

Neutral Citation Number: [2011] EWHC B27 (Fam)

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice

Date: Thursday, 22<sup>nd</sup> December 2011

Before:

MR. JUSTICE BODEY

B E T W E E N :

\_\_\_\_\_  
NIVIN EL GAMAL

Applicant

- and -

HRH SHEIKH AHMED BIN SAEED al-MAKTOUM

Respondent

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*Transcribed by **BEVERLEY F. NUNNERY & CO**  
Official Shorthand Writers and Tape Transcribers  
Quality House, Quality Court, Chancery Lane, London WC2A 1HP  
Tel: 020 7831 5627 Fax: 020 7831 7737  
info@beverleynunnery.com*

MR. R. TODD QC and MR. G. KINGSCOTE (instructed by) appeared on behalf of the Applicant.

MR. M. POINTER QC and MR. M. GLASER (instructed by) appeared on behalf of the Respondent.

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**J U D G M E N T**

MR. JUSTICE BODEY:

## A INTRODUCTORY

- 1 This is the hearing of a nullity petition brought by Nivin el Gamal against His Royal Highness Sheikh Ahmed Bin Saeed al-Maktoum, a member of the Royal Family of Dubai. Since the parties have a child, S, born on 21<sup>st</sup> April 2008, I shall, purely for ease of reference, speak of the parties as “the mother” and “the father” respectively.
- 2 By her petition the mother asserts that on 11<sup>th</sup> January 2007 the parties underwent an Islamic wedding ceremony in the father’s flat in Knightsbridge SW1. She says it created a marriage, albeit a void marriage by reason of its failure to comply with the formalities of marriage at English law. She therefore seeks a decree of nullity of marriage. If such a decree is granted she can claim consequential financial orders for herself and would not be limited to the more restricted claims which she makes for S under Schedule 1 of the Children Act 1989. The father denies that any such ceremony took place. If the court is against him and finds that such a ceremony did take place, then his case is that it was too far removed from anything resembling a marriage at English law to amount even to a void marriage, and so was in shorthand what has become known as a ‘non-marriage’ or ‘non-existent marriage’. If that be so, it would follow that the mother’s claims would be limited to those which she brings on behalf of S in his own right.
- 3 There are thus two fundamental issues. (1) As a matter of pure fact, was there an Islamic wedding ceremony on 11<sup>th</sup> January 2007? (2) If so, what was its legal effect, if any, in English law?
- 4 This hearing was originally timetabled to determine other proceedings between these parties, in particular the Schedule 1 proceedings just mentioned (whereby the mother seeks financial relief for S) and proceedings for a Declaration of Parentage in respect of S. In fact, his paternity is not in doubt. DNA testing has established that the father is indeed S’s father, and the father has fully accepted that. He is currently paying very substantial interim maintenance for S under interim Schedule 1 orders of the court. However, he opposes a Declaration of Parentage which he feels the mother would abuse. She maintains she would not abuse it, and says that S needs and is entitled to formal recognition of his paternity, particularly since, when the father underwent the DNA testing just mentioned, he did so under the pseudonym “Robert Smith”.
- 5 The nullity petition is of recent origin. Following a false start earlier this year when a district judge refused the mother permission to issue it without a supporting marriage certificate (there being none) the mother was unable to issue a petition until on 5<sup>th</sup> October 2011 Hedley J. granted her permission to do so. The petition was issued on 20<sup>th</sup> October 2011. Directions were then given for the nullity suit to

be heard by this court at this hearing as well as the final hearing of the Schedule 1 claim for S. All formalities in the nullity proceedings were dispensed with to enable this to happen.

- 6 It was apparent, when I came to consider the size and relative complexity of the case, that it would not be possible to deal with all the issues in the round at one time, desirable though that would have been. As has now been shown, everything would have gone part-heard, probably for a lengthy period, which would not have been in anyone's interests. I therefore decided that, in order to make some progress, the nullity proceedings should be dealt with at this hearing so that the parties' status would be established. It would then be known whether the mother has financial claims for herself or only for S.
- 7 The mother has been represented by Mr. Todd QC and Mr. Kingscote; the father by Mr. Pointer QC and Mr. Glaser. I have read a considerable proportion of a voluminous amount of material contained in about 20 lever arch files, and have heard five witnesses. For the mother, I have heard the mother herself, Nadida el Dakak (the mother's Egyptian solicitor) and Teri Pearson, a good friend and former flatmate of the mother. For the father I have heard Ian Edge (expert witness in Islamic law) and Mr. Nurani, solicitor to the father (although not in these family proceedings). It was intended and expected until 10.30 a.m. on the last day of evidence (Monday 19<sup>th</sup> December 2011, three days ago) that the father would give evidence. When the time came to call him, however, Mr. Pointer QC announced that he (the father) has been required by the ruler of Dubai to attend the UAE's delegation to the 32<sup>nd</sup> summit of the Gulf Cooperation Council leaders being held this week in Riyadh. It is unsatisfactory that warning of this was not able to be given sooner, since the court could have adjusted its preparatory work and sat different hours, or rearranged the order of witnesses, so as to facilitate the father's attendance, or his evidence being given by video link during the course of the week commencing 12<sup>th</sup> December 2011. Be that as it may, Mr. Pointer was not instructed to and did not seek an adjournment. He simply told me that his client was unavailable during this week and the case then proceeded to submissions. I shall return later (at paragraphs 72 to 74 below) to the impact of this unexpected development.
- 8 I say at this early stage that this is one of those cases into which, because credibility is deeply in issue, have been drawn multiple tangential factual disputes on issues tending to support (or diminish) an inference and conclusion that the parties went through a ceremony of Islamic marriage on 11<sup>th</sup> January 2007. Since they only go to credit, such issues are not always prepared or pursued (bearing in mind the needs of proportionality) sufficiently to enable a reliable and just conclusion to be reached on them. There are some aspects of this case which simply do not fall into place easily like a good jigsaw. There are some issues and

features which would and will stick out and grate, whichever conclusion I reach on the key factual issue.

## **B THE PSYCHIATRIC EVIDENCE REGARDING THE MOTHER**

- 9 Before coming to the chronology of relevant events it is necessary to say a little under this heading. I regret this because it is material which should otherwise be personal to the mother. However, it is essential to an understanding of how she reacts to events and conducts herself generally. It unavoidably has to be taken into account when seeking to resolve the various factual disputes between the parties and the allegations levelled against the mother on multiple issues of credibility.
- 10 On 3<sup>rd</sup> February 2010 the mother was seen for one hour by Dr. Robin Lawrence, instructed by her solicitors in certain immigration proceedings which I will mention. He has 20 years' experience as a consultant adult psychiatrist. He speaks of the mother's reporting panic attacks, inability to sleep, loss of appetite, feelings of helplessness, hopelessness and pointlessness, and of suicidal ideation. He recorded one "quite serious suicide attempt" in May 2009. He refers to the mother having changed her religion and having gained a great deal of support from the Jewish Khabbalah. He spoke of her having a 'succession of rich partners who buy her things or are her employer or patron' – a reference upon which Mr. Pointer bases a submission that she is a "courtesan", with the connotations attaching to that expression. However, that phrase 'a succession of rich partners' does not seem to be based on anything which Dr. Lawrence recorded in interview with the mother, and I do not consider that without further and better investigation I should place weight on it. Dr. Lawrence gave his opinion at that time, in February 2010, that the mother had the symptoms of 'a major depressive episode with paranoid ideation'. She was describing events with a distinctly psychotic tone. He spoke of her life as having been characterised by chaotic and unwise decisions, quite fragmented and impulsive. At the time she was 'not well'. He closed his report by saying "... there are signs suggestive of an underlying personality disorder often [in] narcissistic, histrionic cluster, in which she experiences the world almost exclusively from her own point of view and only considers things from this rather narrow perspective. She over-dramatises and is impulsive."
- 11 Dr. Sherine Mikhail was the mother's treating consultant psychiatrist in and after February 2010. In her report of 20<sup>th</sup> February 2010 she gave a diagnosis of a moderate depressive episode and stated the symptoms in much the same terms as Dr. Lawrence. She advised and prescribed antidepressant medication. In a subsequent report dated 16<sup>th</sup> June 2011 Dr. Mikhail recorded the mother's having reported these symptoms already mentioned as having occurred intermittently throughout her life with a history of suicidal behaviours, suggesting vulnerabilities in her personality functioning. Dr. Mikhail recorded an occasion, in early May

2010, when such was the mother's level of distress that she entered into a "transient dissociative state" and was found by the police wandering on the M11 motorway. She was reported as being mute and requiring emergency NHS intervention, a reflection of her fragile mental state. As regards the occasions when the mother had experienced fear for her safety and that of S (said by the father to be examples of her manipulative lying) Dr. Mikhail expressed herself as entirely satisfied that these "... paranoid or self-referential concerns reflect a heightened sense of anxiety about her situation and safety and that of her son, in consequence of which they become over-valued ideas, i.e. excessive preoccupations. But they do not, and have not at any time in the period that I have looked after her, amount to delusional beliefs, i.e. beliefs that are fixed, unshakeable and based on abnormal reasoning."

- 12 On 3<sup>rd</sup> November 2011 Dr. Jan Wise, consultant psychiatrist, reported on the issue of the mother's litigation capacity, the father having challenged Dr. Mikhail's earlier expressed view that the mother does have litigation capacity. At the conclusion of a long report, Dr. Wise expressed the view that the first stage in determining the absence of capacity under the Mental Capacity Act 2005 is met, but that the second stage is not. In other words, Dr. Wise found in the result that the mother has litigation capacity, being able to 'understand, retain, use and weigh' information about relevant decisions. Dr. Wise stated that as a result of the mother's early life experiences she "had developed an anxiety disorder, not otherwise specified, together with a depressive disorder currently in remission as a result of the stresses of the various legal processes in which she has been involved." Dr. Wise stated that the mother demonstrates marked impulsivity in a variety of contexts, as indicated by her "frantic efforts to avoid real or imagined abandonment", and she (Dr. Wise) refers to a "pattern of unstable and intense interpersonal relationships characterised by alternating between extremes of idealisation and devaluation". This is well reflected in the text messages at D below, and by the numerous changes of solicitors which the mother has had in these proceedings (some five or six in number).
- 13 On 28<sup>th</sup> November 2011 Dr. Mikhail was able to report that under her continuing care the mother has stayed on antidepressant medication, remaining well and with no clinically significant symptoms of depression. Her mental health has been stable with no evidence of further paranoid thinking, nor any further situations where she has feared for her life or that of S. Dr. Mikhail concludes that the mother continues to have litigation capacity, undistorted by any symptoms of mental illness, at the present time.

## **C THE CHRONOLOGICAL BACKGROUND**

- 14 The mother was born on 23<sup>rd</sup> October 1976 so she is 35. She was born in Egypt to a wealthy, powerful and influential family and has throughout been an Egyptian citizen. After failing in an asylum claim in this country in 2009, taken right up through the immigration appeal process and unsuccessfully on to the Administrative Court of the High Court, she succeeded on 28<sup>th</sup> July 2010 in obtaining leave to remain here until 28<sup>th</sup> July 2013 as a ‘tier one migrant’. This involves an investment in a business in this country, which the mother has made. After 2013 she intends to apply for indefinite leave to remain here. She says that she had an unhappy upbringing in Egypt, the precise details of which it is unnecessary to go into, and “ran away” from home when she was 21 and again when she was 24. In her CV, the mother refers, amongst other things, to having BA degrees from universities in Egypt and the USA in theatre design, painting, sculpting, and interior design. She says she has undergone courses in Fine Art, History of Art and others. She has a diploma in pilot training in Egypt. She speaks Arabic, French, English and some Japanese. English is her most recently acquired language and she spoke in the witness box through an interpreter on some aspects which she did not fully understand. Her CV sets out employment in a number of businesses from 2001 to 2008 or 2009, including marketing and interior design. (I mention all this because it is relevant to part F below). She describes herself as a “skilful interior designer and proven business manager ... having worked at the highest levels in real estate development, banking, interior design, media and the fashion industry for over ten years”. The CV describes her as extremely motivated and resourceful and as a highly adaptable executive “with a combination of business savvy, creative awareness and personal skills”. This is, of course, a CV and it is sure to be self-promoting; but it does give a flavour. She has also been a model and has clocked up an impressive range of international travel, with frequentation of top restaurants. She has been photographed on occasions in society magazines, certainly in Egypt. She owns a small flat with a mortgage in London SW1 but is presently renting that out. She has rented instead for herself and S a sizeable property, also in SW1, using for the rent part of the substantial interim maintenance being paid by the father for S.
- 15 The father was born on 1<sup>st</sup> December 1958 in the UAE so that he is 53. He is the uncle of the current ruler of Dubai and a senior member of the Royal Family, although he says not part of the royal inner circle. He lives in Dubai and is of Emirati nationality. He describes a conventional but affluent upbringing, including attendance at a university in the USA. He is the President of the Department of Civil Aviation in Dubai and Chairman of the Emirates Group. He is also Chairman of the Dubai Supreme Fiscal Committee, and describes himself as a man of international business reputation, having a prominent role in the economic world in Dubai. The father’s family have many properties internationally but when in the UK he uses a substantial and comfortable flat in Knightsbridge SW1 owned through family companies and/or trusts. For the purposes of the Schedule 1 proceedings concerning S’s financial claims, the father has taken the so-called

“millionaire’s defence” by which he accepts he can pay any order which the court may make. Thus, he has not been required to give detailed financial disclosure, although he is obviously a man of considerable wealth and influence. He has never had, and has never sought, any relationship with S and has never seen him. In my judgment, from all that I have seen and read, and in spite of the mother’s love/hate attitude to the father exemplified at part D below, this has caused the mother genuine pain and regret for S.

- 16 In 2002 the mother came to live in England on a student visa running until 2008. She began to share a flat with Teri Pearson, mentioned above. The two of them were out in Dubai in 2003 when they met up with the father. The mother says that she and the father then dated for about 18 months, separating in January 2005. The father says they never dated, but rather that they were “occasional sexual partners” who met for “intermittent sexual relations” in a relationship which was “casual, uncommitted and non-exclusive”. He accepts that he would give the mother substantial cash and gifts, but with no particular structure and merely because he had enjoyed being with her. She, I am satisfied, gave him many gifts too.
- 17 In April 2006 the mother says the parties re-met in New York and that the father began begging her to go back with him. She told him, she says, in October 2006 that she had an English boyfriend, whom I shall call T. T had, according to her evidence, given her a racehorse for her birthday in October 2006. He (T) also gave her cash of £20,000, which she had later put towards buying a second hand Bentley (see below) and a Harrods voucher for £10,000.
- 18 The mother’s case is that on a date in December 2006, after she had told the father that she had broken up with T, he (the father) proposed to her over the telephone. She says she took the call in London and that it was some time before 23<sup>rd</sup> December 2006, which she recalls because that is when she went to Morocco. There is some support for this from the mother’s Egyptian solicitor, Nadida el Dakak who says that when the two of them met up on 24<sup>th</sup> December 2006 in Agadir, the mother went shopping for things which only a bride would buy. Miss el Dakak says that the mother told her that she was getting married; but that it was to be a secret marriage. She, Miss Dakak, advised the mother against such a secret marriage but says that the mother was so blindly in love that she went through with it, saying that she was sure the marriage would later be made public. Teri Pearson also gives evidence that, towards the latter part of December 2006, before the intensely busy pre-Christmas period, the mother rang excitedly to say that she and the father were going to get married.
- 19 I accept Miss el Dakak’s and Miss Pearson’s evidence that these conversations occurred, although they do not of course prove the truth of what the mother reported. It is possible that the mother dreamt, fantasised, or simply made up this alleged proposal by the father, which she then reported onwards to her friends.

This is something which I will be considering as a possibility. But the friends' evidence which I have heard does show that the mother's assertion of a proposal of marriage by the father is not of recent invention.

- 20 On 11<sup>th</sup> January 2007 the mother says that an Islamic wedding ceremony occurred in the father's flat in SW1. She says that an Imam was in attendance who took the ceremony, and that there were two Muslim witnesses: Hakim and Tariq, members of the father's staff. Her affidavits describe the alleged ceremony in detail. The mother says she was wearing an Armani outfit, not a wedding dress (something on which I will comment later at paragraphs 56 to 59). She accepts that the father did not give her a wedding ring; but she says that on the day he gave her a diamond encrusted Bulgari watch and that after the ceremony he went to the safe and gave her a dowry of £30,000 in cash. It had appeared from her written evidence that this £30,000 had gone towards the purchase of her Bentley (above). She did say in an earlier affidavit that the father had 'offered her' that sum both for her living expenses and to put towards a car (i.e. implying that it was not a dowry). However, the mother clarified this in her oral evidence by explaining that she wanted to preserve the father's cash gift of £30,000 because it was in an attractive block of new notes, and that it was actually T's cash gift of £20,000 which she put towards the Bentley. I acknowledge that the mother has not produced documentation in relation to the Bentley as she was asked to do. She answered the father's Questionnaire simply by saying that she does not have the documents any more. She was then ordered, on 20<sup>th</sup> October 2010, to respond to a Schedule of Deficiencies served by the father's solicitors; but as far as I can see, that Schedule pressed only for documents regarding the *sale* of the Bentley and not regarding its purchase. So far as I can determine, any apparent inconsistency in the mother's evidence about the deposit for the Bentley has been resolved by her oral evidence in the manner indicated; so that is where the matter rests in that respect.
- 21 In every reference until the mother's affidavit of 11<sup>th</sup> May 2011, she had always given the date for the alleged ceremony as being "December 2006". This leads to the obvious criticism and submission on behalf of the father not only that she could not remember the precise date of her own alleged wedding ceremony, but also that she actually got the date wrong. I will deal with this later.
- 22 In January 2007 Miss Pearson says that the mother rang her excitedly to say that the marriage had taken place. I accept Teri Pearson's evidence of that conversation having occurred. As before, though, it does not prove the truth of the mother's report. The mother says that after the wedding the couple ceased to use contraception. The father says he thought she was continuing to use it. That would have been one of the issues upon which Mr. Todd would have wanted to cross-examine the father, but that has been rendered impossible.



- 23 In April 2007 the mother and Teri Pearson went to Cairo and to Alexandria where the mother bought a wedding ring for about £3,000, which I accept is modest in the context of this case. She had herself photographed there in a wedding dress which she had taken from England (see further below).
- 24 On 3<sup>rd</sup> and 4<sup>th</sup> August 2007 the mother says that she had sexual relations with the father and conceived S.
- 25 In November 2007 the mother and Miss Pearson travelled to Dubai to celebrate the father's birthday and to attend a wedding. The mother's passport shows that she was there from 26<sup>th</sup> November 2007 to 16<sup>th</sup> December 2007, for some of which time she accepts that the father was in America. Miss Pearson's evidence is that the mother stayed with the father in Dubai. According to the mother, there occurred a major row between herself and the father over the telephone whilst she was in Dubai, because she confronted him with rumours that he had been womanising. He later returned gifts to the mother which she had given to him: a Louis Vuitton book and a Louis Vuitton necklace. She says that at this point the father "...effectively abandoned me both emotionally and financially".
- 26 In February 2008 the mother went to the USA where she stayed until May 2008. It was during that time, on 21<sup>st</sup> April 2008, that she had S in a hospital in Los Angeles. On 14<sup>th</sup> June 2008, just after the mother had returned from the USA with S, the father married a cousin. The mother would say 'married again'. In July 2008 she says he told her over the telephone that she could regard herself as divorced. Shortly thereafter she sent a text to a friend saying that she was going to commit suicide. The police and social services became involved. They found no significant cause for concern regarding the mother's mental health, nor regarding her care of S, and they closed the case. The mother told them that she had meant to text the father, not the friend, as a way of getting his (the father's) attention. The father responded on 12<sup>th</sup> August 2008 by texting the mother to say that she was not to send him any more text messages. This was a forlorn hope since, from May 2009 to October 2011, the mother sent him some 230 text messages of varying degrees of reasonableness and unreasonableness, to which I will revert in part D.
- 27 From October 2008 to April 2009 the mother was working in Qatar. During this time she went to Egypt to celebrate S's first birthday at her own father's home. From there, she went to Dubai hoping, unsuccessfully, to meet the father. She texted him setting out her financial needs and requirements for S, to which the father responded by text on 28<sup>th</sup> May 2009: "If you go round talking about your fucking baby I know what to do. Don't SMS me, betch [sic]". She says that the father threatened over the telephone to kill her and S and that she attempted suicide. She went to the US Consulate (S being an American citizen) which she says helped her to get back to the UK with S. They arrived here on 9<sup>th</sup> June 2009

and the mother applied for asylum. In these proceedings she declined to disclose documents from the immigration files until she was ordered to do so.

- 28 In the asylum screening interview conducted by the U.K. Board Agency (UKBA), the mother described herself as “a Muslim studying Khabbalah”. She said she was scared of her own father and of her own family’s perpetrating what is sometimes called an “honour killing” against her, because of the father’s (the Respondent’s) abandonment of her and of S. She said she was also very afraid of the father. She is recorded as saying “My husband has divorced me, but we were not legally married just Islam marriage”. Her case is that she said this because friends had advised her to that effect, although she maintains that back in 2007, she had believed that the Islamic ceremony would be valid under English law (see further at part F below).
- 29 On 16<sup>th</sup> June 2009 the mother made a written immigration statement. In it she said that there had been papers signed by two witnesses at the alleged ceremony of marriage, which she dated as being in December 2006. She repeated that assertion in a further UKBA interview on 18<sup>th</sup> June 2009, embellishing it by saying that the wedding papers were left in the father’s flat. Her case now is that there were no such papers and that the reference to papers arose from a misunderstanding between herself and her solicitor when her written statement had been prepared. She says she felt in the interview that she had to go along with it (the existence of the marriage papers) because she was scared to correct her written statement. Understandably, this is put forward on the father’s behalf as an example of the mother’s lying. Mr. Todd submits, on the other hand, that if the mother wanted to lie about this alleged wedding ceremony then, having first said that there was paperwork, she would have continued to say so: and further, that it would have been better for her to have stood by her claim that the papers had all been left in the father’s flat, since that would have strengthened her case with any Islamic court. He also points out generally the mother’s language difficulties, in that English is her third language. I consider that the mother must have said to her solicitor that the alleged witnesses signed some papers, since I cannot see that as being easy to misunderstand. In any event, the mother was not truthful with the UKBA interviewer when she said that the (non-existent) paperwork was left in the father’s flat. So there is a credibility point there for the father. Having said that, I consider there is real force in Mr. Todd’s submission that, if the mother were being truly devious, she would simply have stuck to the original presentation (that there were signed papers) and that her backtracking is therefore the action of someone wanting to put things right.
- 30 At around this time in 2009, a number of things happened in respect of which the mother clearly overreacted. A woman on the plane back fro Dubai to England on 9<sup>th</sup> June 2009 had offered S a lollipop and a few days after their arrival here, someone else offered him a cherry. The mother formed the view that both the

lollipop and cherry were poisoned and that this represented the father's trying to "get rid" of S. There was also at this time some damage to the front communal door of the mother's building, clearly caused by some technical problem (as other residents told the police). But the mother made what were recorded at the time as "wild allegations" that the damage had been caused by the father. Then a taxi ran into the side of a car in which the mother was travelling, a fact confirmed by a friend at the time. The mother regarded this as the father trying to kill her. All these things were reported by the mother to the police. Steps were taken to ensure that there were security cameras and other measures in place, given the seriousness (on the face of it) of the mother's allegations, including that the father had access to weapons. It is clearly not remotely established that the father was in fact behind any of these events. It is not now being seriously suggested that he was. In my judgment, these were extreme, objectively unreasonable overreactions and over-dramatisations by the mother, being a product of her suspicious and paranoid (using the expression loosely) mindset, due to her fragile mental and emotional health.

- 31 On 14<sup>th</sup> September 2009 the mother made her Schedule 1 application seeking financial relief for S. In her supporting affidavit she said she was applying for British citizenship. That was wrong, as she was applying for asylum. Nor did she mention that her asylum application had been refused on 20<sup>th</sup> July 2009. She sought just over £1 million per annum interim maintenance for S including carer's allowance. On 6<sup>th</sup> October 2009 the then President of the Family Division, Sir Mark Potter, directed that the father do pay substantial interim maintenance for S, together with a substantial costs allowance regarding the Schedule 1 proceedings.
- 32 On 4<sup>th</sup> January 2010 Immigration Judge Francis, sitting in the Asylum and Immigration Tribunal, refused the mother's appeal against the UKBA's earlier refusal of asylum. She, Judge Francis, heard the mother give evidence and heard her cross-examined on behalf of the UKBA. She was not impressed with the mother and did not find her to be credible. She found that the father's text "Don't SMS me, betch" was not a threat on the mother's life (as the mother maintained) and that the mother had tried to exaggerate the implication of that text to give credence to her claim for asylum. Judge Francis did not find it plausible that the mother's own father wanted to kill her. She found that the mother was generally over-dramatic and paranoid. She did not accept that the mother would be at risk if she were returned to Egypt with S. The mother sought a reconsideration from the AIT against this ruling.
- 33 On 7<sup>th</sup> January 2010 the mother reported seeing strange cars at S's school and that her telephone was being tapped. She complained to the police saying that this was the third time she had been followed, suspecting that it was instigated by the father. The father had by now accepted the fact that he has instructed an enquiry agency to investigate the mother. This would doubtless have compounded the mother's

anxiety and neurosis, although the father is adamant that he has never instructed any actual surveillance over her. At the beginning of January 2010 S was genuinely very ill. The mother repeatedly texted the father seeking financial help. He did not reply to her, even when she texted that she thought S was dying, although he did pass the messages to Mr. Nurani who relayed them to the father's family law solicitors.

- 34 On 28<sup>th</sup> January 2010 the father's solicitors paid the amount being requested for S's medical expenses, but in the meantime the mother had clearly suffered much anxiety. It was during that interim period of time (she says feeling desperate to get the father to respond) that on 24<sup>th</sup> January 2010 she gave an interview to the Sunday Times, referring to fears for her safety and to her phone being tapped. The story was covered by that newspaper and also by the Daily Telegraph. Initially, the mother denied giving a written statement to the newspapers, but later accepted that she did give the reporter her 42 page immigration statement dated 15<sup>th</sup> December 2009.
- 35 On 2<sup>nd</sup> February 2010 Senior Immigration Judge Latta, sitting at the AIT, rejected the mother's application for a reconsideration of the refusal of asylum. The mother was advised to and did seek a review in the Administrative Court of the High Court. On 3<sup>rd</sup> February 2010, as I have said, consultant psychiatrist Robin Lawrence reported on the mother, diagnosing a major depressive episode with paranoid ideation. The mother subsequently sent an email suggesting that she had been tricked into seeing him and that the father had got at him and paid him to report unfavourably on her.
- 36 On 9<sup>th</sup> February 2010 grounds for review of the AIT's asylum refusal were prepared by counsel for the mother in the Administrative Court proceedings. The grounds prayed in aid the mother's "Khabbalah religion", describing her as "a follower of Khabbalah" and as having been so since as long ago as December 2005. "The claimant's [the mother's] case", the document reads, "is that she would not be able to practice her faith in Egypt and would be harmed for doing so". It was also asserted that the mother had a fear that the recent article in the Sunday Times would "...increase her risk of harm on account of her faith if she were to be returned to Egypt".
- 37 On 30<sup>th</sup> March 2010 the mother called the police again to her flat, saying that she had been watched and followed at the father's instigation. She expressed fears that S would be taken away from her. On 5<sup>th</sup> April 2010 the mother says the father telephoned her at about 9 p.m. and threatened her in Arabic saying "You bitch! I will kill you and cut you into pieces like the Lebanese singer". That was an apparent reference to a Lebanese woman singer brutally murdered in her flat in Dubai in 2008. The father denies making any such telephone call, or any call at all. The mother texted him that evening "Why are you saying you want to kill me?"

That's because I love you or you want to stop me from taking my son's rights. Shame on you! You want to do with me like you did with the Lebanese singer". I deal with this factual issue at paragraph 49 below.

- 38 On 6<sup>th</sup> April 2010 the mother reported that alleged phone call to the police and was interviewed by them. She told them she had been married via an Islamic marriage ceremony two years ago (which would make it about April 2008, taken literally). She alleged that the father had been trying to kill S. She mentioned the lollipop, the cherry, and the taxi incidents above, saying that he was planning to get them out of the country to kill them in Egypt. She said that a few days later she had been dreaming all night that she had been killed and that she was scared for her son. On 7<sup>th</sup> April 2010 the mother obtained an ex parte non molestation order against the father based on the allegation of the phone call two days previously.
- 39 On 30<sup>th</sup> April 2010 Irwin J. in the Administrative Court rejected the mother's application for a further review of the dismissal of her asylum claim. This clearly affected the mother very badly and it was a day or two later, on 1<sup>st</sup> May 2010, that she was found by the police as mentioned in paragraph 11 above, disorientated and wandering on the M11 motorway.
- 40 On 10<sup>th</sup> June 2010 the mother's immigration solicitors made a fresh asylum application by letter to the UKBA. It was based on a claim that "the mother actively practices Khabbalah, a prohibited religion in Egypt". They prayed in aid the "wide ranging press reports" regarding her religious practices as supporting the submission that she would face persecution in Egypt. That application was in fact subsequently withdrawn. On 9<sup>th</sup> February 2011 the mother's solicitors served her nullity petition in draft. This was the first ever reference to nullity proceedings. As already stated, leave was not given for that petition to be issued without a marriage certificate.
- 41 On 4<sup>th</sup> June 2011 the mother took S to 'A&E' because she said that the water in his water bottle did not taste right. She expressed concern that the bottle had been tampered with and that S had been poisoned. In fact, no problem was found and S was perfectly all right.
- 42 The above is a much truncated version of the full chronology of the events in this matter; but it is sufficient to deal with the issues before me at this hearing. I emphasise that nothing else is before me at all at present, save for the petition for nullity and the consequential side-issues as to credibility which the petition has thrown up.

## **D THE MOTHER'S TEXT MESSAGES TO THE FATHER**

- 43 Running through the latter part of the above period, from May 2009 until July 2011, the mother sent about 230 text messages to the father. They are summarised in a Schedule prepared by the father's solicitors at I.3 to I.45. The father did not reply to them but passed them to his lawyers who, I understand from Mr. Nurani, weeded out the ones that needed a response and ignored the others. The text messages represent a helter-skelter of seemingly conflicted emotions about the father and his role (actually, by then none) in the life of the mother and S. They veer wildly from expressing utter hatred of him (see the text of 19<sup>th</sup> August 2010, text 98, saying simply "I hate you" seven times) to expressing great love and affection for him, as in her text of 19<sup>th</sup> May 2011, text 218. There she said: "Life is worthless without you, my love, my pride. I hope there are no hard feelings between us. God keeps you and confers on you a long life so that you can remain with us, as I have no-one in the world but you. I believe there will be a day when we are united again and my dreams come true, where our child lives under the wings of both his mother and father and is not deprived of his father's warm heartedness and affection".
- 44 Alongside that, there are multiple references to the father's wishing and intending to kill the mother and S, including for example one on 22<sup>nd</sup> March 2010, text 53, asking whether he had sent someone to spray poison over S, making him ill. On 7<sup>th</sup> November 2010, text 152, the mother texted the father "Do you still love me?" On 4<sup>th</sup> January 2011, text 184, she texted him "Are you planning to kill us tonight?" followed the next day by a chatty text about the colour of S's eyes. On 21<sup>st</sup> March 2010, having been expressing herself as terrified of the father, she texted him details of S's second birthday party inviting him to attend: "... I would be pleased if you could make it. S would be really happy if he had his dad. Lots of love Nivin xx". On 8<sup>th</sup> March 2011 the mother asked the father in text 203 whether he wanted her to be brunette or blonde at this court hearing. She said she would not wear black clothes "... as I know this is your favourite sexy colour and I don't want to get you excited in court". On 8<sup>th</sup> April 2011 she texted him that she would be claiming £151 million at this hearing and £90,000 a month for S. In her last text dated 3<sup>rd</sup> July 2011 she called father "a fox" and told him that she hated him.
- 45 It is difficult to know what to make of these texts, although they are more understandable than they would otherwise have been in the light of the psychiatric evidence summarised in part B above. They demonstrate a person who is impulsive and whose emotions seem to veer wildly with her mood. They show her able to shoot from the hip one minute and to act or speak quite inconsistently the next. Perhaps the mother got it right when she said in her text of 28<sup>th</sup> March 2010, text 64, "I love you and I hate you at the same time". That said, I do not consider that the text messages actually throw any direct light on the issues of credibility which present themselves at this hearing.

## **E DISCUSSION AND CONCLUSION ON THE FIRST ISSUE: WAS THERE A WEDDING CEREMONY?**

- 46 Mr. Pointer QC submits that the mother's credibility is so "shot through" on multiple issues (including the key one as to whether there was any ceremony at all on 11<sup>th</sup> January 2007) that she should be generally disbelieved. In paragraph 6 of his closing written submissions of 19<sup>th</sup> December 2011, amplified in oral submissions, he sets out 26 points from (a) to (z) on which he says the mother is not to be believed. It would be disproportionate to deal with them all here, although I have taken them all into account and reflected on them carefully. These are my findings on the main ones.
- 47 The Immigration Tribunal findings. Mr. Pointer relies on the findings of Judge Francis, who did not regard the mother as credible. The issue there was, however, different, and the evidence and credibility points were, I venture, less far ranging. But the findings of the AIT certainly represent a point in the father's favour and one to which I pay careful regard.
- 48 Medical expenses for S. It is said that the mother made a false allegation by saying in cross-examination that the father had not met S's medical expenses when he was asked to do so. Having seen the Schedule of text messages and the way in which these were processed through the respective solicitors, I consider there is something to be said for both parties on this issue. The father did indeed pay; but the delays whilst things were checked out (perhaps not unreasonably) were such as to lead the mother to suffer much anxiety, and she did in any event agree in cross-examination that he did pay, but not straight away. I do not regard her credibility as having been impugned on this issue, as submitted on behalf of the father.
- 49 The alleged threatening telephone call on 5<sup>th</sup> April 2010. As to what I will describe as the 'telephone call which never was' on 5<sup>th</sup> April 2010, I have already set out (paragraph 37) the mother's allegation about this. In fact, as is common ground, the Orange log for that evening does not show any incoming call from the father to the mother. The mother says she nevertheless believes the call took place, saying she clearly heard and recalls it. If there had been nothing more, I would have concluded that the mother had simply invented this call to bolster her pending immigration application to the Administrative Court based on her alleged fear of the father. However, it is not that simple, given her text to the father that same evening: "Why are you saying you want to kill me? That's because I love you or you want to stop me from taking my son's rights (etc)". Of course, the mother could simply have falsely concocted and sent such a text message to support her case that there had just been an incoming call, although it would require a certain level of deviousness. Having seen and heard the mother, I consider that she did and does believe there was a threat by telephone. I am not, however, satisfied that there is any substance in her stated belief that the father has used his power and

influence to get Orange to fix its computerised records by deleting a call from him that evening. I consider that to be fanciful. Digressing for a moment, I have noted the mother's recording strange dreams from time to time. For example, on 15<sup>th</sup> March 2008 she recorded (in writing) dreams which she had before she knew she was pregnant, whereby she dreamt herself to be at Mecca, about which she wrote down considerable vivid detail. She recorded that she had dreamed also that she was in Harrods, a dream which involved the Queen (i.e. the Queen of England). She dreamed a further dream, also involving the Queen set in a fish restaurant in Alexandria. Her one page record of these dreams says that after two weeks of having them, she found herself to be pregnant with S. It is a self-prepared statement in which she added "I was happy [at being pregnant] but scared of his [the father's] reaction and what would happen between us. Will he divorce me or stay with me ... He loves me and he loves the baby so is he going to come back to us?" That reference to the father divorcing her, albeit self-serving, has an air of spontaneity pre-dating the litigation warfare between the parties and it adds some support to the mother's case that she had been through a wedding ceremony. The mother was taken in cross-examination to another strange dream of hers as texted to the father on 5<sup>th</sup> April 2011 (text 202). She described the dream as "... very scary, like a woman coming to me saying I'm Jean, the world will not end now and your child is the one who is descended from Queen Nefertiti of Egypt who would change the world in the next Millennium. This is the child born from the Middle East we are all waiting for. That's why he has to have his father and you, daughter of Queen Nefertiti, and he has to be in his places [sic] which the cross growing above him [sic] which she said Saeed (Yusef) will transform the world, unite the world, religion, bringing the world peace ... [etc]". She ended that text to the father saying "...I am really scared".

- 50 Against this background and having seen the mother, I am not persuaded that she simply sat down and falsely invented the allegation of a threatening phone call on 5<sup>th</sup> April 2010. It is, in my view, sufficiently possible as an alternative that it originated from some dream or other flight of fancy, borne of the mother's psychiatric/mental fragility at or around that time, as confirmed by the psychiatric reports.
- 51 The dates of the alleged proposal and the alleged ceremony. As to the mother's inability to date the alleged proposals of marriage and her inability to get the wedding date right, it is true that she did not put the engagement in her 2006 diary: but by and large she can be seen to have been using her diaries for recording prospective commitments, and not for recording things which had occurred. If the mother's report of the proposal to Teri Pearson is accepted as having been a report of a genuine proposal, then it is now pretty well fixed on Teri Pearson's evidence (which I accept) as being some time shortly before 23<sup>rd</sup> December 2006.



- 52 Regarding the failure to identify consistently the wedding date, it is undoubtedly true that on multiple occasions within the many records and documents before me the mother can be seen dating the ceremony as “December 2006”. There is even a single reference to 20<sup>th</sup> December 2006 as being the specific date (in Dr. Lawrence’s report dated 3<sup>rd</sup> February 2010). Mr Pointer relies on this as further evidence of the mother’s getting her (false) story wrong. But there would be little obvious logic in the mother’s mentioning a specific date on one occasion only, if she could always remember it (or purport to do so) and I am more inclined to put that reference down to some misunderstanding. She certainly complained to her solicitor about Dr. Lawrence’s report (I am not suggesting she was justified), although not expressly on that point. Likewise, there is a record in the social services’ records dated 18<sup>th</sup> August 2008 that “... they had a secret Islamic marriage. This may have happened in the US approximately four years ago”. That would put the marriage in 2004. However, the mother told me in cross-examination that she had in fact told the social worker that she had *met* the father about four years ago and would never have mentioned the United States as the place of the marriage. That sounds reasonable enough to me, without more. But in any event, Mr Pointer’s point is good that there is clear evidence of December 2006 being consistently put forward by the mother as the wedding date: to the immigration authorities, the social services, and in all the mother’s Schedule 1 affidavits.
- 53 Then from the start of 2011, her case changes and the date of 11<sup>th</sup> January 2007 appears in her evidence as the given date for the ceremony. It is the date to which she now adheres. She explains the change by saying that she did not have either her diary or her baby book, both of which give this date, in her possession until December 2010, since they were being stored for her in Egypt. She says she did not even open the baby book until September 2011. It was when she looked at these documents (she says) that she realised she had previously misremembered the date. She saw in her diary the wedding noted for 2 p.m. on 11<sup>th</sup> January 2007 and saw a reference in the baby book to that date as the date of the marriage. These references do indeed appear in the two documents concerned, the originals of which are in evidence. She says that she had fixed in her recollection that it had been around Christmas, but that her mind deceived her into thinking that this was the traditional Western Christmas date of 25<sup>th</sup> December, whereas the Christmas which should have been lodged in her mind was the Coptic Christmas date of 7<sup>th</sup> January. The ceremony was “around Christmas”, but the date depended on which Christmas. Mr. Pointer rubbishes this explanation, saying it is quite absurd. Mr. Todd supports it, submitting that it would be perfectly possible for someone born and bred in Egypt, although in an Islamic family, to be conscious that the Coptic Christian community there celebrates on the 7<sup>th</sup> January. He asked rhetorically “Why on earth would someone intent on inventing a wedding and having alighted on a December date, then change it to a January date unless it were true, given the credibility points which this would hand to the opposing party?” This is

particularly so, Mr. Todd says, when the mother volunteered the revised date. It was not a revision which she had to make because of anything produced by the father ruling out a December 2006 wedding for example, positive proof that he was not in London in December 2006.

- 54 Mr. Pointer also draws attention to the ages of the parties as stated in the mother's baby book. There, in April 2008, when she says she filled in the book whilst pregnant, she set her age out as 30, whereas in fact she was 31. He also points out two clear changes to dates for events which took place in 2007 where it can be seen that there was an 8 written first, with a 7 added over the top. These are strong points, suggesting retrospective alteration. But, to have ultimate validity, they require an answer to Mr. Todd's rhetorical question: "given that the fact that the father was in fact in London in December 2006, as was the mother for at least some of the time (for example for ten days between 7<sup>th</sup> and 17<sup>th</sup> December) why should the mother go to all this trouble to change her case by taking a different date out of the blue and then retrospectively and falsely concoct documents?" In addition, unless there happened to be a gap in the baby book for the date of the wedding to have been falsely added later, then the mother must have had to construct the whole or much of the baby book retrospectively.
- 55 Issues such as the late addition of information into a document as alleged against the mother are susceptible to expert handwriting evidence, which might or might not be able to determine the point. Without such evidence, I have to say from just an ordinary inspection, that the baby book does have the look of the genuine article and I do not feel it justified to go so far as to conclude that the mother has falsely added the date of 11<sup>th</sup> January 2007 either into her diary or her baby book. It follows that they were written contemporaneously, in around January 2007 for the diary and in April 2008 for the baby book. They represent therefore evidence, albeit self-made, that there was a ceremony on the stated date. All this does not get round the issue posed by Mr. Pointer "What woman forgets the date of her wedding?", described by the mother herself as "the happiest day of my life". I agree that this is a telling point in the father's favour on the key issue and I shall regard it as such when reaching my conclusion.
- 56 The wedding dress. It is the fact, as I have said, that in April 2007, three months or so after the alleged ceremony, the mother travelled with her friend Teri Pearson to Egypt and that the mother was professionally photographed there wearing a wedding dress and a wedding ring. Both say that the mother purchased the wedding ring, which cost the equivalent of about £3,000, in Alexandria. The mother's affidavit evidence states or strongly implies that she bought the wedding dress after the marriage; but in cross-examination she stated that she had bought it several years previously in about 2003. This appeared to be a substantial inconsistency in her evidence; but what she said was spontaneously confirmed in cross-examination by Miss Pearson, who not only confirmed that it had indeed

been bought in bought 2003, but also that she, Miss Pearson, had been with the mother in Harrods at the time of purchase.

- 57 Miss Pearson was not cross-examined on the basis that her (Miss Pearson's) evidence was false in this or any other respect, although it was put to her, and she readily accepted, that she is a close friend of the mother, has lent her money from time to time and is owed some by the mother at present. As I have said, I can discern no good reason why I should not accept Miss Pearson's evidence and I do so.
- 58 It follows that the mother is right in saying that she bought the wedding dress in 2003, the inconsistent wording of her affidavit being probably the product of a misunderstanding caused by the unlikely nature of the mother's case on this point. It is clearly a highly unusual thing for a woman to buy a wedding dress in the hope that a man might propose to her. But then, as the totality of the evidence reveals, the mother does undoubtedly have some objectively strange ideas and flights of fancy. She has support from Miss Pearson in saying that the father mentioned marriage back in 2003, since Miss Pearson states that on an occasion at about that time in the father's flat in SW1 and in the presence of Hakim she (Miss Pearson) asked the father why he was not married. In response she says he replied that he had been waiting to find the mother and would marry her. The mother told me in cross-examination that she, the mother, had just laughed at this. The mother and Miss Pearson were cross-examined on the basis that this was just a joke, and I accept that there are many references in the mother's and Miss Pearson's statements to laughter and jokes shared between the three of them generally. However, in the absence of the father to give me his version of that asserted reference in 2003 to possible marriage, I accept the incident took place. It may have contributed to the mother's "living a dream" of getting married to the father, such that she bought the wedding dress in hopeful anticipation.
- 59 Why, then, did the mother not wear the wedding dress at the alleged ceremony on 11<sup>th</sup> January 2007? Why keep it all that time and then not use it? She stated on affidavit that she had worn an Armani outfit because she had been wearing it when her racehorse had won a race in December 2006; and so she thought the outfit would bring her luck. In cross-examination she said that the father had told her to wear something simple. These two explanations are not mutually exclusive and in the absence of the father to gainsay the mother's evidence of what he told her, I accept her evidence on that point. That sufficiently explains, in my judgment, the otherwise extremely surprising fact that, even though she owned a wedding dress, she did not wear it on the alleged big day. In terms of the mother's doing or not doing what one might expect, it is equally surprising that she chose to lug the wedding dress out to Cairo in order to be photographed in it, when this could just as easily have been done in London. Yet the fact that this is what she chose to do

is confirmed by Teri Pearson and the photographs are in the bundle. It is just one of the many unusual things about this case.

- 60 The Bentley. As regards Mr. Pointer's submissions about the Bentley, I have dealt with that issue at paragraph 20 above.
- 61 The mother's alleged manipulative conduct. As regards the father's assertion of the mother's "general manipulative behaviour", it is said that she made use of the media to put pressure on the father. She is recorded by Kensington & Chelsea Social Services social worker Claudia Megele on 3<sup>rd</sup> August 2010 as having said that a hearing in the High Court regarding the finances would be 'very embarrassing for the father, as journalists would be allowed into court and would be allowed to report on the case'. There are also one or two text messages from the mother to the father which say or imply that she will go to the media, thereby putting him under intended pressure. Mr. Todd's Opening Presentation, prepared when this case was listed for a hearing of all the issues in the round, states: "The mother is keen for the whole case to proceed in public, which she feels would enable S to get recognition as the son of an Arab prince, which he deserves." It is clearly undesirable that a parent should go to the media involving a child as a way of putting pressure on the other parent. On the other hand, it is patent that the mother has felt throughout that there is not "a level playing field" between herself and the father, given his authority, power, influence and wealth. A fair reading of the texts at the beginning of January 2010 shows that, rightly or wrongly, she was genuinely very distressed at her child's serious illness when she went to the Sunday Times. In the particular circumstances I do not consider that it would be right to hold this sort of manipulative conduct against her as a significant factor in deciding who is telling the truth regarding the 11<sup>th</sup> January 2007.
- 62 The symbols in the mother's diaries. I now turn to an aspect of the case which has caused me considerable difficulty; certain symbols seemingly used by the mother in her diaries. A review of them makes it clear that she does use such symbols to convey items of information to herself; although it is also clear that she genuinely tends to doodle as well, without any significance. There are in places asterisks and there are also the kind of stars which a child would put on the top of a picture of a Christmas tree. In particular, there are in places numbers, some in a single circle, some in a circle made by running the pen several times round the number, and some not in circles at all. Asked about these in cross-examination, the mother first told me that they had and have no significance, and/or that she did not know what they meant.
- 63 After further work had been able to be done by the father's legal team on the diaries, Mr Pointer put it to the mother specifically that the multi-circle figures are in fact a code showing the number of days after the commencement of her last menstrual period, such as to inform her when she would or would not be fertile.

Mr. Pointer suggested to her that she recorded these numbers of days so as to be able to have unprotected sex with a number of different men (paragraph 6w of Mr. Pointer's final submissions) whose names appear in her diaries. The mother denies this and gave explanations as to the men's names appearing near to the numbers in question.

- 64 Just after Mr. Pointer's allegation had been put to her on this point and she had returned to her place in the body of the court, the mother caused herself to be recalled to the witness box by Mr. Todd. She said that she had remembered that the dates did indeed relate to the start of her previous menstrual period, the reason being that she was then on hormone replacement therapy prescribed by an Egyptian doctor, which had to be taken at certain times within the cycle. She told me that one particular symbol, appearing on 4<sup>th</sup> August 2007 (one of the two days of the weekend when the mother says she conceived S with the father), does represent her having had sexual relations. However, it only appears the once in the two diaries before me and I do not agree with the mother that the same symbol appears on 11<sup>th</sup> April 2007, as she thinks it does.
- 65 I have spent a much time on the diaries and on the Schedule of them prepared on the father's behalf annexed to Mr. Pointer's final submissions. I accept that there are occasions when the encircled numbers do arithmetically count back to the start of the last menstrual period, for example, the numbers in circles on 12<sup>th</sup> and 16<sup>th</sup> April 2007, then from 25<sup>th</sup> April to 5<sup>th</sup> May 2007, and also on 4<sup>th</sup> August 2007 itself (one of the conception days) which has the number "17" in a multi circle. That date, the 4<sup>th</sup> August 2007, is arithmetically 17 days after the last period had started on 19<sup>th</sup> July 2007. There are, on the other hand, other numbers, also ringed but with only one circle, which plainly do not relate to the mother's menstrual cycle, for example, 11<sup>th</sup> to 14<sup>th</sup> September 2006, and 2<sup>nd</sup> February 2007. Further, there is one circled number, namely the number "20" on 25<sup>th</sup> April 2007 with a man's name beside it (explained by the mother as being an uncle of hers in Egypt, where she says she innocently saw him that day). Whilst there is no medical evidence before me about fertility times within the menstrual cycle, my understanding is that there is a risk of pregnancy up to days 21 or 22 of a reliable cycle, counting from the start of the last period. If that be right, (assuming that under the father's theory the mother was wanting to *avoid* conception) then that fact – namely alleged sex on day "20" – would not seem to support the theory. Again there is a reference to sex (on the father's theory) on day "22", which would be perilously risky as regards possible conception. There is also the question as to why a woman wanting sex with a number of men would not arrange obvious precautions?
- 66 I am left in a state of uncertainty about these diary symbols. The allegation of sex with other men is of course important, both in the general context of credibility and on the likelihood or not of there having been a marriage. However, it is not pivotal to either and it has not been capable of being pursued as though it were "the" issue

in the case. I propose to make no findings about what precisely the symbols were intended to show because, in my judgment, the key issue can be fairly decided without. What I do say is that the manner of the mother's dealing with them in the witness box was unsatisfactory, in that she appeared not to be forthcoming (at least, not until pressed by Mr. Pointer to the effect that the numbers related to her menstrual cycle). I am of the view that a full explanation of all the symbols has not necessarily been given and, if that be so, then it is probably for some reason which the mother does not wish to disclose. But I do not think it possible to draw any firm conclusions as to what that reason might be. I shall take this into account when reaching my decision.

- 67 Interior design work at the father's flat. On the question of the redecoration of the father's Knightsbridge flat, on which the mother says she started a design project in about August 2007 so that she could move in there, there is one email only by the mother headed up with that particular address. The other emails upon which she relies as purporting to show the address, do not do so. The father says there is absolutely no question that he would have allowed the mother to consider interior design, since all that sort of thing is carefully managed, for good tax reasons, through the Dubai office via the company/trust structure. I am not satisfied on the evidence which I have seen that the mother embarked on an interior design project at the father's request. She may have been on the point of putting forward some ideas, but in my view, on her own initiative and not as arranged with the father. Then she became pregnant, so nothing further happened regarding the flat. The issue does not in my view significantly inform the issue of credibility.
- 68 Absence of living together. On the question of the mother and the father's living arrangements after the alleged marriage, it is true that they had no matrimonial home and that they saw each other only very infrequently: in fact, only about four recorded times in 2007 according to the mother's diary. However, some couples live their lives like that and I cannot see it as anything other than a factor tending, and merely tending, to cast doubt on the mother's case.
- 69 The mother's religion. Last, there is the question of the mother's religion. In her immigration screening interview on 9<sup>th</sup> June 2009, as I have said, she described herself, as "Muslim" adding "and I study Khabbalah". Mr. Pointer's final submissions at paragraph 15 set out various references in the documents to Khabbalah, including even to one about her having changed her religion from Islam to Khabbalah. At paragraph 16 he sets out the references in her diaries to her attending at many Khabbalah observances and events from April 2006 (nine months before the alleged Islamic ceremony) to February 2007. The mother's case before me is that she remains a Muslim, but with a strong interest in Khabbalah which she finds gives her great support. The submissions made on her behalf to the immigration authorities (above) however go much further than that and imply that she has (or had then) positively abandoned her Islamic faith to practise

Khabbalah in its place. Mr. Pointer's submission is that the mother is now fully converted to Khabbalah, which she strongly denies. I rather side with the mother on this: in that a person can regard him or herself as being of a particular religion whilst still worshipping regularly elsewhere because (for example) he or she finds it helpful, or likes the music, or for any number of personal reasons. The only credibility point which I see on this issue of religion is that, if I am right, then the mother's alleged adherence to Khabbalah in the immigration proceedings was very much hyped-up and exaggerated to create a case for asylum: and that is what I find.

- 70 Those are the main points on the mother's credibility relied on by Mr. Pointer. Mr. Todd, in his closing written presentation backed up by oral submissions deals with them all in so far as he can. He relies on his client's answers in cross-examination and on the father's absence from the witness box to face the same sort of rigorous probing as that to which the mother subjected herself.
- 71 I have weighed all these matters in the round, remembering that the burden of establishing the wedding ceremony is on the mother, the standard being the balance of probabilities. I am tolerably confident that if the father had attended, had been cross-examined and had given anything approaching a reasonably good account of himself, then I would probably have concluded the underlying credibility issue in his favour, holding either that the mother had falsely invented the alleged wedding ceremony (presumably for financial gain) or else, as a result of her unusual personality traits and emotional fragility, had somehow incorporated it into some sort of disassociated dream world where, for her, wishes come to be reality.
- 72 However, I need to take careful stock of what has actually happened here. The father relies on no evidence at all as to why he could not be here, merely instructing Mr. Pointer to tell the court about his need to attend the Gulf Cooperation Council Summit in Riyadh. The very short internet newscast issued by the Emirate government and handed up by Mr. Pointer on Monday 19<sup>th</sup> December 2011 speaks of the Summit being on only the 19<sup>th</sup> and 20<sup>th</sup> December 2011, that is Monday and Tuesday of this week (it now being Thursday). The father did not instruct that any application be made for an adjournment and none was made. Mr. Pointer simply told me that he would be going straight into his submissions on the father's behalf without calling the father, which is what happened. This is tantamount to the father saying that he does not propose to attend to give any evidence in support of his own case, nor in respect of the rigorous adverse case which he instructed be deployed against the mother. Although Mr. Pointer told me, and of course I accept, that he (Mr. Pointer) was personally only told of the father's asserted GCC commitment on Sunday 18<sup>th</sup> December 2011 (the day before the father's evidence was due) I cannot, without more, accept that the father has himself been unaware of this forthcoming commitment. He must have known a reasonable time in advance that he was being or would be asked to attend the summit, and that this would or might clash with

this hearing. I note that on the jointly prepared Witness Template submitted on Tuesday of last week, 13<sup>th</sup> December 2011, the father is down to give evidence on Monday 19<sup>th</sup> December 2011 and that the case ran exactly to that timetable. So everyone was clearly wrong-footed by Mr. Pointer's announcement that the father would not be giving evidence, just seconds before he was due to be called.

- 73 The father has taken the moral high ground in this acrimonious litigation, saying for example at C79 that the mother's approach to the litigation has been "discreditable"; whereas his own has been "constructive and civil". Yet his non-appearance has denied Mr. Todd the ability to cross-examine him on the mother's behalf on a variety of issues of fact, as Mr. Todd mentioned to me in his final submissions.
- 74 There has been some discussion about the hearsay rules. As I indicated to Mr. Todd, what I propose to do, having extensively read the father's statements expecting him be called, is pragmatically to admit those statements into evidence as hearsay; but I shall attach little weight to them where the issue is controversial, or where his evidence is set against any reasonably acceptable evidence given by the mother. In fairness to her, I must also consider drawing some inference from the father's non-attendance. The least adverse inference I can draw against him is that he has chosen not to attend because he does not wish to subject himself to similar probing cross-examination on the various issues, including of course the alleged ceremony, as that to which the mother has subjected herself.
- 75 Further to this, there is the question of the two alleged witnesses: Tariq and Hakim. In the mother's statement of May 2011 they were clearly alleged to have been present in the flat on 11<sup>th</sup> January 2007. It is true that the burden of proof is on the mother; but she could be forgiven for anticipating that they would have sided with their employer and in any event, she was in-and-out of having legal representation during the period of preparation of the nullity proceedings. The upshot was that no attempt was made by her or on her behalf to ascertain the whereabouts of Tariq and Hakim from the father's solicitors. However, the father could have located them, as they are or were members of the staff at his flat. One would thus have expected statements from them, denying that they were ever present at any wedding ceremony; or at least some explanation on the father's behalf as to why such statements could not be obtained. But there are none such, and as Mr. Todd submits, I am left to wonder why.
- 76 Putting all this mass of information together, and having regard to the father's failure to attend, the conclusion which I have reached is that I should, on balance, accept the mother's evidence of a wedding ceremony on 11<sup>th</sup> January 2007. In the process of reaching my decision I have considered whether I should find that the mother dreamt or imagined it, wishing and believing that it had occurred because she wanted it so badly. But this would require her to have genuinely dreamt or



imagined both a proposal in December 2006 and a ceremony some six weeks later, which I consider to be a step too far. I have also wondered whether the ceremony may have been something less than an actual wedding – perhaps some sort of fidelity or commitment ceremony. But on the competing version of events, there is no mandate for this. It was an Islamic wedding ceremony, or it was nothing. I have concluded, on balance, that it was the former. It is not for me to second guess, even if I could, the precise motivations of either party which led him/her to take this step.

**F THE SECOND ISSUE: WHAT, IF ANYTHING, IS THE LEGAL EFFECT IN ENGLISH LAW OF THE ISLAMIC WEDDING CEREMONY? DID IT CREATE A VOID MARRIAGE OR NO MARRIAGE AT ALL?**

77 By s.11 Matrimonial Causes Act 1973 a marriage is void on the following grounds only, namely that

“... (a) it is not a valid marriage under the provisions of the Marriage Acts 1949 to 1986, that is to say where ... (3) the parties have intermarried in disregard of certain requirements as to the formation of marriage ...”.

78 This section and the issue to which it gives rise (namely when does a ceremony or ritual create a marriage which the section renders void and when does it create nothing, or a so-called ‘non-marriage’) has been the subject of a number of decisions. In *R v. Bham* [1966] 1 QB 159, a decision directly on the Marriage Acts, a Mohammedan leader of a Muslim religious sect was charged with and convicted of the offence of solemnising a marriage other than in a licensed building. The service had been a Nichan in a private house, performed in accordance with Islamic law and would have created a potentially polygamous marriage. The then Court of Criminal Appeal allowed the defendant’s appeal against his conviction, describing his counsel’s submissions as correct that:

“... the Marriage Act 1949 ... is dealing throughout with marriages as known to and permitted by English domestic law ... It does not seem to the court that the provisions of the Act have any relevance or application to a ceremony which is not and does not purport to be a marriage of the kind that is allowed by English domestic law. That this was a ceremony under the Islamic law admits of no doubt ... but unless the ‘marriage’ purporting to be solemnised under Islamic law is also a marriage of the kind allowed by English law, it is not a marriage with which the Marriage Act 1949 is concerned ... What, in our judgment, was contemplated by this Act and its predecessors in dealing with marriage and its solemnisation and that to which alone it applies was the performing in England of a ceremony in a form known to and recognised by our law as capable of producing, when there performed, a valid marriage. For the Act to have any application to

the ceremony, in our judgment, [it] must at least be one which will prima facie confer the status of husband and wife on the two persons.”

- 79 That approach has been followed in subsequent cases in this area: *Gereis v. Yagoub* [1997] 3 FCR 755 Judge Aglionby; *AM v. AM* [2001] 2 FLR 6 Hughes J. (as he then was); *Gandhi v. Patel* [2002] 1 FLR 603 Park J.; and *Hudson v. Leigh* [2009] 2 FLR 1129, a decision of my own. In *AM v. AM* a man and a woman of the Islamic faith (the man already married, as both knew) underwent a ceremony of marriage in a flat in London conducted by an Islamic Mufti. There was an exchange of rings and vows were taken. Friends attended and the wife wore a wedding dress, with hat and veil. A certificate of marriage was signed by both parties. All concerned intended the marriage to be a formal marriage by the Islamic process. Hughes J. held *obiter* that the reasoning applied in *R. v. Bham* should be applied and he therefore found that the ceremony did not give rise to a valid marriage (plainly), nor even to a void marriage susceptible to the grant of a declaration of nullity (see para.58). He stated that

“... Unless a marriage purports to be of the kind contemplated by the Marriage Acts it is not, I hold, a marriage for the purposes of S.11 of the Matrimonial Causes Act 1973 ... It is clear that the present ceremony did not begin to purport to be a marriage according to the Marriage Acts, with or without fatal defects. It was not conducted under the rites of the Church of England, nor was there ever any question of an application for, still less a grant, of a Superintendent Registrar’s certificate, and it was conducted in a flat which was clearly none of the places which was authorised for marriage. The ceremony was consciously an Islamic one rather than such as is contemplated by the Marriage Acts ... Nobody purported to conduct or take part in a Marriage Act 1949 ceremony, and the fact that no-one applied their mind to how the English law would view what they did does not alter that conclusion. It is not only a question of polygamy which *ipso facto* takes this ceremony outside s.11, but the fact that it in no sense purported to be effected according to the Marriage Acts, which provide for the only way of marrying in England.”

- 80 That reasoning, whilst *obiter*, was followed in *Gandhi v. Patel*. There, having stated the basic proposition that it is the law of the State where the ceremony takes place which governs the question of formal requirements, Park J. said

“... English law recognises the validity of a marriage conducted in an overseas jurisdiction if the ceremony complies with the requirements of that jurisdiction, even if it would not have complied with the nearest equivalent requirements which apply under the law of England. The other side of the coin is that if a ceremony which takes place in England is to create a relationship which English law will recognise as a marriage, it

must comply with the formal requirements of English law. Those requirements are mostly contained in the Marriage Act 1949 ... If a man and a woman whose families originated abroad take part in this country in a ceremony which, by the traditions of their own community, would or might give rise to a lawful marriage but the ceremony does not comply with the Marriage Act 1949, they are not married in the eyes of English law.”

He found that the ceremony “failed in multiple respects” to comply with the formal requirements of the Marriage Act 1949 and therefore was incapable of creating a marriage recognised as a marriage (not even a void one) under English law. He held that the alleged marriage was in law a ‘non-marriage’ because it ‘purported to be a marriage according to a foreign religion’ and made ‘no attempt to be an English marriage within the Marriage Acts’.

- 81 In *Hudson v. Leigh* [2009] 2 FLR 1129 I reviewed these authorities, quoting additionally an article by Rebecca Probert, Lecturer in Law at the University of Warwick, “When are we married? Void, non-existent and presumed marriages”. Vol. 22 Legal Studies 2000 p.398. There she said:

“It is clear from the logic – or lack of logic – of the Marriage Act 1949 that a concept of non-marriage is necessary since a marriage conducted outside the framework of the Act can be neither void nor valid.”

I concluded in *Hudson v. Leigh* that there exists a concept (in shorthand) of ‘non-marriage’ known to English law, it having been submitted to me that there was not. But I found it impossible to achieve any definition. I said in paragraph 79 that:

“Questionable ceremonies should I think be addressed on a case by case basis, taking account of the various factors and features mentioned above including particularly, but not exhaustively: (a) whether the ceremony or event set out or purported to be a lawful marriage; (b) whether it bore all or enough of the hallmarks of marriage; (c) whether the three key participants (most especially the officiating official) believed, intended and understood the ceremony as giving rise to the status of lawful marriage [I was referring to lawful under English law]; and (d) the reasonable perceptions, understandings and beliefs of those in attendance. In most if not all reasonably foreseeable situations, a review of these and similar considerations should enable a decision to be satisfactorily reached.”

- 82 Here, Mr. Todd relies on para.5 of the mother’s statement of 3<sup>rd</sup> October 2011 where she states:

“I believed, both that the ceremony gave rise to a valid Islamic marriage and that a valid Islamic marriage was accepted as a valid marriage for the

purposes of the law of England and Wales. I believed the father shared this belief and that we both believed that the ceremony gave rise to a marriage which was valid in the eyes of the secular law of this country.”

He refers also to paragraph 17 of the same statement, where she states the belief that the Imam felt the same. Relying on these passages, he makes the submission that in this case the intention of the parties is the all important factor, converting a ceremony which failed to comply with the Marriage Acts into a marriage, albeit a void one, (void as a result of having so failed). This was a refrain of his submissions on the law, differentiating this case, he asserted, from the sort of case (like *Hudson v. Leigh*) where a ceremony may be performed and undergone when no-one intends that a marriage compliant with English law should be created.

- 83 I have had the benefit of expert evidence in Islamic law from Mr. Ian Edge of Counsel on the requirements of a valid Islamic ceremony of marriage. Putting it very shortly, nowadays a written contract or some written evidence is generally required by the courts in Islamic countries, although a court may exceptionally hear oral evidence instead. It would be rare to find a customary Islamic marriage (known as an “Urfi”) without writing, and it would be unlikely, says Mr. Edge, that an Imam, certainly one from London, would even perform such a ceremony without a written contract. I pause to say that there is no evidence here of where the Imam came from; he may have practised in London or he may not. The gist of Mr. Edge’s evidence was that this requirement for writing has become widely known, to the extent that the traditional Islamic ceremony has actually come to be known generally as a “Katib al Kitaab”, meaning the writing of the agreement. The evidence of Nadida el Dakak, the mother’s Egyptian solicitor, resonated with this expert evidence from Mr. Edge. When the mother told her of the intended secret marriage, Miss el Dakak says she advised the mother against it; but the mother was headstrong and went through with it. Miss el Dakak advised the mother that if the father was insisting on this sort of marriage ceremony, then she (the mother) must be confident that he would declare it later, and she advised her ‘to secure her future’. Miss el Dakak said in her oral evidence that “... in Egypt we don’t like secret marriages”.
- 84 I have had a good opportunity to observe the mother in the witness box, and I have also considered her CV (paragraph 14 above). Given Mr. Edge’s evidence which I have only very briefly summarised (and the transcript of which needs to be read in full) and the evidence of Miss el Dakak, I find it hard to accept that the mother would have considered this ceremony, conducted secretly with no writing, as being one which would be readily recognised in (say) Egypt. It would have been more likely that it would have not been so recognised, and it would be surprising if the mother was not aware of this at the material time. In addition, she was well in with her interest in Khabbalah by January 2007 and would appear to have been at least ambiguous as to her religious beliefs at that time.

- 85 I turn to the mother's asserted belief about the marriage as regards English law. I bear in mind that she had lived mainly in this country for some five years by 2007. It must be tolerably well known generally that there are required formalities before one can be married here. Again, bearing in mind everything I have read about the mother and seen of her at this hearing, I consider that she would have been so aware. I view her expressions of belief that the ceremony would be valid by both Islamic and English law as self-serving. She may perhaps have come to the belief that that is what she thought that the time, but I find it unlikely that she actually did so. She may have had some idealistic dream or wish that it would be valid, and it may have caused her to feel 'freed up' to have a child by the father. But that sort of hope is not the same as an intention to create a valid, recognised marriage with a genuine belief that the ceremony could and would do so.
- 86 The mother does not claim to have taken any steps to ascertain what the formal requirements of marriage would be, whether here in England or in an Islamic country, and I do not accept Mr. Todd's submission that the parties' belief or intent that a ceremony would be valid can serve to convert something which, on the above authorities, would otherwise have been a 'non-marriage' into a (void) marriage. I have no doubt that intention is relevant to the status achieved or not achieved by a questionable ceremony, as being one of the many considerations which need to be taken into account. It is particularly relevant in the presumably unusual circumstances where the parties did not intend to create a valid marriage, or where they realised that for some reason they would not be able to do so. But the converse does not apply. It is not the law, in my judgment, where no or minimal steps are taken to comply with the Marriage Acts and so the marriage does not set out or purport to be a marriage under those Acts, that it nevertheless suffices if the participants hopefully intended, or believed, that the ceremony would create one.
- 87 When I asked Mr. Todd what he could say the parties had done to comply with the Marriage Acts (i.e. what they had done to arrange or participate in a ceremony which set out or purported so to comply) he was only able to say that they (a) had an Imam; and (b) had two witnesses; and (c) intended that it should be valid. In my judgment, that amounts to nothing done by the parties to show an attempt to be part of a ceremony set up to or purporting to comply with the formal requirements of English law. In such circumstances, there exists nothing here in English law susceptible to a decree of nullity under S.11 Matrimonial Causes Act 1973. There was a wholesale failure to comply with the formal requirements of English law. This was not, as submitted, a void marriage but was, in shorthand, a 'non-marriage'. Accordingly, the nullity petition must be dismissed, leaving outstanding the Schedule 1 proceedings claiming support for S. Given the vast costs already spent on this acrimonious litigation, and given that the father can pay any

reasonable order which the court would make, I urge the parties now to redouble their efforts to reach a negotiated settlement without further expenditure of costs.

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