



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 23

F85/25

OPINION OF LADY TAIT

In the cause

TAMKARA OLAYINKA IRIMAGHA OR ADUN

Pursuer

against

DAVID KEHINDE ADUN

Defender

Pursuer: Aitken; DAC Beachcroft Scotland LLP

Defender: Bradbury; Brodies LLP

11 March 2026

Introduction

[1] The issue for determination relates to jurisdiction and arises from the defender's motion for a discretionary sist of the present divorce action in terms of the Domicile and Matrimonial Proceedings Act 1973 ("the 1973 Act").

[2] The parties married at Port Harcourt in Nigeria on 16 July 2005. There are two children of the marriage, both of whom are over the age of 16 years. The parties' daughter was born in December 2005 and their son was born in June 2009. Both children were born in Nigeria.

[3] The pursuer raised an action for divorce in the Court of Session on 7 August 2025.

The defender subsequently filed a petition for divorce in Nigeria.

[4] The defender argues that the parties are both originally from Nigeria. The defender is domiciled there. The pursuer is Nigerian and has Dutch citizenship. The defender was in Scotland from 1 April 2024 on a temporary basis for his employment. His contract in Scotland terminated in December 2025 and he returned to Nigeria in January 2026. The matrimonial property is held in Nigeria, the Netherlands and the Middle East. The parties have not purchased property in Scotland nor invested in any other UK assets. There is no connection between the marriage and Scotland. Scotland is not the appropriate jurisdiction to deal with the financial matters arising from the parties' separation. None of the witnesses likely to give evidence are based in the UK. The balance of fairness (including convenience) is such that it is appropriate for the proceedings in Nigeria to be allowed to progress before further steps are taken in the present action.

[5] The pursuer contends that having regard to the balance of fairness (including convenience), it is not more appropriate for the proceedings in Nigeria to be disposed of before further steps are taken in the present action.

[6] The defender admits that this court has jurisdiction based on his habitual residence in Scotland for 1 year immediately preceding the raising of the action. He disputes the pursuer's claimed date of separation and consequently that there is a ground for divorce in Scotland. The pursuer has challenged the jurisdiction of the Nigerian court in respect that there has been an abuse of process through multiplicity of suits and procedural irregularity. On 13 January 2026, the Nigerian court struck out the defender's case as there is a pending case in the UK. The defender submitted an appeal of that decision on 14 January 2026. The appeal has not been determined.

The law

Discretionary sist

[7] Paragraph 9 of Schedule 3 of the 1973 Act provides:

- (1) Where before the beginning of the proof in any consistorial action which is continuing in the Court of Session or in a sheriff court, it appears to the court concerned—
 - (a) that any other proceedings in respect of the marriage in question or capable of affecting its validity are continuing in another jurisdiction, and
 - (b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for those other proceedings to be disposed of before further steps are taken in the action in the said court,
 the court may then if it thinks fit sist that action.
- (2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1)(b) above, the court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being sisted, or not being sisted.

[8] When considering a discretionary sist, the court should adopt the same approach as that adopted at common law in cases of *forum non conveniens* where there is a *lis alibi pendens* (*de Dampierre v de Dampierre* 1988 AC 92).

“Consequently the respondent in the divorce proceedings will have to show that that there is another available forum which, *prima facie*, is clearly more appropriate for the trial of the action. If he succeeds in this a sist will be granted, unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted.” (*Anton, Private International Law*, 3rd Edition, paragraph 16.16).

[9] In *Mitchell v Mitchell* 1992 SC 372 at pages 380 to 381, it was held that the initial approach should be to consider the overall connection of the marriage with the jurisdictions in question and if that connection was *prima facie* with Scotland, the Lord Ordinary would have been entitled to grant the sist only if he took the view that there were nevertheless other circumstances by reason of which justice required a sist should be granted. No substantial weight should be attached to the fact that the Scottish action was commenced

first, both actions being still in their initial stages. Further, the court should not as a general rule be deterred from granting a stay of proceedings simply because the plaintiff in this country will be deprived of a legitimate personal or juridical advantage, provided the court is satisfied that substantial justice will be done in the appropriate forum overseas (*de Dampierre* above at page 110).

[10] Submissions were framed in terms of the two-stage test in *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 at page 476:

- “(a) The basic principle is that a stay will only be granted on the ground of *forum non conveniens* where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.
- (b) ... in general the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay.... Furthermore, if the court is satisfied that there is another available forum which is *prima facie* the appropriate forum for the trial of the action, the burden will then shift to the plaintiff to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country.”

The evidence

[11] An affidavit of each party was lodged. A further affidavit of Daniel Duata was lodged. Mr Duata is the defender’s Nigerian solicitor and advocate. Reports were lodged from each party’s expert witness on Nigerian law as discussed below.

Undisputed evidence

[12] The parties married in Nigeria on 16 July 2005. They have two children, aged 20 and 16. Both children were born in Nigeria. After their marriage the parties lived together in Nigeria until 2013. In 2013, the parties moved, with the children, to reside in the Netherlands for the purpose of the defender’s work. The defender moved to Qatar for the

purpose of his work in 2017. The pursuer and children joined him in Qatar in 2019. The defender moved to Aberdeen in or about April 2024.

Defender's evidence

[13] The defender is aged 50. He has been employed by Shell since 2004 and is currently a projects, maintenance, reliability and turnarounds lead. The pursuer obtained a post-graduate qualification in human resources in 2009 from the University of London and an MBA from Erasmus University when residing in the Netherlands. She worked as an HR specialist at several companies in the Netherlands. The parties' jobs required them to travel for business and they were supportive of each other's careers, ensuring that their family unit had stability and continuity.

[14] The parties purchased a property in The Hague as a family home. The children attended the British School of the Netherlands and the International School of The Hague. The family settled well into life in the Netherlands. In 2017, the defender began working in Doha, Qatar. The pursuer and the children remained in the Netherlands to obtain their Dutch citizenship before joining the defender in Qatar in 2019. The children attended the American School of Doha and Doha College. In 2022, the pursuer returned to the Netherlands to rebuild her HR career following the pandemic. She was offered employment with an international company as an HR specialist. She has remained in continuous employment in the Netherlands since her relocation from Qatar in 2022. The children remained in Doha with the defender. The family travelled back and forth between Qatar and the Netherlands as required to keep the family unit intact.

[15] The defender came to Scotland in April 2024 with Shell on a 4-year fixed-term contract. He came on a Global Business Mobility visa which did not confer indefinite leave

to remain. He was sponsored by Shell. The parties' son lived with the defender throughout his time in Aberdeen. He attended the International School of Aberdeen. The parties' daughter started her undergraduate degree at the University of Amsterdam. The defender arranged for the family belongings to be shipped from Qatar to the family home in the Netherlands on 11 July 2024.

[16] The pursuer completed a partner visa application stating that she was joining or accompanying the defender to the UK; they were married; she had Dutch nationality; the parties had lived continuously together for the last 2 years until the defender moved to the UK for work in early 2024; and the pursuer would be living with the defender at his then address in Aberdeen. The pursuer was granted a dependent's visa. When the pursuer joined the defender in Aberdeen in July 2024, she was critical of his rented apartment so chose to travel between the Netherlands and Scotland regularly and to stay in a hotel when in Aberdeen. She had full access to the apartment and would spend time with the family.

[17] In December 2024 Shell announced a merger between Shell and Equinor which resulted in an organisational scoping exercise. On 3 March 2025, the defender was informed that he would not move to the new company with the consequence that his role in Aberdeen would conclude on 1 December 2025. Shell arranged for the defender to relocate to his base country, Nigeria. The defender gave his landlord notice in Aberdeen; he gave notice to the tenants renting the parties' property in Nigeria. The defender and the parties' son travelled to Nigeria on 3 January 2026. Their son started as a boarder at Westerfield College in Lagos on 5 January 2026. The business handover is scheduled to be completed by 30 March 2026. Following completion of the handover process, the defender will resume full-time duties with Shell Nigeria in April 2026. The defender holds no assets in the UK other than a current bank account. His belongings in Aberdeen will be shipped back to Nigeria with

Shell's assistance. The defender's base country governs the benefits and support which he receives from Shell. Following relocation to Nigeria, his income will reduce significantly in line with salaries paid in Nigeria. He will be the sole financial provider and caregiver to the parties' son. He provides support to the parties' daughter. Continued and prolonged litigation in Scotland would negatively impact the funds available to support the children.

[18] In April 2025, the pursuer told the defender that she would rent a separate apartment in Aberdeen and intended to relocate to Aberdeen. She said that their relationship was over. The pursuer initiated divorce proceedings in Scotland in July 2025, averring that the parties had separated on 29 September 2022. The defender disputes the date of separation.

Throughout the parties' marriage they lived apart at various points due to their work circumstances but had remained in a committed marriage and successfully parented the children until the pursuer decided that she wished to reside in a different apartment in Aberdeen.

[19] The defender was born in and grew up in Nigeria. He is a Nigerian citizen by birth. The defender remains domiciled in Nigeria, having never abandoned his domicile of origin. He has never acquired a domicile of choice anywhere else. The periods he has spent residing outside of Nigeria have always been linked to his employment and not permanent. He has never obtained citizenship in any other country. He continues to pay taxes in Nigeria. He has continued to visit Nigeria since relocating due to work in 2013. He visits Nigeria every 2 years the most recent being in 2022 and 2024. He has never viewed Scotland as a permanent home for his family. His presence in the UK has always been temporary and purely assignment related.

[20] The pursuer and the children became Dutch citizens in 2019. In doing so, the pursuer renounced her Nigerian citizenship. The defender sponsored the pursuer's

Nigerian residency permit which she holds as a “Niger’s wife”. It is valid until August 2030.

The pursuer’s domicile of choice is the Netherlands. To the defender’s knowledge, she does not hold indefinite leave to remain or any form of permanent residency in the UK. Her time in Scotland has been on a temporary basis, initially on a dependent visa sponsored by the defender and, following separation, on a visitor visa. The pursuer does not have employment in the UK and continues to work remotely for her employer in the Netherlands.

The pursuer rented a property in Aberdeen from April 2025.

[21] On 15 August 2025 the defender instructed his Nigerian lawyer to raise a petition in the High Court of Justice Delta State of Nigeria. The notice of petition was served on the pursuer on 21 August 2025. A further hearing on the *ex parte* motion for substituted service was held on 21 October 2025 and the order granted. Valid service by email was effected on 29 October 2025.

[22] The pursuer returns to Nigeria to visit friends and family on a regular basis, most recently in 2022 and 2023. The defender has no concerns regarding safety in Nigeria. There have been no concerns regarding the pursuer’s or the children’s safety during previous travel to Nigeria. Were the pursuer uncomfortable about attending Nigerian court hearings, there would be the option for hearings to be conducted online.

Pursuer’s evidence

[23] The pursuer is aged 46. She resides in and is a business owner in the Netherlands. She has not been able to attend to her business since April 2025 nor to work full-time due to ongoing family challenges. She undertook temporary, remote work for a UK university which ended in December 2025 following notification to the Home Office of her marital separation.

[24] The parties' children have spent the vast majority of their lives living outside Nigeria. They have visited Nigeria twice since 2013 and have no school or sustained ties there. The pursuer renounced her Nigerian citizenship to secure Dutch nationality for herself and the children. This reflects that the family's habitual residence and centre of life have been in Europe for many years.

[25] After more than 20 years of emotional hardship, trauma, coercive control and abuse within the marriage, Scotland offers a neutral, fair, transparent and timely forum for resolution. The pursuer would face serious procedural, logistical and personal difficulties if compelled to litigate in Delta State, Nigeria. Proceedings involving overseas assets frequently take 5 years or longer resulting in prolonged uncertainty, psychological and emotional harm. The pursuer does not hold a Nigerian passport, making repeated attendance difficult and exposing her to cultural and social repercussions as a result of renouncing Nigerian citizenship. She would require a visa each time she seeks entry. The pursuer does not hold an independent Nigerian residence permit. It is a Nigerian wife permit which is dependent on the continuation of the marriage. It does not grant unrestricted rights to reside, work or access Nigerian courts on the same basis as a Nigerian citizen or permanent resident. The defender has the ability to cancel the permit. The pursuer's habitual residence, employment history and centre of life are not in Nigeria. The pursuer fears that Nigerian matrimonial courts do not consistently recognise non-financial contributions by women in long marriages. Many women emerge with little or no financial protection. Her evidence may be received unfavourably in a system with entrenched patriarchal and religious norms. The pursuer has lived under a climate of fear and threat with the defender. If required to attend proceedings in Delta State, she would fear for her safety. She has personal knowledge of women being killed in "crimes of passion". The

defender has attempted to intimidate and silence her by serving a cease-and-desist letter through the court in Nigeria (6/13). The pursuer is concerned that the choice of forum in Nigeria is strategic; and that the defender is seeking to manipulate the parties' son's education and residence to create false links to Nigeria. As at August 2025, the defender advised the Dutch authorities that the parties' son would remain in education in Aberdeen until 2027.

[26] The pursuer has given up lucrative employment positions to support the defender's career. After the defender moved to Qatar, the pursuer remained alone in the Netherlands to manage the children and family life. She has been subject to emotional, psychological, verbal, sexual and financial abuse.

[27] The pursuer anticipates that while the parties' son is at boarding school in Lagos, Nigeria, the defender may return to Aberdeen to live and work there. The defender's practical and personal ties to Nigeria are limited. He has not travelled to Nigeria for close family funerals. He was generally reluctant to travel to Nigeria with the family or to facilitate family visits there. The defender's physical presence in and engagement with Nigeria are limited.

Expert evidence

[28] Each party has produced opinion evidence from an expert in Nigerian law. The defender lodged opinions of Viviane O Ibeawuchi (7/10 and 7/65-66). The pursuer lodged opinions of Efosa O Etomi (6/9-11). There was no challenge to the experience and qualifications of either witness to give expert evidence. The opinions principally addressed the matter of jurisdiction in Nigeria.

[29] The parties agree that it is for the Nigerian courts to determine the pursuer's application to strike out the defender's divorce petition both at first instance and at any subsequent appeal. As urged upon the court by defender's counsel, the pursuer's application to strike out the defender's petition was based upon multiplicity of suits and not a fundamental absence of jurisdiction. In the event, the petition was struck out on 13 January 2026 in the circumstances of there being a pending case in the UK. The defender has appealed that order. This court is invited to proceed to determine the motion for a discretionary sist as there are still proceedings continuing in another jurisdiction. The court should proceed on the basis that jurisdiction in Nigeria is presently unresolved.

[30] Beyond jurisdiction, the opinion of Efosa O Etomi (6/9) addresses the Nigerian legal framework on financial provision, treatment of foreign and domestic assets and division of assets as follows:

- (i) the Nigerian courts grant two types of financial orders in divorce proceedings: maintenance and settlement of property;
- (ii) they apply a principle of equitable fairness in financial provision, exercising discretion in determining what is fair and just in the circumstances of each case;
- (iii) an award of maintenance is based on the means, earning capacity and conduct of the parties and all other circumstances;
- (iv) foreign assets are considered in making financial orders;
- (v) the courts possess wide discretion to ensure that financial and custodial arrangements meet the ends of justice and best interests of the family.

[31] Standing the terms of the pursuer's affidavit, the defender's expert provided a supplementary opinion addressing the protection of women, domestic violence and any perceived unfairness of the Nigerian judicial system (7/66) as follows:

- (i) Nigeria operates under a supreme, written constitution which guarantees fundamental rights, including freedom from discrimination on grounds of sex; the right to a fair hearing; and unrestricted access to court for the enforcement of these rights;
- (ii) these rights are justiciable and routinely enforced by Nigerian courts;
- (iii) Nigerian courts have consistently held that women are entitled to full constitutional protection, and that cultural or marital contexts do not diminish those rights;
- (iv) Nigeria has a robust and evolving statutory framework addressing domestic violence and gender-based abuse. Domestic violence is expressly recognised and criminalised under Nigerian law. Most notably the Violence against Persons (Prohibition) Act 2015 criminalises domestic violence, physical and emotional abuse, economic abuse, spousal battery, and coercive control. Allegations of cruelty, violence, or abuse are expressly recognised under the Matrimonial Causes Act 2004 as one of the facts to be considered in determining whether a marriage has broken down irretrievably. There is provision for protective orders.
- (v) Women are not legally disadvantaged in matrimonial proceedings. They are entitled to legal representation, to call evidence, and to cross-examine witnesses. They may appeal decisions through established appellate courts.

(vi) The Nigerian judiciary is constitutionally independent, with security of tenure for judicial officers and a hierarchical appellate structure designed to correct error and ensure fairness.

(vii) Matrimonial causes are governed by statute and settled jurisprudence and are adjudicated without gender bias. Established civil procedure rules provide: open and adversarial hearings; reasoned judgments; rights of appeal to higher courts; the ability to proceed through counsel; and judicial independence.

(viii) Nigeria is a party to major international human rights instruments protecting women, including the Convention on the Elimination of All Forms of Discrimination Against Women.

[32] Both experts accept that a party who is unable to attend court in person may apply for leave to have a virtual hearing, in line with modern judicial practice and post-pandemic procedural adaptations. In the opinion of the defender's expert, such matters are addressed procedurally within the court's discretion and do not amount to exclusion from, or denial of access to, the judicial process.

Defender's submissions

Stage 1: Natural forum

[33] The defender's submissions were framed in terms of the two-stage test in *Spiliada Maritime Corp* above. The court is invited firstly to see what factors point in the direction of another forum being the "natural" forum "with which the action [has] the most real and substantial connection" (*ibid* at page 478 citing Lord Keith of Kinkel in *The Abidin Daver* [1984] AC 398). It is accepted that the Scottish court is a competent jurisdiction based on the defender's habitual residence at the time the action was raised. However, there are

procedural difficulties should the action continue in Scotland. First, there is a dispute over the relevant date. As currently pled, the pursuer's case would fall to be dismissed if she were not able to establish the relevant date as September 2022. Secondly, if the action were not dismissed, any orders for financial provision would be unenforceable, with neither party remaining resident in Scotland and there being no matrimonial assets here.

[34] The defender instituted divorce proceedings in the High Court of Delta State, Nigeria (Nigerian court) on 21 August 2025. These proceedings have been validly served on the pursuer. The Nigerian court has competent jurisdiction to hear the divorce petition because the defender is a Nigerian national domiciled in Nigeria. Habitual residence is not a concept that applies to Nigerian matrimonial law. The defender's temporary residence abroad does not affect Nigerian jurisdiction; domicile is the primary basis for jurisdiction. The pursuer seeks to challenge the jurisdiction of the Nigerian court. She does not challenge jurisdiction based on the defender's domicile. She argues that the defender's non-disclosure of the Scottish proceedings (which have since been disclosed) is fatal to the proceedings and the action is incompetent. Therefore, Nigeria still has competent jurisdiction over the subject matter, even if the current action were struck out due to a failure to obtemper the rules of court. There do not need to be proceedings in another competent jurisdiction for a plea of *forum non conveniens* to be successful, rather that a competent jurisdiction exists (*de Dampierre* above at 107, 108).

[35] The defender has lodged an expert opinion from Viviane O Ibeawuchi, a senior matrimonial causes practitioner in Nigeria. In her opinion, the Nigerian court has jurisdiction; the petition is competent; and the petition is procedurally regular. The pursuer's objections regarding service and non-disclosure have been addressed and do not vitiate the proceedings. It would be contrary to the ends of justice to allow the pursuer

to forum shop in a jurisdiction where neither party has any connection. The pursuer's argument against jurisdiction in Nigeria is weak. As confirmed by the defender's expert opinion, the initial non-disclosure of Scottish proceedings is a "procedural irregularity" which has been cured by the filing of a supplementary affidavit. It does not render the Nigerian petition void. The Nigerian court remains seised of the matter at this stage. Even if the petition were struck out, it would not preclude the defender from raising another petition. Nigeria is the more natural forum for the parties.

Most real and substantial connection

[36] The pursuer has no connection to Scotland. She has remained living and working in The Hague (as confirmed by her address in the instance). On her own case, the parties have not lived any of their married lives in Scotland. She does not work in Scotland and has no family here. She has no right to remain in Scotland. Her visitor's visa will expire after 6 months. The only asset in Scotland is the defender's bank account, which was used for transactions whilst he was living here. On the pursuer's case this would be non-matrimonial given that it was opened after her averred relevant date. All other assets owned by the parties are outside of the UK.

[37] The defender's connection to Scotland was transient and employment related. The only connection to Scotland is the present court action. He had no intention to reside permanently here. The pursuer has failed to provide any evidence to rebut that. The defender has moved back to Nigeria, following the end of his contract. He has no right to be in the UK. To travel to Scotland, he must apply for a visa. He cannot obtain a visa on entry.

[38] The parties have no connection to Scotland. It is more likely than not that the pursuer has attempted to forum shop by raising proceedings in Scotland rather than in

the Netherlands or Nigeria, both of which are clearly more appropriate jurisdictions than Scotland. The defender issued proceedings in his country of domicile. The pursuer chose not to do the same and has failed to explain to the court why she chose Scotland over the Netherlands. The pursuer alleges that the defender has orchestrated a move back to Nigeria to defeat her jurisdictional argument. There is no evidence of this. To the contrary, the defender was informed of the change in his contract in March 2025 and that his employment would not be continuing in Scotland. That was whilst the parties remained in a relationship and prior to the pursuer raising an action. Since that time, he has taken steps to ensure a smooth transition for himself and the parties' son back to Nigeria. He gave his landlord notice in Aberdeen; he gave notice to the tenants renting the parties' property in Nigeria; he secured a place at the international school in Lagos for their son; and arranged for their possessions to be shipped back to Nigeria. These steps are supported by documentary evidence and by the defender's presence in Nigeria.

[39] The core dispute involves assets held by the parties in Nigeria, the Netherlands and Qatar. There are no matrimonial assets in Scotland. A Scottish court order regarding foreign property (particularly in Nigeria) would face significant enforcement hurdles. To enforce a Scottish order over the Nigerian assets, the pursuer would require to initiate civil proceedings in Nigeria to register the judgment or sue upon the debt. This renders the Scottish proceedings duplicative, wasteful of judicial resources, and financially ruinous for the parties compared to an order from the Nigerian court, which has direct jurisdiction over the defender (who will be resident there) and the Nigerian assets.

Practical convenience and witnesses

[40] The defender and the parties' son have moved to Nigeria. Their son has started at Westerfield College, Lagos. It can be assumed that the pursuer intends to visit their son in Nigeria. She has family there. It has been confirmed that she can attend any hearings in Nigeria remotely, if she wishes.

[41] The defender will return to a Nigerian level salary with Shell in his base country. He is solely responsible for the financial needs of the parties' son. Litigating in Scotland will be unaffordable and greatly diminish the parties' assets. He will be unable to travel to Scotland to engage in litigation as he requires to care for his son. Conversely, the pursuer has demonstrated her ability to travel to and maintain legal relations in Nigeria. She has engaged a lawyer and counsel in Nigeria. She receives a Dutch salary and can easily afford to litigate in Nigeria.

[42] It will be necessary to obtain expert valuations of foreign assets. All experts will be outwith the jurisdiction of Scotland, thereby generating further complexities and expense. Experts will have to give evidence remotely. Interpreters may be required. Further, it will be difficult for the Scottish court to compel disclosure of foreign assets, given that third party havens will be outwith the jurisdiction, requiring the court to make use of letters of request and to seek the assistance of a foreign jurisdiction. All of these are practicalities which tip the balance in favour of the Nigerian court being the more appropriate jurisdiction.

Stage 2: Substantial justice

[43] If the court is satisfied that there is another more appropriate jurisdiction, then the burden shifts to the pursuer to prove that there are circumstances by which justice requires

that the case should nevertheless be heard in Scotland. Any denial to the pursuer of substantial justice in Nigeria, must be “established objectively by cogent evidence” (*Spiliada* above at page 478). The court should consider all the circumstances of the case, including circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions (*ibid* at page 478). The authorities show that this burden will not ordinarily be discharged by showing that the pursuer will enjoy procedural advantages, or a higher scale of damages, or more generous rules of limitation if she sues in her chosen forum. A pursuer must take a foreign forum as she finds it, even if it is in some respects less advantageous to her than her chosen forum. It is only if the pursuer can establish that substantial justice will not be done in the appropriate forum that the plea will be repelled (*ibid* at page 482). The pursuer has presented no evidence that she will be denied substantial justice in Nigeria. She has engaged Nigerian counsel and is participating in the process. Her own expert has provided an opinion on Nigerian law which details a system which is based on fairness. It may be different to Scotland but that is not the test.

Safety in Nigeria

[44] The pursuer cites general Foreign, Commonwealth & Development Office (FCDO) travel advice to suggest that Nigeria is unsafe. The defender has produced evidence to show that the family travelled there during the marriage in 2022 and 2023. The pursuer holds a Nigerian residency permit which is valid until July 2030 and which contradicts her attempt to distance herself from the jurisdiction.

Allegations of domestic violence, treatment of women and unfairness in the Nigerian judicial system

[45] The pursuer's reliance on generalised assertions of unfairness is rebutted by the expert opinion of Viviane O Ibeawuchi. The Nigerian legal system explicitly criminalises domestic violence through the Violence Against Persons (Prohibition) Act 2015 and guarantees non-discrimination under section 42 of the constitution. The pursuer has failed to provide any instance of personal denial of justice. There is no evidential or legal basis for the assertions that are made by the pursuer. She would be protected in Nigeria by a system which upholds the rights and freedoms of women. The Nigerian judiciary is constitutionally independent, with security of tenure for judicial officers and a hierarchal appellate structure designed to correct error and ensure fairness. Judicial comity will be expected between the two jurisdictions.

Conclusion

[46] The defender has identified a clearly more appropriate forum where justice can be done at substantially less inconvenience and expense. The pursuer has failed to show why justice requires the case to remain here. In these circumstances, the defender moves to sist the action until the conclusion of the Nigerian proceedings.

Pursuer's submissions

[47] There is no dispute that this court has jurisdiction to determine the issue of divorce and ancillary financial provision between the parties. When proceedings are continuing in another jurisdiction, the court has a discretion to sist the present action. After the pursuer raised this action, the defender raised proceedings in Nigeria. Although there are concerns

about the Nigerian proceedings, it is not disputed that, at present, there are proceedings continuing in another jurisdiction. That remains the position pending determination of an appeal against the Nigerian case being struck out.

[48] In *Mitchell* above, the court determined that the initial approach should be to consider the overall connection of the marriage with the jurisdictions in question. This is only the initial consideration. It is not determinative of the issue which requires a consideration of all factors appearing to be relevant and ultimately, in terms of the statute, the court's task is to consider what is appropriate having regard to the balance of fairness (including convenience). In the present case, the court has the additional complication that there are limited connections to the competing jurisdictions given the parties' multi-continental movement of their established home during the marriage.

[49] As both actions are in their initial stages, it is accepted that no substantial weight should be given to the fact that the present action was raised first. However, it is relevant to the overall assessment of fairness for two reasons. Firstly, the pre-existence of the Scottish proceedings was not disclosed to the Nigerian court when the Nigerian proceedings were raised. The defender continues, it is submitted, to mislead the Nigerian court in this respect. Such attempts to mislead the court in Nigeria are relevant to the assessment of fairness and prospective justice. Secondly, the expert opinion for the pursuer is that the existence of the Scottish proceedings excludes competent jurisdiction for the Nigerian action to proceed. If correct, sisting the present action would frustrate litigation of divorce between the parties, not promote its fair conclusion.

[50] It is also accepted that when considering issues of legitimate personal or judicial advantage, the court should not, as a general rule, be deterred from granting a stay of proceedings simply because the plaintiff in this country will be deprived of such an

advantage, provided that the court is satisfied that substantial justice will be done in the appropriate forum overseas: *de Dampierre* above at page 110. However, the issue is whether substantial justice can be achieved in Nigeria.

Nigerian proceedings

[51] The defender lodged an action in Delta State, Nigeria on 21 August 2025, that is subsequent to service of the Scottish action on 7 August 2025. The Nigerian petition failed to disclose the existence of Scottish proceedings. As a matter of Nigerian law, such disclosure is necessary. There is a prohibition against multiplicity of suits. The defender's legal expert's opinion is demonstrably wrong insofar as it states that the Scottish court does not have jurisdiction to determine the divorce. The defender admits jurisdiction in these proceedings. Such an error undermines the validity of the expert's conclusions on key issues. Further, the defender continues to mislead the Nigerian court by claiming that at the time of filing the Nigerian petition, the Scottish court had not yet been seised of jurisdiction. The Nigerian petition was not properly served. Appropriate orders for service by substitute means were not obtained prior to initial purported service. Most fundamentally, there is a significant dispute over whether the Nigerian court holds jurisdiction to hear the case irrespective of the issue of multiplicity of suits. It is doubted that the defender had Nigerian domicile such that he could raise competent proceedings. Unlike the present action where jurisdiction is admitted, the existence of jurisdiction is in dispute in Nigeria. The case has been struck out and there is an outstanding appeal at the defender's instance. Further procedure and expense on the issue of jurisdiction can be anticipated in Nigeria before the court considers the action's merits. In Scotland, matters can progress to proof consistent with standard timeframes and procedure. In summary, there are considerable procedural

and jurisdictional issues which throw the legitimacy and competence of the Nigerian proceedings into doubt. No such issues pertain in the present action.

Parties' circumstances

[52] The parties were married in Nigeria and lived there until 2013. Neither has lived in Nigeria since then. Rather the parties have lived in different countries across different continents. Neither of the parties' children lived in Nigeria until their son started boarding school in January 2026. The children have returned to Nigeria only twice since 2013. The pursuer has renounced her Nigerian nationality to secure Dutch nationality for herself and the children. For entry into Nigeria, she would be treated like any non-national.

[53] The parties own heritable property in the Netherlands, United Arab Emirates and Nigeria. They have moveable assets in, at least, the Netherlands, Nigeria, the USA, Qatar, United Arab Emirates and United Kingdom. Whichever court deals with matters, assessment of the value and division of international assets and the enforcement of decrees across the borders of countries in multiple continents will be necessary.

[54] The pursuer did not locate to a jurisdiction to secure a favourable forum. She raised proceedings in the country in which the defender had been resident and working for over a year. The defender's decision to return to Nigeria with the parties' son post-dates the raising of the present action and payment of annual school fees. The pursuer maintains that the defender's return to Nigeria is a deliberate step intended to frustrate the jurisdiction of this court and an attempt to cure the problems identified in respect of his domicile and jurisdiction. This court should be alert to a risk of the defender manipulating the court system including misleading it on fundamental issues.

Balancing fairness

[55] It is unarguable that a simplistic comparison demonstrates that there is a greater connection between the marriage and Nigeria than there is between the marriage and Scotland (the parties' nationality, the children's birthplace, the parties' residence together there and heritable assets there). However, that oversimplifies this case given the period of residence outwith Nigeria, the intention (at least on the part of the pursuer) never to return to live there, the number of different countries involved and the international movements of the parties. It is a case where assessment of the connection with the marriage alone would be insufficient to ensure fairness between the parties. The court requires to take account of all factors appearing to be relevant.

[56] The starting point is that this court has jurisdiction to determine the issues between the parties. The onus rests on the defender to demonstrate that it is fair as between the parties that this court should refuse to exercise its legitimately held jurisdiction.

[57] This court should take into account:

- (i) the numerous concerns about competence of the Nigerian proceedings; likely litigation over procedural and jurisdictional issues; and resultant delay, expense and inconvenience;
- (ii) the pursuer's concerns about her ability to enter Nigeria and to litigate properly there; the defender's control of her identity card in Nigeria; the court being within an area where the FCO advises against all but essential travel; and
- (iii) the pursuer's concerns about the patriarchal culture in Nigeria; direct bullying by cease-and-desist threats issued on behalf of the defender; and her safety in Nigeria;

[58] Overall, there is a reasonably apprehended risk that substantial justice will not be achieved in the Nigerian proceedings. Substantial justice can be achieved in the present action which is competently before the court. Refusing to sist allows this court to move swiftly to address the merits of the case. No concerns arise in respect of the defender's ability to enter Scotland, in respect of his safety here nor in respect of a patriarchal culture.

[59] There is unlikely to be any benefit to any witness if the case proceeds in Nigeria. There are no child issues. Given assets are spread around the world, international aspects arise for witnesses wherever the case is litigated. This court should be assured of its own abilities to hear remote witness evidence across international borders.

[60] In all the circumstances, the court should not be satisfied that this case cannot, consistent with fairness and justice, be tried in this court. In any event, Nigeria would not be a better forum to secure the ends of justice between these parties. The court should refuse to sist the action.

Discussion

[61] In considering a discretionary sist under the 1973 Act, it is not disputed that there are other divorce proceedings continuing in Nigeria. The pursuer's counsel fairly and realistically accepts that there is a greater connection between the marriage and Nigeria than there is between the marriage and Scotland. However, he stresses that this is only the initial consideration and is not determinative. Rather, the court must consider all factors appearing to be relevant. Ultimately its task is to consider what is appropriate having regard to the balance of fairness (including convenience). The pursuer submits that there are limited connections to the competing jurisdictions given the parties' various homes and bases throughout the marriage; the parties have resided outwith Nigeria for long periods;

the pursuer has no intention to return to live there; and their assets are located across several jurisdictions. Accordingly, it is submitted that assessment of the connection with the marriage alone is insufficient to ensure fairness between the parties.

[62] At present, neither party has any connection to Scotland. The pursuer raised the present action when the defender and parties' son were residing in Scotland. That connection was always temporary given the defender's fixed term assignment to Scotland. In the event, the assignment was ended early following a business merger between Shell and Equinor. I reject the pursuer's submission that the defender relocated to Nigeria with the parties' son in January 2026 to influence the outcome of the motion to sist. The productions provide a credible timeline for a publicly announced merger resulting in staff redeployment and a contractual obligation to return to Nigeria as the defender's base country.

[63] With the exception of a current account, none of the parties' assets are in Scotland. I accept that the family has an international profile. They own heritable property in Nigeria, the Netherlands and UAE. They have moveable property in those countries and in the USA and Qatar. The parties were born, grew up and married in Nigeria. Their children were born there. The defender remains a Nigerian citizen albeit the pursuer and children are Dutch citizens. The defender and the parties' son now reside in Nigeria. The pursuer resides in the Netherlands and the parties' daughter attends university in the Netherlands.

[64] Ultimately, the pursuer's counsel opposes the motion to sist on two principal grounds: (i) the uncertainty around jurisdiction being founded in Nigeria; and (ii) the pursuer's ability to participate in proceedings in Nigeria. Notwithstanding the terms of the pursuer's affidavit claiming deficiencies in a patriarchal Nigerian legal system, her counsel does not suggest that the regime for divorce and financial provision in Nigeria would result

in demonstrable substantial injustice. In line with comity, due deference must be given to the Nigerian system. That concession is appropriately made standing the opinions of both Nigerian legal experts in relation to the substantive and procedural framework as set out above.

[65] The defender's divorce action in Nigeria has been struck out on the pursuer's challenge. The challenge was not on the basis that Nigeria lacks fundamental jurisdiction anent the defender's domicile. It was on the basis of a failure by the defender to declare the present Scottish proceedings and multiplicity of suits. There is an ancillary challenge in relation to service. The defender has appealed the decision to strike out and appeal proceedings are outstanding. The experts' opinions indicate that there is an arguable case. The pursuer submits that the defender has not presented his case in good faith by not disclosing the existence of Scottish proceedings and by his later characterisation of their status. I understand the concern which is raised. Ultimately, it is for the Nigerian court to determine the appeal and whether the defender's action will proceed. In the event that the defender is unsuccessful, it would be open to the pursuer to recall any sist in the present action.

[66] The pursuer submits that to await the outcome of the appeal in Nigeria will necessarily result in uncertainty, delay and expense. In contrast, jurisdiction is admitted in the present action and this court can deliver immediate substantive justice. However, in these proceedings the defender disputes the pursuer's claimed date of separation in September 2022 and relies upon certain documentary evidence. He asserts that the parties separated in April 2025 and so have not been separated for the requisite period of 2 years. It is likely that there will be a preliminary proof as to the date of separation. Accordingly,

there are preliminary challenges in both Nigeria (jurisdiction) and Scotland (ground of divorce). Both attract uncertainty, expense and potential delay.

[67] The pursuer's second ground of opposition is that substantial injustice will arise from an inability to participate properly in any Nigerian proceedings. The pursuer renounced her Nigerian citizenship on acquiring Dutch citizenship. She has a Nigerian residency permit which she holds as the defender's wife. She fears difficulty in entering and travelling in Nigeria. While there is the possibility of conducting proceedings remotely, such an option is not guaranteed. While it is accepted that the defender would require to apply for a visa to enter the UK, there is said to be nothing to suggest that he would be denied entry. Notwithstanding the defender's expert's opinion on protective domestic abuse legislation, the pursuer perceives a direct threat from her husband in terms of the cease-and-desist letter and his conduct during the marriage.

[68] As set out in *Mitchell* above at page 380:

“the court should look first to see what factors there are which connect the case with another forum. Once that has been done and *prima facie* there is a more appropriate forum on the basis of that connection, then unless there are circumstances by reason of which justice requires that that should not be the forum, that should ordinarily be the appropriate forum.”

[69] In all the circumstances, I am satisfied that *prima facie* Nigeria is the more appropriate forum based on the connection of the marriage and parties to Nigeria. There are strong family links (some historical), some property links and the defender and the parties' son are presently based there. There are no such links to Scotland. The issue then becomes whether there are circumstances by reason of which justice requires that Nigeria should not be the forum. For the reasons set out above, the pursuer urges the court to conclude (i) that fairness and convenience indicate that this court can proceed immediately to deal with the merits of the parties' dispute: and (ii) that Nigeria would not be a better forum to secure the

ends of justice between the parties. I disagree. When considering any delay or expense, there are preliminary challenges in both jurisdictions which require to be resolved before the substantive issues can be determined. The Scottish court is not convenient for parties where neither is in the jurisdiction, where none of the assets in dispute are located here and no witnesses are based here. While there will inevitably be international cross-border evidence wherever the divorce proceeds, certain of the assets and witnesses will be in Nigeria and certain orders will fall to be enforced in Nigeria. The available evidence is that the pursuer has a Nigerian residency permit and can return to Nigeria. If she chooses not to, the expert evidence speaks of a developed procedure to allow for remote participation and access to justice. Similarly, both experts speak to a system which applies a principle of equitable fairness in financial provision, exercising discretion in determining what is fair and just in the circumstances of each case. The defender's expert is not challenged in her evidence that Nigeria has a robust and evolving statutory framework addressing domestic violence, with provision for protective orders. The pursuer's objections to the Nigerian system are unfounded in evidence. I am not satisfied that she faces a real risk of substantial injustice. I am not satisfied that there are circumstances by reason of which justice requires that Nigeria should not be the forum.

Decision

[70] Accordingly, the balance of fairness (including convenience) is such that it is appropriate for the Nigerian proceedings to be disposed of before further steps are taken in this action. I shall grant the defender's motion for a discretionary sist. I reserve meantime the question of expenses.