendants in their capacity as executors of the Deceased's estate brought possession proceedings against the Claimant. A notice to quit had been served on 30 July 2019. The Claimant remains in the Property.

41. I made an oral judgment in favour of the Deceased's will dated 11 September 2013. At one time the Claimant challenged the will on the basis, among other things, that the handwriting on it demonstrated that it was a forgery. This was why the court had directed a single joint handwriting expert. The order of 26 June 2023 made an unless order against the Claimant regarding payment of her half of the expert's fees, striking out her challenge to the will if those fees were not paid. The fees were not paid. Nevertheless, I considered the evidence which supported the will and had the benefit of seeing the original will, which met the relevant testamentary requirements. I had no doubt that the will was genuine and it was proven in solemn form. I will make the relevant declarations to that effect.

42. The Claimant has not suggested any defence to the possession claim other than any that might be associated with her 1975 Act claim or setting aside the will and

therefore the authority of the Defendants to act on behalf of the estate. Neither of those potential bars to the estate getting possession arise on the court's findings.

43. I will grant a possession order in favour of the Defendants over the Property. I will order possession in 28 days but urge the Defendants to take a humane stance in respect of this because I have no doubt that the consequence to the Claimant of having to leave her home will be devastating.

Conclusion

44. I circulated a draft order with the draft judgment. Except for costs the terms of the order are not disputed and I will make it and reserve questions of costs to written submissions as requested on behalf of the Claimant.