

Neutral Citation Number: [2018] EWHC 3903 (QB)

Case No: HQ 17 X 04383

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: Wednesday, 19<sup>th</sup> December 2018

**Before:**

**MR. JUSTICE POPPLEWELL**

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**Between:**

**NATIONAL CRIME AGENCY**  
**- and -**  
**(1) AYODELE ODEWALE**  
**(2) SARA YADAV**

**Claimant**  
**Defendants**

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**MR. ANDREW SUTCLIFFE, QC**

(instructed by **National Crime Agency**) for the **Claimant**  
**MR. MUTHUPANDI GANESAN** (instructed by **Scarmans**)  
for the **Second Defendant**

**The First Defendant** was neither present nor represented.

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**APPROVED JUDGMENT**

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**MR. JUSTICE POPPLEWELL:**

1. This is an application by the second defendant, Ms. Yadav, to vary a Property Freezing Order granted by Mr Justice Blake on 9<sup>th</sup> December 2016 (“the PFO”). The PFO was granted in support of a recovery claim brought by the claimant, the NCA, against Ms. Yadav and the first defendant, Mr. Odewale, under section 243 of the Proceeds of Crime Act 2002. Ms. Yadav is Mr. Odewale’s partner and the mother of his two children. She is expecting their third child shortly. The application is brought under section 245C(3)(a) of the Proceeds of Crime Act to vary the PFO to allow for an exclusion to fund Ms. Yadav’s living expenses.

Background

2. The background is that Mr. Odewale has been convicted of a number of offences of fraud in this country, in particular: (1) on 11<sup>th</sup> September 1998, Mr. Odewale was convicted of attempting to obtain property by deception contrary to section 15 of the Theft Act 1968 and was sentenced to 100 hours community service; (2) on 5<sup>th</sup> February 1999, Mr. Odewale was convicted of conspiracy to defraud contrary to common law and making a false statement to obtain a passport contrary to section 36 of the Criminal Justice Act 1925, and was sentenced to 12 months and 3 months concurrent imprisonment; (3) on 23<sup>rd</sup> April 2003, Mr. Odewale was convicted of conspiracy to defraud contrary to common law; that involved stealing victims’ identities and using them to withdraw cash from the bank accounts of the victims or taking out loans in the victims’ names, in a total amount in excess of £500,000. The method of operation for those frauds included Mr. Odewale using drug users to receive redirected post and one of the

drug users opening bank accounts with a false identity supplied by Mr. Odewale. Mr. Odewale then used the proceeds of such frauds to acquire various assets often using intermediaries in order to conceal, convert, and use criminal property. He was convicted and sentenced to eight years' imprisonment after a trial. The sentence was reduced on appeal to six-and-a-half years. He was released from that prison sentence on 19th October 2005.

3. On 7<sup>th</sup> December 2011, Mr. Odewale was convicted of four counts of possessing or controlling a false or improperly obtained identity document contrary to section 6 of the Identity Documents Act 2010; and one count of possessing or controlling a false or improperly obtained identity card contrary to section 25(5) of the Identity Card Act 2006. He was sentenced to two years' imprisonment and was released on 3<sup>rd</sup> December 2012.
4. When Mr. Odewale was being sentenced in 2003 following a trial before HHJ Ball QC, the judge said:

“Mr. Odewale I judge to be at the very heart of this conspiracy. I judge him to be the controlling force behind it ... I did not find Mr. Odewale either an honest or attractive witness ... Through his dealings with the police and through his evidence in court Mr. Odewale impressed as someone who would not recognise the truth if it stood up and bit him. He is, in my judgment, a deeply, deeply dishonest person who has displayed not a shred of remorse for what he has done, or shame not a shred. It is because of that I judge that come his release from custody he will, if given the opportunity, revert to crime again, increasingly sophisticated crime involving greater loss and distress.”

5. The property which is caught by the PFO comprises the following: (1) a Sainsbury's Bank account with the number ending 637 in Mr. Odewale's name on which the current balance is said to be just over £300,000; (2) a Sainsbury's Bank account with the number ending in 841 in Ms. Yadav's name on which

the current balance is said to be about £500,000; (3) a Santander account with the number ending in 649, which is an ISA account in Ms. Yadav's name, on which the current balance is said to be just over £28,000; (4) three Patek Philippe watches with values, respectively, of £93,000, £93,000, and £13,000.

The recovery claim

6. The recovery claim in support of which the PFO was made is based on the following allegations, amongst other things. First, that in May 2014 a fraud was committed very similar to those which were the subject matter of Mr. Odewale's 2003 conviction. They involved, it is said, Mr. Odewale being involved in activity relating to a NatWest bank account of a Mr. Davies which resulted in a debit card in the name of Mr. Davies being used fraudulently to purchase a Patek Philippe watch for £162,500 which was then in turn sold by Mr. Odewale for a sum a little over £140,000.
7. Secondly, in August 2015, £105,450, it is alleged, was fraudulently transferred from an account of a Mr. and Mrs. Fitzpatrick at NatWest to a receiving account which had been fraudulently created in their name and from that £93,000 was then used to purchase a Patek Philippe watch, which was deposited by Mr. Odewale under an alias at the London store of Patek Philippe.
8. Thirdly, between the financial years 2010/2011 and 2016/2017 Mr. Odewale and Ms. Yadav are alleged to have had cash deposits totalling a few thousand pounds short of a million pounds, including accounts of Mr. Odewale using the alias Ayodele Balogun.

9. As against Ms. Yadav, it is alleged that she has used or allowed bank accounts in her sole and joint names to be used to assist Mr. Odewale in laundering proceeds of these crimes. It is further alleged that it is to be inferred from her close relationship with Mr. Odewale, dating back to 2000, Mr. Odewale's past convictions and his absence of any legitimate sources of income, that she must have known or suspected that the property going into and out of her accounts represented the proceeds of criminal conduct.
10. Her involvement is alleged to have been that her Sainsbury's 841 account was opened in June 2015 with a transfer into it of £100,000 and a further £400,000 was paid into it on 28<sup>th</sup> April 2016. The £100,000 is traceable back to the sale by her of a property at Westbourne Terrace, which itself is said to have been acquired with the proceeds of the unlawful conduct that is alleged. The details are set out in the Particulars of Claim.
11. Payment of £400,000 into the Sainsbury's 841 account is said by her to be a repayment of loans which she made to Mr. Odewale, namely, £66,900 paid to Mr. Odewale on 8<sup>th</sup> June 2015 and a sum of £185,000 said to have been given to Mr. Odewale to buy a Mercedes; and that loan carried interest of £1,000 a month. Two identified payments, £66,900 and £185,000 are both traceable back, it is said, to the sale of Westbourne Terrace and therefore to what are said to be the proceeds of crime. It is also alleged that this was not a valid loan and that there is no record of any such loan.
12. The Santander 649 account was opened on 28<sup>th</sup> March 2015 with the transfer into it of £15,000, £12,500 of which is said to be traceable back to cash deposits originally paid into accounts controlled by Mr. Odewale and to be the proceeds

of crime. Then there were paid into that account some sums which are traceable to her salary and some sums which are, it is alleged, traceable back to cash deposits in accounts controlled by Mr. Odewale and therefore proceeds of crime.

13. Ms. Yadav denies that the frozen property represents the proceeds of crime or that she is aware of any wrongdoing on the part of Mr. Odewale. However, the grant of the PFO by Blake J shows that for the detailed reasons set out in the Particulars of claim there is at this stage a strong prima facie case that the property which is frozen does represent the recoverable proceeds of crime; and that, as Mr. Odewale's partner, Ms. Yadav must have been aware of that when the monies were received in the Sainsbury's and the Santander accounts, not least as a result of her close relationship with him and Mr. Odewale's previous convictions which must have been known to her.

Ms Yadav's application

14. The procedural position on this application is as follows. Ms. Yadav issued an application for a legal expenses exclusion on 3<sup>rd</sup> May 2018 following which the parties agreed an exclusion from the PFO to allow Ms. Yadav to receive legal advice in relation to the NCA's claim and her defence. This was recorded in a consent order approved by Mr Justice Lavender on 14<sup>th</sup> May 2018. On 17<sup>th</sup> May 2018, the NCA agreed to vary the PFO in order to permit Ms. Yadav to incur up to £5,000 in legal expenses in defending tax proceedings brought against her; those proceedings have since been stayed pending the outcome of the civil recovery proceedings.

15. By a letter from her solicitors, dated 25<sup>th</sup> June 2018, Ms. Yadav requested a variation of the PFO for a living expenses exclusion for £3,466 a month to meet rent and £12,500 a month to meet school fees. Her solicitors' letter stated that Mr. Odewale had previously been responsible for meeting both of those expenditures allowing their client to use her monthly salary for her family's general living expenses. However, it was said that by virtue of being a defendant to the claim and his assets also being subject to the PFO, Mr. Odewale was no longer able to pay the rent or school fees.
16. Following further correspondence between the parties, in a letter of 30<sup>th</sup> August 2018, the NCA agreed to permit an exclusion from the PFO in the total amount of £23,467.15 which was three months' rent for the period from August to October 2018 and for the school fees for the two children for the autumn term. The two children are, respectively, at a private preparatory school and a private secondary school in West London.
17. The penultimate paragraph of the NCA's letter stated: "This agreement is without prejudice to the NCA's right to agree between the parties or apply to court subsequently to set aside or reduce any exclusion ... (a) in the event that Ms. Yadav moves to a property with lower rent and the total exclusion granted exceeds the amount required for the specified time period; (b) evidence is obtained which demonstrates that Ms. Yadav has sufficient assets (whether herself or another's) with which to fund her reasonable living expenses."
18. By this stage, Mr. Odewale had issued an application to vary the PFO for a legal expenses exclusion. That came before Mr Justice Walker on 19<sup>th</sup> October 2018. He dismissed Mr. Odewale's application finding that Mr. Odewale had other

available assets which he had failed to disclose and which were worth more than the amount of the exclusion he was seeking. In particular, there were two readily convertible assets in the form of a Vertu mobile phone handset and a Patek Philippe watch which Walker J valued together at approximately £24,000. In light of those findings, the NCA has declined to agree to any further variation of the PFO in Ms. Yadav's case in relation to her living expenses and for that reason she issued the present application on 3<sup>rd</sup> December 2018.

19. The exclusion which is now sought is for the purposes of obtaining the following living expenses for a period of 12 months, that being the minimum period which it is envisaged will be taken before the recovery claim will come to trial.
  
20. First, it is sought to have the exclusion cover the rental arrears on the property where Ms. Yadav is currently living with her two boys in the sum of £13,866; that would cover the rental up to the end of this month, December 2018. Secondly, what is sought is £32,400 as 12 months rental payment on a property to which she and the boys could move. The amount identified is £2,700 per month. In fact, the evidence has moved on since those figures were put forward. The property which she has in fact identified as that in which she was willing to live would involve paying £2,470 a month. She has also, however, investigated a number of other properties which would be available, including two properties in Verdun Road, which is close to and convenient to the schools, which are available at a monthly rental of £1,800 and £1,850, respectively. The third item which is identified is the children's school fees for the next three terms, amounting in total to £38,805.15.



21. She explains in her evidence that otherwise her daily living expenses are catered for, she says, from her salary as Head of Operations for Antimicrobial Research at Imperial College, London, which produces a net monthly sum of £3,146.90. She says that she has no other assets with which to fund her living expenses and no other source of income or capital, on her parents or elsewhere from which to draw. There is also a seventh witness statement from Mr. Odewale who says that he has no further funds with which he could assist her with her living expenses.
  
22. Her evidence identifies that she owns an Audi Avant RS4 car. There is a dispute in the evidence about how much that car is worth. The evidence advanced on behalf of the NCA, by reference to what similar cars are valued at on the AutoTrader website, is that such cars sell for something between about £22,000 and £30,000. Ms. Yadav says that the car is worth no more than about £15,000 and has, in a witness statement dated yesterday, said that its value can be verified by a search on webuyanycar.com. She produces a single page apparently as a result of an enquiry on that website giving the valuation at £14,321. The difference between these valuations is surprising. The valuation which one gets from the webuyanycar.com website depends upon the information which is put in as to mileage, service history, and one or two other parameters. Unless the car has done an exceptionally high mileage, has no service history, no satnav, and is in very poor condition, a search on webuyanycar.com would suggest that it does have a value of £22,000 or more.
  
23. So far as the payment of rent and school fees are concerned, the previous position is explained by Ms. Yadav as follows. From October 2017 till May

2018, the rent on the London home was paid by Mr. Aderinokun, who did so by transferring funds directly from his business account in Nigeria to the landlord's account. Mr. Aderinokun is said to be a long-time family friend and business partner of Mr. Odewale. However, Mr. Odewale has said that they have fallen out and that Mr. Aderinokun stopped making the payments with effect from May 2018. Ms. Yadav says that in order to pay the school fees for the spring term of 2018 she had to obtain a personal loan from Santander in the sum of £12,500 that she is having to repay monthly. She says that she is not in a position to obtain any further finance from Santander or anyone else. She explains that she has previously relied upon Mr. Odewale to pay the rent and the school fees but he is no longer able to do so as his assets are also subject to the PFO.

The law

24. The statutory framework is that the court has power to exclude assets frozen under a PFO for the purposes of enabling a respondent to meet his reasonable legal and/or living expenses under section 245C of POCA. Section 245C(6) requires the court, when considering whether to make an exclusion for the purpose of enabling a person to meet legal expenses, to have regard to the desirability of a person being represented in proceedings. Subsection (8) provides that subject to that, the power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the NCA to recover property obtained through unlawful conduct is not unduly prejudiced.

25. Paragraph 7A.4 of the Practice Direction in relation to civil recovery proceedings provides that the court will not make an order if the applicant has assets or access to assets other than those the subject of a PFO from which he/she can reasonably be expected to bear legal costs or living expenses.
26. It was common ground between the parties that the principles I should apply are those identified by the Court of Appeal in *Serious Organised Crime Agency v Azam* [2013] 1 WLR 38. That case involved legal expenses but the parties are agreed that the same principles ought to be applied in relation to an application for exclusion in respect of living expenses.
27. The principles are clearly set out in paragraph 66 of the judgment in the following terms:

“Accordingly, it seems to me that the position is as follows:

- i) It is for the applicant to show that, in all the circumstances, it is just to permit him to use funds which are subject to the PFO in order to pay his legal expenses.
- ii) If on the evidence the court is satisfied that there are other available assets which may be used for this purpose, to whomsoever they may belong, it will not allow the affected assets to be used.
- (iii) If the court is not satisfied of that, the court has to come to a conclusion as to the likelihood that there are other available assets on the basis of the evidence put before it. If the evidence leaves the court in doubt, but with specific grounds for suspicion that the applicant has not disclosed all that he could and should about his assets, then it may resolve that doubt against the applicant, as it did in *SFO v X*. But if the evidence does not provide any such specific indications or grounds for suspicion, then even if the court rejects the applicant’s evidence as unreliable, it may not have any adequate basis for concluding that there are other available assets. In that case (Mrs. Azam’s application being an example) the court should not resolve the impasse against the applicant on the basis that it was for him to prove positively the absence of available assets. There may be objective factors which cast light on the probabilities one way or the other, as there were in the case of Mrs. Azam. But if there is nothing of that kind, and nothing which

indicates the existence of unexplained or undisclosed available assets, then the fact that the applicant has previously concealed relevant assets is not sufficient by itself to show that he is still concealing such assets, and thereby to deprive him of the ability to use his own assets, despite the constraints of the PFO, to defray the cost of legal representation to defend himself in the proceedings. I would therefore reject the proposition that there is a specific burden of proof on the applicant which requires him to prove that there are no other available assets which could be used for the relevant purpose, such that if he does not discharge that burden, his application must fail.”

### Analysis

28. The first question which ought to be addressed is: What is the amount of living expenses for which Ms. Yadav can properly seek exclusion? I accept the submission which is made on behalf of the NCA that she is not entitled to maintain an expensive lifestyle merely because that was the position she previously enjoyed, if that was the result of living off the proceeds of crime. Since there is a strong prima facie case that that is the position in which she finds herself and therefore that the variation sought is to use the proceeds of crime for her living expenses, the correct approach, in my view, is to make such a variation only so far as is reasonably necessary to enable her to maintain a standard of living which is commensurate with her income of a little over £56,000 per year and her avowed lack of savings, and is also consistent with her and her children’s Article 8 rights. That means that she will have to move to more modest accommodation than that in which she currently resides as she herself recognises.
  
29. So far as the school fees are concerned, that means that in general terms she is not entitled to what is the luxury of private school education for her children. However, I do consider that in the particular circumstances of this case the

Article 8 rights of her children would be infringed if they were moved in the course of a school year and given that the NCA agreed that the autumn term fees should be paid and that therefore there was an expectation of both parties that they would attend private school for the first part of the academic year, it seems to me that she can legitimately seek school fees continuing up to but not beyond the current school year so that the children can complete it.

30. Accordingly, the sums for which Ms. Yadav may legitimately seek an exclusion are, first of all, the arrears of rent in the sum of approximately £14,000; secondly, school fees to the end of the school year, which amount to approximately £26,000; and thirdly, rent on a cheaper property for 12 months. I do not regard the figure of £32,400 as permissible under this head. It is clear that there are at least two properties in Verdun Road available at a significantly cheaper rental. The only reason she gives for being unwilling to move into these is that she does not regard the standard of accommodation to be that which she would wish and she does not like the road itself. Those are not good reasons for her to be entitled to move into any more expensive properties in the circumstances of this case. Accordingly, rental on a property at that level would involve a figure of about £22,000 and that is the figure for which she may legitimately seek an exclusion.
31. It also follows from what I have said that, whilst she needs a car, it need not be such an expensive one; indeed, the Audi can be sold and a cheaper one purchased for no more than £10,000 to replace the car. That would mean that she would then have assets of, on her own valuation, about £5,000 or on the

valuation put forward on behalf of the NCA approximately £12,000 and those ought to be taken into account.

32. I also accept and agree with the findings of Walker J that Mr. Odewale has unfrozen assets worth at least £24,000 in the form of the Vertu mobile phone handset and the Patek Philippe Aquanaut watch which he valued, respectively, at £9,900 and £14,500. Those are available to her because it is clear that the value of those assets have not in fact been used for legal expenses by Mr. Odewale despite his application.

33. In Mr. Odewale's seventh witness statement he disputes the value of those assets and disputes the findings of Walker J. In relation to the Vertu mobile phone handset he says, at paragraph 7 of his seventh witness statement:

“As stated in the witness statements served in support of my application” [now his application to Walker J] “the Patek Philippe watch is a fake, and therefore worthless, and a Vertu handset would now be worth a fraction of its price in 2016 as the manufacturer is no longer in existence. A cursory glance online will show how little these handsets (Vertu Signature Touch 2014 model) are now trading for.”

34. So far as the Vertu handset is concerned, the initial point, namely, that it would be worth a fraction of its price as the manufacturer is no longer in existence, is a point in which the conclusion simply does not follow from the premise. As far as the second point, is concerned which is a reference to paragraph 9 of the witness statement, the witness statement does not identify any online material which identifies any current price for the handset. In argument on behalf of Ms. Yadav, it was said that the court should take judicial notice of the price at which such handsets trade. Judicial notice can only be taken of matters which are well known and can be expected to be within the common knowledge of all judges.

The trading price of a Vertu Signature Touch 2014 model handset does not fall within that category.

35. So far as concerns the suggestion that the Patek Philippe watch is a fake, Walker J gave detailed reasons as to why that was highly improbable, at paragraph 31 of his judgment, and I agree with those reasons. For the same reasons as him, I reject the suggestion that it was a fake or had a value any less than that which he found.
36. It follows from what I have said so far that Ms. Yadav has assets available of at least £29,000, that is to say £24,000 in relation to the Vertu handset and the Patek Philippe Aquanaut and at least £5,000 which can be realised from the sale of the car, if not more than that. That is not sufficient for the amount for which she can legitimately seek exclusion and which I have identified totals £62,000. I must therefore consider whether to make an exclusion order in relation to the balance.
37. On behalf of the NCA, it is said that there are strong grounds for suspicion that Mr. Odewale has undisclosed assets of at least that value which are likely to be available to her to meet these expenses. On her behalf, it is first argued that such considerations would be irrelevant. It is said that whilst the first limb of the enquiry, reflected in paragraph 66(ii) of *Azam*, expressly looks to available assets “to whomsoever they belong”, the second limb is explained in terms of “specific grounds for suspicion that the applicant has not disclosed all that he could and should have about his assets”. On the basis of this difference in language it is submitted on behalf of Ms. Yadav that any suspicions about Mr. Odewale’s undisclosed assets are irrelevant. I am unable to accept that

submission. Both limbs are concerned with the ultimate test, which is whether the applicant has shown that in all the circumstances it is just to permit him/her to use funds which are subject to the PFO in order to pay their living expenses. The reason the first limb of the enquiry refers to assets belonging to others, if they are available to be used, is that in those circumstances justice would require that those assets be used rather than the assets which are subject to the PFO in respect of which there is a proprietary claim that they represent the proceeds of crime.

38. Exactly the same is true under the second limb, in that if there are specific grounds for suspicion that the applicant has available to him/her undisclosed assets in the hands of a third party, it will usually not be just to allow the application for exclusion, for the same reasons as apply if the suspicion is of undisclosed assets in their own hands. The focus in each case is on available assets, whether in the applicant's hands or those of another, from which the living expenses should be funded in preference to the frozen assets. The second limb is concerned with whether the court resolves doubts against the applicant in concluding on all the evidence that there are likely to be such assets. The language employed by Lloyd LJ in *Azam* was not, in my view, intended to draw any distinction in the application of the two limbs.
39. The grounds put forward by the NCA for suspecting that Mr. Odewale has undisclosed assets are set out in some detail in the ninth witness statement of Mr. Evans, a financial investigator and member of staff at the NCA. They can be summarised as follows. First, that in a letter of 23<sup>rd</sup> October 2016, following



Mr. Odewale's removal by the Home Office to Nigeria, Mr. Odewale said in a letter addressed to the relevant Home Office Immigration caseworker:

"You can laugh at me as much as you like because of my criminal records most of which are racist induced, but you know what, I'm a comfortable millionaire and the Police will confirm this to you if they haven't done so yet. Sky is the limit with legal action against you bastards for unlawfully detaining me when it was obvious deportation was NOT imminent.

I'm sure as you can see I can afford to employ the best QCs money can buy, being in Nigeria now does not prevent me from taking action against you which will soon commence. ...

I decided to leave your country in a dignified way not on economy class ...

I don't need your country to pay for my flight. Surely, you won't pay for my class of ticket. For your records, I don't give a damn what information you have or the Police has given you but take note that I don't get anything nor have I taken a penny from the public purse as I don't need to."

40. It was argued before Walker J and has been argued again before me that this was mere boastfulness. I am unable to accept that that is so. This is a clear statement that Mr. Odewale regards himself as having funds available which would not be caught by the PFO which could be employed for the purposes which he identifies.
41. Secondly, Mr. Evans draws attention to the disclosure which has been given by Mr. Odewale of his bank statements in support of his application for exclusion in relation to legal expenses. It is a feature, he points out, of those bank statements that none of them identified any debits which could be construed as representing normal living expenses. There are few cash withdrawals. This suggests that Mr. Odewale has further bank accounts, credit cards, or access to cash to fund his living expenses.

42. Third, Mr. Evans sets out a considerable body of evidence which suggests that although he maintains that he is resident at an address at 2 Surulere Street, Oke, Ooa, Gbongan, which is in Osun State in Nigeria and which is owned by his parents, the true position is that he is actually living at an undisclosed address in Abuja, which he is concealing from the NCA and from the court. That evidence includes Mr. Odewale's use of a notary in Abuja when swearing his affidavit on 24<sup>th</sup> April 2018, the fact that when Ms. Yadav visited him in May 2018 with the children they took a flight to Abuja, that the address on Mr. Odewale's bank statements is an Abuja address and that cash withdrawals can be traced to having come out of Mr. Odewale's Nigerian bank account in Abuja. Abuja is some 500km, or more, from Gbongan and involves a car journey of over eight hours, therefore it is said to have been unlikely that Ms. Yadav's trip to Nigeria would involve flying to Abuja and then taking the lengthy car journey when flights to somewhere closer were readily available.
43. Fourth, Mr. Evans points out that there is considerable evidence of Mr. Odewale having travelled since April 2018 to Accra in Ghana, to Lagos within Nigeria, Praia in Cape Verde, and to Abuja. There is no visible explanation of funds which could have been used to pay for international flights from the material which has been identified by Mr. Odewale to date.
44. Fifth, Mr. Evans says there is evidence that the 2 Surulere Street address given by Mr. Odewale does not exist. In particular the NCA wrote two letters recently to Mr. Odewale addressed to that address and the response was that the couriers said they had been unable to locate the address because the street was unknown and DHL could not achieve delivery.

45. Sixth, there is evidence set out in Mr. Evans' ninth witness statement that when Mr. Odewale sent his defence by DHL courier, although he gave his name and address as being at the Abuja address, the DHL tracking system showed that in fact that letter was sent from Accra in Ghana.
46. Those points are all set out in some detail in Mr. Evans' ninth witness statement, which was dated a week ago, 12<sup>th</sup> December, and served the following day, 13<sup>th</sup> December. There has been only a very limited response to those matters. Ms. Yadav has served a further witness statement dated yesterday. The only one of those matters which she addresses is the family trip to Nigeria in May with the children, in respect of which she says that, although it might be considered unlikely that they would embark on an eight-hour journey, that overlooks the reality of travelling in certain countries where such journeys are commonplace.
47. There is also an eighth witness statement of Mr. Odewale, also dated yesterday, 18<sup>th</sup> December, but he chooses to deal with only one of the points which Mr. Evans advances, namely the fifth of the points that I have identified, that is, the inability of the couriers to deliver the two letters to the 2 Surulere Street address on the basis that the street was unknown and therefore did not exist. The only response which Mr. Odewale gives to support his assertion that such an address does exist is by way of exhibiting a bank statement of an account in his mother's name which bears that address as the address for her.
48. What is striking is not only that the response is not, in my view, adequate to meet the grounds for suspicion on those two points, but there is a deafening silence in response to the other points which are made. Ms. Yadav and Mr. Odewale have chosen to put no evidence before the court on those other points.

49. Taking all those points together, and the evidence that there is of Mr. Odewale's fraud and dishonesty, there are, in my view, very strong grounds for suspecting that he has substantial undisclosed assets, which mean that on all the evidence I conclude there are likely to be undisclosed assets which are available to Ms. Yadav to meet the living expenses for which she seeks an exclusion variation. In those circumstances, the application must be dismissed.

*(For further proceedings see separate transcript)*