



Neutral Citation Number: [2023] EWHC 1567 (Fam)

Case No: FD02D03678

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/06/2023

Before :

MR JUSTICE MOSTYN

Between :

VARSHA GOHIL

Applicant

and

(1) BHADRESH BABULAL GOHIL
(2) BABULAL RAMJI GOHIL (DECEASED)
(3) KAMLA BABULAL GOHIL
(4) ODESSA MANAGEMENT LIMITED
(5) SUNFOR COMMERCIAL

Respondents

-and-

CROWN PROSECUTION SERVICE

Intervener

Sarah Wood instructed by **Hanne & Co** for the applicant
The respondent acted in person,
Tom Tyler and **Michael Newbold** (instructed in house) for the CPS
Hearing date: 22 June 2023

Approved Judgment

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MR JUSTICE MOSTYN

This judgment was delivered in private. There is no order restricting what may be reported about it.

Mr Justice Mostyn:

1. I shall refer to the applicant as “the wife”, to the first respondent as “the husband” and to the Intervener as “the CPS”.
2. Astonishingly, the wife’s application for financial remedies was made 21 years ago. Although the claim was resolved by a consent order made in 2004, that order was set aside by Moylan J by reason of the husband’s non-disclosure in September 2012. That set-aside order was overturned on appeal but reinstated by the Supreme Court on 14 October 2015 ([2015] UKSC 51).
3. The judgment of Lord Wilson sets out in detail the reasons for the extreme delays that beset this case up to 2015. He recounts how in November 2010, after an 8-week trial in the Crown Court, the husband was found guilty of laundering money corruptly obtained by Mr Ibori, a state governor in Nigeria, to the tune of £25 million. Following that conviction, the husband pleaded guilty to further offences, resulting in him being committed to prison in April 2011 for a total of 10 years.
4. The CPS then commenced confiscation proceedings under the Proceeds of Crime Act 2002 (PoCA) against the husband. Believe it or not, those proceedings have not yet concluded, although I am told that on 21 July 2023 a perfected judgment containing the relevant factual findings will be handed down and confiscation orders will be made.
5. Although back in 2017 I had indicated that perhaps a way could be found for the same judge (maybe even me) to have heard the confiscation proceedings in the Crown Court in tandem with the wife’s financial remedy proceedings in the High Court, this was not possible to arrange. Accordingly, there will be a directions hearing before another judge of this Court in September 2023 when a decision will be made for the best way for the wife’s claim to be determined in the light of the confiscation orders which I am confidently told will have been made on 21 July 2023. If that has happened then it seems to me that the only course that can plausibly be followed is as set out in the well-known case of *Webber v Webber* [2007] 1 WLR 1052 namely that the CPS shall agree, following the making of confiscation orders, not to seek to enforce them pending the determination of the wife’s claims. Once those claims have been determined it will then be for the wife to apply to the Crown Court to vary the restraint order to allow her financial remedy award to be met. Separately, an application to vary the confiscation order under s. 23 POCA could be brought by the husband, or the CPS or a receiver (but not the wife - see s. 23(1)(b) POCA), but that step would not be essential for the wife’s purposes.
6. That decision is however not for me and I do not seek to tie the hands of the judge who will succeed me as the allocated manager of this case.

7. This judgment is concerned with a discrete point namely the inexplicable differences that accompany a draft judgment handed down respectively in the KBD, the Family Division, and the Crown Court.
8. The confiscation proceedings against Mr Gohil were eventually heard in the Crown Court over four weeks last autumn with judgment being reserved on 11 November 2021.
9. Nearly a year later, in the absence of a judgment, and in circumstances where a hearing before me was looming, the CPS politely asked what was happening. On 3 October 2022 an email was sent by the Crown Court to the CPS. This stated that the Crown Court judge was content for me to be informed of the following:

“(1) I would be finding that having been convicted on two indictments containing a series of money laundering counts contrary to sections 327 and 328 of POCA, [H] would be subject to the assumptions prescribed by statute, and

(2) Having regard to the issues on which the Family Court would likely be focused as between [H] and [W], I was satisfied, regardless of what may be shown by way of title, that [H] has a beneficial interest in the following available assets listed by the prosecution and that those assets represent the proceeds of [H]’s criminal conduct.

(i) Real property:

- In Mumbai – ‘Raj Classic’
- In London – 88 Sydney Street, W3 (sic, semble SW3)

(ii) Other assets:

- Rental income from 88 Sydney Street held by Foxtons.
- A Schrodgers bank account in the name of Sunfor Commercial.
- A State of Mauritius bank account also in the name of Sunfor Commercial.
- A Schrodgers bank account in the name of Slavonian Finance Corp.
- A Hinduja bank account in the name of Bilt Finance Ltd.”

10. On 28 October 2022 the Crown Court sent an email to the CPS, and to the husband (who was self-represented). The email said merely “please see attached document”. The attached document said on its front page “Findings Following Confiscation Proceedings”.

11. An equivalent document relating to Mr Ibori was sent to the CPS and to Mr Ibori's lawyers. In November 2022 the CPS provided the Ibori document to Mr Gohil and the Gohil document to Mr Ibori.
12. A remote hearing took place on 21 April 2023. The dates for final determination on 20 and 21 July 2023 were fixed¹ and a timetable was set for the filing of submissions. During the hearing the judge confirmed that the documents constituted draft judgments; he said they were "complete" but they were subject to editorial correction of obvious errors.
13. Perhaps surprisingly, there was no rubric on the face of either draft judgment limiting who could be apprised of its contents.
14. Nothing was said explicitly by the judge that suggested that there was a prohibition on any party disseminating the contents of the draft judgments to anyone, although such a prohibition could be inferred.
15. If that is so, Mr Gohil has breached the prohibition and may be technically in contempt of court because in his position statement he has told me a number of things about the contents of the draft judgments.

Rubrics on embargoed judgments

16. In the King's Bench Division a reserved judgment will be provided confidentially to the parties in draft pursuant to the terms of CPR PD 40E. This states:

"2.4 A copy of the draft judgment may be supplied, in confidence, to the parties provided that –

(a) neither the draft judgment nor its substance is disclosed to any other person or used in the public domain; and

(b) no action is taken (other than internally) in response to the draft judgment, before the judgment is handed down.

...

2.8 Any breach of the obligations or restrictions under paragraph 2.4 ... may be treated as contempt of court."
17. In the light of these provisions, the digital judicial judgment generator produces as a default a draft KBD judgment bearing a rubric which states:

IN CONFIDENCE

This is a judgment to which the Practice Direction supplementing CPR Part 40 applies. It will be handed down on _____ at _____ in Court No _____. This draft is confidential to the parties and their legal representatives and accordingly neither the draft itself nor its substance may be disclosed to any other person or used in the public domain. The parties must

¹ Those July dates were confirmed at a mention in May 2023.

someone cannot be guilty of contempt of court for breaching an implied, unwritten, embargo.

24. This confusion is, in my judgment, completely unacceptable. It is unacceptable that someone would almost certainly be in contempt of court if she discloses a draft KBD judgment to a journalist; might well not be if she discloses a draft Family Division judgment; but in all likelihood would not be if she discloses a draft criminal judgment. This is an unacceptable example of arbitrariness.
 25. I therefore direct that a copy of this judgment is to be sent to each of the Civil Procedure Rule Committee, the Family Procedure Rule Committee and the Criminal Procedure Rule Committee with a request that they seek to harmonise the rules on embargoed draft judgments.
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