Neutral Citation Number: **[2025] EWHC 1401 (KB)**

Case No: CO/195/2020 & KB-2024-003279

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/06/2025

Before:

MR JUSTICE JAY

- -

Between:

(1) JOHN HAMILTON (AS TRUSTEE FOR CIVIL RECOVERY AND TAX)
(2) NATIONAL CRIME AGENCY **Claimants**

- and –

(1) ABIGAIL MARSHALL KATUNG
(2) MARVIN KATCHY YAHAYA UDENZE
(3) ALVIN UDENZE **Defendants**

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Kerry Bretherton KC and Penelope Small (instructed by **Burges Samon LLP**) for the **Claimants**
Gary Pons (instructed by **FSL Solicitors**) for the **Defendants**

Hearing dates: 13 and 14 May 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 6 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE JAY

MR JUSTICE JAY:

INTRODUCTION

1. These proceedings concern conjoined applications under Part 5 of the Proceeds of Crime Act 2002 ("POCA") and for possession in relation to property at 2 Sandmoor Drive, Leeds LS17 7DG ("the property").

2. The First Claimant is the Trustee for Civil Recovery in relation to the property and the Second Claimant brings the POCA claim. I shall refer to them collectively as the NCA save where it is necessary to distinguish between them.

3. The First Defendant is the current occupant of the property together with two of her children. They have no separate defence to advance. I shall refer to the First Defendant as Mrs Katung.

4. This case has a lengthy and convoluted procedural history. Given the size of the trial bundles and the complex list of issues which the parties have prepared, one might be forgiven for thinking that this is a case bristling with legal and factual issues of some complexity. Although I started out thinking that the parties had set me a series of examination questions requiring detailed and learned answers, by the end of the hearing I was satisfied that the issues arising were, in fact, few in number and relatively straightforward.

ESSENTIAL FACTUAL BACKGROUND

5. Mr Mansoor Mahmood Hussain ("Mr Hussain") bought the property for £650,000 on 18 February 2006. The property is subject to a registered charge dated 13 December 2006 in favour of the Royal Bank of Scotland Plc. This was, and still is, an interest-only mortgage.

6. The NCA contends that the property represented money obtained by criminal conduct. That proposition is neither admitted nor denied by Mrs Katung, although the NCA's witness, Mr Andrew Cole, was not cross-examined on any contrary basis. Mr Hussain has accepted that the property was recoverable property under POCA and it is obviously right that I proceed on that basis.

7. On the other hand, there is no evidence that Mrs Katung knew or even suspected that Mr Hussain was involved in money-laundering or any similar illegal activities. It was not put to her in cross-examination that she did. Understandably, Mrs Katung is concerned about the impact that this judgment may have upon her reputation, and I therefore make it crystal-clear that I do not find that she was cognisant of what Mr Hussain was up to.

8. Mrs Katung agreed to buy the property from Mr Hussain on 1 April 2015. The agreed purchase price had originally been £950,000 but it was raised to £1,000,000 to reflect the fact that completion was delayed to 1 April 2016 to enable Mrs Katung to arrange for the balance of the purchase price to be remitted to the UK from Nigeria. The deposit

of £400,000 was composed of two amounts: first, the sum of £40,000 payable on 1 April 2015 (Mrs Katung sold a property in the UK which enabled her to pay this), and a second tranche of £360,000 payable on 29 May 2015. The balance of £600,000 was payable on the due completion date.

9. The contract incorporated the Law Society's Standard Conditions of Sale (Fifth Edition, 2011 revision) as modified in one respect. Condition 2.2.6 was varied so that the total deposit was to be paid to the seller's solicitors as agents for the seller instead of on the usual condition that it is paid to the seller's conveyancer as stakeholder. Elsewhere, the standard conditions applied including the condition that time was not of the essence unless a notice to complete is served (condition 6.1.1), and the condition that if the buyer fails to complete in accordance with a notice to complete, the seller may rescind the contract, in which case the deposit is forfeited and the seller may retain it together with interest (conditions 7.4.1 and 7.4.2).

10. On 31 March 2015 Mr Hussain's solicitors had written to Mrs Katung's solicitor enclosing the contract and stating amongst other things that:

> "The deposit will be utilised to reduce the mortgage debt. We are informed by our client that the amount required to redeem the mortgage currently exceeds the mortgage debt.
>
> Your client is moving into the property as a lodger …"

11. I do not particularly wish to rub salt into Mrs Katung's wounds, but I have to say that her solicitors gave her egregiously bad advice. The deposit was atypically and unreasonably high (more of which later) and the buyer was being informed in terms that the mortgage debt was above £1,000,000. Mrs Katung may have thought that she was getting the property at a good price, but the overall deal was in my opinion an unacceptably bad one.

12. When the sum of £40,000 was paid on 2 April 2015, it was transferred as promised to the mortgagee.

13. Mrs Katung was late in paying the remainder of the deposit. The total amount of £336,175 was transferred in increments to Mr Hussain's Coutts bank account between 1 July and 27 August 2015 from the bank account of Mrs Katung's company, 1st Resource Consultancy Ltd ("1st Resource"). I shall be examining those payments in due course, as well as the source of the monies. The parties are agreed that further sums were paid to Mr Hussain out of Mrs Katung's personal bank account. The figures which I have been given do not wholly reconcile, but the real dispute between the parties concerns what the NCA says is a shortfall of £6,000. Mrs Katung relies on two transfers of £3,000 which were made from GT Bank in Nigeria to a Post Office in Leeds on 16 and 21 July 2015. She says that she withdrew the money in cash and gave the total of £6,000 to Mr Hussain. I accept her evidence on this issue, not least because on 27 August 2015 Mr Hussain confirmed by email that the whole of the deposit had now been paid.

14. At the time she made these remittances to Mr Hussain, Mrs Katung was acting without the benefit of legal advice. That was unwise. Unfortunately, but maybe not altogether

surprisingly, Mr Hussain did not transfer any of the balance of £360,000 to the mortgagee.

15. Mrs Katung failed to pay the remaining purchase price of £600,000 on 1 April 2016 or at all. She accepts that she did not have the funds to do so. Instead, on 1 April 2017 she reached an oral arrangement with Mr Hussain, presumably terminable on reasonable notice by him, that she would remain in the property and would pay council tax and insurance premiums. Later, that arrangement was varied to the extent that Mrs Katung would also pay the mortgage instalments. This she did between 28 July 2017 and December 2019, at which point she was unable to continue to pay. The total amount she paid in this way was £97,671.28, but those actions did not confer in her a beneficial interest in the property.

16. On 12 February 2020 the NCA issued a disclosure notice on Mrs Hussain. On 11 March that year she was interviewed by Mr Cole. What she admitted during that interview I shall be examining in due course, but at this stage I should deal with Mrs Katung's assertion that she was expressly told during the interview that she should not resume making mortgage payments to the mortgagee. I cannot accept her oral evidence on that matter. The interview transcript makes no reference to any such prohibition, and Mr Coles denied it when cross-examined. One would have thought that an instruction of this sort would been included in a formal letter but I have seen none. The reality is that Mrs Katung was not being put in funds by her husband.

17. Between February 2021 and April 2025, the total sum of £276,081.36 was paid in respect of mortgage instalments by the NCA. Meanwhile, Mrs Katung and her family were living at the property largely free of charge - I am not ignoring her continuing discharge of the Council tax and insurance liabilities. I draw the inference that Mrs Katung remains unable to pay the balance of the completion monies.

18. On 3 July 2020 Mrs Katung registered a unilateral notice in respect of the sale agreement on the Charges Register for the property.

19. On 2 October 2020 the property was vested in the NCA (technically, the Trustee) pursuant to the Civil Recovery Order granted under ss. 266 and 267 of POCA. This was achieved with the consent of Mr Hussain. However, Mrs Katung was not notified of and joined to the proceedings as she should have been. The current proceedings are designed in part to address that failure. Although the civil recovery order does not have to be remade, the financial consequences that ensue from it are wholly at large.

20. On 5 May 2021, the NCA served a notice to complete. On 24 May 2021, the NCA served a notice to rescind the contract citing conditions 7.4.1 to 7.4.3 of the Standard Conditions of Sale.

21. On 28 June 2021, the NCA issued a claim for possession which was served on or about 31 August 2021. On 10 September 2021, Mrs Katung filed a Defence in which she sought time for completion. She alleged that her husband would lend her £600,000 but it was difficult to arrange the funds at short notice especially when the funds were coming from offshore. Despite having been filed, the Defence was not served and was first seen by the NCA's representative on the morning of the first possession hearing.

22. Possession was granted by DDJ Waite by Order dated 15 September 2021. Mrs Katung asked the judge to extend time for completion explaining that she needed to travel to Nigeria because the money was coming from there. DDJ Waite rejected the request for more time because Mrs Katung had been unable to complete for over five years.

23. Mrs Katung appealed to the Circuit Judge. On 24 November 2021, HHJ Gosnell originally refused permission for Ms Katung to appeal on the basis that there was no real prospect of success, but that decision was orally reconsidered on 3 December 2021 and permission to appeal was granted on an Article 8 issue alone on 24 January 2022. The appeal was dismissed on 4 April 2022. During that hearing Counsel then acting for Mrs Katung stated that she could complete within 30 days.

24. On 2 August 2022, permission to appeal and a stay was granted by Asplin LJ. Amongst other things, she said this:

> "Although the question in relation to relief from forfeiture was not raised squarely below, it does appear in essence in the defence. … There is a real prospect of success in arguing that the judge erred in his approach to proportionality and [Mrs Katung's] Article 8 rights in the context of relief from forfeiture where it is also arguable that the deposit was a penalty.
>
> The important point of principle raised by the grounds of appeal is whether the Court has power to grant relief from forfeiture of the benefit of a contract for the purchase of property where the effect of forfeiture amounts to a penalty. There are also compelling reasons why an appeal should be heard on grounds of proportionality and Article 8."

25. The appeal hearing was listed for 8 December 2022 but shortly before the hearing it was vacated by consent by the Order of Lewison LJ drawn up on 14 December 2022 directing that the issues arising in the Grounds of Appeal and Respondent's Notice in the possession proceedings should be dealt with by the High Court sitting as a court of first instance, together with the POCA claim.

26. On 13 August 2024 Foster J made an Order for Directions in the conjoined proceedings. This included a requirement that Mrs Katung file an Amended Defence in the possession proceedings and Points of Defence in the POCA proceedings. In the event, Mrs Katung filed only one document, namely Points of Defence dated 16 September 2024. This pleading failed to take the point identified by Asplin LJ although it did contend that Mrs Katung should receive relief from forfeiture in the context of a financial claim. Mr Gary Pons, the author of this pleading, accepted during the hearing before me that his client had no defence to the possession claim. His reasons for adopting that stance were not made explicit, but I deduce that they are not unrelated to the harsh financial reality that Mrs Katung does not have access to £600,000. I do not see how the Court could grant relief from forfeiture in the possession claim if the buyer was not ready, willing and able to complete.

THE ISSUES

27. In my opinion, these boil down to two.

28. The first issue is whether Mrs Katung in the events that have happened has any beneficial interest in the property which should be regarded as "associated property" for the purposes of s. 245 of POCA.

29. The second issue is whether, if the answer to the first question is in the affirmative, her beneficial interest is itself the result of unlawful conduct such that it falls to be treated as recoverable property and not associated property.

30. I invited the parties before the hearing to draw up a list of issues in the order in which they said those issues fell to be determined. The parties' respective lists were very much like two large metaphorical ships passing in the night. They also contained issues which in my judgment did not require resolution if I found in the NCA's favour on the two principal questions, or perhaps in any event. Both parties asked me to determine what I have labelled as the second issue first. For reasons which I will be explaining in a moment, it does seem to me that the better logical sequence involves first of all considering the proprietary question.

RELEVANT LEGISLATIVE PROVISIONS

31. Section 266 of POCA provides in material part:

> "**266 Recovery orders**
>
> (1) If in proceedings under this Chapter the court is satisfied that any property is recoverable, the court must make a recovery order.
>
> (2) The recovery order must vest the recoverable property in the trustee for civil recovery.
>
> (3) But the court may not make in a recovery order —
>
> (a) any provision in respect of any recoverable property if each of the conditions in subsection (4) or (as the case may be) (5) is met and it would not be just and equitable to do so, or
>
> (b) any provision which is incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998 (c. 42))."

32. Mr Pons' skeleton argument referred to the s. 266(3) conditions (as more fully outlined in s. 266(4), but I cannot see how they have any relevance here. It is not being said by the NCA that Mrs Katung was aware of Mr Hussain's criminal conduct.

33. Section 240 of POCA provides in material part:

> "**240 General purpose of this Part**

(1) This Part has effect for the purposes of —

(a) enabling the enforcement authority to recover, in civil proceedings before the High Court or Court of Session, property which is, or represents, property obtained through unlawful conduct,

(b) enabling property which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a magistrates' court or (in Scotland) the sheriff and, in certain circumstances, to be forfeited by the giving of a notice."

34. Section 241 of POCA provides:

"**241 "Unlawful conduct"**

(1) Conduct occurring in any part of the United Kingdom is unlawful conduct if it is unlawful under the criminal law of that part.

(2) Conduct which —

(a) occurs in a country or territory outside the United Kingdom and is unlawful under the criminal law applying in that country or territory, and

(b) if it occurred in a part of the United Kingdom, would be unlawful under the criminal law of that part,

is also unlawful conduct.

(2A) Conduct which —

(a) occurs in a country or territory outside the United Kingdom,

(b) constitutes, or is connected with, the commission of a gross human rights abuse or violation (see section 241A), and

(c) if it occurred in a part of the United Kingdom, would be an offence triable under the criminal law of that part on indictment only or either on indictment or summarily,

is also unlawful conduct.

(3) The court or sheriff must decide on a balance of probabilities whether it is proved —

(a) that any matters alleged to constitute unlawful conduct have occurred, or

(b) that any person intended to use any cash property in unlawful conduct."

35. Section 242 of POCA provides:

"**242 "Property obtained through unlawful conduct"**

(1) A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct —

(a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct,

(b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct."

36. Section 304(1) of POCA provides:

"**304 Property obtained through unlawful conduct**

(1) Property obtained through unlawful conduct is recoverable property."

37. Section 245 of POCA provides:

"**245 "Associated property"**

(1) "Associated property" means property of any of the following descriptions (including property held by the respondent) which is not itself the recoverable property—

(a) any interest in the recoverable property,

(b) any other interest in the property in which the recoverable property subsists,

(c) if the recoverable property is a tenancy in common, the tenancy of the other tenant,

(d) if (in Scotland) the recoverable property is owned in common, the interest of the other owner,

(e) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property.

> (2) References to property being associated with recoverable property are to be read accordingly.
>
> (3) No property is to be treated as associated with recoverable property consisting of rights under a pension scheme (within the meaning of sections 273 to 275)."

38. Finally, s. 314 of POCA provides:

> "**314 Obtaining and disposing of property**
>
> (1) References to a person disposing of his property include a reference—
>
> (a) to his disposing of a part of it, or
>
> (b) to his granting an interest in it,
>
> (or to both); and references to the property disposed of are to any property obtained on the disposal.
>
> (2) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.
>
> (3) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.
>
> (4) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration."

THE FIRST ISSUE: MRS KATUNG'S INTEREST, IF ANY, IN THE PROPERTY

39. At the moment she signed the Contract of Sale, Mrs Katung acquired an equitable or beneficial interest in the whole of the property. If she complied with the terms of the Contract, that beneficial interest would transmute or crystallise into a legal interest upon completion. But, in the event that she did not so comply, and a valid notice to complete was served, her beneficial interest would evaporate and – subject to one qualification - any deposit paid be forfeited to the seller. In the event, however, that the deposit was a penalty, the buyer could obtain relief from forfeiture *vis-à-vis* the seller and compel repayment of the deposit.

40. Mrs Katung is not contending in these proceedings that she has a beneficial interest in the whole of the property. Nor, as I have already pointed out, is she seeking relief from forfeiture in the context of the claim for possession. Her contention, advanced in various ways through Mr Pons, is that she has a beneficial interest equivalent to the deposit: that is to say, 40% of the property, or (as it is pleaded), 36%. Of course, that equitable interest would take second place behind the mortgagee, but that is the least of Mrs

Katung's problems. But in my opinion the payment of the deposit, whether or not it went into the hands of the mortgagee, did not confer on her a beneficial interest in the property to that extent or at all. All that it meant was that she was fulfilling a contractual stipulation *en route*, in due course, to obtaining a full legal interest.

41. It seems to me, therefore, that Mr Pons' entire case is based on a fallacy that the payment of the deposit (and he accepts that the £400,000 was paid as a deposit) conferred on Mrs Katung some sort of additional or different beneficial interest. It did not. At the time the deposit was paid, Mrs Katung already had a full beneficial interest in the property.

42. My reading of s. 245 of POCA is that "associated property" in this context means a proprietary right cognisable either in law or equity. "Associated property" cannot encompass purely contractual rights subsisting *in personam* as between Mr Hussain and Mrs Katung. If I am correct in holding that the deposit is not in the nature of being an equitable interest in the land, it must follow in my judgment that it cannot be regarded as "associated property" for POCA purposes.

43. That conclusion flows whether or not the deposit was lawfully forfeited to the NCA, standing for these purposes in the shoes of Mr Hussain, after Mrs Katung failed to complete pursuant to the notice. I agree with Mr Pons that this wholly unusual deposit was in the nature of a penalty where special circumstances do not exist (see *Workers Trust & Merchant Bank Ltd v Dojap Investments Ltd* [1993] AC 573). The fact that one year was allowed for completion is not relevant to this issue because the consideration for that benefit was an additional £50,000. Further, that Mrs Katung was in effect living rent-free during that period does not significantly add to this main point. My analysis is that the issue of relief from forfeiture in the context of a purely financial claim is not justiciable against the NCA: Mrs Katung's remedy lies *in personam* against Mr Hussain alone. If, as I have found, the deposit is not in the nature of being "associated property", that determines the matter conclusively against Mrs Katung in the context of her endeavour to compel the NCA in some way to account for the £400,000.

44. Ms Kerry Bretherton KC referred me to a mass of authority which, with respect, I do not think is relevant. Nor do I consider that the NCA's interesting point on s. 314(4) of POCA is germane. The whole of s. 314 is about the obtaining and disposing of *property*, and for the reasons I have given Mrs Katung's argument fails at first base. The deposit was not *property* at all.

45. Not content with winning this case by the direct route, the NCA drew my attention to two complex authorities. I do not think that either is relevant. In *Arthur v AG of the Turks & Caicos Islands* [2012] UKPC 30, the Privy Council was considering the limits of the doctrine of knowing receipt and the scope of the remedy of tracing. That is not at issue here. In *Cavendish Square Holdings BV v Makdessi* [2015] UKSC 67; [2016] AC 1172, the Supreme Court was addressing the wider question of relief from forfeiture in general. The NCA relied on one passage in Lord Toulson JSC's dissenting judgment, but I cannot see how that helps.

46. Mr Pons valiantly advanced a number of submissions seeking to deflect me from my principled analysis. He argued, for example, that Mrs Katung was entitled to rely on the promise in the solicitors' letter that the deposit would go towards the mortgage. Maybe she was, but even if the monies had been properly applied by Mr Hussain the outcome

would have been the same. He submitted that, given the NCA's failure to serve the proceedings on Mrs Katung in the first instance, she should be placed in the position she would have been in before the proceedings were ever started. However, the failure to serve the proceedings did not undermine the validity of the civil recovery order or the NCA's ability to serve a notice making time of the essence. This, with respect, was no more than a jury point.

47. If, as I have found, the deposit cannot be "associated property" for the purposes of s. 245 of POCA, it follows that the entirety of the property under discussion is "recoverable property" regardless of whether the £360,000 was itself "recoverable property" for separate reasons.

48. The NCA therefore succeeds on the first issue, and that is determinative of the claim for a civil recovery order in respect to the whole legal interest in the property and the claim for possession. I deal for completeness, however, with the second issue.

THE SECOND ISSUE: RECOVERABLE PROPERTY

49. Some time was spent during the hearing investigating the source of the £360,000 which came from Nigeria. Mrs Katung's case is that on 22 June 2025 her husband, The Hon Sunday Marshall Katung, obtained a secured loan in the sum of 120 million naira from Fidelity bank Plc in Nigeria. He appears to have received a copy of the loan document on 15 July, which was after the first remittances to the UK were made. On 14 August 2015 the Fidelity Bank loan was repaid by a loan taken out with Skye Bank Plc because the latter had offered better terms. Although there are some inconsistencies in the documentation, I do not consider that the NCA has proved that the monies came from an altogether different source. I prefer to base my findings of fact on firmer ground.

50. As I have already said, Mrs Katung was interviewed by Mr Coles on 11 March 2020. She was asked to explain how funds in Nigeria (in the local currency) were transferred to the UK (in sterling). Mrs Katung said the following:

> "… but, like I said to you, in 2015 as well, we'd just had a new takeover of Government in Nigeria. So, all the banks, there was this policy, the Central Government were not transferring funds from Nigeria directly from the Central bank to any foreign country. So, if you needed to exchange, you had to go through the black market. As this was me, obviously, I had already moved house and I had only moved with £40,000. I meant to move in with £400,000. So, my husband said, "Well we've got the money now, so we have to look for ways in which to transfer the money from Nigeria to England. So it was at that point, almost every local bureau de change that you can think of around the country, I was calling any Nigerian who needed money to send to their home country, I was … I just, you know, word of mouth to people, "I will give you the naira" because that's what the currency's called. … "I will give you the naira, you give me pounds" and I paid everything, I said, "send it through to my business consultancy account."

51. Mr Coles sought clarification of this answer and he put to Mrs Katung the following:

> "so essentially, you've put, for want of a better word, feelers out around the Nigerian community for anyone who wants sterling, the equivalent amount in naira, back in Nigeria, you would effectively buy the sterling off them and you would have the money transferred back in Nigeria, to whatever account they …"

52. Mrs Katung agreed with Mr Coles' interpretation of her answers. She also agreed with the proposition that she was operating a money service bureau.

53. Finally, towards the end of the interview, we see the following exchange:

> "AC: so, basically, your husband has sold the naira to the …?
>
> KATUNG: that's correct
>
> …
>
> AC: and ultimately, your bank account has been given to all these random people.
>
> KATUNG: that's correct … that's what happened.
>
> AC: but you can see the danger here, can't you?
>
> KATUNG: I, I do, yeah, I do. Cos normally, we've gone through, like I said to you, er, we had to go through the, erm … the private, instead of going through the Central Bank."

54. I consider that what Mrs Katung told Mr Coles was clear enough, but Mr Pons contended that Mr Coles completely misunderstood the position. According to his skeleton argument:

> "Mr Katung then used the services of a money service business in Nigeria to exchange the naira into pounds sterling and remit it to a Barclays bank account held in the name of 1st Resource. This was done with a view to making the payments due under the contract. The money service business in Nigeria received the sums of naira, but it was their partner agents in the United Kingdom who then made the payments into the bank account of 1st Resource, as is commonplace with Informal Value Transfer Systems. [Mrs Katung] also relied to a limited extent on family and friends to assist her with currency exchanges in order to make the payments due under the Contract."

55. Mr Pons' argument was that the transfers may have been in violation of Nigerian exchange controls, but that does not constitute an equivalent offence in the UK.

56. Surprisingly, Mrs Katung's witness statements in these proceedings did not address how the payments were made, nor did they seek to explain what she had said at interview. All the more surprisingly, Mrs Katung has disclosed very little

documentation which bears on these transfers (I will deal with what she has disclosed in the succeeding paragraphs of this judgment), and there is no witness statement from her husband. These are telling omissions from which I draw an adverse inference.

57. The two transfers to the Post Office in Leeds are adequately documented: see §13 above. My interpretation of Mrs Katung's oral evidence is that the bank and/or the post office did not permit transfers in any larger amounts, and that the exchange rate was expensive. Exactly who organised the currency exchange is unclear, but it may have been a company such as Western Union. I am prepared to accept that these two transfers were legitimately made.

58. On 17 March 2020 Mrs Katung sent Mr Coles what may well have been extracts from bank statements purportedly showing the transfers her husband made to the Bureau de Change companies in Nigeria who then used agents in the UK to get the monies to her, via her company. The attachments to Mrs Katung's email are no longer available: neither the NCA nor Mrs Katung has disclosed them. However, it does appear from Mr Coles' email of 18 March 2020 that he did see the attachments. He said in the email that the real question is what due diligence was adopted by the various money exchange bureaux in Nigeria "to establish the bona fides of those persons and entities". I have to say that Mr Coles' email is difficult to understand.

59. Why the NCA's systems do not permit access to old emails has not been explained, and in my view they are as much at fault in this particular regard as is Mrs Katung. However, Mrs Katung has had many years to prepare her defence and provide an adequate, documented explanation of what happened in 2015. She has failed to do that. It was incumbent on her to take proactive steps to ensure that a properly evidenced account was given to the Court.

60. Shortly before the hearing, Mrs Katung sought to rely on an attestation from Mr Mubarak Suleiman of My Honey Oil Interbiz Ltd ("Honey Oil") dated 16 September 2020 and an amendment dated 29 September 2020. The first page of the attestation had been disclosed in January 2021 but the three subsequent pages were not. The attestation purports to prove that Mrs Katung's husband was a client of Honey Oil and that the latter was a licensed Bureau de Change in Nigeria. Furthermore:

> "… we received monies from our client in pursuit of his stated objectives and instructions but with particular reference to the sum of N21,710,000 transferred into our account on 3 July 2015.
>
> … upon receipt of the said sums we contacted some of our verified agents in the United Kingdom soliciting for pounds sterling in exchange for the naira we received from our client, hence the various monies inclusive of cash deposited into Mrs Katung's business account of 1st Resource which was provided and verified by the agency."

61. Mr Coles undertook some rapid researches of this document and on Honey Oil. On the basis of internet searches alone, the Central Bank of Nigeria's list of licensed Bureaux de Change as at June 2021 shows no trace of Honey Oil, and the same applies to an archive list dated 2015. Furthermore, Mr Coles has conducted open source research on the address given in the attestation (Plot 2249, Zone 4, Plaza etc.) and although there

are 68 individual Bureaux de Change operating from that address, none of these was called Honey Oil.

62. Confronted with Mr Coles' 10th witness statement, Mr Pons withdrew his application to rely on the late-served Honey Oil documentation. However, the NCA is entitled to rely on it, and this material is unhelpful to Mrs Katung's case.

63. I turn now to address Mrs Katung's oral evidence. She is now the Lady Mayoress of Leeds and she gave her evidence in a restrained and dignified manner. However, by the time the NCA's cross-examination of her had concluded, I was not satisfied that she was a particularly reliable witness.

64. At the outset of her evidence in chief, Mrs Katung sought to explain what happened back in 2015. She said this:

> "In 2015 my husband applied for a loan for approximately £360,000 to complete the deposit. In June the bank granted that amount. There had been an election, a new government, and all forex transfers were stopped. We now had £360,000 to pay, and we went through a "parallel" or "black" market. He asked certain BdCs who were responsible for transferring the funds. I gave them the bank details of 1st Resource because it was easier to transfer from a company account than a personal account. I didn't know the agents in the UK."

65. Later in her evidence, Mrs Katung explained that the term "black market" does not mean an illegal market. She preferred the term "parallel".

66. Although the mechanism described by Mrs Katung appeared to be consistent with Mr Pons' skeleton argument, albeit different in my view from the mechanism explained to Mr Coles at interview, she did accept that four payments totalling £22,320 were made into her company account by two friends in the UK (on the basis, presumably, that her husband would arrange for equivalent sums in naira to be paid in Nigeria to the order of these friends). Under cross-examination and for the first time, Mrs Katung was able to identify two further payments adding up to £20,000. The payee was a "M. Ozigi". I regret to say that on this topic I did not find Mrs Katung's evidence to be frank and forthcoming.

67. Mrs Katung was asked questions about the helpful schedule set out under paragraph 70 of Mr Coles' eighth witness statement. This itemises all the payments made from the bank account of 1st Resource to Mr Hussain's Coutts bank account between 1 July (the witness statement wrongly gives the start date as 6 July) and 27 August 2015. These payments emanate from various sources including cash deposits, individuals (with names of Nigerian origin), companies (but not foreign exchange companies or their agents in the UK) and a company called Cadington Resources (two payments totalling nearly £75,000).

68. According to paragraph 71 of Mr Coles' eighth witness statement:

> "At least one of the depositors, Cadington Resources appeared from my research to be linked to a Nigerian Money Service

> Bureau called Caddington Capital Ltd which featured in connection with a 2017 money laundering investigation referred to in open-source material in Nigeria. Cadington Resources Ltd is listed as a director of another company called Cadington Securities Ltd and one of the other directors of Cadington Securities Ltd is a Mr Braithwaite, the controller of Cadington Capital Ltd and a person who featured in the same open source material/Nigerian money laundering investigation."

69. I am prepared to infer that Cadington Resources was some sort of money exchange bureau which could be described as the UK agent of a Nigerian company. The two payments presently under consideration could, therefore, be fairly characterised as falling into the category described by Mrs Katung in her oral evidence. During oral argument after the evidence had concluded, I suggested that the £10,000 deposit involving "Tranzworld" may also fall into the same category, but on reflection I have concluded that it probably does not. The narrative on the bank statement reads "consulting".

70. In my judgment, the only reasonable inferential conclusion that can be reached on all the available evidence is that the majority of the payments made into the bank account of 1st Resource could not have been from the UK agents of money exchange bureau in Nigeria (whether licensed or unlicensed), contrary to Mrs Katung's oral evidence and the case advanced in Mr Pons' skeleton argument. Instead, the version first given to Mr Coles at interview was very much closer to the true account. In summary, feelers were indeed put out to the Nigerian community in the UK, and whether or not these individuals or companies were previously known to Mrs Katung she, or possibly her husband, used her consulting business account as a repository for sterling payments, on the understanding that her husband would organise the payment in Nigeria of their naira equivalent.

71. The use of Mrs Katung's company for this purpose was improper but does not in and of itself prove the NCA's case.

72. Mr Pons submitted that by acting in this way Mrs Katung and/or her company were not acting as a business because there were no profits to be made. I consider that is not the correct analysis. It would be one thing to undertake informal arrangements of this type for friends and family on a very occasional basis (and such arrangements might well be unlawful for other reasons), but it is quite another to do this on very many occasions for the mutual benefit of individuals and companies many of whose names Mrs Katung did not claim to recognise during the course of her evidence. In my judgment, Mrs Katung was conducting a business in foreign exchange transactions to circumvent Nigerian foreign exchange regulations and/or to avoid a punitive exchange rate.

73. Mr Pons conceded that if I should conclude, as I have done, that Mrs Katung was acting through her company as an unlicensed money exchange business, then she was acting unlawfully. In this regard, it is unnecessary to consider whether what she was doing was also unlawful in Nigeria.

74. This leaves the two payments from Cadington Resources. On the basis that these were payments undertaken using the method described in Mrs Katung's evidence in chief, I am satisfied on the balance of probabilities that Cadington Resources was not licensed

to undertake foreign exchange transactions in Nigeria. I reach my conclusion on the basis of: (1) paragraph 72 of Mr Coles' eighth witness statement, (2) the adverse inferences to be drawn from the Honey Oil material, and (3) the adverse inferences to be drawn from Mrs Katung's failure to file a witness statement from her husband and to disclose relevant documentation. Mr Pons conceded that were I to reach this conclusion, the sums in question would have to be treated as "recoverable property" for the purposes of the POCA regime because there would be a breach of relevant Nigerian legislation.

75. I am not overlooking the two cash payments aggregating £6,000. If the NCA had not succeeded on the first issue, I would have concluded that it should account for this relatively modest amount in the appropriate way.

76. In the circumstances, it is unnecessary for me to address the issues raised by the expert report of Mr Jonathan Ercanbrack. Nor is it necessary for me to address the decision of Mostyn J in *R (oao Fresh View Swift Properties Ltd) v Westminster Magistrates' Court* [2023] EWHC 605 (Admin); [2023] 1 WLR 3321. That decision is undoubtedly helpful to the NCA but I have been able to decide this case on a more straightforward basis.

77. Mr Pons' other lines of defence cannot possibly succeed in the light of my conclusions on the two principal issues.

DISPOSAL

78. The effect of my conclusions on the two issues I have identified is that the civil recovery order which has already been made in the NCA's favour under s. 266 of POCA should be treated as vesting the entirety of the property in the Trustee, and that no credit falls to be given for the value of the deposit payments made by Mrs Katung.

79. The NCA is also entitled to an order for possession.

80. I invite the parties to draw up an order which reflects the foregoing as well as any additional financial remedies to which the NCA may claim to be entitled. If the parties cannot agree on those remedies I will determine them following further submissions.

81. Finally, the NCA is entitled to its costs.