Neutral Citation No. [2013] NIMaster 13

Ref:	**2013NIMaster13**

Judgment: approved by the Court for handing down
(subject to editorial corrections)

Delivered:	**16/10/2013**

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

FAMILY DIVISION

BETWEEN:

D

Petitioner;

and

E

Respondent.

(Undisclosed Libyan Properties)

Master Bell

Introduction

[1] This is a case where the court is asked to divide the assets of D (hereafter referred to as "the wife" or, in connection with her children, as "the mother") and E (hereafter referred to as "the husband" or, in connection with his children, as "the father") after their divorce. It is clearly a case where the appropriate division of the matrimonial property should be on a 50%-50% basis and the parties are agreed on this. The issue before the court is essentially "50% of what?" The wife alleges that the husband has not disclosed the existence of three properties in Libya. The husband denies that these properties belong to him.

[2] The husband and the wife were married in Libya on 28 January 1977. They came to Northern Ireland in 1978 and subsequently separated on 1 November 2006. An Islamic Divorce was pronounced on 11 November 2007 in the Surman Court, Libya and it was recognised in this jurisdiction by an order of Stephens J on 10 February 2010 and a Decree Nisi was granted by

him on the same date. There are four surviving children of the marriage: three daughters and a son, each of whom is over eighteen.

[3] The wife seeks Ancillary Relief pursuant to a summons dated 6 January 2012. She was initially represented by solicitors and counsel but was unable to afford to continue with the cost of such representation and so became a personal litigant, representing herself at the hearing of this application. I granted her leave to be assisted by a McKenzie Friend and two of the parties' children adopted this role on various days during the hearing. The husband was represented by Miss Kerr.

[4] At the ten day hearing thirteen witnesses gave oral evidence. Seven of the witnesses were in Libya and gave their evidence in Arabic through an interpreter and over a Skype link. The witnesses gave their evidence out of order due to issues of availability and the time difference between the jurisdictions. One of the witnesses was in Germany and gave her evidence in English over a Skype link. Given that the petitioner is a personal litigant, I will explain at the outset that this judgment will contain only a summary of the matters of law and evidence which I heard. No written judgment can address every detail of an extensive hearing. It will therefore deal only with those matters which I found significant in reaching the decisions which I have made. All the evidence which I heard was, however, carefully considered. I have also carefully considered the closing submissions of both parties which I allowed to be made in writing rather than orally. (The husband also submitted an addendum to his closing submissions.) The wife, being a personal litigant, misunderstood the function of written submissions and, in the extensive written submissions which she filed, she made assertions of fact which she had not made during her oral evidence. I have completely disregarded these. Closing submissions, whether written or oral, cannot be used as a means of offering evidence which a party has, for whatever reason, neglected to give during their oral evidence. To allow such evidence through the back door via written submissions which cannot be challenged and tested through cross-examination would be completely unfair and must not be permitted. Although the wife was a personal litigant and therefore suffered the disadvantages that most personal litigants suffer, courts can only decide cases on the admissible evidence which the parties call. Finally, I have also considered written submissions made by the parties following their receipt of a draft judgment.

[5] Both parties requested in their oral submissions that I anonymise this judgment. Indeed the husband in his written closing submission stated that he did not want the details of this judgment published at all. The husband has referred me to the cases of *A v A* [2012] EWHC B17 (Fam) and *W v M* [2012] EWHC 1679 (Fam). In *A v A* accredited media representatives attended a hearing and, having heard the evidence, were very keen to be able to report what they had learned. The respondent in that case argued that his business

was sensitive and that publicity would be damaging. In *W v M* a claimant argued that, over the course of a long cohabitative relationship, she had become a beneficial tenant in common of two properties. The respondent sought anonymity but this was opposed by the claimant. Both authorities are of limited assistance except to identify well known applicable principles.

[6] The starting point of our legal system is the principle of open justice. In *W v M* Mostyn J refers to what was said by Woodhouse P, in *Broadcasting Corporation of New Zealand v Attorney General* [1982] 1 NZLR 120, 122:

> "…the principle of public access to the Courts is an essential element in our system. Nor are the reasons in the slightest degree difficult to find. The Judges speak and act on behalf of the community. They necessarily exercise great power in order to discharge heavy responsibilities. The fact that they do it under the eyes of their fellow citizens means that they must provide daily and public assurance that so far as they can manage it what they do is done efficiently if possible, with human understanding it may be hoped, but certainly by a fair and balanced application of the law to the facts as they really appear to be. Nor is it simply a matter of providing just answers for individual cases, important though that always will be. It is a matter as well of maintaining a system of justice which requires that the judiciary will be seen day by day attempting to grapple in the same even fashion with the whole generality of cases. To the extent that public confidence is then given in return so may the process may be regarded as fulfilling its purposes."

[7] An important aspect of public justice is that it allows the legal profession to see how the law is being applied to particular facts and circumstances. This allows them to anticipate how the law will be applied in other cases and advise clients. In Lord Bingham's notable 2006 lecture *The Rule of Law* his first sub-rule was that "the law must be accessible and so far as possible intelligible, clear and predictable". One might anticipate therefore that, without the publication of court judgments, the law cannot be predictable; the legal profession cannot advise clients as to the likely outcome of a case; fewer cases may therefore settle; more cases may be contested; and greater costs and delays can be expected in the administration of justice.

[8] Article 8 of the Convention which provides a right to a private life is a qualified right to be balanced against other rights. Often it may need to be balanced against the Article 10 right to freedom of expression. In the context of judgments by a court it will require to be balanced against

the principle of open, public justice enshrined in Article 6(1) of the Convention:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

[9] Of course family cases give rise to difficulty because of their sensitivity and it is recognised that, in particular, cases involving children should almost always be anonymised. Further, special care should be taken with the potential for jigsaw identification. For this reason, it is arguable that facts should only be reported if and to the extent that they are relevant to the findings made. However anonymisation in a judgment cannot mean the removal of all detail so that it is impossible even for an individual who knows the family concerned to recognise whom it refers to. Rather, anonymisation can only mean the removal of detail from the judgment which would enable members of the public who do not know the family to readily identify them.

[10] In *W v M* Mostyn J noted that he was obliged to conduct a highly fact-specific and focused balancing exercise between the competing claims or rights and that the engagement of the competing claims or rights must be proved by clear and convincing evidence, mere assertion not being enough.

[11] Although all the parties and those who gave evidence are aged over 18, the husband in this case has a minor child as a result of his second marriage. The husband asserts that the child could suffer distress in the future should he read or become aware of the proceedings and the evidence given. The husband also expresses his anxiety that potential patients who may google his name could come upon the judgment, thereby laying his private life bare.

[12] In the case before me, neither party has offered any evidence as to the reason why there should be anonymisation. Rather each has relied on, to use Mostyn J's term, "mere assertion". I have therefore applied the usual degree of anonymisation which is generally applied in ancillary relief cases in this jurisdiction. Surnames are not used in this judgment, nor are addresses given. The parties are requested to consider the terms of this judgment and to inform

the Matrimonial Office in writing within two weeks of the date of delivery of this judgment as to whether there is any reason why the judgment should not be published on the Court Service website or as to whether any further anonymisation is justified prior to publication. If the Office is not so informed within that timescale then it will be published in its present form.

The Contested Issues

[13] The parties agreed that the following assets were held by them:

(i) The matrimonial home in Northern Ireland
(ii) A flat in Dublin
(iii) The husband's pension fund
(iv) An Allied Dunbar/Zurich pension fund
(v) A Phoenix endowment policy
(vi) A Zurich life insurance policy
(vii) Shares in the husband's name worth approximately £10,000

[14] Most of the hearing was taken up with a factual dispute as regards whether or not the husband owned properties in Libya. The three disputed properties were:

(i) A flat in Tripoli;
(ii) A house built on a plot of land in Zawia; and
(iii) A house built on land in Tajoura.

The essence of the parties' positions on the three dwellings was as follows. The wife argued that the three dwellings were owned by the husband and should be taken into account by the court. The husband argued that the Tripoli flat had either not been fully purchased by him or had been owned by him but he was subsequently deprived of it by the wife's brothers using a Libyan law introduced by the Gaddafi government known as "Law Number 4". He argued that the Zawia dwelling was owned by his father. He argued that the Tajoura property was a house owned by his entire extended family and that the husband had only paid a small share of the price of it.

[15] The wife also submitted that this was a "conduct" case in that the husband had deliberately dissipated assets to deny them to his wife and had committed litigation misconduct by his failure to properly disclose the Libyan properties.

[16] The husband also raised a number of other matters in order to challenge the wife's application:

(i) that the Libyan marriage contract only entitled the wife to 1,000 Libyan dinars in the event of a divorce;

(ii) that in the event that a fact finding exercise found that the husband did own property in Libya, this court has no jurisdiction over any Libyan property;

(iii) that, even if there was a finding of fact that the husband owned the Tripoli flat, the wife's brothers could apply to take it through the Libyan legal process;

(iv) that, even if there was a finding of fact that the husband had owned the Tajoura property, his extended family now owned it on foot of avowal testimony uttered by him in Libya by which he had effectively disposed of it.

I can deal with the first two of these matters briefly. The third and fourth of them, however, require dealing with the evidence in an extensive manner.

The Libyan Marriage Contract Issue

[17] Miss Kerr submitted that the marriage contract which the parties entered into in Libya stated that, in the event of divorce, the wife would be entitled to a payment of 1000 Libyan dinars (approximately £512). At one point during her submissions on behalf of the husband Miss Kerr argued that the terms of the contract were akin to a pre-nuptial arrangement as in the case of *Radmacher (formerly Granatino) v Granatino* [2010] UKSC 42. However, even if I was to accept this as a valid proposition that is not the end of the matter, rather it is only the beginning. In *Radmacher* Lord Phillips observed:

> "If an ante-nuptial agreement, or indeed a post-nuptial agreement, is to carry full weight, both the husband and wife must enter into it of their own free will, without undue influence or pressure, and informed of its implications."

The court in *Radmacher* then examined a range of factors which should be taken into account in determining how much weight to give the pre-nuptial contract, including whether the terms of the contract were unfair from the start.

[18] The wife argues that the marriage contract refers to a dowry not to a sum of money payable on divorce. Her evidence was that her father refused the sum of 1000 dinars as he considered that his daughter "was not for sale". The reference to 1,000 dinars was only inserted into the marriage contract because it was the practice in the husband's village at that time.

[19] In the light of the evidence I am not satisfied as a matter of fact that this was a pre-nuptial contract which was entered into with the intent of being bound by it as a matter of law, as opposed to a cultural trapping which was part of the traditional marriage ceremony but which the parties did not intend to be bound by. I will therefore apply the usual legislative provisions set out

in the Matrimonial Causes (Northern Ireland) Order 1978 to the evidence adduced by the parties.

The Jurisdiction Issue

[20] The husband's submission that this court has no jurisdiction over property in Libya is correct. However ancillary relief proceedings in this jurisdiction regularly deal with cases where one of the parties possesses property outside the jurisdiction. There are various ways which a court can deal with this issue. For example, a court can require a party to deal with the property in a particular manner, such as repatriation of funds, and then deal with that party by means of contempt proceedings if they fail to comply with any court order. Alternatively, the court can take account of the property and its value when making any order in respect of property which is within this jurisdiction in order to reach a fair result. Hence the mere fact that property exists outside the jurisdiction does not mean that the court will ignore it.

The Oral Evidence

[21] The difficulties in this case were entirely connected with the fact-finding exercise of whether the husband owned the three properties in Libya and, if so, what were their values. Much of the evidence was given in Arabic and I had the benefit of the evidence of two interpreters during the hearing. Theirs was not an easy task, however, as there are different varieties of Arabic and issues of whether particular words had been correctly understood arose frequently following challenges by the wife. In respect of those witnesses who gave evidence in Arabic I have borne in mind the cautions of Lord Bingham, speaking extra-judicially in "The Judge as Juror: The Judicial Determination of Factual Issues", a lecture delivered at University College, London on 7 February 1985 and subsequently published in Current Legal Problems, 1985 when he said :

> "However little insight a judge may gain from the demeanour of a witness of his own nationality when giving evidence, he must gain even less when (as happens in almost every commercial action and many other actions also) the witness belongs to some other nationality and is giving evidence either in English as his second or third language, or through an interpreter. Such matters as inflexion become wholly irrelevant; delivery and hesitancy scarcely less so. Scrutton LJ once observed: 'I have never yet seen a witness who was giving evidence through an interpreter as to whom I could decide whether he was telling the truth or not'. If a Turk shows signs of anger when accused of lying, is that to be interpreted as the bluster of a man caught out in a deceit or the reaction of an honest man to an insult? If a Greek, similarly challenged, becomes rhetorical and voluble and offers to swear to the truth of what he has said on the lives of his

> children, what (if any) significance should be attached to that? If a Japanese witness, accused of forging a document, becomes sullen, resentful and hostile, does this suggest that he has done so or that he has not? I can only ask these questions. I cannot answer them. And if the answer be given that it all depends on the impression made by the particular witness in the particular case that is in my view no answer. The enigma usually remains. To rely on demeanour is in most cases to attach importance to deviations from a norm when there is in truth no norm."

[22] In my assessment of the credibility of the witnesses who gave their evidence in Arabic I have therefore not taken any account of demeanour. Nevertheless, I am still obliged to make findings of fact. To assist in this task there are a number of general principles which judges apply as to fact finding and the assessment of credibility. I will refer to a number of these. In *Re B (Children)* [2008] UKHL 35 Lord Hoffmann stated:

> "If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."

[23] I have also borne in mind the comments of Lord Pearce in *Onassis and Calogeropoulos v Vergottis* [1968] 2 Lloyd's Rep 403, HL:

> "'Credibility' involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or, though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so, has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over-much discussion of it with others? Witnesses, especially those who

> are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, it is so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part."

[24] I also bore in mind, as Goff LJ observed in *Armagas Ltd. v. Mundogas S.A. ("The Ocean Frost")* [1985] 1 Lloyd's Rep 1, that it is essential, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony.

[25] Inherent probability and improbability was a further factor which I took into account. Of course inherent improbability may be difficult to assess in particular contexts and sometimes inherent probability can be a dangerous and wholly inappropriate factor to rely on. Evidence can relate to societies with customs and circumstances which are very different from those of which judges have any experience, even second-hand. There will be cases where actions which may appear implausible if judged by domestic standards are, however, plausible when considered within the context of a person's social and cultural background: *HK v. Secretary of State for the Home Department* [2006] EWCA Civ 1037.

[26] I also bear in mind that where the civil standard of proof applies, it is not necessary for every piece of the evidential jigsaw to fit together. To require that is to apply too high a standard of proof: *Montracon Ltd v. Whalley* [2005] EWCA Civ 1383; and that, where a case is tried on a balance of probability, an area of doubt may be contemplated, and thus each piece of the jigsaw does not need to fit snugly with its neighbour before the jigsaw can present a recognisable and reliable picture: *Birmingham City Council v. H and Others* [2006] EWHC 3062 (Fam).

[27] I have also been careful to assess the three disputed property issues separately. It is of course quite common for a court to accept some, but not all, of a witness's testimony. For example, a judge may accept part of a witness's testimony because that testimony was supported by credible documentation produced during the trial but might reject other parts of his testimony because it was inconsistent with other evidence that he accepted or was not supported by relevant documentation. Hence judges may find a witness credible as to one issue but not as to another.

The Documentary Evidence

[28] The parties sought to have admitted a number of pieces of documentary evidence. These were primarily legal, business, and public record documents from Libya. Further difficulties in the fact finding exercise were therefore that the documentation had been translated from the Arabic and that the social, cultural and legal context in Libya differs from that of Northern Ireland. The originals were in Arabic and translations into English were attached. I allowed the parties to refer to the documentation but reserved my decision as to its admissibility and any weight to be attached to it.

[29] The documentation submitted by the parties included documentation purporting to be :

(i) A 1978 Contract of Sale in respect of the Tripoli flat. (Wife's Exhibit 1)

(ii) A document by the husband confirming that he had received the flat back from a tenant "in a good shape" after it had been rented to the tenant between 1982 and 1986. (Wife's Exhibit 2)

(iii) A Power of Attorney by the husband in favour of one of the wife's brothers for the purpose of managing the Tripoli flat. (Wife's Exhibit 3)

(iv) A receipt for rent in respect of the Tripoli flat dated 1991. (Wife's Exhibit 4)

(v) A document to the Head of Revenues purporting to pay the amount of 5350.700 dinars against the lease of the Tripoli flat. (Wife's Exhibit 5)

(vi) A document in respect of a bank account held in the name of the husband showing deposits made in 1986. (Wife's Exhibit 6)

(vii) An agreement for sale of land located in Ain Zara (referred to in this judgment as the Tajoura property. (Wife's Exhibit 7)

(viii) A Power of Attorney by the husband in favour of one of the wife's brothers for the purpose of acting on his behalf in respect of the Tajoura property. (Wife's Exhibit 8)

(ix) A Certificate of proprietorship in respect of the Tajoura property. (Wife's Exhibit 9)

(x) A Real Estate Certificate in respect of the Tripoli flat. (Wife's Exhibit 10)

(xi) A letter dated 1999 from the Assistant Manager of the Tripoli Branch of the Saving and Real Estate Investment Bank stating that the full price of 4592 dinars and 900 dirham had been paid in respect of the Tripoli flat. (Wife's second Exhibit 1)

(xii) A 1966 document concerning the sale of the Zawia land to the husband's father. (Husband's exhibit 1)

(xiii) A 2012 Certificate from the Libyan National Transitional Council stating that the husband is one of the residents of Zawia and has no house or real estate. (Husband's exhibit 2).

[30] Miss Kerr on behalf of the husband objected on various grounds to the admission of all documentary evidence submitted by the wife.

[31] Article 9(1) of the Civil Evidence (Northern Ireland) Order 1997 provides :

> "A document which is shown to form part of the records of a business or public authority may be received in evidence without further proof."

and the court has a wide discretion under Article 9(6) :

> "The court may, having regard to the circumstances of the case, direct that all or any of the above provisions of this Article do not apply to a particular document or record or description of documents or records."

[32] The issue of whether the definition of the terms "business" and "public authority" in Article 9(1) were sufficiently wide to interpret them as applying not just to entities in Northern Ireland but to such entities in any jurisdiction arose. In her written submissions Miss Kerr referred me to Article 12(3) of the 1997 Order which provides that nothing in the 1997 Order affects the operation of section 5 of the Oaths and Evidence (Overseas Authorities and Countries) Act 1963 but her submission did not analyse in sufficient depth what the impact of section 5 upon the admissibility of public documents from a foreign country was. Nevertheless it has not proved necessary for me to reach a decision as to the interplay, if any, between the 1997 Order and the 1963 Act.

[33] The husband's position was that the documentary evidence must conform to the strictest possible standard for the admission of evidence. The argument was made by Miss Kerr on behalf of the husband that Libya was a society in which corruption was endemic. Public servants could be bribed to produce false documentation and therefore the court could not rely on the

documentation which had been submitted. Of course I have also borne in mind that this would be an easy argument to make if a party finds that it faces documentary evidence which is detrimental to its case. I also bear in mind that this was an argument advanced by counsel rather than a matter on which I received sworn evidence which could be probed in cross examination.

[34] Nevertheless, even if I was to admit the documents in evidence, there would remain an important question as to the weight to be given to them. In order to properly assess a legal document a court has to understand the function that that document has within its societal context. In most cases which come before this court, the function of a particular document is not disputed between the parties. It would be common case what documents should exist for the sale, purchase or ownership of property in Northern Ireland. In this case, neither the parties nor their experts were agreed as to the function or effect or validity of particular documents. I have therefore been unable to attach any weight to the documents produced by either party. Given that I do not intend to attach any weight to the documentation it is not necessary for me to reach a formal decision as to its admissibility.

The Expert Opinion Evidence

[35] The court was offered expert opinion evidence from a Libyan lawyer by each party as to the ownership of the flat in Tripoli and the villa at Tajoura.

[36] In reaching a view as to the weight I should place on the expert evidence I have attempted to assess it according to the following criteria :

(i) The context of all other evidence;
(ii) The quality of the expert witness's reasoning;
(iii) The correctness of factual premises and underlying assumptions;
(iv) The quality of the expert witness's investigation into the matter at hand;
(v) The expert witness's qualification and reputation;
(vi) The objectivity of the expert witness;
(vii) Any apparent bias by the expert witness;
(viii) The expert witness's performance under cross examination;
(ix) Changes of opinion by the expert witness; and
(x) Whether the expert witness strayed outside their field of expertise.

[37] There were a number of difficulties with the oral expert evidence in relation to ownership of the three properties in question. These included, firstly, that neither of the witnesses signed an expert witness declaration as required by the courts in Northern Ireland (though each of course swore an oath before giving evidence). Secondly, the evidence of the expert witness for

the husband was clearly not genuinely independent of his client and made assumptions based on what his client had informed him. Thirdly, the Skype connection was sometimes of a poor quality that hindered the interpreter's task of translating the experts' evidence. Fourthly, I was not satisfied that technical legal terms were always being properly translated. Fifthly, the evidence was unstructured, failing to set out what was the legal framework on property ownership and how that law changed at different times of Libya's development. Rather it focused on the effect of particular documents and their legal validity. There was therefore little context for the opinions expressed about particular documents.

[38] Matters of foreign law are matters of fact. Although later in this judgment I will summarise the evidence I received from the expert witnesses in relation to the ownership issue, none of the expert evidence adduced by the parties was of sufficient quality to satisfy me on the balance of probabilities as to any particular aspect of the law of Libya. I was left with a confusing mixture of unstructured assertions. I have therefore not taken the expert evidence into account in deciding whether the husband owns the properties in Libya.

The Evidence of Abdul-Qadir

[39] The witness is a brother of the wife. He gave his evidence in Arabic over a Skype connection from Libya. His evidence was translated by an interpreter in the court in Belfast.

[40] The witness gave evidence that the husband gave him a Power of Attorney in 1986 in respect of the Tripoli flat so that he could protect the flat and rent it out. As a result he received rent and paid it into the husband's account. The witness gave evidence that the husband currently still owned the flat and that it was not currently rented out. He stated that he has in his possession the original contract of sale between the husband and the Libyan government who sold it. Under cross examination it was put to the witness that the witness's brother had in fact taken over the flat in 1993. The witness denied this but stated that he still had the keys for it. He agreed, however, that his brother had run a shop from the flat's garage. Miss Kerr put it to the witness that the husband had initially purchased the flat but had only made three payments in respect of it, that the witness then had given the flat to his brother in in 1993, and that the husband had had nothing to do with it since. The witness denied this emphatically. As to its condition, the witness stated in cross examination that it was built in the 1950's and was now derelict, damp, and needed a lot of repair before it would be habitable.

[41] The witness also said that the husband owned a house in Zawia. The witness gave inconsistent evidence as to when the house was built, saying at one point that the house was built before the parties' marriage and at one point that it was built after their marriage.

[42] The witness gave evidence that the husband also owned a property in Tajoura. When asked as to how he knew this, he simply stated that his brother had more information on this matter.

The Evidence of Abdulnaser

[43] The witness is a brother of the wife. He gave his evidence in Arabic over a Skype connection from Libya. His evidence was translated by an interpreter in the court in Belfast.

[44] In respect of the Tajoura property, the witness gave evidence that the husband had asked him to show him plots of land for sale. He did so and agreed on a plot of land and on a 75,000 dinar price with the vendor, a Mr Bashir. The witness himself paid the first and second deposits as the husband did not have sufficient Libyan currency. The husband then paid money into the witness's bank account and the witness paid it to the vendor. The witness said the husband's brother then built a villa on the plot for the husband. The witness was not willing to express a view on the property's valuation and suggested that the Libyan Open Souk website would be a better guide to current Libyan property values.

[45] In respect of the property at Zawia, the witness stated that he had had lunch there several times and that on one of those occasions the husband referred to it as his house. However the witness also said that the husband had said that he had given the house to his younger brother. When asked whether this was a gift or a loan, the witness was unsure.

[46] In respect of the Tripoli flat, Miss Kerr put it to the witness that the husband's position was that the witness and his brother had taken the flat from the husband using Law No 4. The witness denied this. He explained that his brother, who had a Power of Attorney from the husband, had in turn executed a Power of Attorney in the witness's favour as he worked outside Tripoli at an oilfield.

The Evidence of Mispah

[47] The witness is a brother of the husband. He gave his evidence in Arabic over a Skype connection from Libya. His evidence was translated by an interpreter in the court in Belfast.

[48] In respect of the Tripoli flat the witness's evidence was that the flat was not owned by the husband, rather it was allocated to him by the government. When asked how he knew this he replied that "I'm 56 years old. I know these things." He conceded, however, that he had not seen the sale contract in respect of the property.

[49] In respect of the house at Tajoura, the witness said that it was not owned by the husband, it was owned by the whole family and that each had paid a share towards its project. He said that the family uses it for occasional visits to the area. The witness gave evidence that he had supervised the building of it and that there had been no planning permission granted in respect of the dwelling. He said that this was not unusual. All the houses outside the main city lacked planning permission. He also testified that there was no documentary evidence regarding the purchase of the land as there had been no legal papers signed at the time in respect of the land. Counsel questioned the witness about the potential value of the property. The witness gave evidence that it was very difficult to buy and sell land. Many of those who owned land had left the country. Citizens had occupied land which had been owned by supporters of the Ghaddafi regime and had sold it. Potential buyers were afraid of purchasing land seized in this way. He drew a picture of social chaos, stating that there were no legal boundaries and only weak government.

[50] In respect of the Zawia property, the witness said that various family members had built houses on family land. These had been built between the 1970's and the present time. The witness said that six houses were built and he named the family members who owned them. The witness gave evidence that when the husband and his family came to Libya to visit they stayed in the house owned by his father. He denied suggestions put to him in cross-examination by the wife that there were in fact seven houses and that the seventh property was owned by the husband.

[51] Given that the witness stated in his evidence that the house at Tajoura, was not owned by the husband but by the whole family, and this was not followed up by either party, I asked the witness in clarification why the property had been bought in the husband's name. The witness answered that it had been his idea but that the property was not in the husband's name anymore. He explained that it has been gifted to the extended family. I asked whether there was any legal documentation to show this transfer. The witness answered that there was no legal documentation only a letter signed by the husband in 2000 and witnessed by witnesses. When the wife asked where was this letter now, the witness then said there was not a letter as such. He made a verbal declaration before witnesses. I asked the interpreter to confirm that the witness has used a word which was properly translated as "letter". She confirmed this.

[52] I found this witness's evidence unreliable. He provided little justification as to why the matters raised in the children's evidence (which I will come to shortly) was incorrect. Furthermore, the abrupt about-turn as to whether the alleged gifting of the Tajoura property had been done in writing or orally once he was asked where the 2000 letter was made his evidence not credible

The Evidence of Rabia Yousef Bin Mustara

[53] This witness is a Libyan lawyer instructed on behalf of the wife. She gave her evidence in Arabic over a Skype connection from Libya. Her evidence was translated by an interpreter in the court in Belfast. She holds a degree in law and has been qualified as a lawyer in Libya since 1993. The witness is employed to work in the office of Dr Sali Zahif. She currently provides both legal advice and management advice to clients. I accepted that she was sufficiently qualified to be treated as an expert witness. She produced two reports (dated 16 April 2011 and 23 January 2012) which were signed by her employer but which she stated were written by her.

[54] The witness said she had been tasked with examining the ownership of the Tripoli flat and the Tajoura property. She gave her opinion that in respect of the Tripoli flat there had been a legal and binding sale contract between the Libyan government's representative and the husband. She said she had examined a receipt in the name of the husband and documentation regarding the flat's subletting. The husband paid full value for the flat. It was rented to a Polish company and then subsequently to a foreign national. In the witness's opinion the Powers of Attorney are legal and binding.

[55] In respect of Law Number 4, the witness explained that its effect was that a person could only own one property in his name. It allowed the government to take from an individual a second property and give it to someone in greater need. The witness expressed the view that the use of Law Number 4 had stopped before the recent Libyan Revolution. The witness explained that where Law No 4 had been applied, the government would issue a decision to specify that the property had been taken.

[56] In respect of the Tajoura property the witness had seen the private sale contract dated 12 July 1995. The vendor is stated to be Basheer Makhtar Aljundi and the purchaser is stated to be the husband. The contract was signed by witnesses and the sale price was stated to be 75,000 dinar. She was of the opinion that the husband owned this property.

[57] The witness was cross-examined about her experience with land sales. She gave evidence that lawyers in Libya did not specialise. She was a civil lawyer and dealt with land, property and contracts. She was not therefore a specialist property lawyer. Land sales were handled by Notary Publics. It was put to the witness that the contract for the flat was 16 years old and that there was no Real Estate Certificate for the flat. The witness maintained her view that the property was still owned by the husband. She said that her firm had checked with the local government and confirmed that the property was still in the name of the husband.

[58] The witness was cross-examined on the basis that the Real Estate Certificate in respect of the Tripoli flat contained a restriction which proved that in fact the husband had not paid all of the instalments due under the contract of sale and that the sale of the flat had fallen through. During this cross-examination the wife drew to the attention of counsel and the court that the Arabic version of the contract of sale had the words "fully paid" across the clause dealing with the instalments. This had not been translated into English in the English version of the contract.

[59] For the reasons set out in paragraphs 35-38 above I have not relied upon this witness's evidence in the making of my decision as to whether or not the husband owns the Libyan properties.

The Evidence of Elhad Basher Sheob

[60] This witness is a Libyan lawyer instructed on behalf of the husband. He gave his evidence in Arabic over a Skype connection from Libya. His evidence was translated by an interpreter in the court in Belfast. He graduated from law school in Bengazi in 1989 and has worked as a lawyer in Libya for 22 years. For the first few years he worked in the public sector and then subsequently moved to the private sector. I accepted that he was sufficiently qualified to be treated as an expert witness. He produced two reports on the issue of the ownership of the Libyan properties. In the course of his consideration he had had an opportunity to review the documents submitted by the wife as Exhibits 1-10.

[61] In respect of the Tripoli flat, the witness's position was that ownership of the flat had not validly passed to the husband as the instalments for the purchase of the flat had not been made. He based this conclusion on the fact that there was a restriction included on the Real Estate Certificate (Wife's Exhibit 10). He also stated that he had reached this conclusion because the husband had confirmed it to him. It was clear from the witness's evidence that the purpose of a restriction was to ensure that property could not be transferred until all the instalments had been made. However no evidence was offered as to the date of the Real Estate Certificate and the witness failed on more than one occasion clearly to answer whether the instalments might subsequently have been paid.

[62] The witness gave evidence that the "paid in full" written in hand across one of the clauses of the Sale Contract was, in his opinion, referring to the fact that the appropriate taxes payable under the contract had been paid, not that all the instalments in respect of the flat had been paid.

[63] The witness gave evidence that the Power of Attorney was not valid as the signature on the document differed from the husband's signature on the sale contract. I regarded this particular opinion as straying well outside the witness's area of expertise.

[64] The witness gave evidence that it was possible that the flat had been let out by the husband. However he did not consider that it was possible that the rental payments paid off the outstanding instalments. His justification for this conclusion was that the husband had told him that it had not been rented out.

[65] The witness made a number of concessions during his evidence which were to the advantage of the wife's position. Firstly, he conceded that Article 4 of the Sale Contract allowed deductions of the instalments due from the Housing Allowance which the husband was eligible to receive. However he was unable to give evidence as to how much the Housing Allowance was in the late 1970s onwards. Secondly, the witness conceded that he had not seen any documentation to show that the husband was warned by the government in accordance with Article 9 of the Sale Contract that the instalments had not been paid and did not know if such a warning had been given. Thirdly, the witness acknowledged that the purpose of a Real Estate Certificate was to identify the owner of a property

[66] For the reasons set out in paragraphs 35-38 above I have not relied upon this witness's evidence in the making of my decision as to whether or not the husband owns the Libyan properties.

The Evidence of Masara

[67] This witness is the 25 year old daughter of the parties. (When referring to Masara and her siblings collectively I will refer to them for the sake of clarity as "the children" even though they are all adults.) It is highly undesirable that the parties' children, even adult children, are called to give evidence in ancillary relief proceedings. Nevertheless ancillary relief is an adversarial process and the parties are entitled to call those witnesses whom they choose as long as the witnesses are competent and can give relevant and admissible evidence. Masara swore an affidavit on 24 November 2010. She gave her oral evidence in Belfast and in English, which she speaks fluently. She lives and works in England and appears independent of both mother and father. She said that she did not feel under pressure to give evidence, having lived away from home for a number of years and hence she did not consider she was "with either camp". She did not feel particularly influenced by either parent. She gave evidence that her parents were people who spoke and argued openly in front of their children. Financial matters were sometimes discussed. Her testimony was that growing up in the family the properties were often spoken of.

[68] She gave evidence that her parents used to regularly discuss the Tripoli flat at length in front of her. It was always referred to as "the flat". Her father had repeatedly told her that he owned it. She had also been present when relatives in Libya had discussed the flat in front of her. There was never any mention of it having been sold. She had never seen any legal documentation

about the Tripoli flat. She remembered visiting it when she was young. She said that she had never been inside the flat but remembered seeing it from outside. She had also been to her Uncle's shop. But that was in the commercial district and certainly not in the flat's garage.

[69] As regards the Tajoura dwelling, the witness remembered visiting it also. Her father had shown her blueprints of the house he planned to build. He talked about the project around the dinner table. She said that the purpose of the dwelling was primarily as "a family home for us as a nuclear family". Her father wanted his children to get more in touch with their roots and culture and they needed a place to stay. He also mentioned the villa as a retirement home and as part of the children's future inheritance. She stated that it was never suggested to her that it was a gift for the extended family. It was clearly a Western/Spanish style villa to meet the needs of one family. During the visit her mother went to Tripoli and bought appliances such as a fridge freezer and a microwave together with furniture for the house. When they were there, there had been a housewarming party. It was attended by members of her father's family. A sheep was killed for a barbecue. The extended family members all left that evening and did not stay overnight. She recollected that her parents had re-mortgaged the family home in Northern Ireland for £50,000 in order to build the house in Tajoura. She stated that both parents had been very vocal about these matters and discussed them round the kitchen table at home.

[70] As regards the Zawia dwelling the witness said that the family would always stay there when they went to Libya. When they did so there was never anyone else living there. It was built on a plot of land owned by her grandfather. It was referred to as "the house of Maulod". She noted specifically that her uncles had referred to the house as "Maloud's house" and that there had been no sign that anyone else had moved out of the house temporarily to let them stay there. The witness said she had last been at the house in July 1995 when she was aged 15 and at this time no one had been living there other than their family.

[71] The witness also gave evidence that she had always been told that her father would inherit farmland in Libya and that it would be passed down to his children. She did not identify who had told her this, where the farmland was or any potential value of such land.

[72] The witness gave evidence that after her parents' separation she had had a conversation with her father in which he had expressed shock that properties in Libya might be taken into account by a court making an asset division following the divorce as they were outside the court's jurisdiction. On one occasion he told her that she must not let her mother get her hands on the properties in Libya, that they were her (Masara's) inheritance and that the

mother "had no rights to these properties". The witness recorded her father as stating "she's never going to get her hands on them."

[73] The witness was challenged in cross examination but stated that she had no motive to lie. She rejected the suggestion that her evidence was based on mere assumptions. She said that it was based on years of discussions within the family. She was challenged that her affidavit had not mentioned family discussions about the properties. Her explanation was that her affidavit had not been drafted by a lawyer. She had drafted it herself prior to getting it sworn in England and she had not realised that the discussions were important. Importantly, there was no suggestion put to her in cross examination that the relationship between Masara and her father was in any way acrimonious and that she had a motive to assist her mother's case.

[74] The witness came across as independent of both mother and father. At one point during cross examination her mother shook her head indicating disapproval with her daughter's answer to a particular question. Masara responded "Don't you shake your head at me. This is my evidence." It was a telling reaction which confirmed my impression that the witness was testifying with genuine independence. I was satisfied that she was not embellishing her evidence in favour of her mother and was honestly giving her understanding of the factual position.

The Evidence of Monia

[75] This witness is the 26 year old daughter of the parties. She swore an affidavit on 24 November 2010. She gave evidence in English via a Skype connection in Germany where she lives, working in the music and arts field. She is mostly independently of her parents although her mother gives a little financial assistance from time to time.

[76] In respect of the Tripoli flat, the witness indicated that it "had not been talked about overwhelmingly in the family". In her examination in chief she stated that she did not know who owned it and queried how she could be expected to remember who owned it from something that had happened when she was aged 10.

[77] In respect of the house at Zawia she stated that the last time she had been there was in 2002 with the rest of the family. She stated that they had stayed in this house which was owned by her father. In 2002 there were four houses built on the plot of family land. She was very clear that the house they stayed in belonged to her father and not her grandfather. She described her knowledge of this as "common family knowledge" and stated that she had been told by her father that he owned the house, although she could not recollect a particular conversation as to the issue. She maintained a firm position that her father had told her that he owned the house.

[78] In respect of Tajoura the witness remembered visiting it in 2002. She was aged 10. She recollects that her father had a sports bag of money. The villa was completed just before they arrived. She recollected that her mother went and purchased furniture for the villa. None of the extended family stayed with them overnight but rather only came for the party. Monia and her family remained in the villa for two to three weeks afterwards.

[79] The witness stated that the villa was not large enough to house an extended family. It was simply a normal sized family home although it had an African guard armed with a shotgun who lived in an outhouse.

[80] The witness was robustly challenged by counsel that she was not on speaking terms with her father because her father had refused to fund her music activities when she was in London unless she worked towards a qualification. The witness responded that, while they were not on speaking terms, the reason for this was that she had stopped speaking to her father after he had badly assaulted her mother in the kitchen of the family home. Challenged as to whether she could truly assist the court with knowledge of the legal position in relation to the properties, she acknowledged that she had never seen any legal documents relating to any of the three properties, but tellingly replied to counsel that it would not be usual for parents to show their children the mortgage documentation in respect of a family home and that it would not be unusual for parents to inform their children as to whether they owned a particular property.

[81] In respect of her father Monia observed "he's not the most truthful person in the world".

[82] It was clear that this witness and her father were significantly estranged and that she was angry with her father. However that does not mean that I should disregard her evidence, merely that I should be cautious lest the truthfulness and accuracy of it be affected by the difficulties in their relationship. Although the witness was combative towards counsel in the face of a very rigorous and personal cross examination, I was nonetheless impressed that Monia was a witness who was telling the truth as she understood it to be. I did not consider that the truthfulness of her evidence was in any way tainted by the difficult relationship with her father.

The Evidence of Moshin

[83] This witness is the 23 year old son of the parties. He swore an affidavit on 23 November 2010. He gave his oral evidence in Belfast and in English, which he speaks fluently. He stated that he was not under pressure to give evidence but rather had come voluntarily. He considered that the dispute had been going on for a long time and wanted to help resolve it if he could.

[84] He gave evidence that he had been to Libya on a number of occasions: 1995, 2002, 2006, 2009 and 2010.

[85] Moshin stated that his father owned the flat in Tripoli and that his primary source of information in this regard was his father but he had also had conversations as regards the properties with members of the father's extended family. His mother talked less about the properties than his father did. In respect of the flat, Moshin said that he had never visited it but his father had told him on numerous occasions that he owned it. In the immediate post-separation period Moshin lived for nine months with his father prior to attending university. He stated that his father often said that he did not want his mother to get any of the Libyan properties. Moshin said that they had lots of conversations including as to how he could disguise the ownership of the properties, perhaps by transferring them into his own father's name.

[86] Moshin recollected one conversation in particular. It occurred while they were on holiday in Canada. The father joked that that if Moshin "married a nice Libyan girl" he could have the flat in Tripoli or the villa in Tajoura. This was a conversation in front of his father's friends.

[87] In relation to Zawia, Moshin stated that there were seven houses on the family plot of land. In 2009 he had not stayed in the house belonging to his father as it was in a dilapidated state. But the following year when he was there it had been replastered and repainted. His father had stated to him that he needed to pay for some of the work done on the property. Moshin stated that the house was referred to as "Maloud's house" and never in any conversation did any other family member indicate that it belonged to them.

[88] He had visited Tajoura in 2002, 2006 and 2009. He recollected that his mother went and bought furniture and kitchen equipment for the villa. He gave evidence that his father had told him on many occasions that he owned the villa. He had heard other family members and close personal friends also refer to it as his father's villa. When Moshin was there in 2009 his father stated that he needed to pay the on-site gardener and that he needed to pay back his brother Mispah for having paid the gardener.

[89] I formed the view that Moshin was a reliable witness. As the youngest of the children he was clearly the most reluctant of them to give evidence. Nevertheless he did so to the best of his recollection.

The Evidence of Manal

[90] This witness is the 33 year old daughter of the parties. She swore an affidavit on 26 November 2010. She gave her oral evidence in Belfast and in English, which she speaks fluently.

[91] In relation to the Tripoli flat Manal said she "heard so much" about it when she was growing up. In 1995 she visited Libya and was inside the flat. It was partially furnished. Her uncle had used the garage as a storage facility. She stated that her father had asserted his ownership of the flat to her on many occasions.

[92] In relation to the Zawia house, Manal stated that her father had always referred to it as "my house". When she visited Libya in 1986, 1989 and 1995, she stayed in the house on each occasion and relatives always referred to it as "Maloud's house". During her 1986 visit she said that her female cousins had told her that their father had lived in her father's house while their own house was being constructed. Manal described the layout of the house and said it was where her father "held court" when they visited, as foreign trained doctors were treated like celebrities. She stated that, when she was there, her grandparents had been living in the house opposite. She described them as very humble people.

[93] In relation to the Tajoura property, Manal stated that she had not visited it. She had been in Libya when the land had been purchased. In the late 1990's she said she had been shown the plans for what would be built there. Both parents informed her that the idea was that they would have a property which would be close to the city but which would be at a distance from the extended family, so that they could have "respite" from them. At one point her father had had the idea of running a clinic from the property. The building project was being overseen by one of her uncles. She described her father as being on the phone everyday about the project. She was told by both parents that it had been financed by a loan they had taken out. She said that her father had never mentioned that this was his contribution to repay his family or that his brothers had built a wall or a well. It subsequently became apparent that, as she and her siblings grew older, none of them wanted to move to Libya. She testified that her father's plan was then downsized from a big clinic to a family holiday home.

[94] Manal stated that her evidence was based on what she had been told, mainly from her father but also by her mother and other relatives. She did not claim to have seen any legal documentation which had helped her form her views. She indicated that she had not been pressurised by her mother to give evidence. She stated that it was one of her character traits to be independent minded. She indicated that she was indifferent to her father. She was motivated by wanting a fair result to the proceedings with both parents sharing in what the marriage had produced. She said that her parents were not discreet people. She stated that it was characteristic of their marriage that

they wanted their children to be referees between them. However she tried to stay out of their arguments. Manal stated that she had lived with her father for a while after her parents separated. She described him as very negative to be around and as saying many derogative things about her mother such as "I'm going to make her ashamed", "She's going to be a pariah", and "She's entitled to nothing". Manal stated that as an adult woman she could not accept this. Another particular conversation she recollected when she lived with him was when he said "I've changed it all to my father's name." She understood him as meaning he was depriving her mother of the properties. She described him as being "cool, not hot-headed" in this conversation. She drifted apart from her father and eventually thought it was best for her personal happiness to move out. As a result she hadn't been speaking to her father for a few years. He had not contacted her in four years. She described herself as not being hostile to him, nor holding grudges. She was just happy to have her own life. She described her father as "a sexist, misogynist" and that she could not condone his lying. Manal stated that she got on fine with her mother and that they had "a functioning relationship". However she stated that they disagreed on a lot of things. She acknowledged a financial link between them in that she had loaned her mother approximately £20,000 out of savings as her mother had been in desperate straits. Some of this had been paid back. She was not concerned about this as an issue. She saw her mother as an honourable woman who would repay her in time.

[95] I formed the view that Manal was not angry with her father, just disappointed with him. She was prepared to acknowledge lack of first-hand knowledge where this was the case. I considered that Manal gave credible evidence.

The Evidence of the Husband

[96] Four affidavits have been sworn by the husband. Two of these were dated 16 July 2010, with the remaining two being sworn on 4 January 2011 and 17 May 2012.

[97] As was true of also of the wife, the husband's evidence in respect of the Tripoli flat was inconsistent and erratic. There was no one simple, factual position adopted by him in relation to it. Rather there was a mixture of claims. The husband's evidence was that, prior to moving to the UK, they had only paid some twelve or thirteen instalments. After that no payment had been made. His understanding was that, in order to fully purchase the flat, he would have had to pay the full amount. He stated that the flat had been taken over by squatters on at least two occasions but they were evicted by family members. The husband stated that he did not recollect giving Abdul-Qadir a Power of Attorney. He initially stated that Abdul-Qadir took managing the flat upon himself but subsequently changed his evidence to say that he and his wife asked Abdul-Qadir to manage it for them. He stated that he did not

recognise the 1986 signature on the Power of Attorney which the wife claimed was his. The husband did not recollect getting cheques from Abdulnaser for rent, except that on one occasion in the 1980's he was given 1200 dinars. The husband stated that in 1993 the wife had suggested to him that they should give the flat to Abdulnaser in connection with the shop. He stated that Abdul Nasser has had the key to the flat since 1993 and has not paid him any rent since then. He claimed that he had not renovated the flat or got anything from it for about 20 years. He claimed that Abdulnaser operated a very fashionable shop from the garage. The flat was in the centre of Tripoli and it was "worth money". The husband stated that he did not own the flat and that either the government did or Abdulnaser did. (Although the husband did not explicitly state it during his evidence, the implication was that the wife's brothers had used Colonel Gaddafi's Law Number 4 to usurp the husband's ownership of the flat – a point made on a number of occasions during counsel's submissions on his behalf). The husband also claimed that the 1978 Contract of Sale in respect of the Tripoli flat was a false document.

[98] In cross examination the wife tried to make much of the documents which she had submitted. The husband became very evasive in the face of some of the documents that, if I had accepted them, seemed on their face to suggest his ownership of property.

[99] In respect of the Tajoura property the husband stated that there had always been the expectation that he would repay his parents for his education. He had studied in Tripoli and Bengazi. During the six years there his father and brothers supported him. His father had paid for his wedding. He said that he had only minimally repaid his father. He had, for example, paid for his parents to go to Mecca one year. He described in his evidence how in 1995 he and the family had been out looking at land one of his brothers had wanted to buy. He saw a plot of farmland and decided to buy it for his family whom he wanted to reward. It cost the equivalent of $20,000. His brothers had paid for the digging of a well and the building of a wall. He admitted that he had no proof that the brothers paid for the wall and the well, as Libyan workmen did not give receipts. He stated that he borrowed £50,000 against the family home in Northern Ireland. It went into the building of a villa on the Tajoura property. He stated that he had told his children that it was a family home but that by that he had meant his extended family. The husband stated that in 2000 he made a statement before a Notary Public and witnesses in Libya that the land now belonged to his father. He stated that this had legal effect before the Libyan courts. The husband also said that the house was built without planning permission and therefore was illegal. He could not therefore register it. He stated that his brothers regarded themselves as having an interest in it.

[100] In respect of the Zawia property, the case initially advanced by Miss Kerr on the husband's behalf was that the family compound contained only

six dwellings. The wife maintained steadfastly that there were seven and subsequently produced satellite images showing seven buildings. The husband then gave evidence that there were six dwellings and one storage facility. This facility was the original house his parents had lived in. The husband's evidence was that the disputed house in the family compound was in fact his parents' house. He admitted that the husband and his family had stayed in it and other houses when they made trips to Libya.

[101] The husband stated that his children had grown up in Northern Ireland. They were individualistic. They did not understand the concept of extended family. He denied ever saying to them that they would receive an inheritance. He stated that, up until the 1986 bombing of Tripoli by the United States Air Force, he had intended to return to Libya. Thereafter he changed his mind. He stated that his children were scared and intimidated by their mother who was exploiting them.

The Evidence of the Wife

[102] An affidavit was sworn by the wife on 25 October 2010 for the purpose of these proceedings which the wife adopted as her evidence. The wife gave oral evidence setting out the circumstances which had led to her husband obtaining the flat in Tripoli in June 1978. She said that her husband had shown her the contract for the purchase of the government-owned flat. Her evidence was that in Libyan society it was the husband who dealt with the outside world. The couple then obtained scholarships abroad and moved to the UK. Her husband told her shortly before they left that a government department had informed him that the remainder of the purchase price for the flat could be paid later. Initially a tenant for the flat was arranged by the husband's brother. This lasted until approximately 1982. Thereafter it was rented to a foreign national, Mr German. The wife gave evidence that the husband had told her Mr German lived in the flat until at least 1986. She said that in 1986 the husband had asked her brother to look after the flat. She claimed to have been present during this conversation which had taken place in her mother's home. The reason for the change was that the husband's family had found it difficult to visit the flat. She said that her brother and her husband had both told her that the husband had sworn a Power of Attorney to allow her brother to manage the flat and she claimed to have been shown the Power of Attorney when the two returned from the notary public. In 1989 when the parties were in Libya the husband told the wife that he had found a tenant for the flat and was going to rent it to a company.

[103] In respect of the house at Zawia, the wife gave evidence that her husband had told her that his father was giving the sons a plot each and that the husband had been given the plot opposite his father's house. They drew up plans for the house and applied for a loan. It was built in early 1979 and work finished in 1980. She stated that it had always been referred to by the

wider family as "Maloud's house". She testified that in 1980 one of the husband's brothers had lived there with the husband's permission.

[104] In respect of the Tajoura property, the wife's evidence was that the parties had been discussing acquiring property. Living at the family compound in Zawia was too intense – too many relatives, children and visitors. The husband had come up with the idea of getting a plot of land near Tripoli. In 1995 they had been visiting Libya and had gone for a drive with Abdulnaser and the wife's mother. Abdulnaser knew a man who had two plots for sale. The husband, Abdulnaser and the owner discussed the property. A few days later they returned to the area. The husband was keen to purchase one of the plots. It was bought before witnesses so as to avoid taxes and legal fees. The wife stated she was in the next room with the women. The wife stated that there was never any mention of the purchase being for the extended family until the husband raised this in his 2011 affidavit. Sometimes the parties would have discussed plans for the plot. They initially wanted a massive villa and the wife's sisters drew up plans for this. However the children were not keen on the idea and the parties subsequently downsized their plans to a smaller villa.

[105] The wife testified that they re-mortgaged their home in Northern Ireland and obtained a loan for £50,000 in order to build a house on the plot. Between 1999 and 2001 the husband transferred money to Libya for the building of the house. In 2002 the wife visited Tajoura and helped supervise aspects of the building which was to her specifications. The husband's family supervised the building of the house. She stated that she only agreed to taking the £50,000 if her name was on the property. However she later heard that the building could not be registered. In cross examination the wife denied that the husband's brothers had paid for a well to be drilled and for a wall around the property to be built. She stated that they could not have afforded to pay for the well and the wall – one has twelve children and the other has seven children and neither of the brothers have an income from paid employment.

[106] In July 2002 the parties lived in Tajoura. The wife went to Tripoli and bought beds, a fridge, a washing machine, a tumble drier, chairs tables and bedding. She and her daughters arranged for delivery men to transport these from Tripoli. As a thank you to the husband's family for their assistance, the wife said she hosted a big party for all of the husband's family. The relatives left at 11.00 pm and none of them stayed overnight with the parties and their children.

[107] In cross examination the wife firmly denied she had influenced the children's evidence. She stated that they were not easily influenced. Manal, for example, tended to adopt the role of a referee between her parents.

Conclusions On Matters Of Fact

[108] I am required to reach a view on the balance of probabilities, based on the evidence I heard, as to whether or not the husband owns three properties in Libya.

[109] As I have already indicated, the documentary evidence was of limited assistance because of the difficulties I have explained earlier in this judgment. I have found it unsafe to rely on and have therefore disregarded it.

[110] As I have already indicated, the evidence of the expert witnesses was particularly difficult to assess for the reasons I have set out earlier in this judgment. I have also found it unsafe to rely on and have therefore disregarded it.

[111] The evidence of the father's brother was most unsatisfactory. I formed the view that his evidence was inconsistent, changed direction whenever he found himself in difficulty, and did not grapple in any way with the issues raised in the evidence of the parties' children.

[112] The evidence from the wife's brothers did not suffer from the same weaknesses.

[113] I found the evidence of the four children to be consistent and compelling. I completely reject the argument advanced by the husband in his evidence that the children were scared and intimidated by their mother and that they have therefore tailored their evidence to suit the case being made by their mother.

The Tripoli Flat

[114] The husband's position was that, although he entered into a sale contract for the purchase of the flat and had made a number of payments, he did not continue with these and that therefore the purchase of the flat lapsed. The husband also mounted an argument that the wife's brother's had usurped his ownership by taking over the flat under Law Number 4. The wife's position changed during the course of the hearing as to how the payments were made and ended as being that the payments were made not out of salary but out of the entitlement to housing benefit or out of rental income paid by tenants. She stated that she could not be sure as to the correct position because of the husband's control of the family financial matters.

[115] The husband claimed in cross examination that he could not remember whether or not he had given Abdul-Qadir any legal authority to deal with the flat on his behalf. I was satisfied that the husband was being untruthful on this point. Even though I decline to take account of the documents which the husband and wife sought to have admitted in evidence, it is also noteworthy

that on being faced with the documents in cross-examination, the husband became extremely evasive.

[116] If the instalments had not been made for an extended period of time I would have expected that the husband would have received a formal warning of this from the government. However given the alleged inadequacies of the Libyan government systems this is not a factor on which I consider it safe to place weight. I was caused some concern that the Real Estate Certificate dated January 2007 contained a restriction that the flat could not be disposed of except after payment of the whole price in favour of the Libyan State. However, again this is not an issue on which I can place weight given the problematic nature of the Libyan legal documentation.

[117] The evidence of the four children was consistent about the ownership of the three Libyan properties. This was not in my view a case where all four had conspired together to invent a conversation with their father which they then testified about. This was a case where each spoke of different occasions that their father acknowledged ownership of the properties, some more distinctly remembered than others. Each of them was frank enough to readily admit whenever they were unable to assist because of a lack of memory. It was particularly noticeable that Monia, who of the children was the most estranged from her father, readily gave evidence that she did not know who owned the Tripoli flat. The father suggested that the children, having being brought up in Northern Ireland, had a much more individualistic approach to life than the Libyan one. Hence "family" to them meant nuclear family rather than extended family, which the father had meant when he used the word "family" during any conversations about property. However this explanation did not explain their evidence that he had indicated that he would disguise his ownership of property to make sure that the wife did not get it or any portion of it. The children clearly indicated that he was prepared to act in a deceitful manner. This was not simply a misunderstanding based on a cultural difference between the culture that the children grew up in and Libyan culture. The father submitted that the children were biased against him. My assessment of their credibility was, however, that they were telling the truth about what their father had told each of them and that the wife had not persuaded each of them to adopt a story in her interest. In particular, the three daughters presented as highly independent and determined young women who would not be willing to tailor their evidence to suit either parent.

[118] The wife's brothers gave evidence that rent was being paid to the husband in respect of the flat from a Polish company tenant in 1991. This undermines the arguments that he had not paid and more than a couple of instalments on the flat and that the purchase of it had not properly concluded or that the wife's brothers had taken the flat from him using Law Number 4.

[119] After consideration of all the evidence I have received I am satisfied on the balance of probabilities that the flat in Tripoli is a matrimonial asset owned by the husband.

The Zawia dwelling
[120] In respect of the Zawia dwelling I have been careful not to make cultural assumptions, masquerading as inferences, such as that the husband's father, having given a plot of land to each of the husband's brothers, would have been likely to have given a plot to the husband also. It may, for example, be true that the husband's father, in the light of the fact that the husband had been the most economically successful of his sons, considered that the husband did not need a plot of land in the family compound and that, having lived so long abroad was unlikely to return to Libya to live. I have no way of knowing which of either of these is likely to be true. Speculation cannot substitute for evidence.

[121] It was notable that in the evidence of both the wife and the children that, when staying at the family compound, none of them said that they had stayed anywhere else other than the disputed house. I found it significant that when the children stayed at the Zawia dwelling there were no indications that anyone else had been living there and had temporarily moved out to allow the husband, the wife and the children to reside there during their visit. I also found it persuasive that the Libyan relatives referred to the house as "Maloud's house".

[122] After consideration of the all evidence I have received I am satisfied on the balance of probabilities that the Zawia dwelling is a matrimonial asset owned by the husband.

The Tajoura Villa
[123] The husband admitted that he had taken a £50,000 loan against the matrimonial home but claimed that the house was nevertheless for his extended family in order to reward them. The husband was asked during cross-examination whether he had told his wife and children that the Tajoura property had been bought for the use of him, his wife and his children. He responded, in an utterly implausible manner, that he could not remember as they had "talked about lots of things".

[124] It seemed improbable that, if the villa had been a resource for the extended family, the wife would have shopped for furniture and appliances without taking into account the views of other members of the extended family as to fittings and furnishings. I also found it inherently improbable that the wife would have agreed to their family home in Northern Ireland being remortaged if the purpose was to raise money to buy a property for the whole extended family in Libya. It is much more probable, however, that she would have agreed to the remortgage in order to build a home for them as a

couple and for their children. I was impressed by the evidence of Masara that her father had told her that she must not let her mother get her hands on the properties in Libya and that they were her inheritance. I was greatly unimpressed by the evidence of the husband's brother for the reasons stated earlier in this judgment.

[125] After consideration of all the evidence that I have received I am satisfied on the balance of probabilities that the Tajoura dwelling is a matrimonial asset owned by the husband.

The Avowal Issue

[126] The husband has produced a document entitled "Avowal Testimony" which states that in the presence of witnesses, the husband avowed that the Tajoura property since 2000 belonged to his father. In her written submissions Miss Kerr stated:

> "Public pronouncements are a recognised part of Sharia law, and the husband instructs are as effective within that jurisdiction as signed contracts within this jurisdiction.
>
> It is highly likely that this avowal would be accepted in the Libyan courts, which said courts have jurisdiction over this property. Especially where there is a lack of reliable property registers in a war torn country.
>
> It is thus submitted on his behalf that he is not owner in Libyan law of the lands or dwelling situate at Tajoura. He is not at liberty to deal with this house, or to dispose of it to raise capital. It is not a resource available to him."

[127] There are a number of reasons why this argument must be rejected. Firstly, matters of foreign law are matters of fact. They must be proved by evidence. The way of doing so is by the calling of expert evidence. The husband was not qualified during the hearing as an expert in Libyan law. Even if he had been such an expert, his instructions to counsel cannot amount to proof as to what the law in Libya is. The husband's limited oral evidence on the issue does not provide me with a sufficient basis for accepting that he transferred the property to his father.

[128] Secondly, the avowal document suffers from the same difficulties that Miss Kerr attributed to those documents which the wife sought to have admitted. Even if I was to admit it in evidence I could give it no weight because, as Miss Kerr argued in relation to the wife's documents, Libya is a society in which corruption is endemic. Public servants could be bribed to produce false documentation and therefore the court cannot rely on the documentation which had been submitted.

[129] Thirdly, even if I was to accept the legal efficacy of the avowal event which took place in Libya, it is clear that the law in this jurisdiction possesses mechanisms to prevent this type of transactions working unfairness on a party. For example Article 39 of the Matrimonial cases (Northern Ireland) Order 1978 gives a statutory basis for setting aside certain transactions. Similarly, cases such as *Norris v Norris* [2003] 1 FLR 1142 and *Vaughan v Vaughan* [2007] EWCA 1085 demonstrate that the courts can use their powers to notional re-attribute property to a party which has been dissipated.

[130] In the light of the evidence which I have received in this case therefore, I intend to notionally re-attribute the value of the Tajoura property into the "pot" of property to be divided between the parties.

Valuation Evidence

[131] Having reached the conclusion that on the balance of probabilities the husband did own the three Libyan properties, I directed that the parties should call whatever valuation evidence they wished to present. Each party called an expert witness from Libya to give evidence in Arabic via a Skype connection in connection with the valuation of the properties. The expert evidence of valuation from witnesses in Libya was easier to assess than the expert evidence as to the ownership of properties because each witness gave underlying reasoning for their conclusions.

[132] Nevertheless, the valuation of the properties in Libya is a considerably more difficult exercise for a court than valuing property in Northern Ireland. The properties are situated in a country which has undergone a revolution. The husband's evidence was that he went to Libya in February 2012 and "could not wait to get out" of the country. He said there was no law and order, weapons were everywhere and things were very unstable. He gave evidence that it was absurd to suggest that property prices were rising. Given that there were Libyan refugees in Tunis, who was going to buy properties in Libya? There is clearly some merit to such arguments.

[133] On behalf of the husband I received evidence from Najeeb Albasheer Sagar. Mr Sagar has a degree in law from Bengazi University and has worked as a notary for 17 years. He described his main work as buying and selling properties. In cross examination he stated that there was no qualification for estimating property values but the skill came naturally through his work. He admitted in cross examination that he had previously met the husband socially on a couple of social occasions, such as weddings or funerals. I also note that in Mr Sagar's written report, furnished to the court by the husband, there is no expert witness declaration as is required in this jurisdiction.

[134] Mr Sagar valued the flat in Tripoli at 145,000 Libyan dinars (approximately £74,917). His reasoning for this valuation was, firstly, that it was a non-commercial property. Secondly, that it "looked like a ruin", needing not just cosmetic repairs but more fundamental work. Thirdly, he took into account the age of the property, the flat being a property which dates back to the time of the Italian colonisation of Libya. Fourthly, he said that the government had set a price for such properties of 5,000 dinars. His valuation was based on an outside viewing of the building in which the flat is in. He did not have any access to the interior of the flat. He did not consider that a valuation of 335,000 dinars (approximately £173,047) was realistic. He stated that for 250,000 dinars (approximately £129,124) one could purchase a modern flat in Tripoli with a car park space. When asked in cross examination as to whether in estimating a value, he had used comparables, the witness failed to answer the question directly.

[135] Mr Sagar stated that he placed a valuation of 250,000 dinars (approximately £129,124) on the Tajoura property. His reasoning for this conclusion was that, firstly, the land was outside the city. Secondly, the road to the property consisted of a very bad, sandy road, one kilometre in length. Thirdly, the water in the area was very salty. Fourthly, the dwelling on the property was small and built without a licence.

[136] The husband called no valuation evidence in relation to the property at Zawia.

[137] On behalf of the wife I heard oral evidence in Arabic via Skype from a Mohamed Taher. Mr Taher is a civil engineer who qualified in 1987. He had worked for a number of companies designing properties, supervising the building of properties and valuing properties. He currently works as one of three civil engineers employed by Abobaker Mohamed Enaaji whose business is said to specialise in valuing property and other assets.

[138] The wife submitted two reports by Mr Enaaji providing valuations in respect of flat in Tripoli and the land on which the villa at Tajoura is built. Miss Kerr objected to any reliance being placed on these reports in that they had not been produced by the person who signed them. In addition they did not contain any expert witness declaration. I agree with Miss Kerr's submission and accordingly I have not taken account of them.

[139] Mr Taher gave evidence that he had inspected the Tripoli flat, not just from the outside but the inside, having been admitted to the flat by Abdulnaser. The size of the flat was 209.87 square metres. It had three bedrooms, a bathroom, a kitchen, a balcony and a ground floor garage. The rest of the building was inhabited. Mr Taher valued the flat at 335,000 dinars (approximately £173,047). His reasoning for this valuation was that firstly the location was a popular one. Secondly, the location was close to the city centre.

Thirdly the area was classified as a business area. Fourthly, the average value of similar flats in the area ranges from 350,000 to 500,000 dinars (approximately £180,784 to £258,262). In cross examination he stated that the building condition was very old but believed that his valuation was correct in today's market. He conceded that his work responsibilities did not include the selling of property, merely valuing it but stated that he could find someone to buy it at that price.

[140] Mr Taher gave evidence that he went and inspected the property at Tajoura. He valued the land itself at 725,000 dinars (approximately £374,489) with a value of a further 90,000 dinars (approximately £46,493) in respect of the villa. He conceded in cross examination that he did not know if the land had any drinking water and when asked if a lack of drinking water would influence price he replied that this was not his speciality.

[141] The wife called no valuation evidence in relation to the property at Zawia.

Conclusions as to Valuation

[142] Valuation of property is a matter of fact. But it is an art not a science. It is at best informed and educated guesswork, particularly where a proposed valuation is not based on actual completed sales. It is particularly difficult when a court is invited to reach conclusions as to valuations of properties in foreign countries. However, the issue having been placed before the court by the parties, it is not one which a court can avoid.

[143] In relation to the Tripoli flat I have concluded in the light of the evidence which I have received that I should adopt a valuation of £100,000.

[144] In relation to the Tajoura villa I have concluded in the light of the evidence which I have received that I should adopt a valuation of £160,000.

[145] In relation to the Zawia property, the house is built on land owned by the husband's father. It was often referred to by the parties as being in a family "compound". Neither party offered any expert evidence in relation to what value it might have. There are two possible approaches which could be adopted. One is to take the view that the property is not capable of being sold to a non-family member and therefore has no true market value. The alternative is treat it as any other property and attempt to place a value on it. A court must be realistic: the property was not disclosed by the husband because it had value to him and yet it is true to say that it would be difficult to sell. I conclude that, despite the problem of assessing an open market valuation, it would be fundamentally unfair to the wife to accord it no value whatsoever. However in the absence of any evidence from the parties as to valuation I consider that I must be extremely cautious about the valuation I

place on it. Based on the photographic evidence that the parties submitted when arguing as to its ownership and the valuations I reached in respect of the other two properties at issue, I therefore value the Zawia property at £50,000.

DIVISION OF ASSETS

THE ARTICLE 27 FACTORS

Welfare of the child

[146] Article 27 of the Matrimonial Causes Order (Northern Ireland) 1978 provides that first consideration must be given to the welfare while a minor of any child of the family who has not obtained the age of 18. Each of the parties' surviving children is now aged over 18.

Income and earning capacity

[147] The husband is a consultant who works for the National Health Service in Northern Ireland. He earns approximately £100,000 per annum. The wife is also a doctor but has retired on ill health grounds. She receives maintenance from the husband and has an NHS pension in payment providing approximately £4,950 annually. The wife argued in her submissions that the husband's second wife, also being a qualified doctor, therefore had a large earing capacity. The husband's evidence was that his second wife was "not fluent in English" and that if she was to work here she would need English lessons and to pass exams. This evidence was not challenged by the wife. Article 27 provides that a court should have regard to "the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future". On the basis of the evidence before me therefore I cannot be satisfied that the husband is likely to have earnings from his second wife in the foreseeable future. I have not therefore taken the second wife's earning capacity into account.

Financial needs, obligations and responsibilities of the parties

[148] There was no evidence placed before me of unusual financial needs in respect of the parties.

The standard of living enjoyed by the family before the breakdown of the marriage

[149] Both parties enjoyed a very good standard of living prior to the breakdown of the marriage.

The age of each party to the marriage and the duration of the marriage

[150] The wife is aged 61 and the husband is also aged 61. The marriage was of significant duration, having lasted just short of 30 years until the separation.

Any physical or mental disability by the parties of the marriage

[151] Each of the parties are experiencing health issues. The husband gave evidence that he has had high blood pressure since 2003 and had a stroke in 2007. He stated that he also requires certain coronary tests to be carried out. After the hearing of this case but before the written submissions were filed the husband underwent surgery. The wife's evidence was that she suffers from degenerative osteoarthritis in her right hand and knee and that she also has a heart murmur. The filing of her written submissions were delayed due to palpitations in respect of which she submitted a note by her doctor that she was unfit for work.

The contribution made by each of the parties to the welfare of the family

[152] In *White v White* [2001] 1 All E R 1 the House of Lords made it clear that there was no place for discrimination between a husband and wife and their respective roles. If, in their different spheres, each contribute equally to the welfare of the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the homemaker and the child-carer. The evidence before me was that the contribution made by each of the parties to the welfare of the family was equal.

Conduct

[153] In the light of my findings of fact in relation to the three Libyan properties, it is inevitable that I must therefore reach a conclusion in respect of litigation conduct which is adverse to the husband. The husband has deliberately concealed his interest in the three Libyan properties.

[154] The wife also argued that there had been financial misconduct in that the husband had dissipated funds of £46,000. The husband gave evidence in respect of his costs during the relevant period and in the light of this evidence I am, however, not satisfied that the wife has demonstrated on the balance of probabilities that there has been dissipation by the husband and therefore I do not take any regard of the dissipation allegation.

[155] In her written closing submissions the wife made allegations of physical domestic abuse which she did not make during her oral evidence. I have therefore, for the reasons explained in paragraph 4 above, completely disregarded these.

Value of any benefit which by reason of dissolution of the marriage a party will lose

[156] The husband's pension provision vastly exceeds that of the wife.

Other matters taken into account

[157] Article 27 of Order requires the court to have regard to 'all circumstances of the case'. There are therefore matters which not do fall within the ambit of Article 27(2) (a) to (h) but which may unquestionably be relevant in a given case. In this case there were no such matters.

[158] Article 27A of the Matrimonial Causes (NI) Order 1978 requires the court to consider whether it would be appropriate to exercise the powers afforded by Articles 25 and 26 in such a way that the financial obligations of each party towards the other would be terminated as soon after the grant of the Decree Nisi as the Court considers just and reasonable – the 'clean break' approach. In the words of Waite J. in *Tandy v Tandy* (unreported) 24 October 1986 'the legislative purpose… is to enable the parties to a failed marriage, whenever fairness allows, to go their separate ways without the running irritant of financial interdependence or dispute.' The use of the word 'appropriate' in Article 27A clearly grants the court a discretion as to whether or not or order a clean break. The particular facts of each individual case must therefore be considered with a view to deciding the appropriateness of a clean break. I have concluded that a clean break in this case is both possible and desirable.

[159] As will be recollected from the opening paragraph of this judgment, the initial position of the parties was that this case was one where the assets should be divided on a 50% - 50% basis. The principal issue was whether to the matrimonial assets included three properties in Libya. I have concluded as a matter of fact that, on the balance of probabilities, the husband does own these properties. I have valued them at a total of £310,000. This means that the wife's share of the Libyan properties is worth £155,000.

Costs

[160] Courts take into account that representing oneself without the assistance of legal advisers is a very difficult enterprise for most people. Knowledge of legal principles, court rules, available legal strategies and so forth will all usually be lacking in a personal litigant. In this particular case the wife faced a range of difficulties including a protracted hearing, expert

evidence on Libyan property law and valuations and complex documentary evidence. What a court does require, however, even from personal litigants, is basic compliance with the clear instructions that a court gives in terms of the behaviour it expects. In her conduct of these proceedings the wife repeatedly interrupted the interpreters who were interpreting the evidence given in Arabic. She repeatedly muttered her discontent and repeatedly sighed loudly whenever a ruling did not please her. I had to warn her repeatedly that her behaviour could not be tolerated and that there would be costs implications if she did not adjust her behaviour. Although her behaviour improved to some degree, I did consider that the delays caused by the need for frequent warnings merited some penalty in costs against her.

[161] However her behaviour must be weighed against that of the husband. While by comparison he behaved impeccably in court, I have found against him on the issue of the Libyan properties. His failure to disclose the existence of the Libyan properties can, on the evidence, be nothing other than a deliberate and dishonest attempt to evade sharing their value with the wife. As a result 10 days of court hearing time have had to be expended. The husband's costs are considerable. His written closing submissions assert that his outstanding legal bills are estimated at £45,000 plus VAT. In the light of my findings of fact, these amount to a self-inflicted wound and I do not consider that he should be relieved of paying any of these due to wife's poor behaviour in court. In these circumstances therefore I exercise my discretion not to penalise the wife in costs on the basis of her poor behaviour and I make no order as to costs.

[162] The wife's written submissions ask that I should go further than this. She states that she became a personal litigant after running out of money to pay her legal team. She is being sued by her former solicitors for the sum of £25,117.90 which they asserts she owes to them. She seeks an order against the husband that he pay all her costs in the ancillary relief proceedings.

[163] The husband advanced *S v S*, an undated 2012 decision by Master Redpath, as authority for the proposition that "the court should not allow costs to distort equality and re-balance the division". In my view *S v S* is dealing with an entirely different factual matrix and has no application to the circumstances of this case.

[164] Order 62 Rule 3 of the Rules of the Court of Judicature provides that one of the general principles to be applied when a court in the exercise of its discretion sees fit to make any order as to costs is that costs should follow the event. In this case the wife has clearly won. She claimed that that the husband owned properties in Libya and was concealing them. The husband denied their existence. I am satisfied as a matter of fact that the husband does own the properties which the wife alleged. However the position is not as simple as saying that the husband should pay all the wife's legal costs. I have little

doubt that the wife would have incurred significant legal costs even if the husband had been completely honest in relation to the three properties. For example, there were rancorous proceedings where the wife obtained non-molestation and occupation orders and the wife would of course have commenced ancillary relief proceedings even if these had resulted in a negotiated settlement. In the exercise of my discretion I order that the husband should pay £5,000 towards the wife's legal costs.

Order

[165] I conclude that the assets (with the exception of the husband's pension which I shall deal with below) should be divided on a 50% - 50% basis. In many cases this would be a sufficient order to make. Generally parties would either agree to sell assets and divide the proceeds between them or one would agree to raise sufficient cash so as to buy out the other's interest in particular assets. In this most intractable case I see little hope of agreement between the parties. For example, after a draft judgment in this case was delivered to the parties the husband, after submitting that "Libya remains dangerous and unstable" asked the court to approve that the wife should accept the Tripoli flat as part of her 50% of the assets. The lack of agreement between the parties therefore drives the court to be more prescriptive than might otherwise be the case.

[166] Unless the parties can reach a written agreement between themselves as to an alternative method of dealing with particular assets within 28 days from the date this judgment is delivered I therefore order the parties to sell the following assets and divide the net proceeds 50%-50% between them (subject to the adjustments referred to below) :

(i) The matrimonial home
(ii) The flat in Dublin
(iii) The Phoenix endowment policy
(iv) The Zurich life insurance policy
(v) The shares in the husband's name worth approximately £10,000

[167] Prior to the division of the net assets, account must be taken of my findings of fact in relation to the husband's ownership of the Libyan properties and my valuation of them. Hence the wife should receive the sum of £155,000 (being 50% of their value).

[168] The husband has submitted that, at the time of separation, the Zurich policy was worth £25,464.59 and the Phoenix policy was worth £8,168.49. Hence he argues that since the wife did not contribute to the policies after that date any additional value belongs to him alone. I agree. The husband is entitled to any excess value.

[169] In his written submissions the husband set out that, although the wife received maintenance pending suit, she had returned to work in January 2008 and had worked until September 2009, receiving approximately £1,000 per month. He argued that as a result, £19,000 of "overpaid" maintenance pending suit should be deducted from the wife's 50% of the matrimonial assets. I decline to do so. The husband, upon learning that the wife was working, should have returned to court and sought a reduction in the amount of maintenance which had been ordered. He cannot raise the issue now and simply seek to use it as an argument for reducing the wife's ancillary relief award.

[170] The husband also sets out in his written submissions that, having paid a lump sum of £10,000 to the wife in November 2007, this sum should be deducted from the wife's 50% of the matrimonial assets. I decline to do so. In some cases which come before the courts, the parties agree a lump sum should be paid in advance to the one of the parties and it is clearly agreed that this sum should then be deducted from the amount awarded later on. This is not one of those cases. Master Redpath made an order on 27 November 2007 as follows :

> "UPON HEARING Counsel for the Petitioner and Counsel for the Respondent, pursuant to a Summons dated 2007 and upon hearing the parties and upon reading the papers in the case ;
>
> AND UPON the Respondent undertaking to the Court to pay the Petitioner a lump sum of £10,000 within 14 days;
>
> IT IS ORDERED that the Respondent shall pay Maintenance Pending Suit at the rate of £2,500 per month to the Petitioner pending the further Order of the Court, with the first payment to be made on 30 November 2007;
>
> AND IT IS FURTHER ORDERED that the Respondent be condemned in the costs of the Petitioner;"

It is clear that Master Redpath was dealing with a Summons for Maintenance Pending Suit and that the payment of the £10,000 formed part of that award. Accordingly, it should not now be deducted from the wife's 50% award.

[171] Mr Ian Conlon, the parties' joint actuarial expert, did not give oral evidence. However the parties agreed that I should be given, and should take into account, a report from him. I have received a report dated 3 May 2011, an addendum dated 26 March 2012 and an addendum 10 June 2013. Mr Conlon reached a conclusion that, in respect of the husband's HPSSSS pension, the percentage pension share required to provide equal incomes adjusted for the higher cash sum that the husband will receive in relation to pension benefits

accrued over the marriage was 37.1%. After consideration of Mr Conlon's report and addendum, and the written closing submissions of both parties, I have concluded that I should make a Pension Sharing Order in favour of the wife in respect of 37.1% of the husband's HPSSSS pension.

[172] Mr Conlon also concluded, in relation to the Zurich pension arrangement which the husband had entered into, that if the proportion of the fund in respect of contributions made after the separation was excluded, then a 36.8% pension share would provide both parties with 50% of the value of the fund which relates to contributions paid over the course of the marriage. I have therefore concluded that I should make a Pension Sharing Order in favour of the wife in respect of 36.8% of the husband's Zurich pension.

[173] Counsel for the husband is to prepare draft Pension Sharing Orders and submit them to the Trustees for their approval. Once that approval has been received, the parties should request that the case be relisted for the formal making of the Pension Sharing Orders.

[174] In the event that the parties cannot agree between themselves how to market the matrimonial home and whether decorative work is desirable prior to its sale I will hear the parties as to whether or not an order for the sale of the property by auction ought to be made.

[175] This order is made on a clean break basis. The husband's maintenance to the wife shall cease as soon as payments to the wife under the Pension Sharing Order in relation to the husband's HPSSSS pension commences.