

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LAND REGISTRATION – FRAUD – application to register transfers – objector claiming to be registered proprietor – transferees disputing claim – whether FTT’s decision dealt sufficiently with conflicts of evidence – appeal dismissed

**AN APPEAL AGAINST A DECISION OF
THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

BETWEEN:

MR BASHIR AHMED AWAN

Appellant

-and-

**AKEEL AHMED AWAN
SHAKEEL AHMED AWAN**

Respondents

**Re: 7 Stott Street, Rochdale
51a Peel Lane, Haywood
Flat 25, 16-20 Chepstow Street, Manchester
77 War Office Road, Rochdale
Hollyhurst, Bradox Close, Rochdale
5 Stott Street, Hurstead, Rochdale**

Martin Rodger QC, Deputy Chamber President

4 November 2021

By CVP remote video platform

Michael Bailey, instructed by Liberty Solicitors, for the appellant
Michael Hoffman, instructed by Silverdale Solicitors, for the respondents

The following cases are referred to in this decision:

Simetra Global Assets Ltd v Ikon Finance Ltd [2019] EWCA Civ 1413; [2019] 4 WLR 112

R v Lucas (Ruth) [1981] QB 720

Re A, B and C (Children) [2021] EWCA Civ 451

Introduction

1. The appellant, Mr Bashir Ahmed Awan, appeals with the permission of this Tribunal against a decision of the First-tier Tribunal (Property Chamber) (the FTT) issued on 27 March 2020 following a hearing lasting three days which had taken place in November 2019. The FTT's determination depended almost entirely on its rejection of the uncorroborated evidence of the applicant himself, and the main ground of appeal is that it failed to deal adequately with conflicts in the evidence, and with weaknesses in the evidence of the respondents, when deciding the issue of fact on which the outcome depended.
2. The respondents to the appeal, Mr Akeel Ahmed Awan and Mr Shakeel Ahmed Awan, are two of the appellant's sons. Without intending any disrespect, I will refer to them separately as Akeel and Shakeel, and jointly as the respondents.
3. The case before the FTT concerned six properties in and around Rochdale, some commercial, some residential, which were the subject of transfers to the respondents purportedly made by the registered proprietor, Bashir Ahmed Malik. When the respondents applied to register the transfers their father lodged objections with the Land Registry maintaining that he is the Bashir Ahmed Malik named in the Register as proprietor of the six properties, and that he had not made or authorised the transfers to his sons. In answer to that objection the respondents claim that the Bashir Ahmed Malik who executed the transfers in their favour was not their father but was a family friend living in Pakistan who held the properties on trust for them.
4. At the hearing of the appeal the appellant was represented by Mr Michael Bailey and the respondents by Mr David Hoffman. Both counsel had also appeared before the FTT and I am grateful to them for their assistance.

Background

5. The appellant was born in 1949 in Pakistan and is now 81 years old. He and his wife, Mrs Rafia Begum Awan, have five children. Their three sons are Akeel, Shakeel and Imran, and their two daughters are Nabeela and Adhila.
6. The appellant, his wife, and their three older children came to the United Kingdom from Kenya in 1967, settling eventually in Rochdale. The appellant worked first as a lorry driver, and later as a bus driver, before establishing a convenience store business. All are agreed that at that time his name was Bashir Ahmed Malik, his wife's name was Rafia Begum Malik, and their children's family name on passports and birth certificates was also Malik.
7. In 1978 the appellant and his wife changed their family name from Malik to Awan. The FTT was given various explanations for this change. The appellant said that it was made because of the "perceived caste superiority" of the name Awan, which was a matter of importance, particularly in Pakistan. Shakeel disagreed that Awan denoted a superior status but acknowledged that Malik was a "clan" or "tribal" name that their father could legitimately have chosen to use. Imran suggested in his evidence that the change from Malik

to Awan was made because the appellant wished to avoid County Court judgments against him in his original name. The FTT did not decide which of those alternative explanations was correct but, more pertinently, the Judge did find that the appellant had not used the name Malik for any purpose after 1978 either in the UK or in Pakistan.

8. The appellant claims to be the rightful owner of at least nine properties in and around Rochdale. On 28 December 2016 all nine properties were the subject of a Deed of Gift to the respondents which was notarised in Pakistan and later certified by the Pakistani consulate in Manchester. Of the six properties which are in issue in this appeal (which are listed at the start of this decision) two were gifted to Akeel and four to Shakeel. On 18 January 2017 transfers of all nine properties were completed by the parties to the original Deed of Gift in form TR1. The name of the transferor was stated to be Bashir Ahmed Malik and in each case one or other of the respondents was the transferee. It is common ground that the appellant did not execute the transfers.
9. Three of the transfers were registered by the Land Registry without objection (two in Shakeel's name and one in Akeel's). The transfers of the remaining six properties have not yet been registered. Registration was initially delayed by concerns raised by the Land Registry over the identity of the transferor, created when documents in the name of Bashir Malik Ahmed (rather than Bashir Ahmed Malik) were relied on to support the application for registration. The process was further delayed when, by letters dated 11 May 2017, the appellant lodged objections to the registration of the transfers. He claimed that the Deed of Gift was a forgery procured by the respondents to justify the transfers and he supplied documents to the Land Registry demonstrating that his name had formerly been Bashir Ahmed Malik. Among the documents he relied on was a copy of a Pakistani identity card issued to Bashir Ahmed Malik, and a copy of his current passport and driving licence issued to Bashir Ahmed Awan. The appellant suggested that the signatures on each of the documents was the same and were his.

The proceedings before the FTT and its decision

10. HM Land Registry referred the appellant's objections to the FTT. It provided a summary of the core facts in each of the references in almost identical terms, explaining that the appellant, as objector, asserted that Bashir Ahmed Malik and Bashir Ahmed Awan were one and the same person and that he was the registered proprietor of each of the properties. He claimed to have been a victim of fraud and had not executed the TR1 forms. The respondents denied that Bashir Ahmed Malik and Bashir Ahmed Awan were the same person and maintained that the properties had been transferred to them by the registered proprietor.
11. HM Land Registry also recorded that it held documents relating to two of the titles which appeared to indicate that Bashir Ahmed Malik and Bashir Ahmed Awan were different people. The first of those documents was a transfer of a commercial property at 51A Peel Lane, Heywood, dated 28 July 2003 which was stated to have been made between Bashir Ahmed Awan and Bashir Ahmed Malik and which purported to have been executed by the appellant and Akeel as attorneys for Bashir Ahmed Malik. The second was a transfer dated 1 August 2012 of land and buildings at Hollyhurst in Rochdale made between the appellant's daughter, Adhila, and Bashir Ahmed Malik which once again purported to have been

executed by the appellant as attorney for Bashir Ahmed Malik. The Land Registry recorded that the appellant's case was that he did not understand the nature of these documents, having relied on translations given by his sons.

12. At the hearing before the FTT oral evidence was given by the appellant and Mrs Rafia Awan in support of his objection, and by the respondents and both their sisters, by Akeel's wife Shabana, by Shakeel's daughter, Reisa and by Imran's son Hamza. Other members of the family made witness statements but were not called to give oral evidence. Counsel's opening exchanges with the Judge and the evidence received on the first and second days of the hearing were recorded and a transcript has been supplied for the appeal. Unfortunately, the evidence received on the third day was not recorded. The most important part of that evidence was that of the appellant himself. I have been provided with contemporaneous notes of parts of that evidence prepared by counsel together with a note of the brief evidence given by Adhila, the appellant's younger daughter; it is agreed that there is no significant differences between counsel's notes of the evidence.
13. The respondents also tendered a witness statement purporting to have been made by Bashir Malik Ahmed, resident in Pakistan, stating that he was the registered proprietor of the disputed properties and that he held them on behalf of the respondents. The FTT was told that the maker of the statement was in Pakistan but was too ill to travel to the United Kingdom. On the third day of the hearing an unsuccessful attempt was made to establish a live video link to enable a person said to be this Bashir Malik Ahmed to give evidence from the offices of a firm of lawyers in Lahore. The witness was expected to confirm that he was the maker of the statement and presumably to confirm the truth of its contents. I was told that it proved impossible to establish a voice connection to the gentlemen in Pakistan and that attempts to receive his evidence orally during the hearing were unsuccessful.
14. The FTT received detailed written submissions from both counsel after the conclusion of the hearing. It was not suggested in those submissions that it was necessary for a further attempt to be made to receive the oral evidence of the gentlemen in Pakistan or to enable him to be cross examined.
15. When it gave permission to appeal the Tribunal noted that the FTT's decision comprised only 16 paragraphs, following a three-day hearing, and suggested that much of the evidence could not have been set out or summarised. That is undoubtedly correct and was specifically acknowledged by the FTT Judge. At paragraph 4 of the decision the Judge stated that he had heard evidence from a number of witnesses but would only make reference to the evidence that he considered relevant to the issue he had to decide. That issue was whether the appellant was the "Bashir Ahmed Malik" who was registered as the proprietor of the properties.
16. The Judge briefly summarised the appellant's case. It was common ground that his name had been Bashir Ahmed Mallik when he arrived in the United Kingdom in 1967 and that he had continued to use that name until 1978 when he changed his family name to "Awan". His case was that he had continued to use his former name for certain purposes and that the two names referred to the same person, namely himself. He claimed to be the beneficial owner of the properties and to have provided the purchase money for them.

17. The respondents' version of events was recited in paragraph 6 of the decision. That was that one or another of them was the beneficial owner of each of the properties, for which they and their brother Imran (rather than their father) had provided the purchase monies. They had arranged to have the properties put into the name of a family friend in Pakistan, Bashir Ahmed Malik, who held them on trust. This had taken place "with the appellant's permission where necessary", which I take to mean in cases where the appellant was previously the registered proprietor. The respondents wished the properties to be held by someone outside their father's immediate influence because of his "overbearing nature". When Bashir Ahmed Malik became ill the respondents arranged for him to execute a deed of gift in Pakistan in their favour and subsequently for individual transfers to be executed so that they could be registered as proprietors.
18. Evidence was given to the FTT by the appellant. As I have explained, no transcript is available. I will therefore set out the FTT's account of his evidence in full, as follows:

"7. ... His testimony was given through an interpreter. During cross-examination the [appellant] confirmed that since 1978 rather than "Malik" the last name "Awan" was used in documents, such as a letter of 22 February 2010 from the Pension Service, a Pakistani identity card (now expired) bearing the family number D6T798 (the same number as appears on his wife's identity card), and his passport and UK driver's licence. The [appellant] had also provided a Pakistani identity card for the period 2003-2008 with the last name "Malik" which the [appellant] initially claimed was the name he used in Pakistan. This bears a different family number from the identity cards mentioned above however, which I was satisfied would remain a constant irrespective of name changes if it was in respect of the same person. The respondent was unable to explain why the two identity cards bore different family numbers and I conclude that the "Malik" identity card was not a genuine document. The respondent then accepted that since 1978 he had not used the name "Malik" in either the UK or Pakistan.

8. In respect of the TR1 of 51a Peel Lane dated 28 July 2003, the transferor is stated to be "Bashir Ahmed Awan" and the transferee "Bashir Ahmed Malik". In box 13 there are two signatures, that of Bashir Ahmed Awan, which the [appellant] confirmed was his signature, and the signature of [Akeel] as attorney for Bashir Ahmed Malik. It is the [respondents'] case that there had been a power of attorney for them and also the [appellant] to sign documents on behalf of the Bashir Ahmed Malik in Pakistan. The [appellant] could think of no reason why he would transfer this property to himself.

9. In respect of TR1 of Hollyhurst dated 1 August 2012, the transferor is the [appellant's] daughter Adhila Awan and the transferee Bashir Ahmed Malik. The signature of the transferee is that of "Bashir Ahmed Malik acting by his attorney Bashir Awan". The [appellant] confirmed this was his signature but stated that he was not aware what he was signing or that he was an attorney for a Bashir Ahmed Malik.

10. In the light of such evidence I am drawn to the conclusion that the person identified as the transferee in these two TR1s and who was subsequently registered as proprietor, was not the [appellant]. There is no apparent reason

why there would be a transfer from his current name to himself using a last name he had stopped using some years earlier, or for a document to be executed by him as an attorney for himself, again using a name long since changed. My finding is that in respect of those transactions the [appellant] was not the same person as Bashir Ahmed Malik.”

19. The FTT found that the transfers in respect of the other four properties had been signed by Akeel as attorney for Bashir Ahmed Malik. In each case, basing his conclusion on his finding in relation to 51a Peel Lane and Hollyhurst, the Judge said that the appellant was not the original transferee of the properties and that he had not used the name Bashir Ahmed Malik since 1978.
20. The Judge then explained that he had received evidence about a number of matters on which he was not making any finding because he considered they fell outside the proper scope of the references. There had been, for example, a conflict of evidence over the extent to which the appellant was able to read English and whether the content of documents had been correctly translated for him by Akeel. The Judge explained that issues as to whether any of the documents in the case were void or voidable were not a matter for the FTT which was dealing with the specific issue of identity raised by the appellant’s objection. Other issues could only be determined in proceedings in which they were specifically raised; the FTT had no jurisdiction to set aside documents or grant other relief that would be appropriate in such a case. Nor was the Judge going to make findings as to the competing claims for beneficial ownership or concerning the source of the funds originally used to purchase the properties. His conclusion was simply that the appellant was not the Bashir Ahmed Malik who was registered as proprietor of the six properties and that his objection on that basis to the applications to register must therefore fail.
21. Having stated that the objections to registration failed the Judge added that, on the evidence before him, there was only one other person whom it had been suggested could be the registered proprietor, Bashir Ahmed Malik, namely the person in Pakistan who had provided the witness statement although he accepted that “such statement only amounted to hearsay evidence and he was not subject to cross-examination.”
22. In view of its finding that the appellant’s objections had not been established, the FTT directed the Chief Land Registrar to give effect to the applications for registration as if the appellant’s objections had not been made. That was not a direction to register the respondents as the new proprietors, and I am told that the Land Registry is not yet satisfied as to the identity of the transferor. The transfers to the respondents have not yet been registered.

The appeal

23. The grounds of appeal settled by Mr Bailey took issue with the FTT’s conclusion that the appellant was not the registered proprietor. The thrust of those grounds is that the FTT failed properly to consider all of the evidence in the case and to weigh up and analyse the competing accounts of the parties before deciding that the appellant’s evidence was not credible. Mr Bailey drew attention to matters which he suggested ought to have been

considered in the decision but were not and suggested that the Judge ought to have drawn strong inferences in the appellant's favour but failed to do so.

24. Permission to appeal was granted at a time when no transcript of evidence was available because it appeared to be arguable that, in producing a decision as concise as this one, the FTT had failed properly to address relevant evidence as suggested in the grounds of appeal.
25. The Tribunal originally directed that the appeal would proceed as a rehearing at which the evidence would be taken afresh. It did so on the understanding that no adequate transcript was available. That was an unusual order for the Tribunal to make. It was formerly the practice of the Lands Tribunal that all appeals from first-tier tribunals took the form of a complete rehearing of the evidence. That practice is no longer generally followed and (except where issues of valuation principle are engaged) it is regarded as appropriate only in exceptional cases where the appeal is against a tribunal's findings of fact and no transcript is available.
26. In this case, after considering the transcript the Tribunal was subsequently persuaded that a rehearing of the evidence was not necessary because those parts which had not been transcribed were not as extensive as had been thought, and a sufficient note of the missing cross-examination could be agreed. The Tribunal therefore directed on 3 August that the appeal would be conducted as a review of the FTT's decision.

The approach to be taken to appeals against abbreviated findings of fact

27. The principles to be applied when dealing with an appeal against findings of fact based on a suggested lack of reasons in the decision of a first instance court or tribunal were set out by the Court of Appeal in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413. Males LJ, with whom the other members of the court agreed said this at [46] and [47]:

"46. Without attempting to be comprehensive or prescriptive, not least because it has been said many times that what is required will depend on the nature of the case and that no universal template is possible, I would make four points which appear from the authorities and which are particularly relevant in this case. First, succinctness is as desirable in a judgment as it is in counsel's submissions, but short judgments must be careful judgments. Second, it is not necessary to deal expressly with every point, but a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered. Which points need to be dealt with and which can be omitted itself requires an exercise of judgment. Third, the best way to demonstrate the exercise of the necessary care is to make use of "the building blocks of the reasoned judicial process" by identifying the issues which need to be decided, marshalling (however briefly and without needing to recite every point) the evidence which bears on those issues, and giving reasons why the principally relevant evidence is either accepted or rejected as unreliable. Fourth, and in particular, fairness requires that a judge should deal with apparently compelling evidence, where it exists, which is contrary to the conclusion which he proposes to reach and explain why he does not accept it.

47. I would not go so far as to say that a judgment which fails to follow these requirements will necessarily be inadequately reasoned, but if these requirements are not followed the reasoning of the judgment will need to be particularly cogent if it is to satisfy the demands of justice. Otherwise there will be a risk that an appellate court will conclude that the judge has 'plainly failed to take the evidence into account'."

The grounds of appeal in detail

28. In the grounds of appeal Mr Bailey identified five aspects of the decision which he said had been overlooked or insufficiently considered by the FTT. He raised a further matter relating to one of his original criticisms in a supplemental skeleton argument. I will deal with that matter first.

Motivation

29. Mr Bailey submitted that before finding that the appellant had lied the Judge should have given himself a "Lucas direction" and asked himself whether there was any other explanation for the appellant having lied. The reference to a "Lucas direction" is to the standard direction given to juries in criminal trials warning them that there may be reasons for a defendant lying which are unrelated to guilt and explaining the circumstances in which a lie told by a defendant is capable of providing corroboration of other evidence indicating guilt; it has its origin in the decision of the Court of Appeal in *R v Lucas (Ruth)* [1981] QB 720. Juries are directed that, by itself, a lie cannot prove guilt, but it may support other evidence of guilt if the jury are sure that it was a deliberate untruth relating to a significant issue which was not told for some reason advanced by or on behalf of the defendant which does not point to their guilt.
30. Mr Bailey relied on *Lucas* and on a more recent case in a quite different context, *Re A, B and C (Children)* [2021] EWCA Civ 451, in support of his general submission that the issue of credibility had been central to the application before the FTT and that it had required a careful analysis by the Judge of the rival versions of events. In particular, he submitted, one of the suggestions made in cross examination of the respondents had been that the properties were registered in the name of Malik as a device to avoid potential liabilities to tax. The FTT ought to have made reference to that issue before determining that the appellant had lied about being the registered proprietor.
31. Mr Bailey's submissions on *R v Lucas* were a little opaque but I took his position to be that the Judge ought to have considered what other reasons there may have been for the appellant and the respondents to have behaved as they did before deciding that the appellant was not telling the truth. Mr Bailey did not refer me to any part of the transcript of his cross examination of the respondents to show where the suggestion was put to them that properties had been placed in the name Malik as a means of avoiding a tax liability. No such suggestion was put to Shakeel. Having read the transcript I see that it was suggested to Akeel that capital gains tax would not be payable on a commercial property which he owned if it was in the name of someone whom HMRC could not locate. The witness said that he did not understand what was being suggested, so the Judge asked Mr Bailey to put any allegation

he wished to make more directly, but rather than doing so Mr Bailey moved on to another topic.

32. There is no obligation on a Judge determining a civil matter to remind themselves in their decision that people lie for all sorts of reasons; that is not to say that there is no place for such a self-direction in an appropriate case, but it is difficult to see how its absence can be a ground of appeal in itself. I do not find it easy to relate the allegation of a tax motive to the appellant's case, as it was put to his sons, that they had acted together to defraud him of his property. The logic of the suggestion would seem to be that, contrary to the appellant's case, the properties in fact belonged to his sons and that they wished to reduce their exposure to tax by having the properties held for them by a trustee. It is not clear whether the motive is said to have been shared between the appellant and his sons or was theirs alone. No mention of it is made in the appellant's witness statement.
33. I agree with Mr Hoffman that the Judge could not be expected to deal with every subsidiary point raised on the appellant's behalf. That is particularly so in relation to points left unexplained and undeveloped, and on which the respondents did not have a proper opportunity to comment despite the Judge having invited Mr Bailey to put the allegation directly to the only witness to whom it was suggested.

The Pakistani identity cards

34. Mr Bailey submitted that the FTT had failed to draw appropriate inferences from the fact that the appellant had two Pakistani identity cards, one in the name Awan, the other Malik. His possession of two recent ID cards in different names was consistent with his case that he chose to register his properties in the name Malik, which he had used before 1978.
35. The identity card in the name of Malik was a critical piece of evidence in the case. It was one of the documents relied on by the appellant when he wrote to the Land Registry objecting to the registration of the transfers. He used it at that time to demonstrate that the signature on the transfers was not his and that he went by the name Malik. Later he produced a second identification card in the name Awan. Both cards bear a photograph of the appellant but for documents purporting to identify the same person there are a number of striking differences between them. The dates of birth on the two cards are not the same: one says the subject was born on 1 April 1938, the other on 12 April 1938 (a small difference which might simply have been a clerical mistake). One card gives the address of the subject as in Lahore, the other as a post office in Gujrat (neither refers to any address in the UK). One gives the subject's father's name as Mohammad Alam, the other as Mohammad Alam Malik. Each card includes a different family number. There was also evidence from a notary in Pakistan that for one individual to possess two identification cards for overlapping periods (as these were) was a serious offence.
36. The FTT found that the Malik identity card on which the appellant relied was not a genuine document. Given the differences between the two cards it is impossible to say that that was not a conclusion which was open to the Judge. But what is not made clear in the decision, and which emerges only from counsels' notes of the cross examination of the appellant, is that by the end of the evidence the appellant himself had disowned the Malik card and

asserted that it had been fabricated by his sons. He was first asked to explain the discrepancies between the two cards, which he was unable to do other than to suggest that the differences were the result of mistakes by officials in Pakistan. It was then put to him that criminal charges had been brought against him in Pakistan over his possession of two identity cards (although it seems those charges were not pursued). In response to this suggestion the appellant stated that he had never used the Malik card, that all of his identity cards had been stolen from him by Shakeel, and that the card he was being questioned about had probably been falsified by Shakeel.

37. The Judge's finding that the appellant had not used the name Malik in either Pakistan or the UK since 1978 was based on his own evidence given in cross examination. I do not accept Mr Bailey's submission that the Judge was required to explain his conclusion on this point in more detail than he did, or that his failure to do so renders his conclusions unsafe or unclear. Nor do I accept that the absence of independent evidence about the practice in Pakistani bureaucracy in relation to family identification numbers undermines his conclusions. The suggestion that the document was not genuine was being made by both parties, each blaming the other for the fabrication.
38. It is surprising that the Judge did not record that the appellant had disavowed his former reliance on the Malik identity card, despite having used it in his effort to persuade the Land Registry of his dual identity. It may be, as Mr Hoffman submitted, that by the conclusion of the evidence it was common ground that the card was not genuine and that the Judge therefore did not feel it necessary to say any more about it. What is clear, however, is that the Judge's omission to mention the appellant's own evidence that the card was not genuine, cannot now be used to cast doubt on his wider conclusion that the appellant was not the registered proprietor. If, as the appellant asserted, the Malik card was fabricated by his son, it cannot support his own case that from time to time he used that name for official purposes.

Burden of proof and need for a comprehensive assessment of the evidence

39. Mr Bailey submitted that because the respondents were the applicants for registration, they bore the burden of proving that they were entitled to be registered. They sought to prove their entitlement by the evidence of the gentleman in Pakistan, but his evidence was received only in writing and was not subject to cross examination and the FTT ought therefore to have been slow to accept it. Additionally, although Mr Bailey acknowledged that both parties put forward a positive case and that it was open to the FTT to accept one and reject the other, he submitted that it ought not to have done so without reviewing all of the evidence, including evidence tending to undermine the credibility of the respondents. Instead of approaching the evidence in the round, Mr Bailey said, the FTT had considered only half of the picture and addressed the evidence of the appellant in isolation. It had not weighed up the inconsistencies and improbabilities of the respondents' evidence and the effect had been to place the sole burden of proof on the appellant.
40. I reject these criticisms of the decision. Looking at the submission first from the narrow perspective of the burden of proof, the matter referred to the FTT by HM Land Registry was the appellant's objection to registration of the six transfers in favour of his sons. The question for the FTT was therefore whether the objection was made out. The burden of

proof on that issue lay on the appellant who was required to substantiate his objection. The FTT was not required to reach any conclusion on whether the respondents were entitled to be registered; that was not the matter referred to it and it remains a matter for HM Land Registry to determine.

41. Looking at the evidence more broadly, I reject the appellant's complaint that the FTT should not have reached its conclusion without making findings which took account of and, so far as possible, resolved all the inconsistencies and disagreements in the evidence. Neither party presented a case which was amenable to such a comprehensive resolution. It was, for example, a remarkable feature of the evidence that each side sought to bolster their case by producing documents drafted or attested to by lawyers in Pakistan, whom the other side then claimed were fictitious characters whose attestations were worthless; thus, the Deed of Gift from Bashir Ahmed Malik to the respondents was said by the appellant to bear the forged signature of a witness, while an affidavit relied on by the appellant was said by the respondents to have been made by a notary who did not exist. It was quite impossible for the Judge to reach a conclusion on these allegations and counter-allegations on the basis of the material supplied to him because they depended on the bare assertions and denials of the parties themselves, with all apparently independent verification challenged as fabricated.
42. Nor was the Judge's task made any easier by the generally poor quality of the written evidence. Although there were twelve separate witnesses for the respondents and five for the appellant, many statements signed by different individuals were virtually identical, and there was a noticeable absence of detail on both sides. To give one example, a critical passage in the witness statement of the appellant left it entirely unclear whether, when he signed the transfer of 51A Peel Lane in 2012 apparently as attorney for Bashir Ahmed Malik, the person who explained the effect of the document to him was the solicitor who was present or was his son Shakeel. He gave no account of his understanding of the effect of the document he had signed and did not say what the explanation he received had been other than that it concerned the lease of the Peel Lane property.
43. The central suggestion by the appellant and his wife was that the properties had been purchased by him and that they had only recently become the subject of dispute when Shakeel demanded that they should all be transferred to him. Both the appellant and Mrs Awan suggested that allegations of serious criminal behaviour had been made against the appellant by the respondents to blackmail him into signing the properties over to them. The respondents asserted that the properties were theirs and that they had taken steps to put them beyond the influence of their father when they became aware of his behaviour towards other family members which later became the subject of criminal charges and his eventual conviction and imprisonment. The appellant maintained that the charges against him were false. The FTT was understandably reluctant to form any view on the issues of guilt or innocence which were due to go before a jury within a few weeks of the tribunal hearing, nor was the Judge provided with evidence which would have enabled him to do so. Neither party suggested that the hearing should be delayed and the Judge was invited, in effect, to decide issues turning on the credibility of the main participants without coming to any conclusion on the veracity of the explanations which they gave for their actions.
44. Very little evidence on either side dealt with the circumstances of the acquisition or transfer of the properties and no supporting documents were produced. It was said by the

respondents and in the witness statement of Mr Malik in Pakistan that relevant documents had been taken by the appellant from the solicitor in Rochdale who had acted on behalf of Mr Malik when he acquired the properties between 2003 and 2012. Elsewhere, it was said by the appellant that his sons had taken documents belonging to him from a safe in his house. Once again the FTT was given no detailed evidence on these matters or material from which it could determine which, if either, version of events was true.

45. Although the hearing took place over three days, the time spent receiving evidence was relatively short and some of it took longer than might have been expected because it was given with the assistance of an interpreter. Such independent evidence as there was dealt largely with peripheral matters. A number of witness statements were tendered by the appellant confirming that it was known within his community that his name had been Malik and that he was sometimes addressed as such as a term of endearment. Most of the respondents' witnesses gave evidence only about the appellant's capacity to speak and understand English (his written case was that while he could speak English he relied on others to explain official written material to him, and that he was insufficiently fluent in written English to be able to understand the legal documents he had signed in 2003 and 2012 to effect the transfers of property to Bashir Ahmed Malik). Some witnesses referred to the appellant's lack of means and to the offences for which he was being prosecuted. None of this material assisted the FTT in reaching a conclusion on the critical issues.
46. The appellant's younger daughter Adhila did make a statement explaining that Hollyhurst had originally been in her name but that in 2012, at the insistence of her husband and after discussion with her brother Shakeel, she and her father had visited a solicitor where she had signed documents which she thought were intended to return the property to her father. Adhila's account of her own understanding of what was happening was not inconsistent with the case advanced by either side, and it was clear from her oral evidence that she had had no independent appreciation of the effect of the documents she was signing.
47. Faced with this morass of inconsistent evidence, unsupported for the most part by contemporaneous documents or independent corroboration, the FTT was entitled in my judgment to focus on the material relied on by the appellant to make out his objection. When it did so it found that the appellant had no credible explanation why, on his own case, he had transferred 51A Peel Lane from himself, under his usual name of Bashir Ahmed Awan, to himself under the name Bashir Ahmed Malik which he had not used since 1978, nor why he would have purported to act as his own attorney when executing the transfer of Hollyhurst from his daughter to himself as Malik. Those documents had been created in 2003 and 2012, long before the parties fell into conflict, and without some credible explanation they provided strong evidence that the appellant was not the Bashir Ahmed Malik to whom the two properties had been transferred and that his claim to be so was false. The Judge was also entitled to rely on the appellant's own evidence that he had not used the name Malik in the UK or Pakistan since 1978, and on his own acknowledgement that the Malik identity card was not a genuine document. The appellant's admissions under cross examination and his inability to explain his own actions meant that the FTT did not need to form a favourable view of the truthfulness of the respondents' evidence to justify rejecting the appellant's case that he was the registered proprietor.

48. None of the other matters relied on by Mr Bailey undermine the Judge's conclusions. It was said to be a remarkable coincidence, on the respondent's case, that they had chosen as their trustee a person in Pakistan who shared the appellant's former name, and that the appellant's evidence about his own connection with the nine properties ought to have caused the Judge to infer that it was more likely that he was the registered proprietor. Whether the coincidence was remarkable or not is not something on which the FTT could have formed a view without further evidence, and there was no adequate evidence on which the FTT could have based a reliable finding about who had provided the money to acquire the properties. Two of the grounds of appeal also repeated the suggestion that the respondents were sheltering behind the gentleman in Pakistan in order to avoid tax but, as I have already explained, that allegation did not form a significant part of the appellant's case before the FTT and it was not required to reach any conclusion on it.
49. I am satisfied that the FTT was entitled to dismiss the appellant's objection to registration on the evidence provided to it and that the reasons it gave, short though they were, dealt adequately with the critical point in the case and with the significant material relied on by the appellant. The Judge was not required to endorse the respondents' account of what had happened concerning the properties, and he was careful to make no findings about beneficial ownership or whether any document might be voidable. All he was called upon to determine was whether the appellant's objection to registration was made out and, for the reasons he gave, he was entitled to conclude that it was not.

Disposal

50. I therefore dismiss the appeal. In accordance with the FTT's original determination the Chief Land Registrar may give effect to the respondents' applications for registration as if the appellant's objections of 19 and 22 May 2017 had not been made.
51. A party wishing to apply for an order for the payment of their costs of the appeal should refer to rule 10(9)-(10) of the Tribunal's Rules (the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010).

Martin Rodger QC
Deputy Chamber President
6 December 2021

Right of appeal

Any party to this case has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the

Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.