



10 March 2010

PRESS SUMMARY

Agbaje (Respondent) v Akinnoye-Agbaje (FC) (Appellant) [2010] UKSC 13

On appeal from the Court of Appeal Civil Division [2009] EWCA Civ 1

JUSTICES: Lord Phillips (President), Lord Rodger, Lady Hale, Lord Collins, Lord Kerr

BACKGROUND TO THE APPEAL

Mr and Mrs Agbaje were married for 38 years. Both Nigerian by birth, they had met in England in the 1960s and acquired UK citizenship in 1972. All five of their children were born (and all but one educated) in England, and in 1975 Mr Agbaje bought a property in England called “Lytton Road” in which their children stayed with a nanny. But for the majority of their married life Mr and Mrs Agbaje lived in Nigeria.

They separated in 1999, at which point Mrs Agbaje came to live in Lytton Road. She has lived here ever since. In 2003 Mr Agbaje issued divorce proceedings in the Nigerian courts in which Mrs Agbaje sought ancillary relief. The Nigerian court awarded her a life interest in a property in Lagos (with a capital value of about £86,000) and a lump sum equivalent to about £21,000.

Part III of the Matrimonial and Family Proceedings Act 1984 was enacted to give the English court the power to grant financial relief after a marriage has been dissolved (or annulled) in a foreign country. Mrs Agbaje sought such relief. The High Court granted her leave (as required under Part III) and ultimately ordered that she should receive a lump sum equal to 65% of the sale proceeds of Lytton Road (equivalent to about £275,000) on condition that she relinquish her life interest in the Lagos property. The award represented 39% of the total assets.

The Court of Appeal set aside the whole of the English award principally on the ground that the High Court had given insufficient weight to the connections of the case with Nigeria.

Put broadly, the overarching issue for the Supreme Court was: what is the proper approach for courts to take when considering applications made under Part III?

JUDGMENT

The Supreme Court unanimously allowed the wife's appeal and restored the order of the High Court. The judgment of the Court was delivered by Lord Collins.

REASONS FOR THE JUDGMENT

- The Court held that Part III is to be applied in light of the purpose of the Act, which was the alleviation of the adverse consequences of no, or no adequate, financial provision being made by a foreign court in a situation where the parties had substantial connections with England ([71]).
- In applying Part III, the English courts should not be deciding whether it would be appropriate for an order to be made by a court in England or Wales *as opposed to* a foreign court. The whole point of Part III is to allow for relief in circumstances where there have *already* been proceedings in a foreign country ([50]).
- Relevant to the question of whether an order should be made and, if so, what order, will be a number of factors such as the financial benefit which the applicant has already received, or whether the applicant has failed to take advantage of a right under the foreign law to claim financial relief. The hardship or the injustice which would result if no award were made will be relevant factors, although neither are pre-conditions to an award under Part III ([41]-[44] and [60]-[61]).
- Although there was no principle that an English court could only make an award that was the “minimum necessary to remedy the injustice” which would otherwise occur, it was equally not the intention of the legislation to allow a simple “top-up” of the foreign award so as to equate with an English award in every case ([62]-[65]; [72]). If the connection with England is not strong and a spouse has received adequate provision from the foreign court, it will not be appropriate for Part III to be used to “top-up” the award. If the English connections are strong, however, it may be appropriate to do so ([70]).
- The amount of financial provision awarded under Part III will depend on all the circumstances of the case. But three general principles should be applied. First, primary consideration should be given to the welfare of any child of the marriage. Second, it will never be appropriate to make an order which gives the claimant more than she or he would have been awarded had all proceedings taken place within this jurisdiction. Third, where possible the order should have the result that provision is made for the reasonable needs of each spouse ([73]).

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html