Neutral Citation Number: [2019] EWHC 1468 (Fam)

Case No: 2019/0027

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/06/2019

Before :

MR JUSTICE WILLIAMS

- -

Between:

AB	**Appellant**
- and -	
XY	**Respondent**

- -
- -

Fareha Choudhury (instructed by **Gisby Harrison Solicitors**) for the **Appellant**
Laura Cooke (instructed by **Nockolds Solicitors**) for the **Respondent**

(Appeal: Procedural Irregularity: Undue Acceleration)

Hearing dates: 7th June 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE WILLIAMS

This judgment was delivered in public. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Williams :

1. On 29 October 2018, HHJ Lochrane conducted the first hearing on an application by Ms Y (the respondent to this appeal and described for ease of reference as the wife) for an occupation order in respect of a property at [REDACTED]. The respondent to those proceedings but the appellant in these (and referred to for ease of reference as the husband) is Mr B. The wife was represented by counsel, the husband appeared in person. In the background there was also a divorce petition which the wife had issued in late September 2018. During the 29 October hearing the husband asserted that he was not married to the wife and that a marriage certificate which was produced at the hearing was a forgery. Somewhat to the surprise of both the appellant and the respondent, HHJ Lochrane decided that the question of the existence of a marriage ought to be listed for determination of a preliminary issue on 1 November 2018 with a time estimate of 1.5 hours. The order of 29 October 2018 identifies the preliminary issue.

   'And upon the court considering that the existence or otherwise of the marriage must be resolved as a preliminary issue.'

2. A direction was also given providing for the simultaneous filing of any evidence including affidavits from any third parties relevant to the '*question of whether or not the parties were married.'* That evidence was to be filed by 12 noon on 1 November 2018; giving 2 working days for it to be prepared. A final hearing of the applications for occupation and non-molestation orders was listed for 13 December with a time estimate of one day.

3. On 1 November 2018, HHJ Lochrane heard evidence and made an occupation and non-molestation order. He also made an order deeming service of the wife's divorce petition thus allowing that to proceed. The findings recorded '*having considered the written and oral evidence of each party*' are as follows:

   i) The [husband] did not tell the truth on a number of occasions during the hearing and was a serial liar.

   ii) The parties were married in Jordan on 9 June 2010 and thereafter lived as husband and wife.

   iii) The [husband] has a beneficial interest in the family home, despite legal title to the property being held by CB and DB, the [husband's] children from a previous relationship.

   iv) By virtue of his beneficial interest in the family home, the [husband] was entitled to occupy the family home.

   v) The family home is and has been the home of the parties.

4. In addition to those recorded findings, in paragraph 11 of the judgment HHJ Lochrane makes a finding that the husband has been abusive to the wife (in accordance with her allegations) and had put her out of the house without notice and sought to defeat any claim she might have over the house by transferring the property into the names of his children.

5. On 15 February 2019 the husband filed an appellant's notice in the Family Division seeking permission to appeal against the order of 1 November. In particular, paragraph 6 of the Appellant's notice the appellant sought to challenge the findings

recorded in the order and the non-molestation, occupation, and costs orders which were made in consequence. Given that the appellant's notice was long out of time, the appellant also sought an extension of time for filing his notice. He also sought a stay given that divorce and financial remedy proceedings were underway with an FDA listed on 6 March 2019.

6. On 19 February 2019 Mrs Justice Gwynneth Knowles gave directions for the appeal to be listed for an oral hearing with the appeal to follow immediately if permission was granted. By that order she provided that the order of HHJ Lochrane dated 1 November 2018 shall be stayed.

7. The appeal came before me today, 7 June 2019. The order provided for the appeal to be listed on a date to be fixed by counsels' clerks in a consultation with the clerk of the rules. It is regrettable that a further nearly 4 months has passed before this appeal has been heard. A total of 7 months has elapsed since the relevant order was made. During that time the wife has resumed occupation of the property and I am told by Miss Choudhury that the husband has in effect been sofa surfing at the homes of friends and family, as well as spending periods in hospital.

8. The grounds of appeal (abbreviated in part) are:

   i) Ground one: the hearing on 1 November 2018 was listed for determination of the preliminary issue of the existence or otherwise of the marriage. Only 2 working days was allowed for the appellant to prepare for this hearing, which was wholly insufficient time, unjust and a serious procedural irregularity in the proceedings.

   ii) Ground 2: the hearing on 1 November 2018 went beyond the determination of the preliminary issue of the existence or otherwise of the marriage and the court made a non-molestation order and occupation order. This was a serious procedural irregularity and unjust.

   iii) Ground 3: the learned judge failed to hear any evidence on the allegations relied upon by the [wife] in support of the applications for non-molestation order and occupation order. This was a serious procedural irregularity and unjust.

   iv) Ground 4: The hearing was conducted under severe pressure of time to the point of being an unfair hearing, particularly to the appellant who was self representing.

   v) Ground 5: the [wife] relied upon a "Jordanian family book" in Arabic in support of her case that she was the wife of the [husband]. No translated copy of the said document was available during the hearing.

   vi) Ground 6: the learned judge made a finding that the husband had a beneficial interest in the property at [REDACTED]. This went beyond the intended scope of the hearing. Further the learned judge was wrong to make such a finding without notice to the two legal owners of the property CB and DB. This was a serious procedural irregularity and unjust.

vii) Ground 7: the learned judge was wrong to find that the parties were married in Jordan on 9 June 2010 and failed to give sufficient weight to or refer in his judgment to the following (there follow 12 particular 'facts' which are relevant to the marriage ceremony or the certificate).

viii) Ground 8: the learned judge wrongly concluded the Jordanian embassy had authenticated the marriage certificate.

ix) Ground 9: the learned judge was wrong to conclude that because the [husband] had lied about the [wife] being his lodger, it therefore followed that he was lying about everything else and therefore the Family Law Act orders should be made.

x) Ground 10: the learned judge failed to deal in his judgment with the particular matters set out in section 33(6) Family Law Act 1996 and fails to deal with the balance of harm test set out in section 33(7).

9. Miss Choudhury supported those grounds with a concise focused skeleton argument. She supplemented them in her oral submissions.

10. On behalf of the wife, Miss Cooke also provided a helpfully focused and concise skeleton. Importantly within that skeleton, the wife accepted that 4 of the grounds of appeal should be allowed. They were Grounds 3, 6, 9, and 10. Prior to reading her skeleton I had already formed a provisional view that grounds 3, 6 and 9 were unanswerable and so the concessions were quite properly made. Miss Cooke also accepted in respect of ground 2 that as a consequence of the concessions in respect of grounds 3, 9 and 10 that the Family Law Act applications would have to be remitted for rehearing. Miss Cooke though maintained that the remaining grounds did not have a realistic prospect of success and nor was there some other compelling reason why the appeal should be heard. She therefore submitted that permission to appeal should be refused on the remaining grounds. The principal arguments deployed in respect of each ground were as follows:

i) Ground one: the husband did not raise any objection to the hearing on 1 November 2018 proceeding or seek an adjournment or request any additional time. She submitted that the timing of the hearing afforded the husband sufficient time to prepare and that he had known since 28 September that the wife was asserting there was a valid marriage between them. He therefore had ample time to address the issue of whether a marriage existed.

ii) Ground 4: it is denied that the hearing was conducted under any pressure of time sufficient to result in an unfair hearing. It was originally listed for 1.5 hours but in the event lasted for 3 hours. The judge attempted to focus the husband's questions to ensure they were relevant rather than putting him under pressure and the transcript makes clear that both parties were given a full opportunity to address the court in evidence and to make submissions.

iii) Grounds 5, 7 and 8: the decision was reached after a full consideration of the written and oral evidence. The Jordanian family book was one part of the evidence and the judge was entitled to rely on it. The matters raised in ground 7 were within a document 'fake marriage certificate analysis' that the husband

put before the judge and so they must have been in his mind. They were explored in the parties' evidence and submissions and the judge was not obliged to refer to every aspect of the husband's response in his judgment. The judge was entitled to reach the conclusion that the Jordanian embassy had certified the marriage certificate copy as genuine. Miss Cooke sets out an extensive list (some 19 items) of the evidence that was before the judge which he relied upon in reaching the conclusion that the parties were married in Jordan on 9 June 2010. In particular she relies on the judge's finding that the husband was a serial liar and that his evidence lacked credibility.

11. I shall explore some of the arguments in more detail later.

Extension of time

12. The appellant seeks an extension of time to lodge an appeal. The following are some of the relevant dates:

    i) 7 November 2018: appellant instruct solicitors.

    ii) 15 November 2018: appellant receives copy of order of 1 November 2018.

    iii) 22 November 2018: appellant's solicitors contact transcription company and are told a transcript can be provided within 48 hours. EX107 submitted to family court requesting urgent transcript of 1 November 2018 hearing.

    iv) 23 November 2018: conference with counsel. Counsel requires transcripts to advise.

    v) 26 November 2018: EX107 submitted to family court for transcript of 29 October hearing.

    vi) 14 December 2018: transcribers confirm receipt of both tapes.

    vii) 2 January 2019: transcript of hearing of 29 October received.

    viii) 10 January 2019: transcript of hearing (but not judgment) of first November received.

    ix) 29 January 2019: transcript of judgment received by appellant's solicitors.

    x) 15 February 2019: appeal filed.

13. The time for filing the appeal expired on 22 November 2018. The appeal was thus filed some 8 weeks out of time. Knowles J extended the time for appealing. I would observe that it will very often be the case that no written judgment is handed down and that a transcript will be required; with litigants in person there will very often be no note of the judgment and obtaining a transcript (particularly if one is sought at public expense) will lead to lengthy delay. However the 21 day time limit still applies and it is imperative that those instructed to advise on appeals pull out all the stops to obtain the material that they need to make a decision. In particular, in a case such as this requesting a note of the judgment from counsel who was present seems to me to be mandatory. It is part and parcel of counsel's duty in attending a trial to take a note

of the judgment. The consequence of the delay in filing the appeal has not been great insofar as the respondent is concerned. She has been in occupation of the property, whilst the husband has had to improvise, but the net result is the passing of 8 months.

Appeals against findings of fact

14. The FPR 30.12(3) provides that an appeal may be allowed where the decision was wrong or unjust for procedural irregularity. Permission to appeal may be granted where the appeal has a realistic prospect of success or where there is some other compelling reason.

15. In Re F (Children) [2016] EWCA Civ 546 Munby P summarised an approach to appeals,

> *22. Like any judgment, the judgment of the Deputy Judge has to be read as a whole, and having regard to its context and structure. The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law. To adopt the striking metaphor of Mostyn J in SP v EB and KP [2014] EWHC 3964 (Fam), [2016] 1 FLR 228, para 29, there is no need for the judge to "incant mechanically" passages from the authorities, the evidence or the submissions, as if he were "a pilot going through the pre-flight checklist."*
>
> *23. The task of this court is to decide the appeal applying the principles set out in the classic speech of Lord Hoffmann in Piglowska v Piglowski [1999] 1 WLR 1360. I confine myself to one short passage (at 1372):*
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> > *"The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case … These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2) [of the Matrimonial Causes Act 1973]. An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."*
>
> *It is not the function of an appellate court to strive by tortuous mental gymnastics to find error in the decision under review when in truth there has been none. The concern of the court ought to be substance not semantics. To adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in "narrow textual analysis".*

16. The parties referred to a variety of authorities on appeals against findings of fact. See for instance:

    i) Piglowska v Piglowski [1999] 1 WLR 1360, 1372

    ii) Royal Bank of Scotland v Carlyle [2015] UKSC 13, 2015 SC (UKSC) 93

    iii) Chen-v-Ng [2017] UKPC 27

    iv) In the matter of A & R [2018] EWHC 2771

    v) AA-v-NA [2010] EWHC 1282

    vi) Re B (A child) [2013] UKSC 33

    vii) Fage UK Ltd -v-Chobani UK Ltd [2014] EWCA Civ 5

17. The central thrust of the appeal, even ground 7, was that the process adopted amounted to a serious procedural irregularity which rendered the decision unjust. I say this also really applied to ground 7 because even in respect of Miss Choudhury's contention that the finding was wrong, a significant component in her argument was that the process had not provided the judge with sufficient material to enable him to make a reliable decision, and that lack of time prevented a proper forensic analysis of the evidence that did exist or a proper opportunity for the judge to consider the evidence properly and reach a balanced decision upon it.

18. In Re S-W (Care Proceedings: Case Management Hearing) - [2015] 2 FLR 136 the President (Sir James Munby) said:

    [52] Vigorous and robust case management has a vital role to play in all family cases, but as r 1.1 of the FPR 2010 makes clear, the duty of the court is to 'deal with cases justly, having regard to any welfare issues involved'. So, as my Lord has emphasised, robustness cannot trump fairness.

    [53] *In the context of case management, fairness has two aspects: first, the case management hearing itself must be conducted fairly; secondly, as I observed in the passage in* Re TG *to which my Lord has referred, the task of the case management judge is to arrange a trial that is fair. Here, there was a failure in both respects.*

    [54] *We are all familiar with the aphorism that 'justice delayed is justice denied'. But justice can equally be denied if inappropriately accelerated. An unseemly rush to judgment can too easily lead to injustice. As Pauffley J warned in* Re NL (Appeal: Interim Care Order: Facts and Reasons) *[2014] EWHC 270 (Fam), [2014] 1 WLR 2795, [2014] 1 FLR 1384, at para [40], 'Justice must never be sacrificed upon the altar of speed'.*

19. It is clear from appellate courts of the highest level, that on an appeal from a first instance judge in relation to fact-finding this court should not interfere unless compelled to do so by the identification of clear and substantial errors in the process of the evaluation of the evidence and the drawing of conclusions of fact from that evidence.

20. The court may conclude a decision is wrong or procedurally unjust where:

    i) An error of law has been made.

    ii) A conclusion on the facts which was not open to the judge on the evidence has been reached.

    iii) The judge has clearly failed to give due weight to some very significant matter, or has clearly given undue weight to some matter.

    iv) A process has been adopted which is procedurally irregular and unfair to an extent that it renders the decision unjust.

    v) A discretion has been exercised in a way which was outside the parameters within which reasonable disagreement is possible.

The hearing on 1 November

21. The directions of 29 October provided for each party to file further evidence by 12 noon on 1 November. The husband filed his evidence somewhat earlier. Sometime between 12 noon and 1 PM the wife filed her further statement. That did not contain any narrative but rather produced a list of 29 documents and exhibits which were said to support the existence of a marriage. The statement amounts to some 161 pages. Within it was a letter dated 31 October 2018 from the Jordanian embassy in London which stated that they had examined the wife's Jordanian passport and her family book. They confirmed that she was married to the husband in Jordan on 9 June 2010 as shown on the copy of their marriage contract. The copy marriage certificate bore a stamp from the embassy dated 1 November 2018. The statement did not set out the wife's account of the circumstances leading up to the marriage, the marriage ceremony itself or its immediate aftermath. That is hardly a surprise in respect of the first statement which was made in support of an application for a Family Law Act 1996 order. It is perhaps also not a surprise in respect of the second statement given the very limited time that was given to produce it. However in a case where the central issue was the existence or otherwise of a valid marriage the cornerstone of the evidence must surely be the wife's evidence of the marriage itself, the supporting the marriage certificate which the husband challenged the veracity of. How the parties were perceived by others after the event or indeed how they presented after the event will of course be of some relevance but there are many examples of individuals presenting as husband and wife when in fact they have not undertaken either any marriage ceremony or a marriage ceremony sufficient to create a valid marriage in law.

22. The hearing commenced with exchanges over whether the husband had provided the wife's legal team with all of the documents. Even at that stage the judge records the limited amount of time that had been given in preparation. Following that the wife was called. The relevance of the marriage ceremony itself was recognised by Miss Cooke who asked the wife to give evidence in chief on that. After she had given evidence in chief, the husband was given the opportunity to cross-examine her. The 20 pages of transcript illustrate a relatively familiar picture of a litigant in person

struggling to ask questions in the way a trained lawyer would. Very significant periods record exchanges between the judge and the husband rather than questioning by the husband of the wife. A degree of frustration on the judge's part emerges. There are several references in which the judge refers to the need to hurry up or to running out of time. The husband was then sworn and in effect gave no evidence in chief. He was then cross-examined by Miss Cooke, which takes up about 20 pages of the transcript as well. During the course of the husband's submissions the judge refers to the fact that they need to be out of the building in half an hour. References were made in the course of exchanges to the judge of having sworn statements from 3rd parties who confirmed they were married (self-evidently they were not called). At 5:44 PM submissions finished. The judge gave his decision over a period of 14 minutes thereafter.

23. The transcribed judgment runs to a little over 3 pages. The judge identifies that he listed the matter for determination of the marriage issue because it would be relatively determinative of the credit of either party, which would affect their credit in relation to the occupation and non-molestation orders. I take it from that, not that the judge considered the existence of the marriage to be relevant from a legal perspective, but rather that it was an issue of fact which would give rise to findings on credibility which would be imported into the main application.

24. The judge considers some of the most significant items of evidence. He refers to the considerable volume of documentation that the wife had produced which suggest a clear impression of the parties living together as husband and wife. He considered the husband's denial of discussions with a Visa company to be untrue and inconsistent with there not being a marriage. He plainly found the husband to be a dishonest witness and a significant component in this was the husband's volte face from the directions hearing when he claimed the wife was a mere lodger through to his evidence that day where he accepted they had presented themselves as husband and wife. The judge concluded that a wedding ceremony did take place in June 2010. He did not consider any of the evidence relating to the ceremony itself or the criticisms that the husband made of the marriage certificate. It is clear that the judge considered the marriage certificate to be significant albeit it is equally clear that there was no one item of evidence which dominated the landscape. It was clearly a constellation of matters which led HHJ Lochrane to the conclusion that a marriage had taken place.

Discussion

25. Returning then to the grounds of appeal. In respect of those grounds which it is accepted must succeed I must consider whether they have any bearing on the residual grounds which remain in contention.

26. During the course of the hearing it is clear that the allegations of abuse made by the wife against the husband were not the subject of any cross examination. Given the listing of the matter for determination of the preliminary issue of whether a marriage existed and the time estimate that was to be expected. Nor was there any exploration of the circumstances in which the wife had left the house, still less any exploration of the circumstances in which the property had been transferred into the names of the respondent's children some 3 years earlier and whether the husband retained a beneficial interest in the property. Again this is not surprising given that they were not issues that either the husband or the wife were expecting to be determined that day.

Thus it is undoubtedly the case that the findings made by the learned judge went far beyond those which were listed for determination and were made without any evidence preparation, exploration of the evidence or detailed submissions. It is also conceded by the wife, and rightly so, that the observation in the judgment at paragraph 11 to the effect that the husband's lies in relation to the marriage and the wife's truthfulness in relation to the marriage have the effect that any allegation the wife made would be accepted by the judge unless the husband's evidence on the issue was corroborated was wrong and contrary to 'Lucas.' This approach though mirrors the reasons given at paragraph 3 of the judgment for determining the marriage issue as a preliminary issue. The findings on this as to credibility were plainly to be determinative of the credit of the parties such that (it is implied if not expressly stated) they would be disbelieved on anything else unless there was corroboration. I'm afraid I cannot agree that the issue of credibility can be dealt with in such a binary fashion. 'Lucas' mandates a more nuanced approach. These undoubted flaws in the decision give rise to two questions. First of all a matter of substance; does the fact that they were made in this way undermine the reliability of the findings made in relation to the marriage? Secondly though this is a matter of form; overall has justice been seen to be done on the marriage issue having regard to the obvious lack of justice in relation to the other issues?

27. Miss Cooke argues that those findings essentially all followed on from the judge's conclusion that the husband was not a credible witness on the marriage issues. They came after and consequent upon those findings. Therefore they being made in error cannot influence the reliability of the judge's findings in relation to the marriage. Whilst as a matter of linear logic this may have some merit I do not accept that judicial decision-making can be compartmentalised in the way that it suggests. Several decisions reached without the necessary procedural or evidential foundations suggest as a matter of substance that the decision-making process generally was flawed; that impacts upon the marriage findings as well as the other findings. However irrespective of that matter of substance, as a matter of form it is hard to imagine that an objective observer would have considered that justice had been seen to be done to the husband in those circumstances.

Issues of procedural irregularity

Ground 1; the hearing on 1 November 2018 was listed for determination of the preliminary issue of the existence or otherwise of the marriage. Only 2 working days was allowed for the appellant to prepare for this hearing, which was wholly insufficient time, unjust and a serious procedural irregularity in the proceedings.

Ground 4: The hearing was conducted under severe pressure of time to the point of being an unfair hearing, particularly to the appellant who was self representing

28. The circumstances in which this issue came to be listed may be informative in terms of whether the process was regular and fair or not. Usually issues as to the existence of a marriage would arise in the context of a divorce petition itself. That might give rise to issues of the existence of a marriage or the validity of an accepted marriage or both. It might also lead to questions about whether a presumption of marriage applied. The consequence of the order made on 1 November is to determine that a marriage ceremony took place. It seems clear from the approach taken by the parties that they also accepted that the consequence of that finding was that it created a valid marriage

under Jordanian law and thus a marriage that would be recognised in England and Wales. That marriage could then be dissolved by a decree of divorce and financial remedies would follow. It seems that the purpose of listing the matter for a preliminary issue was not so much to explore any of those issues but rather to use that discrete issue of 'marriage' as a vehicle for reaching conclusions as to the credibility of the husband and wife which could be exported into the main application which was the Family Law Act application, which was listed for hearing on 13 December. Thus the sort of careful preparation that would usually accompany the determination by the court as to the existence and validity of a marriage was not at the forefront of anybody's minds at that time. However the consequence of the order is in effect to determine an issue of status which has very important consequences. It is clear from the oral evidence that was given on 1 November and from the marriage certificate on its face, that there are some unusual features which had it been the subject of closer scrutiny on 29 October might have led either the judge or the wife's lawyers or the husband to identify that further evidence might appropriately be required in order to investigate the issue. The marriage certificate contains dates for 'historical events' in its body which post-date the date of the certificate. It does not contain certain information that might be expected. The wife accepted that the dowry which had been stated to have been received had not been received. The husband claimed that it was a forgery and that the signature it purported to bear was not his. His passport which was in evidence did not show a stamp which would have placed him in Jordan at the material time. The document from the Jordanian Embassy did not certify that the marriage certificate was an authentic document; rather it confirmed they had examined the wife's passport and a family book albeit went on to say that the embassy confirmed that the wife was married to the husband as shown on their marriage contract.

29. On an issue such as status it seems to me that had it arisen in the context of the divorce it is inevitable that an entirely different procedural course would have been followed. The wife would have been given an opportunity to provide a full statement setting out the circumstances in which they came to be married, including her narrative account of the lead up to and the conduct of and the immediate aftermath of the ceremony. Enquiries would have been made in the Amman court to check the register. The husband would have had the opportunity to consider that evidence and to respond in detail to it giving his own account of his whereabouts at the time and to have obtained advice from Jordanian lawyers who might have inspected the register. In the light of that evidence, consideration might have been required as to the necessity for the instruction of a single joint expert on Jordanian law. Had the husband continued to maintain that the signature on the certificate was not his, consideration would have been given to the need for a handwriting expert. In referring to these I am in no sense seeking to predetermine whether they were necessary or will be necessary at any reconsideration of this issue. However the questions would be asked and answered. They were not addressed at all in this instance. The purpose of 'time' is not purely to prepare a statement but rather to reflect and to consider both what evidence might be required but more broadly what approach should be taken to the litigation. I note that the wife at no stage set out a narrative account of the marriage. Her case was essentially based on documents produced between 12 noon and 1pm on the day of the hearing, albeit she gave some oral evidence. The husband's evidence had been filed prior to the wife's evidence.

30. Whilst there is undoubtedly merit in robust case management and the rapid disposal of issues of fact even the simplest and relatively insignificant issues require some space for preparation. On important issues such as status which have far-reaching consequences, the need for careful preparation, the opportunity for reflection, collation of material, the seeking of advice assumes a premium. The fact that the husband did not raise any objection or request any additional time seems to me to be relatively unimportant in the context of the significance of the issue before the court. It emerges from his evidence that he challenged the veracity of the marriage certificate and the inferences that could be drawn from other items of evidence deployed by the wife. It is abundantly clear that there were a raft of further enquiries that would have been undertaken had more time been available. I'm quite satisfied that the timetabling of the hearing on 1 November and the opportunity for the consideration and deployment of evidence was insufficient given the magnitude of the issue in play. It does fall into the category of 'undue acceleration' which in my view is a serious procedural irregularity and which makes the decision unjust.

31. On the basis of the evidence that was before the court on 1 November and on the basis of the issues that were raised during that hearing it seems to me that a 1 ½ hour time estimate was inadequate. Albeit the time extended to something closer to 3 hours the picture which emerges is of a rather fractious hearing in which the husband was hurried along and where the limited time estimate was identified at the outset as creating a pressure. That pressure built as the afternoon progressed. It may be that there are cases where issues of status could fairly be determined in a 3 hour hearing. I do not consider that this was one of them, particularly where the preparation had been so compressed. In the circumstances I'm satisfied that taken in its entirety, the manner in which the hearing took place was inappropriate and crossed the border into one which became procedurally irregular and unfair.

32. Having reached the conclusion that the hearing was procedurally irregular and that the outcome was consequently unjust by reason of the consequences of the flawed decisions and as a result of the procedural irregularities identified above, the appeal must be allowed and the findings set aside.

Was the decision wrong?

Ground 5: the [wife] relied upon a "Jordanian family book" in Arabic in support of her case that she was the wife of the [husband]. No translated copy of the said document was available during the hearing.

Ground 7: the learned judge was wrong to find that the parties were married in Jordan on 9 June 2010 and failed to give sufficient weight to or refer in his judgment to the following (their follow 12 particular 'facts' which are relevant to the marriage ceremony or the certificate)

Ground 8: the learned judge wrongly concluded the Jordanian embassy had authenticated the marriage certificate.

33. As a result of my conclusions in respect of the procedural irregularity these grounds to some extent become redundant. However having heard argument on them I set out my brief conclusions.

34. Miss Cooke is right in saying that the Jordanian family book was only part of the evidence that the court relied upon. In so far as ground 5 might be construed as asserting that the Jordanian family book was inadmissible that cannot be right. The question of the weight that were to be given to an untranslated document was a matter for the court in the light of what the parties had said about it. It is clear from the judgment that the Jordanian family book was in no sense determinative of the conclusion that a marriage had taken place. It was one part of a much wider evidential picture which emerged from the documents. I'm not satisfied that the judge was wrong to admit that document or to take it into consideration.

35. In her skeleton argument, Miss Cooke mounts a compelling argument in support of the judge's finding that a marriage had taken place. By reference to the evidence before the court on 1 November, she is able to demonstrate that there was a raft of material before the court which justified the finding that the judge reached. Had that conclusion been reached after a procedurally appropriate pathway to trial and after an adequate exploration of the issues at trial she would have been in an almost indomitable position. There plainly is a significant amount of evidence that supports the contention that the husband and wife held themselves out as such even to the extent of an application being made for the wife's naturalisation as the husband's wife. It may very well be that after a fuller exploration of matters a judge will reach the same conclusion as HHJ Lochrane. On the other hand further exploration of the matters identified by Miss Choudhury in her 12 subparagraphs of ground 7 might alter the landscape. Further enquiries in Jordan, information about the laws of marriage in Jordan or further exploration of the circumstances of the marriage either with the parties or with others might result in a different picture emerging, either as to the marriage ceremony itself or the validity of any marriage that was entered into. Plainly only the husband and wife know the true answers to all of these questions. By the end of any further trial process many others will also know the answers. The consequences may be far-reaching.

36. Taken in combination the application of a stamp to the marriage certificate and the letter from the Jordanian embassy provide in my view a sufficient evidential foundation (for appellate purposes) for HHJ Lochrane to have concluded that the Jordanian embassy had authenticated the marriage certificate. It is likely that a fuller process of authentication will be pursued during any remitted process but I conclude that to the extent that HHJ Lochrane did accept the marriage certificate as authentic he was entitled to do so on the evidence before him. Judges and litigants do not operate in a perfect world where every possible step can be taken to authenticate documents or to secure witnesses. Real life does not allow that. Judges in busy family courts are entitled to take a robust approach to these matters. Had the only issue in relation to this case been whether the marriage certificate had been fully authenticated, this appeal would have failed.

37. However my conclusions on grounds 5, 7, and 8 are somewhat arid given my findings in relation to grounds 1 and 4 and the acceptance by the wife that grounds 2, 3, 6, 9, and 10 should be allowed and the applications remitted.

Conclusion

38. The appeal against the order of 1 November is therefore allowed on the basis that the process adopted which led to that decision amount to a serious procedural or other irregularity leading to an unjust outcome.

39. The findings contained at paragraph 6 are set aside.

40. I will remit the matter for further consideration by the DFJ at the Chelmsford family court. Given the nature of the dispute over the existence of the marriage, it seems to me that it will be essential that the Petition and the Family Law Act applications are listed together so that the court can case manage both to a final hearing. If either party intends to make a part 25 application for either a single joint expert in Jordanian law or a forensic handwriting expert those applications must be ready for consideration at the directions hearing. It will be a matter for that judge to determine whether they consider it is necessary in the light of any evidence that is then before the judge. I assume that enquiries will be made with the relevant court in Jordan, where it is said the ceremony took place, to establish whether there is a register there and a record of a ceremony taking place on 9 June 2010.

41. The non-molestation and occupation orders are set aside. However given that the wife has been residing in the property for some 7 months and given that the husband makes cross allegations of abuse against her, it is clear that the two cannot resume living under the same roof. Miss Choudhury concedes that the property cannot be subdivided to allow that. In the parameters of this appeal it is not possible for me to delve in detail into the competing merits of the parties' positions at the current time. However given the indication from the husband that he intended to move back into the property if his appeal was allowed, I have to consider the interim position pending any further hearing in the family court. On balance it appears to me that pending any more detailed enquiry the status quo that has existed over the last 7 months should endure until consideration can be given to the up-to-date positions of the parties. In reaching that decision I adopt a very summary approach to the housing needs and resources of the parties, their financial resources, the likely effect of an order, and the conduct of the parties in relation to each other. I will make further orders in the same terms.

42. Ms Choudhury invited to me to make an order for costs in relation to this appeal or at least a costs order in respect of those parts of the appeal which were conceded. I decline so to do. Ultimately the question of costs is a question of doing justice between the parties. Until the central issues are determined it will not be possible to decide what is the fair order to make in respect of costs. If the ultimate outcome of the dispute over the existence of the marriage is that the court concludes that no marriage ceremony took place that might lead to one outcome. On the other hand if the decision is that the marriage took place and that the husband well knew it that would lead to another. Given that the course that was adopted in the court below was not one which was sought by the wife but was one determined upon by the court of its own motion, I consider that the only fair order to make is that costs are reserved to be determined after the determination of the facts relating to the marriage in the court below.