

Neutral Citation No: [2025] NICA 53	Ref: KEE12848
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No: 16/038039/A01
	Delivered: 13/10/2025

IN THIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

**ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION**

Between:

SAMUEL FORBES CARSON
First-named Defendant/Appellant
and

SAMUEL JAMES McKEE
Second-named Defendant
and

FIONA MARY McKEE
Plaintiff/Respondent

The appellant appeared as a litigant in person
Mr Power KC with Ms Moran (instructed by Hunt Solicitors) for the Respondent
The second named defendant played no part in this appeal

Before: Keegan LCJ, Treacy LJ and Colton J

KEEGAN LCJ *(delivering the judgment of the court)*

Introduction

[1] The appellant, Mr Samuel Carson, appeals against decisions of Madam Justice McBride (“the judge”) delivered on 10 June 2022 and 23 May 2025, in what has been a long running chancery claim concerning land.

[2] The final order of 23 May 2025 ordered as follows:

“1. That the transfer of the lands being the subject of
these proceedings dated 7 August 2015, made

between Samuel James McKee (the Second Defendant) and Fiona Mary McKee (Plaintiff) (as Vendors) and Samuel Forbes Carson (First Defendant) (as Purchaser) being the lands contained in Folio 8693 County Antrim and Folio AN227930 County Antrim is rescinded.

2. The court orders the Registrar of Titles in Northern Ireland to register the full Folio 8693 Co Antrim in the names of Samuel James McKee and Fiona Mary McKee as Tenants in Common in equal shares.
3. The court orders the Registrar of Titles Land Registry of Northern Ireland to register the full Folio AN227930 County Antrim in the names of Samuel James McKee and Fiona Mary McKee as Tenants in Common in equal shares.
4. The First Defendant is to pay all legal and Land Registry costs associated with the said registration referred to in paragraphs 2 and 3 above.
5. The First Defendant is to deliver vacant possession of the said lands to the Plaintiff and the Second Defendant within 3 weeks of the date of this order.
6. That pursuant to the Remedies Hearing neither the Plaintiff nor the Second Defendant are required to make any payment to the First Defendant in respect of the said rescission."

Background

[3] The case centres upon a claim brought by Fiona Mary McKee (referred to as the plaintiff and "Mrs McKee") seeking to set aside a transfer of 19 acres of land at Ballee Road West, Ballymena, Co Antrim, to the appellant (referred to as the appellant and Mr Carson). The plaintiff's husband, Samuel James McKee, was the second-named defendant and is no longer part of proceedings.

[4] The relevant background is comprehensively traversed in the first instance judgment which we draw from as follows. Mrs McKee was married to the second-named defendant. She had a difficult childhood as a result of which she obtained £40,000 compensation from the Catholic Church for abuse she suffered. She used her compensation monies to purchase the Northern Ireland Housing Executive home in which she lived. She later sold this home and used the proceeds

of sale to purchase a property in her sole name at Lisles Hill Road, Broughshane, Co Antrim. She subsequently met Mr Gowdy and they moved to live in Northern Ireland. She has two children by Mr Gowdy. Difficulties developed in their relationship and they separated. In the early 2000s, she met Mr McKee and they married in 2003. At that time the plaintiff had her own cleaning business. Mr McKee was a farmer who owned a substantial land holding of approximately 200 acres which he had inherited.

[5] After they married Mr McKee placed the lands he owned in joint names with Mrs McKee. Initially, the parties lived at Eskylane Road, Ballymena, but they later moved to live in the new house they had constructed at 26 Ballee Road West, Ballymena which adjoins the disputed lands. During the marriage most of the farm lands were sold as building sites. The substantial profits yielded from these sales were used by the McKees to fund a very lavish lifestyle with monies being spent on luxury cars and holidays.

[6] By 2004, the McKees had sold off all their lands save the disputed lands. They also continued to own their matrimonial home at 26 Ballee Road West. However, there were tensions in the marriage mostly due to Mr McKee's relationship with Mrs McKee's son. This led to her son leaving the matrimonial home.

[7] In and around 2013 Mrs McKee decided to set up a riding school at Ballee Road West. She applied for a licence on 15 December 2013, which was granted on 27 April 2015. Around this time Mr McKee carried out various works to the property to facilitate the running of a riding school including building stables, a walking area and an arena. The riding school was called Hillview Riding School, and it operated from in and around 2014.

[8] The appellant, Mr Carson is a neighbouring farmer. On 15 April 2015 he attended the McKee's home, and a transaction took place at their kitchen table. The circumstances of this transaction were at the heart of the dispute between the parties and upon which the judge at first instance adjudicated. Summarising what transpired it appears that after the execution of the documentation purporting to transfer the lands to Mr Carson various payments were made by him, namely a cheque to HM Revenue and Customs ("HMRC") on 16 April 2015 in the sum of £43,645.30, two cheques to the McKees, one for £1,000 and one for £2,000. Subsequently, he paid £10,000 by cheque dated 12 June 2015 and £5,000 by cheque dated 18 July 2015.

[9] In July 2015, the horses belonging to the riding school were sold by Mr McKee and Mr Carson assisted with the transport of the horses. Mrs McKee denies knowledge of the sale of the horses. She also moved out of the matrimonial home in July to live with her daughter. On 4 August 2015, she obtained a non-molestation order against Mr McKee.

[10] In August 2015, Mr Carson took physical possession of the disputed lands and deposited stones on the laneway thereby preventing access to the riding school. He has remained on the land ever since. A writ was issued on 28 April 2016, and the case came on for trial in the Chancery Division in 2021.

The arguments at first instance

[11] At the trial which lasted five days, the plaintiff's central assertion was that she never intended or agreed to sell the lands to Mr Carson, believing instead that he was providing a loan to pay an HMRC debt, and that she was unaware she was divesting herself of the land and her riding school business. The plaintiff maintained that the transaction was to her manifest financial disadvantage, and she has been divested of her lands, matrimonial home and riding school business.

[12] Ultimately, the plaintiff sought to nullify the land transfer, on the grounds that the lands were obtained by Mr Carson through forgery, misrepresentation, undue influence, it was an unconscionable bargain and reliance upon the doctrine of *non est factum* in respect of the deed.

[13] Conversely, Mr Carson maintained that the McKees agreed to sell the lands to him for £80,000. He denied any misrepresentation or undue influence and stated that the McKees signed the transfer documents of their own free will. While he accepted the price was "keen", he argued it reflected the immediate and discrete payment of their HMRC debt.

[14] It will be apparent from the above that central to the case at first instance was a classic credibility conflict between the evidence of Mrs McKee and Mr Carson.

The decisions at first instance

[15] A written judgment dated 10 June 2022 reported at [2022] NICH 9 contains the finding of the judge at first instance. We will not rehearse all of the details from this comprehensive judgment. Suffice to say that the court heard evidence including that of Mr Carson and then found decisively against him. Furthermore, the judge made crucial findings of fact based on the evidence presented and on assessment of credibility. Mr Carson was legally represented by senior and junior counsel.

[16] The judge found that Mr Carson had made a false representation that the transaction was a loan. She also found that he had instructed his solicitor to draft sale documents, by representing that he wanted to assist his neighbours during their financial difficulty.

[17] The judge concluded Mr Carson knew that he was obtaining a straight, unconditional transfer of the lands, obtaining more than he had represented to Mrs McKee. The judge recorded that Mrs McKee did not have the benefit of

independent legal advice regarding the transaction and found that Mr Carson advised Mrs McKee that he would pass the documents to his solicitor, ensuring she did not consult her own. Furthermore, the judge found Mrs McKee was a vulnerable person with limited educational attainment, suffering from significant ill health (having had a heart attack and six stents inserted), and that she was experiencing marital difficulties at the time of the signing, lacked financial expertise and depended on her husband for financial matters.

[18] The judge specifically found Mr Carson's evidence to lack credibility and that he was less than honest, often making up evidence and giving contradictory answers. The judge concluded that Mr Carson was an astute businessman who deliberately sought to take advantage of Mrs McKee's difficulties and vulnerabilities for his own gain, knowing that she was under financial pressure and had limited educational attainment, by promising a loan but securing an absolute transfer of lands.

[19] The legal basis for the decision in favour of Mrs McKee was on the grounds of misrepresentation, as the judge concluded that Mr Carson falsely represented the transaction as a loan while knowing it was a sale, taking advantage of her vulnerable state with the result that the land was sold at a significant undervalue. A remedy of equitable rescission was granted, which restores the parties to their pre-contractual positions.

[20] Following this decision on liability the judge invited further submissions from the parties to clarify the exact terms of the remedy, and essentially whether either party was due monetary redress following rescission. There was, however, a considerable delay in having the case concluded. Several hearings were adjourned before the final remedies hearing was listed on 6 February 2025, that is three years three months post judgment.

[21] During this time issues about the appellant's fitness to attend at hearing associated with an alleged assault by the McKees on him in February 2024 came to the fore. A hearing on 25 June 2024 was adjourned. On 19 September 2024, the court ordered that the appellant obtain a medical report. A listing for 25 September 2024 was also vacated, as the judge was advised of an imminent medical consultation. This situation culminated in the appellant obtaining a report from Dr Richard Bunn, Consultant Psychiatrist, dated 23 November 2024 (received 11 December 2024).

[22] The said report records the appellant's history and GP attendances. The core conclusion reads as follows:

"In my opinion, Mr Carson is physically fit and able to attend court. However, his presence in court is a triggering event, particularly the likelihood of bumping into his assailants. Therefore, I would recommend that

Mr Carson attends court remotely. Prior to court however, I would recommend that his mental health is stabilised, whether this be giving sufficient time for the Fluoxetine to be effective or add some anxiety relieving medication and engage in psychological therapy to address the trauma. This may enable an improvement in Mr Carson's mental health sufficiently to attend court whether in person or remotely. In my opinion, it would be in Mr Carson's best interests that the case is dealt with promptly in order that he can get closure." [our emphasis]

[23] In addition, medical evidence was filed by the appellant from Dr Dereck McLaughlin who was providing therapy to Mr Carson as follows:

"When Mr Carson attended on 26th November 2024, I found him to be in a very anxious and distressed state. This is related to an incident when he had been assaulted. He was worrying about the assault and the people he believed had assaulted him, he was fearful of further attacks. Mr Carson was very traumatised by this assault and I felt he was suffering from Post Traumatic Stress Disorder (PTSD). It was agreed that we would address his PTSD using Eye Movement Desensitisation and Reprocessing Therapy. Mr Carson next attended on the 11th December 2024. On this occasion, he was still very anxious, distressed and displaying the features of PTSD. At this session, we began to address the trauma of his assault using EMDR Therapy. I continue to see Mr Carson and address his PTSD."

[24] Following the provision of this medical information the judge had to decide how to proceed. Various directions hearings ensued. When the case was listed for review on 10 December 2024, Mr Carson did not attend. Rather, an email was sent to the court on 11 December 2024, enclosing medical reports.

[25] The remedies hearing proceeded on 13 December 2024 when experts for the plaintiff adopted reports in evidence in the absence of the appellant. On 9 January 2025 the appellant was emailed the directions of the court to the effect that, if he wished to cross-examine either of the plaintiff's expert witnesses, he was to serve notice before 20 January 2025. No notice was given. Thereafter, the appellant indicated by email forwarded to the court on 4 February 2025, that his proposed expert witnesses Mr McBride and Mr McKeown, were unwilling to give evidence, because of alleged intimidation by the McKees.

[26] On 31 January 2025, the appellant sent a “sick line” to the court, claiming he was unfit because of PTSD following a head injury. He also sent a further note from Dr McLaughlin. A further remedies hearing was held on 6 February 2025 which the appellant did not attend. The appellant states that Mrs McKee phoned him to advise him of the judge’s ruling.

[27] On 13 March 2025, the appellant received an email from the court offering Sightlink for a remote review on 26 March 2025. On 25 March 2025 the appellant was advised that the hearing listed for 26 March 2025 was adjourned to 1 May 2025. The hearing listed for 1 May 2025 was also adjourned. However, a further review took place on 8 May 2025 which the appellant attended by Sightlink, and the judge finalised her order on 23 May 2025 at a hearing which the appellant also attended.

[28] From the above chronology of events we can see that the judge decided to proceed with the remedies hearing in the absence of Mr Carson on 6 February 2025 as she was satisfied that he had been given sufficient opportunity to provide medical evidence, outlining his ill health. On the judge’s analysis the report of Dr Bunn made clear that Mr Carson could participate in the proceedings, and that it was in his interests for the proceedings to be brought to an expeditious close.

[29] Having considered the transcript of the hearing on 6 February 2025 we can see that the judge considered all matters in detail. First, she decided that the case could proceed because “I have got Dr Bunn’s report which says he’s able to attend remotely and actually the conclusion will be good for his mental health.” Next the judge herself states that “I think he’s properly asking for an adjournment today.” She takes submissions from Mr Power KC who opposed an adjournment. During exchanges the judge repeated her understanding that “the existing medical evidence says he’s able to participate.” Then the judge refused an application to adjourn and proceeded to hear submissions from Mr Power on the monetary remedy.

[30] During the hearing Mr Power summarises the position from the liability hearing that the sale was at an undervalue. Then the judge records that rather than £80,000 being paid, £61,645.30 was paid over by Mr Carson. The judge is then addressed by Mr Power on monetary remedy following rescission. She also hears detailed legal submissions. Thereafter, the judge provided a detailed oral ruling on the monetary claim made by Mrs McKee. Summarising the decision, the judge allowed various expenses and disallowed other expenses to reach a figure of £52,019.02 in favour of Mrs McKee. She then considered costs and determined that costs outweighed any balance due to Mr Carson. After providing this ruling the judge adjourns for counsel to draw up the necessary order.

[31] Thereafter, the appellant appeared at the review hearing on 8 February 2025 on Sightlink, when he made various representations to the judge. There was also a further hearing before the order of the court was finalised on 23 May 2025. After

hearing from Mr Carson again on that date the judge finalised the order which is now appealed.

[32] The key ruling of the judge on 24 May 2025 is contained in the following passage from the transcript of the hearing:

“McBride J: All right. Thank you. Well, I – I’ve heard the – your application, Mr Carson. You want to give evidence, you want to call witnesses and although you don’t require to cross-examine Mrs McKee’s expert witnesses. Now, for the reasons which I’ve outlined in the chronology at the beginning of this review, I am satisfied that you have been given sufficient opportunity to make your applications for adjournment on the basis of your ill health. I’m satisfied that the court considered those matters carefully and give you an opportunity to provide medical evidence, outlining your ill health. The medical evidence was not provided on time. When it did come in, the court did look at it, but that medical evidence and, in particular, the report of Dr Bunn made it clear that you could participate in the proceedings, but your email made it clear that you did not intend to participate in the proceedings.”

Grounds of appeal and relief sought

[33] The appeal notice is dated 10 June 2025. Essentially, the appellant argues that the judge’s errors during the proceedings have negatively impacted his ability to defend proceedings, which resulted in unfairness. Specifically, the appellant avers that he was subjected to unfair treatment during the proceedings, on a threefold basis:

- The judge failed to make reasonable adjustments for the fact that the appellant is a litigant in person.
- The judge failed to take any steps to make adjustments for Mr Carson’s disabilities.
- The judge failed to take reasonable account of medical evidence presented by the appellant and conducted hearings in his absence.

Application to amend and expand the appeal

[34] The relevant rules of the Court of Judicature provide as follows. The appellant is confined to the grounds and the relief stated on the notice of appeal, save by leave of the court (Ord.59 r.3(3)). So also, the plaintiff is bound by his notice (Ord.59 r.6(2)). Either notice may be amended by or with leave of the Court of Appeal at any time (Ord.59 r.7). There is no particular fetter on the discretion to allow amendment, rather an appellate court will exercise its discretion taking into account the factual circumstances of each case.

[35] Despite the contents of the appeal notice, the appellant sought to expand his grounds to include an appeal against the judgment delivered on 10 June 2022 which determined the substantive issue. When asked why this appeal ground was not contained in the appeal notice the appellant said that he thought the appeal only ran from the remedies hearing and that a friend had latterly told him to appeal. We were unconvinced by these explanations, particularly as an appeal from the substantive order had never been raised in any correspondence between the parties over a three-year period. We find no merit in the application to amend the appeal notice and add other grounds after so long a gap in time.

[36] In any event, the appellant's challenge amounts to a challenge to a credibility assessment made by the judge. In his skeleton argument he refers to the judge's alleged errors as "believing Mrs McKee's lies" and her "sob story" and not believing him in the context of the medical evidence he provided. The appellant himself states that "whilst the Court of Appeal is usually slow to substitute its own assessment of witnesses whom it has not seen or heard, this is a case where the judge provided articulation of her assessment, which was plainly wrong, in that it is illogical." The appellant cites *McGraddie v McGraddie* [2013] UKSC 58, in support which essentially said that a judge's factual findings must be perverse to reach the high threshold for appellate intervention.

[37] Given the point now taken that the judge has in some way acted perversely in making factual findings, it is all the more incredible that the appellant did not raise this immediately in correspondence over a three-year period or in the appeal notice he filed on 10 June 2025. Accordingly, we decline to allow an amendment to the notice of appeal which would allow the appellant to resurrect a case against the judge's original ruling which decided against him on fact, the judge having heard and assessed his evidence along with all of the other evidence in the case.

The remaining appeal

[38] It follows that the only valid appeal ground is as to whether Mr Carson was treated fairly at the remedies hearing. In that regard, after we heard oral submissions, we directed the parties to the authority of *Bilta (UK) Ltd (in liquidation)*

& Others v Tradition Financial Services Ltd [2021] EWCA Civ 221 and received written submissions from both sides which we have considered.

[39] Having considered *Bilta*, the appellant renews his application that the entirety of the case should be quashed because of bias against him. The appellant maintains that the judge requested medical evidence, which was provided and not challenged. He asserts that the judge did not give the medical evidence the proper weight when deciding to proceed. Further, relying on *Bilta*, the appellant holds that there was no demonstrable unfairness to Mrs McKee. Alternatively, the appellant submits that the relevant portion of the case should be remitted to the Chancery Court and heard by a different judge.

[40] From Mrs McKee's perspective it is argued that the appellant's illness and purported inability to give evidence was a cynical ploy to frustrate the proceedings and deny her justice. She maintains that this appeal is similarly intended. Mrs McKee's view is that the court was very careful to afford the appellant reasonable opportunities to present medical evidence to the judge and to make reasonable adjustments and at the time of the remedies hearing on 6 February 2025, the judge was satisfied that there was nothing in the medical evidence before the court that justified any inability on the part of the appellant to attend the hearing.

[41] In a further submissions paper, the plaintiff sets out the factual differences between the present case and *Bilta*. The plaintiff underlines the importance of considering whether an adjournment or interruption is genuine and worthy. Moreover, it is made clear that the onus is on the applicant for an adjournment to prove the need for such an adjournment. The plaintiff argues that the *Bilta* case does not fetter a judge from taking into consideration all matters relevant as to whether the difficulty in which a party or witness finds themselves is, in fact, genuine and compelling. Further that such applications for adjournments are routine, invariably matters of fact in each case and whether a fair trial can be had without the adjournment is ingrained into the process.

Our analysis of the appeal

[42] Procedural fairness directly engages article 6 of the European Convention on Human Rights ("ECHR"). Given the appellant's argument that the judge has unfairly treated him during the High Court proceedings and subsequent judgment, the right to a fair trial is engaged.

[43] This appeal turns on whether the appellant was afforded a fair trial at the remedies stage. Related to that question is whether the judge exercised her discretion properly in refusing an adjournment of the case on medical grounds.

[44] Having outlined the above sequence we turn to examine the law in this area. *Bilta* provides authoritative guidance on adjournment applications due to illness and solidifies the principle that a fair trial takes precedence over scheduling concerns.

[45] The factual background is that Bilta (UK) Ltd & Others brought proceedings against Tradition Financial Services Ltd (“TFS”) for dishonest assistance and fraudulent trading arising out of a VAT carousel fraud. A critical witness for TFS, Ms Mortimer (head of the trading desk), became medically unfit to give oral evidence shortly before the five-week trial. Her evidence was central to allegations of dishonesty. TFS applied for an adjournment on medical grounds to allow Ms Mortimer to testify once she had recovered. The trial judge refused, finding that the trial could proceed fairly without her oral evidence, relying instead on her witness statement.

[46] On appeal, the Court of Appeal allowed the adjournment, overturning the trial judge. It was held that proceeding without Ms Mortimer’s live testimony would risk unfairness. Ms Mortimer’s evidence was central to TFS’s defence. There was credible medical evidence of her unfitness as well as a reasonable prospect she could give evidence following a period of recovery. The absence of her oral evidence therefore posed a real risk of unfairness to the trial. As such, the Court of Appeal held that fairness demanded an adjournment.

[47] *Bilta* is a case concerning the non-availability of a key witness rather than a party however the same principles apply. From this decision, which reviewed previous authority, the following guiding principles are summarised at para [30] as follows:

“... the guiding principle in an application to adjourn of this type is whether if the trial goes ahead it will be fair in all the circumstances; that the assessment of what is fair is a fact-sensitive one, and not one to be judged by the mechanistic application of any particular checklist; that although the inability of a party himself to attend trial through illness will almost always be a highly material consideration, it is artificial to seek to draw a sharp distinction between that case and the unavailability of a witness; and that the significance to be attached to the inability of an important witness to attend through illness will vary from case to case, but that it will usually be material, and may be decisive. And if the refusal of an adjournment would make the resulting trial unfair, an adjournment should ordinarily be granted, regardless of inconvenience to the other party or other court users, unless this were outweighed by injustice to the other party that could not be compensated for.”

[48] It goes without saying that decisions in this area are highly fact sensitive. However, we will briefly refer to some of the other cases referred to us which reiterate the points of principle in play. *Solanki v Intercity Telecom Ltd* [2018] EWCA Civ 101, also considered an application for an adjournment of the trial on the grounds of illness of the defendant which had been refused. In that case, Gloster LJ summarised the position as follows:

“... the authorities make clear that, in reviewing the exercise of discretion, the Court of Appeal has to be satisfied that the decision to refuse the adjournment was not ‘unfair’: for example, see *Terluk v Berezovsky* [2010] EWCA Civ 1345 (per Sedley LJ at paras 18-20), quoted below, particularly in circumstances where his right to a fair trial under Article 6 ECHR is at stake. She said at [35]:

‘Obviously overall fairness to both parties must be considered.’”

[49] At para [38] the court referred to the case of *Teinaz v Wandsworth London BC* [2002] EWCA Civ 1040 citing Peter Gibson LJ thus:

“... A litigant whose presence is needed for the fair trial of a case, but who is unable to be present through no fault of his own, will usually have to be granted an adjournment, however inconvenient it may be to the tribunal or court or to the other parties. That litigant's right to a fair trial under article 6 of the European Convention on Human Rights demands nothing less. But the tribunal or court is entitled to be satisfied that the inability of the litigant to be present is genuine, and the onus is on the applicant for an adjournment to prove the need for such an adjournment.”

[50] In *Albon v Naza Motor Trading Sdn Bhd (No 5)* [2007] EWHC 2613 the trial judge refused an adjournment of an application hearing where shortly before this the defendant stood down its legal team, save to apply for an adjournment on the basis that a witness was too sick to travel from abroad. Having evaluated the reasons for adjournment, and refusing the adjournment, Lightman J (the Court of Appeal noted):

“... then proceeded to give further reasons for refusing an adjournment: he was very unimpressed with the defendant's conduct, which had been fairly described by

counsel for the claimant as 'holding a gun to the court' and for which the defendant and its solicitors were to be seriously criticised ... he also concluded that the defendant's claimed reason for abandoning the application was a pretext and not genuine, and was designed to prevent the court deciding the authenticity of a particular document." (para 43)

[51] Finally, para [33] of *Levy v Ellis-Carr & Ors* [2012] EWHC 63 provides assistance as it articulates the following common-sense view:

"33. Registrars, Masters and district judges are daily faced with cases coming on for hearing in which one party either writes to the court asking for an adjournment and then (without waiting for a reply) does not attend the hearing or writes to the court simply to state that they will not be attending. Not infrequently "medical" grounds are advanced, often connected with the stress of litigation. Parties who think that they thereby compel the court not to proceed with the hearing or that their non-attendance somehow strengthens the application for an adjournment are deeply mistaken. The decision whether or not to adjourn remains one for the judge. The decision must of course be a principled one. The judge will want to have in mind CPR1 and (to the degree appropriate) any relevant judicial guidance (such as that of Coulson J in *Fitzroy* or Neuberger J in *Fox v Graham* ("Times" 3 Aug 2001 and Lexis). But the party who fails to attend either in person or through a representative to assist the judge in making that principled decision cannot complain too loudly if, in the exercise of the discretion, some factor might have been given greater weight. For my own part, bearing in mind the material upon which and the circumstances in which decisions about adjournments fall to be made (and in particular because the decision must be reached quickly lest it occupy the time listed for the hearing of the substantive matter and thereby in practice give a party relief to which he is not justly entitled) I do not think an appeal court should be overcritical of the language in which the decision about an adjournment has been expressed by a conscientious judge. An experienced judge may not always articulate all of the factors which have borne upon the decision. That is not an encouragement to laxity: it is intended as a recognition of the realities of busy lists."

[52] What we take from the above authorities is that medical illness experienced by a party, and supported by credible evidence, must be taken seriously: courts must give proper weight to credible medical evidence that a party or witness is unfit to participate in proceedings. However, there must also be a balance of fairness with regards to both parties. To the extent that a court is required to both evaluate and exercise discretion in considering whether a fair trial can proceed in the face of a relevant adjournment application, a highly relevant issue is whether the difficulty in which a party or witness finds themselves is, in fact, genuine and compelling. Proximity to a trial is relevant but not determinative. Even very late applications may be granted if refusing an adjournment would compromise fairness. There is also a need to forecast future availability of a witness or party. In addition, a relevant factor is whether the party or witness is expected to recover to be able to testify at a later date. If there is a reasonable prospect of attendance within a reasonable time frame if the case is adjourned, the application for an adjournment is strengthened.

[53] It also goes without saying that there is also a requirement on the party seeking an adjournment to provide evidence of:

- The illness/incapacity.
- That the witness is or likely to be able to attend at a later date.
- The materiality of their oral evidence.
- That any prejudice to the other side can be compensated.

[54] With these principles in mind, we have examined how in this case the judge dealt with the hearings on 8 February 2025, 8 May 2025 and 23 May 2025. In doing so, we are acutely aware of the fact that in refusing an adjournment the judge has made a decision in the exercise of her discretion which this appellate court is slow to interfere with. An appellate court will only intervene where the decision is plainly wrong or a relevant matter has been left out of account, or the court has taken into account irrelevant matters.

[55] We also bear in mind that these hearings were conducted after a lengthy period when matters could not progress due to the appellant. It was understandable that the judge wanted to conclude the case as did the plaintiff. Against that there was a live issue as to the appellant's capacity which led to the commissioning of Dr Bunn's report.

[56] The appellant has not helped himself in how he approached this case. Making every allowance for the fact that he was a personal litigant from January 2023 and his medical issues, we consider that he could have made a proper

adjournment application before the 8 February 2025 hearing rather than simply state that he was not attending court. We accept that the appellant was not specifically advised that he could link by Sightlink on 8 February 2025 and that he was undergoing therapy at the time. However, he effectively left the matter to the judge to interpret his medical evidence and to work out what he wanted. Hence, we have great sympathy for the judge who was not assisted by the appellant throughout a long series of reviews designed to progress this case.

[57] In assessing whether the case should proceed or adjourn the critical question was when the appellant would be fit to participate in the remedies hearing. If attendance was feasible in a short period of time an adjournment would be more likely. Understandably the judge did not accept the “sick note” which was uninformative. In addition, the appellant did not forward the additional medical evidence required. This conduct militates against the appellant and raises a valid query as to the genuineness of his conduct.

[58] However, on the other side of the equation is the fact that the appellant did have medical issues vouched by medical evidence which was not disputed at the time. Properly analysed, the judge did not reflect on the operative paragraph of Dr Bunn’s report set out at para [22] herein in reaching her final decision. This opinion was not assessed by the judge who proceeded on the basis that the appellant was fit to attend court on 6 February 2025.

[59] The omission was not corrected at the 23 May 2025 hearing when the appellant asked to be heard on the substance of the monetary remedy. Therefore, applying the relevant legal principles and considering the particular facts of this case, we are regrettably compelled to the view that the judge has left out of account a relevant consideration in exercising her discretion, namely the recommendation of Dr Bunn that prior to court either in person or remotely, the appellant should have some time limited, stabilising medical intervention.

[60] The above analysis means that the third limb of the appeal succeeds. We dismiss the other two limbs of appeal as the judge did in our view make generous allowance for the fact that the appellant was a personal litigant and provided for reasonable adjustments by allowing his attendance by Sightlink.

[61] To be clear, our finding only relates to one discrete aspect of the case namely the question of monetary remedy following rescission. It is plain that the appellant was afforded a fair hearing on all other issues. We conclude that the appellant should be heard on the discrete issue of monetary remedy. His submissions on this are material and now capable of being presented in a short timeframe which will not prejudice the other party to this litigation unduly. The appellant has already said he does not wish to cross-examine any expert. This aspect of the case comes down to whether there has been any improvement to the land by virtue of the appellant’s occupation against the expenses incurred by the plaintiff. To our mind, this is

largely a paper exercise akin to accounts and enquiries. The appellant has now received treatment from Dr McLaughlin fifteen times between 26 November 2024 and 24 June 2025 and has appeared before us in person without issue. There is, therefore, no reason why the remaining net issue that we have identified cannot be concluded swiftly.

Conclusion

[62] Our ruling means that we will allow one aspect of the judge's order to be reheard - namely para [6] which relates to monetary relief. However, the remaining parts of the order remain in force. This means that the appellant must provide vacant possession of the land three weeks from today and the various corrections to registration can now proceed.

[63] We also make the following directions to ensure no further delay in this case. Within seven days each party shall file an affidavit as to their respective positions on the question of monetary remedy and the matter will be remitted to another judge to determine. A directions hearing will take place on 24 October 2025. We see no reason why a short hearing cannot be convened in November 2025.

[64] We will hear the parties as to costs.