IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

CAUSE NO: FAM0269/2020
Rios v Bush [2025] CIGC (Fam) 1

BETWEEN:	**CECIL MARIA VAN EIJK RIOS**	**PETITIONER**
AND:	**HUGH CHARLES BUSH**	**RESPONDENT**

Appearances: **Mr. David Holland of Cayman Family Law for the Petitioner**
Ms. Amelia Fosuhene of Bradys for the Respondent

Before: **Hon. Mr. Justice Richard Williams**

Heard: **On the papers**

Draft Judgment circulated: **06 January 2025**

Judgment provided: **13 January 2025**

Divorce Proceedings - costs

JUDGMENT ON COSTS

The Background - The identity of the parties and the proceedings

1. The matter relates to costs arising in the ancillary relief and child element of divorce proceedings. The wife is the Petitioner, and the Respondent is the husband.

2. At a mention hearing held on 20 September 2024 the Court highlighted the Respondent's failure to attend a number of hearings and his failure to comply with directions made by the Court. The Court

indicated that it was considering making costs orders against the Respondent and against his attorney. The Petitioner is legally aided.

3. The Court has an obligation to take the lead and actively case manage proceedings. This includes marshalling any consequences that may flow from a party's failure to properly engage with the proceedings or to comply with orders of the Court. In this matter, the Respondent has persistently failed to attend Court hearings and to comply with directions of the Court. One might consider reserving the position in relation to costs until the end of the proceedings if such conduct was isolated. However, when it is as consistent as it is in this case, and it creates a real impression that this is the way that a party is intending to improperly litigate the matter, the Court may and should consider the costs consequences of such an approach at this stage of the proceedings. Accordingly, the Court's Minutes from the 20 September 2024 hearing were provided to the parties. In relation to the costs issue, the Minutes stated:

> *"**Costs issues***
>
> *Leave to Ms. Fosuhene to file written submissions (and if she wishes, supporting affidavit evidence) on behalf of herself and the Respondent concerning issues of costs and whether any order for costs, if determined that they should be made against Respondent's side, be by wasted costs order for Ms. Fosuhene to pay and/or by costs for Respondent to pay – The costs for review being those arising from:*
>
> *(i) Failure of Respondent to comply with directions made by Williams J at hearing on 10 February 2022, namely to file affidavits in Ancillary Relief proceedings by or on 11 March 2022 – No affidavit filed at all;*
>
> *(ii) Non-attendance of the Respondent and Ms. Fosuhene at the hearing before Williams J on 28 April 2022 - costs of hearing reserved;*
>
> *(iii) Non-attendance of the Respondent at the hearing before Williams J held 19 October 2022 (reason given by Ms. Fosuhene at that hearing was that she had not informed him of hearing) – Ms. Fosuhene's late attendance at that hearing at 10.56 when matter listed for 9.30AM start;*
>
> *(iv) Non-attendance of Respondent at the hearing before Carter J held on 12 March 2024;*
>
> *(v) The Respondent's non-compliance with the direction of Carter J made at the hearing on 12 March 2024, namely for the second time he was directed to file his affidavit of*

means with relevant supporting documents, this time with a due date by or on 15 April 2024 – No affidavit filed at all; and

(vi) Non-attendance of Respondent at the hearing before Williams J held on 20 September 2024.

- *Written submission on costs to be filed by Ms Fosuhene by or on 4 October 2024.*
- *The Court will decide whether the costs issues should be dealt with on the papers after it received Ms Fosuhene's written submission and after the parties have indicated their preference for the mode of determination.*

In order to assist with preparation of preparation of costs submissions PD No 1/2014 Requirement for Strict Compliance with Court Orders Made in Family Division of the Grand Court & para 39 in Williams J's Judgment in JW v SC Fam 2022-0069 dated 9 August 2024 was read out to them in Court."

4. The Respondent filed written submissions on 16 October 2024[1]. Following receipt of the written submissions, I instructed my Personal Assistant to write to the parties to share my following observations:

"Having read those submissions, I am satisfied that this is not a matter in which the Court will be considering making a waste(d) costs order against the Respondent's attorney. That said, the Court would expect more prioritisation to be given to Family matters.

However, in relation to the remaining costs issue, I would like to afford Mr. Holland the opportunity (if he wishes to do so) to file brief written submissions on the issue of costs. If he files the same, to highlight therein whether any costs are sought for his legally aided client in relation to all the hearings listed in the minute of the last hearing or are limited to specific hearing(s). I would ask that, if any submissions are to be filed, then that be done by close of business on 24 October 2024. If no costs are sought and/or no reply submission(s) are to be filed, could that please be communicated to the court by close of business on Thursday, 24 October 2024.

After 24 October, I will invite the parties to indicate whether they are then content for me to determine any costs issues that may be remaining, to be dealt with on the papers."

[1] The Court extends the time for the filing of the Respondent's submissions at Ms. Fosuhene's request due to her acceptable personal reasons.

5. Counsel for the Petitioner filed written submissions in reply on 24 October 2024. He highlighted that he has a duty to the Legal Aid Fund and that it is a condition of the Petitioner's legal aid certificate that:

> *"Appointed Attorney request of the court at conclusion of the case to consider making an application for an order for costs in favour of the Legal Aid Fund. If no costs were covered, the matter of the Applicant's ability to contribute towards the cost of the matter will be reassessed at the end of the matter."*

He also highlighted that the Petitioner's original legal aid certificate has had to be extended twice due to the delays and the *"required chasing in the matter, caused by the conduct of H and/or his Counsel"*. Counsel confirmed that he had been informed that the Petitioner's latest extension is *'set as final'*. With this in mind, the issue of costs becomes more important and is a relevant consideration at this stage of the proceedings. This is because the Respondent, who appears to be the financially stronger party, may continue with his legal representation whereas the Petitioner may lose her legal aid assisted representation (or have to start contributing towards it) if her legal aid allowance is devoured at hearings which are unable to be productive due to the approach to litigation being taken by the Respondent.

6. In his written submissions, Mr. Holland invites the Court to order costs against the Respondent (payable to the legal aid fund) *"at least[2] in respect of 19th October 2022, 12th March 2024 and 20 September 2024 hearings"*. The use of the words *"at least"* indicates to me that Mr. Holland is not inviting the Court to consider only those three hearings, but to stress his view that those are the three hearings which he feels stand out and which should definitely result in orders for costs being made.

7. On 25 October 2024 Ms. Fosuhene, although addressing her email to Mr. Holland, for reasons best known to her sent the below mentioned inter partes correspondence to my Personal Assistant, copying Mr. Holland in. In the email she thanked Mr. Holland for his written submissions and she added:

[2] My emphasis by underlining.

"In order that I am able to properly reply to them, please would you be kind enough to attach all legal aid certificates including al certificates for the extensions which have been granted."

That does not appear to me to go to the issue of whether a costs order should be made, but it may go to the possible quantum of any costs order. Mr. Holland indicated in reply that the Court had not given any directions in relation to a reply and *"was going to consider determining the issue based on the papers after 24 October"*. He added that he *"will await any further directions from the judge on this"*.

8. On 28 October 2024, on my instructions, my Personal Assistant shared my following comments with the parties:

"Do the parties wish to discuss this at the mention on 4 November 2024? If that is the case, I will likely not be able to get on with making a decision of providing a judgment until sometime in December after the return from my extended leave in November."

Mr. Holland replied:

"That is fine by me. I would also be happy to discuss with Ms Foshuene in advance of 4th November hearing, if she wishes to reach out to me directly."

Ms. Fosuhene replied:

"Received and contents noted , with thanks."

9. As it turned out, the 4 November 2024 was vacated for the reason set out in paragraph 35 below. In the email from the Personal Assistant to the parties sent on 3 November 2024 at 6:55 p.m. concerning vacating the hearing she shared my message:

"Could the parties please promptly confirm whether they are content for me to now get on and deal with the costs issues on the papers and the submissions filed."

Mr. Holland replied:

"I have no difficulty with the Judge proceeding to deal with the costs issue on the papers."

Ms. Fosuhene replied about the adjourned hearing but made no comment about the costs judgment.

10. In light of the non-reply from Ms. Fosuhene, I had my Personal Assistant write the following to Counsel of 10 December 2024 at 12:26 p.m.:

> *"Please can the parties inform whether they are content for me to now write the costs judgment on the materials already filed by them. However, I do not appear to have received a reply from Ms. Fosuhene. Therefore, we would be grateful for reply to that email from Ms. Fosuhene by no later than noon on 17 December 2024. If I do not receive a reply, I will take it that both parties are content to me to now go ahead and draft the costs judgement based (on the) material already filed."*

Mr. Holland replied that he was:

> *"Fine for the Judge to proceed on that basis."*

11. As I have not received any email from Ms. Fosuhene concerning the costs judgment following the Court's communications of 4 November 2024 and 10 December 2024, I now deal with the costs issues on the material filed and written submission made.

Background – The divorce proceedings

12. On 16 September 2020, legal aid (limited to divorce and ancillaries) was granted to the Petitioner with the appointed attorney being Mr. David Holland at KSG Attorneys-at-Law. The grant was subject to a cap of $5,000. The divorce Petition was filed by KSG Attorneys-at-Law[3] on 21 October 2020. The Petition was served on 19 November 2020. The Respondent's Acknowledgement of Service and a Cross-Petition were filed by the Respondent's present attorney on 15 December 2020. On 21 December 2020 the Petitioner's Legal Aid Certificate was transferred from KSG to Cayman Family Law, but Mr. Holland remained as the attorney on record at his new firm. On 21 January 2021 the Petitioner applied for the Petition to be proved. On 22 January 2021 Mr. Holland was informed by the Court about the filed Cross-Petition and the circumstances why the Petition could not be proved at that time. A Notice of First Appointment with a hearing for 4 March 2021 was issued on 23 February 2021. At the written request of the Petitioner, the 4 March 2021 hearing was administratively vacated due to non-service. The hearing was re-fixed for 8 April 2021.

[3] Mr. Holland's firm at the time.

13. At the hearing held on 8 April 2021, the Court was informed that the contested Petitions issue may be resolved with a consent order. The Court was told that there was scope for agreeing the child arrangement orders, especially if the parties attended mediation. The Court was also informed that the ancillary relief financial issues concerned the former matrimonial home and child maintenance. The parties agreed to attend a Mediation Information & Assessment Meeting ("MIAM") on 23 April 2021.

14. A mediation report dated 15 December 2021 informed the Court that mediation had not been successful. Therefore, on 20 January 2022, a Notice for a mention hearing to be held on 10 February 2022 was issued.

Hearing and Order of 10 February 2022 – directions to file affidavit evidence – The Respondent's non-compliance with the 10 February 2022 Directions Order

15. At the hearing on 10 February 2022, the Court was again informed that the contested Petitions issue would likely be resolved by a consent order. The Court was informed that the child of the marriage was living with the Petitioner and the Respondent was having contact. The Petitioner sought a sole residence order in her favour, with contact with the Respondent. The Respondent sought a shared residence order with the child spending equal time with each parent. A referral was made for a court welfare officer to assess the issues of residence and contact and to submit a report by 22 April 2022. Directions were then given in relation to both financial and child issues. The Court directed:

    (i) the parties to file and serve affidavit evidence dealing with financial and child issues by or on 11 March 2012;

    (ii) the parties to file and serve any requests for further and better particulars by 25 March 2022;

    (iii) the parties to file and serve any replies to any filed requests for further and better particulars by 15 February 2022;

    (iv) the parties to file and serve any further affidavits in the child arrangement proceedings no later than 14 days prior to the child hearing;

    (v) that there would be a mention hearing on 28 April 2022; and

    (vi) that the parties have leave to fix a two-day child arrangements hearing on the first open date after 9 May 2022.

16. On 15 March 2022, albeit four days late, the Petitioner filed her affidavit. The Respondent failed to comply with the direction to file an affidavit. The Court Welfare Officer Report ("CWOR") was filed on 21 April 2022.

Conclusions about costs having regard to the Respondent's failure to comply with the direction about the filing of affidavit evidence made on 10 February 2022

17. In the written submissions, the Respondent concedes that the non-filing of the affidavit was *"a mistake in the office of counsel"*. Ms. Fosuhene explained in her submissions:

> *"The fact is, although one was drafted with the Respondent and an up-to date one has been drafted and filed, there is an internal memo. It appears that was overlooked by the person with whom it was left and who no longer works for the firm."*

Although this is a commendably forthright explanation, it is one indication that the case was not being properly managed by the Respondent's attorneys. Despite recognising the veracity in the question asked by Mr. Holland in his written submissions, namely:

> *"If, as H's Counsel suggested in her submissions, H had in fact prepared an affidavit back in March 2022, then it begs the question why it took another four hearings (and 2½ years) before any affidavit or disclosure was provided."*

I am of the view that this early failure to comply with a Court direction about the filing of affidavit evidence should not in itself be a reason for granting costs at this stage. However, it may be a factor to consider if litigation conduct is raised in the proceedings or if the Court is required to consider the issue of costs at the end of the proceedings.

Hearing and Order of 28 April 2022 – Non-attendance of Respondent and his attorney at the 28 April 2022 hearing

18. The Petitioner and her Counsel attended the mention hearing on 28 April 2022. Despite the fact that the mention hearing date and time had been clearly set out in the prepared Court Welfare Officer's Referral Form dated 11 February 2022 and the Court's Minute of Order dated 11 February 2022 sent to the attorneys, the Respondent and his Counsel failed to attend the 28 April 2022 hearing. Therefore, nothing could be done at the hearing, and it was a wasted hearing. My notes from the hearing stated:

> *"Mr. Holland had asked for (adjournment) to consider the CWO(R), but not granted as Ms. Fosuhene had not confirmed agreement- she failed to reply to the Court and to Mr. Holland about (the adjournment) - Therefore costs of today reserved. Appears Respondent not comply with directions (made) at last hearing - parties to seek and fix new mention date."*

The hearing had to remain in the list as Mr. Holland's request for an adjournment was not granted by the Court because it was waiting for the Respondent to communicate whether there was agreement to the adjournment, and no such confirmation was forthcoming to Mr. Holland or to the Court.

Conclusions about costs having regard to the Respondent and his attorney's non-attendance at the hearing on 28 April 2022

19. In the written submissions, the Respondent's attorney, to her credit, readily accepts that the non-attendance was *"an oversight"* on her part. She further stated that:

> *"It was a genuine mistake that counsel was not present at the hearing, there was a diary issue which meant that the matter was not in the diary of counsel. It was not an improper, unreasonable or negligent act or omission of counsel. Counsel apologises for the mistake. Due to counsel's mistake, the client was not informed of the hearing."*

I accept the above explanation for Counsel's non-attendance. I agree that her conduct leading to that non-attendance may not be regarded as being *"improper, unreasonable or negligent"*, but is, however, unprofessional and, using the words of Sir James Munby in ***Re W (A Child), RE H (Children)*** 2013 EWCA Civ. 1177, *"slapdash"* and *"lackadaisical"*.

20. As mentioned, the 28 April 2022 hearing was a non-productive hearing due to the non-attendance of the Respondent and his attorney. The sums expended by the Legal Aid Fund to cover the work done by Mr. Holland in preparation for and his attendance at the hearing were wasted and there is no reason why the Legal Aid Fund or the Petitioner should bear the responsibility for those costs. I am satisfied that those costs should be met by the Respondent. Therefore, upon now considering the reserved costs order made on 28 April 2022, I order the Respondent to pay the costs of the Petitioner resulting from that hearing.

Hearing and Order of 19 October 2022 – Non-attendance of Respondent at the 19 October 2022 hearing- The Respondent's ongoing non-compliance with the terms of the February 2022 Order

21. On 7 October 2022, the Petitioner's attorney filed a Notice for Hearing for 19 October 2022. The Court had, on 28 April 2022, directed the parties to obtain a mention date and that direction had to be made partly due to the continual non-compliance of the Respondent with the direction to file affidavit evidence. The mention hearing was required and the costs expended on the hearing were due to ongoing non-compliance with the Court's directions. One would have expected that, after the April 2022 hearing, the Respondent would have promptly filed the overdue affidavit.

22. Ms. Fosuhene arrived one hour and twenty-six minutes late for the19 October 2022 hearing and the Respondent for the second hearing in a row failed to attend a hearing in these proceedings. His absence meant that the Court was unable to inform the Respondent about his obligations to comply with directions. Due to the ongoing lack of compliance by the Respondent with the previous directions made in February 2022, the following directions (which in relation to filing the evidence were, in their nature, very similar to the February 2022 directions) had to be given:

(i) The Respondent to file and serve updating affidavit dealing with ancillary relief application by or on 2 November 2024;

(ii) The parties to file and serve request for further and better particulars by or on 23 November 2024;

(iii) The parties to file and serve any replies by or on 10 May 2024;

(iv) The parties have leave to attend mediation and may contact the mediator directly about that; and

(v) on the basis that there is a consent order approved in relation to the child arrangement issues and the Petition is proved, leave to fix a final ancillary relief hearing with the time estimate two days on the first open date after 1 February 2023. The parties may vacate and refix any hearing date they obtain if mediation is progressing.

23. Ms. Fosuhene indicated in her written submissions that the non-attendance of the Respondent at the 19 October 2022 hearing was again due to her failing to inform him of the date. She stated that she was not able to speak with him and highlighted that he may have been *"at sea"* on his employment on the two days she attempted to contact him. Ms. Fosuhene said that she had attempted to inform him by telephone, but the *"phone rang out"*. She accepts that she did not email

or WhatsApp him. I accept that the conduct of Counsel may not be characterised as being *"improper"* or *"negligent"*, but the efforts which were made to notify her client were minimal and could not be viewed in any way as being exhaustive. In any event, the Respondent had an obligation to keep in touch with his attorney when he is aware that he has an ongoing case. Although I accept Ms. Fosuhene's apology for her very late attendance at that hearing, it was an unattractive example of Counsel prioritising matters she had commitments to in another Division of the Grand Court over and above her commitments to this Family Division matter. Most regrettably, the Respondent was continuing to fail to comply with the directions about filing his ancillary relief affidavit. Ms. Fosuhene did not deal with that ongoing failure in her written submissions.

Conclusions about costs having regard to the Respondent's non-attendance at the hearing on 19 October 2022 and his ongoing failure to comply with the Court's direction about the filing of evidence made on 10 February 2022

24. I am of the view that Respondent's failure to attend the October 2022 would not, in itself, be a reason for making an order for costs against him. Such conduct could be a factor to consider if litigation conduct is raised in the proceedings or if the Court is required to consider the issue of costs at the end of the proceedings. However, his ongoing failure to comply with directions about the filing of his affidavit made the mention hearing a necessary one. In effect, the case had not been able to move on at all since the directions were given in February 2022 and this was due to the Respondent's abject failure to comply with directions. Therefore, the costs incurred resulted from the Court having to hold a hearing at which the only case management the Court was able to undertake, due to Respondent's non-compliance with its directions and lack of proper engagement in the proceedings, was to give almost mirror directions to the February 2022 directions. Accordingly, I order the Respondent to pay the costs incurred by the Petitioner in relation to that hearing.

Background - Consent Order – Resolving contested Petitions issue

25. To their credit, on 6 December 2022, the parties submitted a Consent Order[4] which resolved the contested issue on a no order for costs basis. That Costs Order, which was not mentioned by either party in their written submissions on costs, has no bearing on the wider issues which were to be

[4] Order initially was prepared in October 2022 as it had the date 19 October 2022 on it, but it appears it was signed on 6 December 2022.

discussed at the 28 April 2022 and the 19 October 2022 hearings. It was agreed that the Petitioner would amend her Petition, and that the Amended Petition proceed as undefended.

Background – Attempts made by the Petitioner, between July 2023 and March 2023, to restore the matter before the Court

26. On the Court file I notice correspondence from Mr. Holland sent on 4 July 2023 to the Listing Officer seeking to list the matter for a two-day final ancillary relief hearing. In the email he indicated that he had written to Ms. Fosuhene on 8 June 2023 asking her to complete the Listing Form adding that he had not received a response from her. When writing to the Listing Officer it appears Mr. Holland was wrongly relying upon the direction made on 10 February 2022 giving leave to the parties to fix a two-day ancillary relief hearing. In fact, those directions had been given in relation to a child arrangement hearing, because: (i) the children issues had to be resolved first,[5] and (ii) compliance with the directions in relation to the filing of evidence relevant to the ancillary relief proceedings had not occurred. Mr. Holland sent a chaser email to the Listing Officer on 14 August 2023. He sent a further email on 4 September 2023 saying that it should be listed in early December *"to allow time for final disclosure etc"*, and he stated that he had still not heard from Ms. Fosuhene in relation to the matter. He sent a further chasing email on 27 September 2023. On 27 September 2023, my Personal Assistant, who was acting as the Listing Officer at that time, wrote to Ms. Fosuhene requesting that she provide dates to avoid by close of business on 29 September 2023. On 28 September 2023, Ms. Fosuhene replied with dates to avoid. Further correspondence occurred between the parties and the Listing Officer between October 2023 and February 2024 as there were problems trying to find a mutually convenient date.

27. It appears that the case was allocated by the Listing Office to a different Judge, Carter J. On 20 February 2024, Mr. Holland requested that there be a pre-trial review ("PTR") hearing, presumably because he had concerns that there had still been no affidavit evidence filed by the Respondent who he said had provided no disclosure. There then appeared to be further issues about finding a date for the PTR hearing and, on 7 March 2024, Mr. Holland wrote to the Court indicating that there had been a lack of response from Ms. Fosuhene. He said that there had been a delay *"as a result of the lack of engagement by Ms. Fosuhene and her client"* which should not be allowed to continue.

[5] See paragraph 22(v) above.

The Listing Officer communicated to the parties that the Judge (Carter J) directed that there be a directions hearing on 12 March 2024.

Hearing and Order of 12 March 2024 – Non-attendance of Respondent at 12 March 2024 hearing - Respondent's non-compliance with the terms of the 19 October 2022 Order

28. The matter came before Carter J on 12 March 2024. Everyone attended, save for the Respondent. This was the third hearing in a row in these proceedings which the Respondent had failed to attend. His absence meant that Carter J was unable to inform the Respondent about his obligations to comply with directions. Again, due to the lack of compliance by the Respondent with previous directions about the filing of evidence the following directions (which in relation to the filing of evidence were in their nature, very similar to the February 2022 and 19 October 2022 ordered directions) had to be made. In the preamble to her Order, Carter J acknowledged the Respondent's *"previous failure to file any evidence in the matter"* and indicated *"that should he fail to do so again in accordance with the terms of this order, he is at risk of the court drawing adverse inferences against him at the final hearing".* Carter J made the following directions:

(i) The Petitioner to file and serve updating affidavit by or on 22 March 2024;

(ii) The Respondent to file and serve his affidavit of means with relevant supporting documents by or on 15 April 2024;

(iii) The parties to file and serve requests for further and better particulars by or on 26 April 2024;

(iv) The parties to file and serve any replies by or on 10 May 2024; and

(v) The parties have leave to consult with Listing to obtain a final ancillary relief hearing with a one-day time estimate for the first open date of 10 May 2024.

29. In her written submissions Ms. Fosuhene indicated that the non-attendance of the Respondent at the March 2022 hearing was *"the fault of Counsel"*. In her written submissions, Ms. Fosuhene mentions that the non-compliance with the Directions Order made on 12 March 2024 was also the fault of Counsel, but she did not comment upon the non-compliance with the order made in October 2022. The explanation given for the Respondent's non-attendance was Ms. Fosuhene's involvement in a substantial case in another Division of the Grand Court. Ms. Fosuhene stated in her written submissions it was *"not the fault of the respondent on this occasion"* and added that *"if any costs regarding this hearing are due to be paid then it should not be the respondent who bears them"*.

30. The Respondent holds a responsible job as a coastguard in the Marine Unit of the Royal Cayman Islands Police Service, and the Court would expect him to have sufficient understanding to recognise his obligation to attend Court. The Court can reasonably expect a litigant, who is properly engaged in divorce proceedings, to be regularly contacting his attorney for updates about hearing dates and enquiring, especially having regard to the delays occurring in the present case, why there has been such a delay in the matter moving forward. I note that Ms. Fosuhene states that the Respondent did on one occasion telephone to ask about the date of the hearing. She states that she was unable to take his call as she was in Court, and she conceded that she failed to return his call. Ms. Fosuhene said that she made a note that she was to call the Respondent, but she concedes that she failed to make that call due to her workload.

31. If it is felt by the Court that an order for the Petitioner's costs should be made, what is clear is that it should not be the Petitioner who should be responsible for them having regard to the above circumstances and concessions made by the Respondent's Counsel. Whether the blame lies with Ms. Fosuhene or with her client, or with both, it is clearly not the fault of the Petitioner. The inevitable increased level of the Petitioner's costs (which are to be met by the Legal Aid Fund) has been caused by the poor manner in which the Respondent and his team were seeking to litigate, communicate and/or fail to prioritise the present matter, means that it should be the Respondent not the Petitioner who becomes financially responsible for those particular costs. If an order for costs is made against the Respondent, then it is a matter between him and his attorney concerning which of the two should ultimately suffer that financial burden.

Conclusions about costs having regard to the Respondent's non-attendance at the 12 March 2024 hearing and his failure to comply with the Court's direction about the filing of affidavit evidence made in October 2022

32. I am of the view that Respondent's failure to attend the March 2024 hearing looked at in isolation may not be a reason for making an order for costs against him. This is because Ms. Fosuhene felt able to represent his interests in his absence. However, I repeat, it could also be a further factor to consider if litigation conduct is raised in the proceedings or if the Court is required to consider the issue of costs at the end of the proceedings. However, his non-attendance should be seen in the context of his ongoing non-compliance with orders of the Court. The Respondent's ongoing failure to comply with a straightforward direction about the filing of an affidavit meant that the mention hearing became necessary and had to deal with procedural orders which should already have been

complied with. The proceedings had not been able to progress in any meaningful manner since the directions were given in February 2022 and again in October 2022 due to the Respondent's abject failure to comply with directions. Therefore, these additional costs had to be incurred by having this further directions hearing at which the only thing the Court was able to do, due to the Respondent's repetitive non-compliance with its directions and continuing lack of proper engagement in the proceedings, was to make similar directions to those made in February 2022 and October 2022 directions. Accordingly, I order the Respondent to pay the costs incurred by the Petitioner in relation to the March 2024 mention hearing.

Hearing and order 20 September 2024 – Non-attendance of Respondent at the 20 September 2024 hearing - The Respondent's non-compliance with the terms of the March 2024 Order

33. On 30 August 2024, the Petitioner's attorney issued a Notice of Hearing for 20 September 2024. Everyone attended the hearing, save for the Respondent. Lamentably, this was the fourth hearing in a row which the Respondent had failed to attend. As set out at paragraph 3 above, certain directions were given concerning the issue of costs. Unfortunately, the Respondent had yet again failed to comply with the direction requiring him to file an affidavit in the ancillary relief proceedings. It was evident at that hearing that the Petitioner had become so frustrated by this non-compliance that she was suggesting that the Court still list the Final Ancillary Relief hearing in a vacuum of disclosure and written evidence and go on to make inferences at the hearing against the Respondent. The Court, however, felt that the Respondent should be given one further opportunity to file his evidence and that this would hopefully enable the Court to better reach a balanced and informed decision. As a consequence of the Respondent's non-compliance with dated directions, the Court yet again (now for the fourth time) had to make similar directions to those given on 12 March 2024 by Carter J, on 19 October 2022 by Williams J, and on 10 February 2022 by Williams J. The directions made were:

(i) The Petitioner to file and serve an updating affidavit by or on 4 October 2024;

(ii) The parties to file and serve request for further and better particulars by or on 18 October 2024;

(iii) The parties to file and serve any replies by or on 1 November 2024;

(iv) The ancillary relief proceedings be adjourned to 4 November 2024 at 9:00 a.m.; and[6]

[6] A hearing time before the normal court sitting hours was provided on that date to accommodate Ms. Fosuhene's commitments in another Division of the Grand Court on that day.

(v) Having regard to Practice Direction No.1/2014 and the Respondent's continuing failure to attend Court hearings and to comply with directions to file an affidavit a penal notice was attached to the orders for him to file and serve an affidavit and a reply if any request for further and better particulars were served on him.

34. Again, Ms. Fosuhene indicates that the non-compliance with the Court's direction to file an affidavit was her fault and it was due to her obligations which had to be met in a substantial case in another Division of the Grand Court. She says that the Respondent came into her office fourteen days prior to the hearing to speak to her, but she was unable to speak to him as she was with another client at that time. She said that the Respondent had left his telephone number with her and that she attempted to call his WhatsApp number four days prior to the hearing. She said that he may not have received her message as she saw no ticks appearing on her message. Ms. Fosuhene said that she later found out that the Respondent no longer had that phone and that he had to purchase a new one to replace it. She said that as soon as the Respondent had replaced his telephone, he called her and came into her office. Ms. Fosuhene stated that it was only at this stage that she became aware that there was a problem with the Respondent's previous phone. The same sentiments as those expressed in paragraphs 30 and 31 above apply to the September 2024 hearing. Whether the blame lies with Ms. Fosuhene or with her client, or with both of them, these additional costs incurred are clearly not the fault of the Petitioner. If any increased costs are incurred because of the manner in which the Respondent and his team continue to litigate, communicate with each other or fail to adequately prioritise the present matter, then it should be the Respondent not the Petitioner who becomes responsible for those costs.

Conclusions about costs having regard to the Respondent's non-attendance at the hearing on 20 September 2024 and his failure to comply with the Court's direction about the filing of affidavit evidence made in March 2024

35. I am again of the view, this time in relation to the September 2024 hearing, that the Respondent's failure to attend in isolation may not be a reason for making an order for costs against him. This is because Ms. Fosuhene again felt able to represent his interests in his absence. However, I repeat, it could also be a further factor to consider if litigation conduct is raised in the proceedings or if the Court is required to consider the issue of costs at the end of the proceedings. However, his ongoing failure to comply with the directions about the filing of affidavit evidence again made the holding of a further mention hearing necessary. As highlighted earlier herein, this case had not been able to

meaningfully progress since the directions were given way back in February 2022, repeated in October 2022 and again repeated in March 2024. This troubling state of affairs continued due to the Respondent's apparent disregard for court made standard directions concerning the filing of affidavit evidence. If the Respondent had complied, the mention hearing would not have been required, as similar directions had already previously been given to trial. Therefore, the additional costs incurred, by having to hold this further hearing at which the only case management function the Court was again able to perform was to give similar directions to those previously made in February 2022, October 2022 and March 2024, are costs which should be met by the Respondent. Accordingly, I order the Respondent to pay the costs incurred by the Petitioner in relation to the September 2024 hearing.

Background – Compliance with the 20 September 2024 directions

36. It appears that the attachment of a penal notice to the orders and the prospects of costs orders now being considered provided a sufficient incentive to the Respondent to belatedly understand his obligation to comply with orders made in the Grand Court. He, at the fourth time of asking and astonishingly two years and eight months after he was first directed to do so, belatedly filed an affidavit[7] on 15 October 2024 .[8] That affidavit was not served until 17 October 2024. However, I note that even this affidavit, which was directed to be filed and served by or on 4 October 2024, was filed late and that its late filing and service resulted in the 4 November 2024 mention hearing having to be vacated because the knock on effect was that insufficient time was left prior to that hearing to file the Requests for Further and Better Particulars and Replies.[9]

Observations

37. This case is one of the worst cases that I have dealt with in which there has been a disregard for Court directions about the filing of affidavit evidence and in which there has been an ongoing failure of a litigant to attend Court hearings. Whether the fault for that improper engagement with the proceedings lies with the Respondent or has been contributed to by the limited communication between him and his attorney or because his attorney has been prioritising her other clients or other

[7] Affidavit dated 11 October 2024.
[8] He was first directed to file an affidavit at a hearing on 10 February 2022 and that affidavit was to be filed by or on 1 March 2022.
[9] Email from Mr. Holland to the Judge's Personal Assistant 1 November 2024 at 1:05 p.m. and email from the Personal Assistant to the parties sent on 3 November 2024 at 6:55 p.m.

cases in other Divisions of the Grand Court, I will leave a conclusion for that to be reached by the two of them. Regardless, the above is the cause of the Petitioner's costs being wasted in trying in vain to move this case forward, the blame falls squarely on the Respondent and his team.

38. The Court has a wide discretion when it comes to making costs orders. These orders can be made in relation to a distinct part of the proceedings or in relation to particular steps taken in the proceedings.

39. As conceded by Ms. Fosuhene in her written submissions, it is open to the Court to award costs because of the criticisms made by this Court at the September 2024 hearing. This is uncontroversial if one takes into account Practice Circular No. 1/2014 Requirement for Strict Compliance with Court Orders Made in the Family Division of the Grand Court ("the Practice Circular"). I have had regard to the content of the Practice Circular when making the costs orders in the present matter. The Practice Circular states at its outset that:

> *"Orders made by the Family Division of the Grand Court are not preferences, requests or mere indications; they are orders. Practitioners and those who appear before the Grand Court are reminded that orders including interlocutory orders, must be complied with to the letter and on time."*

The Practice Circular concludes that:

> *"…persons who appear before the Grand Court are expected to comply with their plain and unqualified obligation to comply with the terms of a Court order made against or in respect of them , unless or until it is discharged. This obligation applies to all forms orders including interlocutory case management directions."*

I would add that this expectation also applies to directions made by the Court about the time and date of the next court hearing or to served Notice of Hearings setting out the time and date of hearing.

40. Reference is made in the Practice Circular to the following clear statement of the then President of the Family Division in England and Wales, Sir James Munby, in ***Re W (A Child): Re H (children)*** [2013] EWCA Civ 1177 at paragraphs, 52 and 53:

> *"The Court is entitled to expect – and from now on family courts will demand – strict compliance with all such orders. Non – compliance with orders should be expected to have and will usually have a consequence."*[10]

41. The Practice Circular also includes the following reiteration of Sir James Munby's observations set out at page 6 of his 7th View from the President's Chambers, January 2014:

> *"What .... is for me a real concern is something symptomatic of a deeply rooted culture in the family courts which, however long established, will no longer be tolerated. I refer to the slapdash, lackadaisical and on occasions almost contumelious attitude which still far too frequently characterises the response to orders made by family courts. There is simply no excuse for this. Orders, including interlocutory orders, must be obeyed and complied with to the letter and on time. Too often they are not. They are not preferences, requests or mere indications; they are orders. This principle applies as much to orders by way of interlocutory case management directions as to any other species of order. The court is entitled to expect – and from now on family courts will demand – strict compliance with all such orders. Both parties and non-parties to whom orders are addressed must take heed. ..... Non-compliance with orders should be expected to have and will usually have a consequence: see Re W (A Child), Re H (Children) [2013] EWCA Civ 1177."*

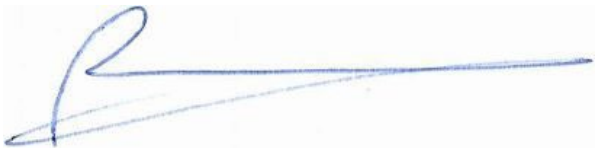
42. It is also worth emphasising, when considering the observations made by Sir James Munby about the unacceptable explanation of the burden of an attorney's other work commitments for non-compliance, my recent following observations made at paragraph 39 in my Judgment in ***JW v SC Fam 69-2022***[11] delivered on 9 August 2024:

> *"The mother's attorney rightly concedes that she had failed to address the issues arising in this matter in a timely matter. It appears that her available professional time was directed towards a Financial Services Division matter. Regrettably, it is not uncommon for attorneys who have matters in the other Divisions of the Grand Court to feel that those matters should be prioritised over their matters in the Family Division. Although I recognise their predicament, I do not know why they would hold such a belief and it is an approach that I do not share. If attorneys have matters in the Family Division, the cases by their nature relate to fundamental issues affecting the day-to-day lives of their clients*

[10] My emphasis by underlining.
[11] The parties were made aware of this judgment on 20 September 2024 – see paragraph 3 above.

> *who are often vulnerable members of the community. They are of high importance, merit adequate care and attention, and they must not be treated as being of a lesser priority. This means that attorneys must actively and professionally case manage these cases and not 'put them on the back burner' whilst they concentrate on other matters. That includes replying promptly and meaningfully to appropriate communications."*[12]

43. I trust that moving forward the parties, and in particular the Respondent, will take on board the above observations and that this matter will receive the prioritisation and proper prompt attention which it requires.



THE HON. MR. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT

[12] My emphasis by underlining.