

**UPPER TRIBUNAL (LANDS CHAMBER)**



**UT Neutral citation number: [2022] UKUT 243 (LC)    UTLC Case Number: LC-2022-147**

**Royal Courts of Justice**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***LAND REGISTRATION – FRAUD – the explanation of evidence in the First-tier Tribunal’s decision – credibility – whether the judge erred in not permitting a witness to give evidence remotely***

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

**BETWEEN:**

**MEHMET EDHEM**

**Applicant**

**-and-**

**MUAZZEZ EDHEM**

**Respondent**

**Re: 27 Netherford Road,  
Clapham,  
London,  
SW4 6AF**

**Judge Elizabeth Cooke  
Heard on: 11 July 2022**

**Decision Date: 7 September 2022**

Mr Stephen Connolly for the respondent, instructed by Irwin Mitchell LLP

The following cases are referred to in this decision:

*Allen v Bloomsbury Publishing Plc* [2011] EWCA Civ 943

*Simetra Global Assets Limited v Ikon Finance Limited* [2019] EWCA Civ 1413

## **Introduction**

1. Either the respondent Muazzez Edhem transferred 27 Netherford Road, Clapham to her son, Mehmet Edhem, on 27 May 2016 or she did not. The First-tier Tribunal (“the FTT”) found that she did not, and that the transfer was forged by her son Mehmet Edhem, so that his registration as proprietor of the property was a mistake and the register was to be rectified. Mehmet Edhem appeals the FTT’s decision
2. The appeal is a review of the decision of the FTT. The appellant was represented by solicitors and counsel in the FTT but has not been represented on the appeal; the respondent has been represented by Mr Stephen Connolly of counsel.
3. Permission to appeal was granted by this Tribunal on two grounds. The first was that the judge should have allowed the crucial witness, Ms Mitchell, who was said to have witnessed the transfer of the property to give evidence by video link when it became clear that she was not going to attend the hearing in response to a witness summons. The second was that the judge failed to take account of significant parts of the evidence when making his decision about the credibility of the respondent. I will explain those grounds in more detail below.
4. I begin with an account of those few of the facts that are not disputed, before summarising the FTT’s decision and then exploring the grounds of appeal. As did the judge in the FTT I refer to the parties by their first names, for the avoidance of confusion since Muazzez is the respondent to this appeal but was the applicant in the FTT.

## **The factual background**

### *The family and the properties*

5. Muazzez and her husband Edhem Mehmet Edhem (to whom I refer as Mr Edhem senior) were born in Cyprus and moved to London in 1964. In 1968 they purchased 25 Netherford Road and it was their family home; Mr Edhem senior worked for British Rail and Muazzez ran a fashion design business. She was 82 in the summer of 2021 when the FTT hearing took place.
6. Muazzez and her husband had three children. The eldest, Isa, is a consultant urologist; his sister Emmetulah is a barrister at No 5 Chambers, and has played no part in these proceedings. Both Isa and Emmetulah left home to pursue their careers and raise their families; the appellant Mehmet, the youngest of the three, continued to live with the respondent at 25 Netherford Road with his wife Sina. The family speak Turkish with each other, and one of the features of the case has been disputes about translations of conversations that were conducted in Turkish.
7. 27 Netherford Road was purchased in Muazzez’s sole name in 1979; it was refurbished and then let. 25 and 27 Netherford Road were said to be worth, at the time of the FTT hearing, about £1 million each.

8. 25 Netherford Road was transferred to Isa and Mehmet in 2014, when Mr Edhem senior's health was failing; the judge found that the transfer was effected in an attempt to avoid an eventual payment of inheritance tax on the property and that Muazzez used 27 Netherford Road as a correspondence address in order to disguise the fact that she was still living at number 25. She moved out in 2018 and number 25 was later sold for £1 million.
9. Mr Edhem senior died on 19 May 2016 after spending some time in hospital.
10. A transfer of 27 Netherford Road in form TR1 from Muazzez to Mehmet, dated 27 May 2016, appearing to have been signed by Muazzez and witnessed by Ms Millicent Mitchell, was presented to HM Land Registry and registered.
11. 27 Netherford Road was subsequently charged by Mehmet to Nat West Bank as security for a loan; as part of the mortgage procedure he provided a form of occupier's consent and postponement of equity, again apparently signed by his mother and witnessed by Ms Mitchell. The charge has since been redeemed. At no time has Muazzez lived at number 27.
12. In April 2018 Muazzez reported to Action Fraud (the UK's national reporting centre for fraud, run by the City of London Police) that she had been misled into transferring the property to him; and in June 2018 Muazzez applied to HM Land Registry to have the register altered, saying that her signature on the transfer had been forged.

#### *The proceedings in the FTT*

13. Mehmet objected to Muazzez's application to HM Land Registry and the matter was referred to the FTT in February 2019, pursuant to section 73(7) of the Land Registration Act 2002. The reference was heard over several days in July and August 2021; the long delay between reference and hearing was no doubt partly caused by the pandemic, but is also a measure of the volume of evidence filed and of the complexity of the proceedings. There were a number of interlocutory applications and a case management hearing. Muazzez was the applicant in the FTT proceedings; she was alleging fraud and so she had the burden of proof.
14. Mehmet filed witness statements by Ms Mitchell, confirming that she witnessed the respondent's signature on the transfer on 21 April 2016, and that in July 2016 she witnessed her signature on the deed of postponement. In July 2021 Mehmet asked that she be allowed to give evidence by video link. His solicitor made the application and said that he had been told that Ms Mitchell, as an elderly lady of Afro-Caribbean origin, was concerned about rising levels of covid in London and was not happy to attend. Muazzez's representative opposed the application and said (in his skeleton argument for the case management hearing on 7 July 2021), that it would be "grossly unfair" to the respondent for Ms Mitchell to do so. The judge refused the application on the grounds that "her evidence was too important, too contentious and too difficult to manage to permit such an application" (paragraph 6.39 of the FTT's judgment). Instead a witness summons was issued. Ms Mitchell did not attend the hearing.

#### *The FTT's decision*

15. Muazzez's case before the FTT was that she did not sign the transfer of 27 May 2016; necessarily therefore she said that Ms Mitchell did not witness her signature. In the alternative she said that the transfer was not a deed that could have transferred title to the property because it was not witnessed. She argued that she and her husband had tried to be even-handed between their children and that it would have been out of character for her to have given 27 Netherford Road to Mehmet alone. The judge considered the evidence about various valuable gifts made to the three children over the years and observed that if Muazzez did transfer 27 Netherford Road to Mehmet then he had received about £2 million in cash and property while Isa had received £950,000 and Emmetulah £450,000.
16. Mehmet's case was that during the weeks prior to the death of Mr Edhem senior Muazzez had discussed with him the transfer of 27 Netherford Road to him. He said that at his suggestion she instructed Best Value Conveyancing ("BVC") to deal with the transaction and through BVC dealt with a firm of solicitors, Hawkins Ryan, whose conveyancing file was disclosed. The file indicated that they were instructed by a Muazzez Edhem whose email address was muazzedhem@yahoo.co.uk, and whose correspondence address was 27 Netherford Road. The file included numerous references to telephone conversations, in which the client was chasing for completion during May 2016. Mehmet gave evidence that he took his mother to visit Ms Mitchell to have her signature witnessed, because she was a tenant of his with whom his mother got on well.
17. In his decision the judge noted Muazzez's position, which was that she knew nothing about Hawkins Ryan and did not instruct them. Nor did she sign the transfer of 27 May 2016. He said that it was "an oddity" that in county court proceedings brought by Mehmet against Isa in April 2018 (seeking an injunction to restrain Isa from harassing him) she had said in a witness statement (made in support of Isa) that she did sign a document that transferred 27 Netherford Road to Mehmet, but that he had misled her into doing so. The judge added that Mehmet also sought to rely on Muazzez's alleged admission to the same effect in a conversation with Sina that had been covertly recorded.
18. The judge went on to say that Muazzez's explanation for "this apparent inconsistency" was that during the week after her husband died she went with Mehmet to a firm of solicitors, Streathers, and signed a document that she thought was a transfer of 27 Netherford Road to all three children. Streathers have no record of that visit.
19. The judge then turned to Mehmet's case and discussed the evidence from Hawkins Ryan's file. He found that the numbers from which calls were made to Hawkins Ryan were the numbers of Mehmet's telephone and of Sina's. The judge also found that the emails on Hawkins Ryan's file were written by Mehmet not by Muazzez (on the basis of their style and content). He found that it was highly unlikely that Muazzez would have engaged in correspondence and repeated telephone conversations with a firm of solicitors about a conveyancing matter during the final days of her husband's life while he was in hospital and she was visiting him daily. He found that either Sina or another woman impersonated Muazzez on the telephone.
20. The judge therefore rejected Mehmet's account of how the transfer came to be signed.

21. However, the judge observed that that did not necessarily mean that the transfer was forged because Mehmet might have a reason (arising from his relationship with Isa) for lying about the circumstances in which it came to be executed.
22. The judge therefore turned to the evidence of execution. He noted again that Muazzez's position was simply that she did not sign the transfer, and that once she saw the form TR1 she changed her position; instead of saying that she had signed a transfer at Streathers which she thought was a transfer to all her children, she now said that she certainly did not sign the TR1 of 27 May 2016. Expert witnesses had been instructed to examine the handwriting, but were unable to conclude that the signature was or was not Muazzez's. Accordingly the judge considered Ms Mitchell's evidence. She had made three witness statements. The first was made on 15 January 2019 and was produced to HM Land Registry as part of Mehmet's objection to Muazzez's application for alteration of the register. It was very brief and simply confirmed that she witnessed the signature of the TR1 and that Muazzez appeared to sign it willingly.
23. The second was dated 17 April 2019, again addressed to HM Land Registry. It recorded that Isa Edhem had visited her on 4 February 2019 and had visited her again, this time with Muazzez, on 31 March 2019. He presented her with a document that she did not recognise and asked her if she had signed it, saying that he thought her signature had been forged. She did not recognise it because "another address was printed along the top of it which was not printed on the original which I did sign". The witness statement concluded by confirming that she did sign her first witness statement and that her signature to it was not forged.
24. It was not in dispute that those two visits took place. Indeed, Isa recorded them. The judge listened to the recordings, and noted that on the first occasion Ms Mitchell was "not forthcoming" and did not appear to recognise the name Muazzez Edhem. The recording of the second visit indicated that Ms Mitchell was shown a copy of her first witness statement and that she denied any recollection of it.
25. Isa in his witness statement confirmed that he showed Ms Mitchell her first witness statement and that she did not recognise it. He went on: "I then showed Ms Mitchell the TR1 bearing the purported signatures of mum and Ms Mitchell. Again, Ms Mitchell confirmed that she did not recognise the TR1 and she did not remember signing anything." But the recording showed that to be untrue; Ms Mitchell was not shown the TR1 and did not deny having signed it. The judge said "That is unsatisfactory but ultimately nothing turns on it because the meeting was recorded (both by Isa and by Ms Mitchell) and because Ms Mitchell did not attend to give evidence."
26. Ms Mitchell's fourth statement recounted the signing and witnessing of the TR1 and (on a later occasion) the mortgage form, and the two visits from Isa, but did not add anything material. The judge found that all Ms Mitchell's witness statements were prepared by Mehmet personally.
27. The judge went on to explain that an application had been made prior to the trial for Ms Mitchell to give evidence remotely, which he had refused; that a witness summons had been served; and that when Ms Mitchell did not attend Mehmet's counsel did not seek an

adjournment in order for him to apply to the High Court for an order committing Ms Mitchell for contempt. The judge then considered what weight he should attach to Ms Mitchell's written evidence. He noted that in neither of the recordings of her conversations did she indicate willingness to assume responsibility for the witness statements apparently signed by her; and that her statements were all drafted by Mehmet rather than the witness being proofed by a professional person owing duties to the Tribunal. He added that he bore in mind that Mehmet was accused of forging his mother's signature on a transfer of property worth £1 million. He concluded that he could not place any weight on the witness statements. He had no confidence that they represented her evidence or even that she signed them. He added that there was no evidence of service of the witness summons, whereas he would have expected a witness statement from Mehmet's solicitor describing the steps taken to serve the summons and would have expected a process server to be instructed. The judge expressed the strong suspicion that the solicitor delegated service to Mehmet himself, and that he had no confidence that any genuine effort was made to serve the summons, probably because Mehmet did not wish Ms Mitchell to give evidence.

28. On the balance of probabilities therefore the judge concluded that Ms Mitchell did not witness Muazzez's signature.
29. The judge rejected Mehmet's case that Muazzez was suffering from increasingly serious memory problems. He noted that in giving evidence Muazzez became tired quickly and lost her grip on the material circumstances of her case, and that she had not been wholly frank, but took the view that she did have a firm grip on events and was satisfied that as to the central issue, whether or not she signed the transfer, she was telling the truth. Mehmet, by contrast, had shown himself determined to give as little information as possible and was willing to tell lies – for example about the authorship of emails on Hawkins Ryan's file.
30. Finally the judge turned to Sina's evidence. She had been out of the country at the time of the trial and for various technical reasons had been unable to give evidence. Her evidence was that she had had a conversation with Muazzez in which Muazzez said she had transferred 27 Netherford Road to Mehmet. But the judge said that nothing turned on that because at the time when that conversation took place Muazzez believed she had signed a document transferring 27 Netherford Road to someone, so that her admission was unremarkable.
31. The judge concluded that Millicent Mitchell did not witness Muazzez's signature on the transfer, that Muazzez did not sign the transfer, and that Mehmet forged her signature. He said that he was unable to say whether Mehmet forged Ms Mitchell's signature on her witness statements or suborned her in some way. Accordingly the registration of Mehmet as proprietor of 27 Netherford Road was a mistake and the register should be corrected.

### **The appeal**

32. The FTT refused permission to appeal the decision. The application was renewed to the Upper Tribunal, and an obvious cause for concern with the grounds of appeal was that they were primarily challenges to findings of fact and to decisions about credibility. But two problems stood out. One was the absence of evidence from Ms Mitchell; she was a crucial

witness and it was not possible to understand why she had not been allowed to give evidence remotely. The other was the absence of explanation for Muazzez’s inconsistent statement in other proceedings about her having signed a transfer of the property. What the judge recounted as her explanation for that – summarised at my paragraph 18 above – did not explain it. The judge did not make any finding about that inconsistent statement and did not say how it affected his view of credibility. That was particularly startling when the judge appeared to have been unconcerned about an obvious lie by Isa about what he said to Ms Mitchell (paragraph 25 above), and about Muazzez’s admission to Sina that she had transferred the property to Mehmet. That much was apparent from the decision; Mehmet also points out that the judge did not mention or make any finding about the evidence of his witness Mr Houlous, who said that Muazzez told him that she had transferred the property to Mehmet, nor about the content of the Metropolitan Police file (“the MPF”) following Muazzez’s report of the fraud, which appears to contain statements by Isa and by Muazzez that are inconsistent with the judge’s findings.

### **The first ground of appeal**

33. The first ground of appeal is a challenge to a case management decision which lay within the judge’s discretion and the Tribunal will interfere only rarely with such a decision and only when it can be shown to have been irrational or made in error of law. The Tribunal will be particularly reluctant to interfere where a party has been represented and his or her representative did not argue against the decision at the time. Mr Connolly drew my attention to the observations of Lloyd LJ at paragraph 17 of *Allen v Bloomsbury Publishing Plc* [2011] EWCA Civ 943:

“... the judge's order was undoubtedly made in the exercise of his discretion and, as a matter of principle, an appellate court will not interfere in such a case unless it is clear that the judge has misdirected himself either because it is clear from the judgment that he has made an error of law — including taking irrelevant matters into account or leaving relevant matters out of account — or because his order is plainly wrong so that it must be the result of a misdirection. In our adversarial system of litigation, in a case where each party was professionally represented with plenty of opportunity to formulate and put to the court all points considered to be relevant on a particular point, it seems to me questionable for a judge to be criticised for having failed to take into account a factor which, if relevant, was known or available to all parties and which no party invited him to consider as part of the process of exercising his discretion.”

34. Having heard the parties’ arguments and, importantly, looked at the transcript of the hearing before the FTT I am satisfied that there is no reason to interfere with this discretionary decision.
35. I observe that this is not an appeal from the original decision to require Ms Mitchell to attend in person. That decision, made at a case management hearing on 7 July 2021 two weeks before the trial commenced on 21 July, was made following an application for permission for Ms Mitchell to give evidence by video, based on Mehmet’s solicitor’s understanding of Ms Mitchell’s position which was that she was unwilling to attend because of Covid levels



in London in light of her age and health. The application was refused; it is not clear why the judge felt that Ms Mitchell's evidence would be "too difficult to manage" if she did not give it in person, since the courts and tribunals are now experienced and confident in hearing video evidence and it is difficult to see what the problem was in this case. But the reasons given for Ms Mitchell's absence were hearsay and there was nothing direct from the witness herself to say that she was willing to give evidence but not in person. The decision made at the case management hearing was not appealed at the time and is not appealed now.

36. There was a further case management hearing on 12 July 2022; the judge refused Mehmet's application for an adjournment but gave permission for a witness summons to be served on Ms Mitchell to ensure her attendance on the morning of 21 July. When she did not attend, permission was given for her to be re-served (nothing was said about how she had been served the first time), and for her to attend on 28 July 2021 which was to be the fifth day of the hearing. There was some discussion as to whether day 5 of the hearing would be conducted remotely; counsel for Muazzez again objected to Ms Mitchell giving evidence remotely and Mr Peters did not challenge that objection. The case proceeded on the basis that Ms Mitchell would attend.
37. Day 5 of the hearing came and she did not. Nothing was said about service. The judge said to Mr Peters that he needed to know what he proposed to do about Ms Mitchell's non-attendance before he closed his case. Mr Peters said he would take instructions and address that on the following day. Day 6 of the hearing was 2 August 2021; Mr Peters said that he did not ask for an adjournment to allow Ms Mitchell to be brought to court and would rely on her written statements. Later in the day during Mr Peters' closing submissions the judge asked about service and was told by Mr Peters that the summonses had been served by delivery to her property but that Ms Mitchell did not answer the door.
38. The question in the appeal is whether the judge was right on Day 5 of the trial to proceed in the absence of this important witness once he knew that the witness still would not attend. Should he instead have re-visited his decision to require her to attend in person and instead permitted her to give evidence remotely?
39. Having considered the transcript of the hearing it is clear to me that the judge's decision to go ahead was within the bounds of discretion. The judge was told nothing about service before Mr Peters closed his case. There was no suggestion that Mehmet or his representatives had been in contact with Ms Mitchell, either before the case management hearing on 12 July 2021 or between that date and the date of the hearing. There was, as the judge said, no direct evidence of the reasons why she was unwilling to attend. There was no suggestion that she was actually willing to give evidence remotely. No arrangements had been made by Mehmet's representatives for her to do so. It is very surprising that those instructing Ms Mitchell were not in contact with her between the case management hearing and the trial and the absence of any such contact meant that there was very little for the judge to work with. This was not a witness who was willing and able to give evidence but just not prepared to venture into London; it was a witness who was not in communication with the party calling her. She had gone to ground, albeit in her own home.

40. Moreover, Mehmet was represented by counsel who during the trial did not challenge Mr Connolly's objection to Ms Mitchell giving evidence remotely. However, in the absence of contact with the witness and of any endeavours having been made to establish that she was actually willing to give evidence remotely, it may have been difficult to mount such a challenge.
41. In the circumstances the judge's decision on day 5 of the trial to proceed in Ms Mitchell's absence, without re-visiting his decision to refuse the application for her to give evidence remotely, was not outside the range of discretionary decisions open to the judge. I might well have taken a different view if those representing Ms Mitchell had been in contact with her and had her set up ready to give evidence remotely, but no attempt was made to do so.
42. Accordingly the first ground of appeal fails.
43. Mehmet now complains that the judge drew an adverse inference against him from the absence of evidence of professional service of the witness summons, and concluded both that the solicitors had allowed Mehmet to serve the summons and that Mehmet did not want Ms Mitchell to attend the hearing. Mehmet drew my attention to copies of emails from a process server who he says served the summons and claimed that the circumstances of service were explained to the judge at the trial, but it is clear from the transcript that they were not. All that was said to the judge about service – and only during closing submissions – was that the witness summons had been served; nothing was said as to who had served it. Accordingly it is unsurprising that the judge drew that adverse inference. Mehmet's solicitor could have prevented that by producing evidence of service at the trial, as one would have expected him to do. There is no appeal from that adverse inference, and the inference was not crucial to the judge's decision. I mention it only to observe that Mehmet and those representing him were responsible for putting the judge in a position where that inference was an obvious one to make.

### **The second ground of appeal**

44. The issue before the FTT was a binary one: either Muazzez signed the transfer or she did not. And on that point either Muazzez was lying or Mehmet was lying.
45. The judge decided this point of credibility in favour of Muazzez. The second ground of appeal is that the judge failed to take account of significant parts of the evidence in reaching his conclusion on credibility or, if he did take account of it, he failed to give any explanation of how it was consistent with his conclusion.
46. The grant of permission to appeal went on to explain that it was troubling that the FTT's decision did not make any finding about the fact that Muazzez gave evidence in other proceedings that she had signed a transfer of the property, or about the significance of that in relation to her credibility. Nor was any finding made about the evidence of Mr Houlous that Muazzez told him in 2016 that she had transferred the property to Mehmet, and of Sina Edhem, Mehmet's wife, that Muazzez had said the same to her in January 2018 (in a conversation that was covertly recorded and the recording transcribed). There was no

mention of the Metropolitan Police file which, according to Mehmet, provided evidence that Muazzez transferred the house to him.

47. I approach this ground of appeal with caution, as I did the first, because credibility is an area where an appeal tribunal must be very wary of improper interference. The trial judge heard and saw the witnesses and was able to make an assessment of their truthfulness in a way that the appeal Tribunal cannot do. But the decision leaves unanswered questions: why did it not matter that Muazzez gave different evidence in other proceedings? How does the story of the visit to Streathers explain what Muazzez said in the other proceedings? Why did the judge think nothing turned on Sina's evidence of an admission? The concern deepens when it is said that the same admission was made to a witness who is not mentioned at all.
48. I am going to look first at what Mehmet says about Muazzez's evidence, and then at Mr Connolly's response.

*Muazzez's evidence about what she did and did not sign*

49. It is Mehmet's case in the appeal that Muazzez fabricated the visit to Streathers in order to cover up her admissions that she had transferred the property to him. The visit to Streathers is first mentioned in Muazzez's witness statement of 19 October 2019, more than eighteen months after Muazzez and Isa reported the transfer to Action Fraud.
50. Mehmet set out in his skeleton argument a summary of the various accounts given by Muazzez and by Isa about the transfer of the property, as follows (I have paraphrased, but have used quotation marks where I have reproduced Mehmet's wording):
  - a. 28 January 2018: the recording of Muazzez's conversation with Sina indicates that Muazzez said she signed a transfer of the property to Mehmet.
  - b. 5 April 2018: Isa contacted Action Fraud by email and said that Muazzez signed a transfer of the property but had been told that it was a transfer to her three children.
  - c. 9 April 2018: Muazzez's witness statement in the family court (see paragraph 17 above): "Mrs Edhem signed to transfer the Property to the sole name of Mehmet Edhem. These was no mention of Streathers or three children."
  - d. 20 April 2018: an entry on the MPF records that Muazzez told the police that she signed a transfer of the property, but does not say to whom.
  - e. 11 September 2018: "Isa told police that Mrs Edhem signed something in Streathers but it was to do with her late husband's affairs, and not a land registry document."
  - f. 9 November 2018: Isa produced a timeline for HM Land Registry which stated that Muazzez visited Streathers on 27 May 2016 and signed a document to transfer the property to her three children.

- g. 22 April 2019 Muazzez's third witness statement said that she did not sign a transfer, and did not mention a visit to Streathers.
  - h. 21 October 2019 Muazzez's fourth witness statement said that she did not sign a transfer, but visited Streathers in the week after her husband died and that she had signed a transfer of the property to her three children.
- 51. The picture is certainly confusing.
- 52. However, the picture looks very different once one adds two crucial events, not mentioned by Mehmet but pointed out by Mr Connolly as having emerged from the evidence given at the hearing.
- 53. The first such event is that on 10 January 2018 Muazzez found out that 27 Netherford Road was registered in Mehmet's name.
- 54. This emerges both from Muazzez's Statement of Case in the FTT and from Isa's witness statement; Isa explained that in January 2018 Muazzez told him that she was struggling for money because she was no longer getting rent from number 27. Isa obtained electronic copies of the register of title and discovered that Mehmet was the sole registered proprietor.
- 55. The second such event is that on 27 April Muazzez first saw the form TR1 that she is said to have signed, and on seeing it said that it was not what she had signed. This emerged from Isa's evidence at the hearing before the FTT and not from a witness statement; it seems that Isa sent for a copy of the transfer and that that was when it arrived.
- 56. If we add those two events to the sequence of accounts that Mehmet set out, and add some detail to those accounts to indicate their context, then a very different picture emerges.
- 57. The first significant event is Muazzez's discovery in January 2018 that Mehmet was the sole owner of 27 Netherford Road. If it is true that in the week after her husband's death she went with Mehmet to Streathers to have a document witnessed, and if it is true that she thought that what she signed was a transfer to her three children, then what she thought she had discovered in January 2018 was that she had been misled into signing a transfer to one child instead of three. Accordingly:
  - a. That is why she told Sina on 28 January that she had signed the transfer to Mehmet.
  - b. That is also why Isa, on Muazzez's behalf, told Action Fraud in early April 2018 that she had been misled about the effect of a transfer she had signed.
  - c. That explains her evidence to the Family Court, which Mehmet has summarised very briefly. It is worth reading Muazzez's words:

“I confirm to this Honourable Court that I consider that the Applicant (Mehmet) has committed a criminal fraud against me. He took advantage of my upset at the death of my husband and misled me into signing a document which I now know had the effect of transferring my property at 27 Netherford Road from my sole name to that of the Applicant. I have now reported this to the police, who I believe are investigating.”

- d. And that is why Muazzez (or Isa on her behalf) told the police that she signed a transfer of the property.
58. These accounts are all consistent with a situation where Muazzez thought she had discovered that she had been misled into signing what she thought was a transfer to three children but was in fact a transfer to one of them.
  59. That position changed if on 27 April 2018 Muazzez saw the transfer itself for the first time. As the judge put it, “as soon as she saw the Transfer which she was alleged to have signed in April 2018 her position changed immediately from ‘I believe I did sign a document which I believed transferred the property to all my children at Streathers’, to ‘I most certainly did not ever sign that document.’ ” What she said in her witness statement of 19 October 2019 was that the document she signed at Streathers had very little text on it and cannot have been a transfer of the property.
  60. From that point on Muazzez’s account was therefore a different one. She was no longer saying she was misled about the significance of the transfer she signed; she was saying that she did not sign the transfer of 27 May 2016. That is what she said in her first two witness statements made for HM Land Registry, on 5 May and 2 September 2018, before the referral of her application to the FTT. Neither statement refers to Streathers because Muazzez now knew that she had not signed a transfer on that occasion and so the Streathers visit was irrelevant. The further accounts made by Muazzez and Isa on the occasions listed by Mehmet are consistent with this:
    - e. The MPF entry on 11 September 2018 records that Isa asked the police to re-open their file. It had been closed on the basis that there was no fraud since Muazzez admitted having signed a transfer (as we noted at point d in paragraph 57 d above). Isa now asked the police to re-open it, explaining that what Muazzez had signed (at Streathers) was not a transfer but was something to do with her late husband’s estate.
    - f. Isa produced a timeline in November 2018 for the use of HM Land Registry’s case officer. It sets out the various items of correspondence with Hawkins Ryan (produced by Mehmet in support of his objection to Muazzez’s application) and notes that Muazzez had never seen them before. What he said about 27 May 2018 was that Muazzez visited Streathers to sign a document prepared by Mehmet, and that *he explained to her that* the document “was to permit authority to transfer 27 Netherford Road to er three children”. Those italicised words are crucially missing from Mehmet’s account set out at paragraph 50 f above; Isa was reporting what Mehmet said about the transfer, rather than giving his own or Muazzez’s account.

- g. Muazzez's "third witness statement" was actually her Statement of Case in the FTT, which said that she did not sign the transfer. The visit to Streathers was not part of her case and she did not mention it.
  - h. Muazzez did mention the visit to Streathers in her witness statement in the FTT, dated 19 October 2019, in order to explain her statement to the Family Court. At that stage, she did think that she had signed a transfer, at Streathers, but that she had been misled about its effect, but that was no longer her case.
61. The narrative we now have, supplemented by Muazzez's discoveries on 10 January 2018 and 27 April 2018, resolves the questions raised by the judge's account. The judge did not make a finding about the visit to Streathers because it was not part of Muazzez's case and was irrelevant to what he had to decide. The statement to the Family Court is not troubling because it is explained by Muazzez's state of knowledge at the time. And Sina's evidence is indeed unremarkable, again because of Muazzez's state of knowledge at the time. The judge made no mention of the MPF because it had no evidential significance, but what Isa and Muazzez said to the police was consistent with their evolving understanding of what had happened.
62. The other puzzle was the judge's failure to mention Mr Houlous' evidence. Mr Bayar Houlous made a witness statement in September 2019, referring to a conversation he had with Muazzez and Sina in July 2016. According to Mr Houlous, Muazzez told him that her husband had transferred 25 Netherford Road to her two sons, and that she had transferred 27 to Mehmet alone to compensate him because other property had been given to the other two children.
63. Mr Houlous' evidence was put to Muazzez at the trial; she denied it and referred to his criminal convictions for drug dealing. Mr Houlous attended and was cross-examined, and did not deny his criminal record. He has spent 12 years in prison. It is well-established that a judge is not obliged to refer to every piece of evidence presented to him; whilst it would have been helpful if he had dealt with Mr Houlous' evidence it is easy to see that the judge rejected it in light of the rest of the evidence and of the obvious doubts about Mr Houlous' credibility.

#### *The outcome of the appeal*

64. The second ground of appeal is that the judge failed to take account of significant parts of the evidence in reaching his conclusion on credibility or, if he did take account of it, he failed to give any explanation of how it was consistent with his conclusion. Does that ground succeed in light of what I have set out above?
65. I have no doubt that the judge did not fail to take account of any part of the evidence.
66. Once one understands the crucial discoveries that Muazzez made on 10 January and 27 April 2018 it is easy to see why the judge did not need to make any findings about the visit to Streathers. The visit had been a source of confusion to her, but it was in the end irrelevant, because of the way her knowledge and understanding changed on 10 January 2018 and 27

April 2018. I would add that there was nothing implausible about the account of the visit; Mehmet protests that it is inconceivable that Streathers did not have a record of the visit, but if the purpose of the visit was simply to have a signature witnessed, on a straightforward document about Mr Edhem senior's estate, then it is unsurprising. Such a visit would not have made Muazzez a client of the firm and would not have needed to be documented.

67. Equally we can see why the judge was not troubled by Muazzez's statement to the Family Court.
68. Equally, in light of the events of 10 January and 27 April 2018, it is easy to see that Sina's evidence was, as the judge said, unremarkable, and that the MPF file added nothing. It is also easy to see why the judge would have rejected Mr Houlous' evidence.
69. And while the judge expressed surprisingly little concern about the falsity of Isa's evidence about what he showed to Ms Mitchell (see paragraph 25 above), and no concern at all about the fact that Isa and Muazzez had visited Ms Mitchell in the circumstances. one can see that it made no difference to the judge's finding that on the central issue Muazzez was telling the truth. Mehmet points out that the judge did not even mention that Muazzez's statement of case reproduced Isa's falsehood about what was shown to Ms Mitchell and, again, it is likely that the judge took the view that it made no difference; even though, as he said at his paragraph 6.46, she was "less than completely frank", on the central issue she was telling the truth.
70. So I am satisfied that the judge did not fail to take account of any of the evidence.
71. However, reverting to the ground of appeal, did he nevertheless fail to explain how it was consistent with his conclusion?
72. Mr Connolly helpfully referred me to the decision of the Court of Appeal in *Simetra Global Assets Limited v Ikon Finance Limited* [2019] EWCA Civ 1413 and to the observations of Males LJ at paragraph 49:

"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.”

73. He argued that in the light of those four points the decision of the FTT was sound. As to the first, the judgment was succinct. As to the second, the omission of some of the evidence was not fatal and, in his submission, the judge took proper care to show that the evidence as a whole had been considered.
74. As to the third point, Mr Connolly argued that the judge’s decision stood securely on a number of building blocks. First, the judge found that Muazzez and Mr Edhem senior wanted to achieve equality between their children, and that the transfer of number 27 to Mehmet alone would not achieve that. Second, he found that in the weeks leading up to her husband’s death Muazzez would not have been able to conduct the correspondence with, and instructions to, Hawkins Ryan that Mehmet sought to attribute to her. Third, the judge found that Mehmet was lying about the instructions to Hawkins Ryan and rejected his account of how the transfer came to be executed. He also rejected Ms Mitchell’s evidence about the execution of the transfer. In light of the fact that either Mehmet or Muazzez, but not both, was lying about whether she signed the transfer, the judge could have stopped there, but he also found that Muazzez was telling the truth when she said she had not signed the transfer, on the basis of his assessment of her cognitive abilities and of her evidence as a whole.
75. As to the fourth point made by Males LJ, the judge needed to deal with apparently compelling evidence, but the evidence he omitted – in particular Mr Houlous’ and the MPF - was not compelling.
76. I accept Mr Connolly’s argument.
77. The judge could certainly have assisted the reader (other than the parties, who were aware of how the evidence fitted together) by explaining how Muazzez’s statement to the family court, the visit to Streathers, and Sina’s and Mr Houlous’ evidence were consistent with that conclusion. It would have been helpful to have more comment about the falsity of Isa’s and Muazzez’s statements about the visit to Ms Mitchell. But I take the view that his conclusion as to who was lying about the one central issue was properly explained.
78. If I had come to a different conclusion about that, I would in any event have refused to set aside the FTT’s decision because to do so, and to remit the matter to the FTT for a re-hearing, would be completely pointless in light of:
  - a. the judge’s finding that Mehmet was lying, upon which the appeal has cast no doubt;
  - b. his finding that on the one central issue Muazzez was telling the truth, and
  - c. the fact that it is possible to understand (and the parties themselves certainly understand) how all the evidence was consistent with that conclusion.



79. The FTT's decision was obviously correct, despite the gaps in its explanation, and a re-hearing would be a waste of costs and of the resources of the parties and the FTT.
80. The appeal fails on both grounds.

Upper Tribunal Judge Elizabeth Cooke

7 September 2022

### **Right of appeal**

Any party 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.