



Neutral Citation Number: [2011] EWCA Civ 921

Case No: B4/2010/2410
B4/2010/2411

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM The Principal Registry of the Family Division
Her Honour Judge Plumstead
BT06ND00793/FD07F1034

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2011

Before :

MR. JUSTICE HEDLEY

Between :

Marie-Therese Yankah (nee Biloune)

Appellant

- and -

John Holdbrook Yankah (a.k.a. John Ashun)
(By His Trustee in Bankruptcy, Robert Harry Pick)

Respondent

The Appellant appeared in person
The Respondent did not appear and was not represented

Hearing dates : 10th June and 24th June 2011

Approved Judgment

1. Mrs Yankah, acting in person, seeks permission to appeal and long extensions of time in respect of orders made by Her Honour Judge Plumstead (sitting as a Judge of the Family Division) on 10th October 2008, 15th October 2008 and 23rd January 2009. She appeared in person before me (sitting as a single Lord Justice); I said that I might seek the observations of the other side and would then put my judgment in writing. In the event (as will be explained), I have not done so but this is my reserved judgment.
2. These matters all have their origins in protracted and acrimonious family proceedings. Mrs. Yankah was married to Mr. Yankah, a Ghanaian, and they have four children, the youngest of whom is now 11. Mrs. Yankah lives in the former matrimonial home and is now facing eviction at the suit of Mr. Yankah's trustee-in-bankruptcy; that is undoubtedly the driver of the present application.
3. In her grounds and submissions Mrs. Yankah seeks to challenge the rulings of the judge and seeks to elicit fresh evidence of properties in which she says Mr. Yankah can be shown to have beneficial interests. Her essential explanation for the delay lies in the sheer complexity of these proceedings and in the personal investigation of Mr. Yankah's assets. As I observed at the hearing, these are matters difficult to sustain in a permission application.
4. However, the context is important. It is not necessary to set out the facts in detail but some overview of the background is essential for Mrs. Yankah's deep sense of injustice engendered by the behaviour of Mr. Yankah has a real basis in fact.
5. Mr. Yankah lived the life of a prosperous man. At about the time of the breakdown of the marriage he contrived to declare himself bankrupt and the trustee-in-bankruptcy has loomed large since then not least because the most easily realisable asset (and it may indeed be the only one) is the former matrimonial home. That property was put in the name of a nominee of the father who subsequently claimed the beneficial ownership of it and sought possession.
6. It is fair to say that the judge had little truck with the evidence and contentions of Mr. Yankah and had every sympathy with the plight in which Mrs. Yankah had been put. However, despite Mrs. Yankah's assertion that the bankruptcy was a contrivance, the judge, having found that he was at the time technically bankrupt, was greatly constrained by the rights of the trustee. I now need to turn to the three orders.
7. The first set of proceedings culminated in the order of 10th October 2008 whereby the nominee was found to be just that, that the property was in law owned in equal shares between the parties and that the husband's share had by reason of the bankruptcy vested in his trustee. This decision did not (and could not) involve any exercise of judicial discretion: this was a determination of strict rights in law.
8. The second set of proceedings which resulted in the order of 15th October were the ancillary relief proceedings which were of course subject to judicial discretion but a discretion which is seriously curtailed by the existence of the bankruptcy. They appear to have taken an unusual turn: the judge heard evidence and made a series of findings of fact (adverse to the husband) which appear as recitals in the order. The remainder of the order appears to be the fruit of lengthy discussions between the judge and the parties based on a succession of drafts. It should be said that no-one criticises

this approach. I had thought that there would be a judgment, Mrs. Yankah thought not and, having read the transcript of the discussions, I think she is right. In those circumstances I thought it right not to put more costs at risk by involving other parties at this stage. Moreover, the question of the former matrimonial home was put over to January 2009 and in respect of that the Judge gave a judgment on 20th January 2011.

9. This hearing focussed on the bankruptcy and the former matrimonial home. Mrs. Yankah sought to annul the bankruptcy order of 15th February 2006. Had she succeeded in doing that, she would then have sought a discretionary transfer of property order in circumstances where she clearly had the sympathy of the court. Should she fail, however, then the trustee was entitled to enforce against the husband's share subject only to an opportunity being afforded to Mrs. Yankah to buy that share. Her application failed and as a result an order for sale was made. It is this order which the trustee has recently sought to enforce.
10. I have considered the learned Judge's judgment with care. In my judgment she has correctly directed herself as to the law and has applied it to the facts of the case in a way that simply does not admit of criticism. She concluded that there was no established basis for contending that the order should not have been made when it was. The essence of Mrs. Yankah's contentions is that the judge should have made a discretionary order transferring the property to her. Whilst that was an order which would have been made absent the bankruptcy, the fact of it precluded the judge from exercising her jurisdiction in that manner.
11. In those circumstances no appeal has any reasonable prospect of success. The new evidence which Mrs. Yankah seeks to adduce, even if capable of proof, would not go to the matter of whether the bankruptcy was valid and thus could not go to the correctness of the orders made by the judge.
12. Appeals must be lodged within 21 days of the judgment and thus, in this case, by the end of February 2009 at the latest. It follows that Mrs. Yankah seeks an extension well in excess of two years. That raises an almost insuperable burden especially when complexity (real enough in this case) is the central explanation. This delay is too long by any standards and it would be quite wrong to grant permission to appeal out of time.
13. That would of course have disposed of the application. However, I thought it right to examine the merits of the appeal since Mrs. Yankah is clearly the victim of her ex-husband's dishonesty. For the reasons I have given, she cannot advance arguable grounds against the order of Her Honour Judge Plumstead and accordingly, even if her applications had been brought in time, I would have been obliged to refuse permission to appeal.
14. That therefore disposes of the applications before the Court of Appeal. I add one comment without in any way seeking to express a view on the merits. By paragraph 6 of her order of 15th October 2008 the judge gave liberty to apply in respect of a lump sum payment which if made might enable Mrs. Yankah to buy out the trustee. If there is substance to her new evidence (and I can express no view as to that), it might provide a basis for seeking a lump sum payment were there any prospect of successful enforcement. It is a matter Mrs. Yankah may wish to consider.