Neutral Citation Number: [2007] EWHC 3053 (QB)

Case No: HC05 CO3602

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday, 3rd December 2007

Before:

MR. JUSTICE MORGAN

Between:

FEDERAL REPUBLIC OF NIGERIA	**Claimant**
- and -	
(1)SANTOLINA INVESTMENT CORPORATION	
(2) SOLOMON & PETERS LTD.	
(3) DEPREYE ALAMIEYESEIGHA & OTHERS	**Defendants**

MR. RHODRI DAVIES QC and MR. MICHAEL FEALY (instructed by **Messrs. Kendall Freeman Solicitors**) for the **Claimant**
THE DEFENDANTS did not appear and were not represented

Approved Judgment

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MR. JUSTICE MORGAN:

Introduction

1. This application is made by the Federal Republic of Nigeria against the first and second defendants for summary judgment under CPR Part 24. The claims made by the Federal Republic of Nigeria arise from the allegedly corrupt conduct of the third defendant, Mr. Alamieyeseigha, who was the Governor of Bayelsa State in Nigeria from May 1999 until his impeachment and dismissal in December 2005. The first and second defendants are companies controlled by Mr. Alamieyeseigha. They hold properties and bank accounts in London. The Federal Republic of Nigeria says that these assets are recoverable by it as representing bribes and secret commissions obtained by Mr. Alamieyeseigha through the abuse of his position as a public officer in Nigeria.

2. This is the second application made by the Federal Republic of Nigeria for summary judgment in this case. The previous application came before Lewison J on 27th February 2007. At that stage Mr. Alamieyeseigha was asserting that he had legitimate explanations for all of the assets claimed by the Federal Republic of Nigeria. The learned judge gave a reserved judgment on 7th March 2007. He dismissed the application on a number of grounds including the ground that although the Federal Republic of Nigeria had a strong case, there were disputed allegations of corruption which ought to go to trial and the claimants' case depended in part on matters of inference.

3. This second application is made in the light of a suggested change in circumstances. Since the first application there have been criminal proceedings in Nigeria. In those proceedings, Mr. Alamieyeseigha has pleaded guilty to money laundering offences on behalf of the first and second defendants. It is now submitted on behalf of the claimant that the admissions constituted by these guilty pleas destroy any possible defence for the first and second defendants in these proceedings and they amount to a change in circumstances since the application before Lewison J.

The Defendants

4. The first defendant, Santolina Investment Corporation ("Santolina") is a company incorporated in the Seychelles. Santolina has been used as a vehicle for Mr. Alamieyeseigha. It has bank accounts in London with the Royal Bank of Scotland PLC with current balances in excess of £1.8 million. The balances on these accounts are part of the subject matter of the present application. Although controlled by Mr. Alamieyeseigha, who entered written guilty pleas on its behalf in the Nigerian criminal proceedings, Santolina has never acknowledged service in these proceedings, has served no evidence and is not represented.

5. The second defendant, Solomon & Peters Ltd. ("S&P") is a company incorporated in the British Virgin Islands. S&P has also been used as a vehicle for Mr. Alamieyeseigha. It is the registered proprietor of four properties in London, three of which are the subject of the present application. As is the case with Santolina, S&P is controlled by Mr. Alamieyeseigha. He entered written guilty pleas on its behalf in the Nigerian criminal proceedings. S&P has never acknowledged service in these civil proceedings, has served no evidence and is not represented. S&P was struck off

the Companies Register in the British Virgin Islands on 5th September 2006. Under subsection (3) of section 215 of the Business Companies Act 2004 of the British Virgin Islands this fact does not prevent creditors making claims against the company and pursuing them to judgment and execution. S&P has been served with the present proceedings but has not been served with this application for summary judgment. However, Mr. Alamieyeseigha knows about this present application and solicitors on his behalf have written to the solicitors for the claimant indicating that Mr. Alamieyeseigha does not intend to appear in any respect on the hearing of this application. At the hearing I made an order under CPR rule 6.9 dispensing with service on S&P.

6. I should say something briefly about the third defendant, Mr. Alamieyeseigha, himself. He was arrested at Heathrow Airport in September 2005 by officers from the Metropolitan Police on suspicion of money laundering offences. The flat in which he lived in London, 247 Water Gardens (which was registered in the name of S&P) was searched on the same day as his arrest and the police found about £915,000 in cash at the flat. The money was in a mixture of sterling, euros and US dollars. Mr. Alamieyeseigha was thereafter charged with money laundering offences. He was initially remanded in custody but later he obtained bail. In November 2005, in breach of his bail conditions, Mr. Alamieyeseigha left the jurisdiction and returned to Nigeria. On his return impeachment proceedings were brought against him in Bayelsa State and on 9th December 2005 he was dismissed from his position as Governor.

The relief sought by the summary judgment application

7. The summary judgment application is for the following relief. The claimant claims a declaration that it is the true owner of and beneficially entitled in equity to three residential properties in London. The three properties are: Flat 202 Jubilee House, Shootup Hill, Cricklewood, London; 14 Mapesbury Road, London; and 68-70 Regents Park Road, London. In relation to those properties the claimant, as well as claiming ownership, seeks an order that the Land Registrar at the Land Registry register the claimant as proprietor in place of S&P in relation to the registered titles.

8. In addition to the claims in relation to the three residential properties, there is also a claim against Santolina in relation to the bank accounts in the name of Santolina with Royal Bank of Scotland PLC. The claim extends to a claim to a declaration that the Federal Republic of Nigeria is the true owner of and entitled in equity to the credit balances standing in those accounts.

The application before Lewison J

9. As I have indicated, the claimant had earlier applied in this action for summary judgment against the first and second defendants and also against Mr. Alamieyeseigha, the third defendant, and indeed against other defendants. The learned judge gave a reserved judgment on 7th March 2007. I will assume that anyone reading this, my present judgment, will also have available to them the judgment given by Lewison J. It is not necessary, therefore, for me to revisit many of the matters which the learned judge himself dealt with, nor is it necessary for me to read out verbatim large sections of that judgment. However, to explain what I decide in this judgment, I will refer by reference to certain passages in Lewison J's judgment.

10. In paragraph 1 of that judgment under the heading "Introduction", he says something about the constitutional position in Nigeria and the existence of some 36 States of which Bayelsa State is one. In paragraphs 3 and 4 of the judgment the learned judge set out very helpfully the relevant principles which a court will seek to apply when considering an application for summary judgment. Those principles are well-known but are helpfully summarised. I will adopt those principles in approaching the application before me.

11. At paragraphs 15, 20, 21 and 22 the learned judge refers to the law of Nigeria which is the relevant substantive law for present purposes. He identifies the evidence before him as to the legal basis of the Federal Republic's claim against the relevant defendants. The learned judge referred to the expert evidence on Nigerian law and he concluded that the Federal Republic of Nigeria did have a claim against the company defendants, the first and second defendants, if it were to be shown that the monies used to acquire the residential properties and the monies paid into the relevant bank account had been the fruits of a bribe given to Mr. Alamieyeseigha in his position as State Governor in Nigeria. It is not necessary for me to go into further detail as the matter is discussed in a clear and full way by Lewison J.

12. The learned judge then dealt with the matters in dispute before him. He summarised the state of the evidence at the time of the hearing before him and he expressed his conclusions in paragraphs 71 to 73 of his judgment. Again, it is not necessary for me to read out verbatim all of the concluding reasons, but I think, in view of what has happened subsequently, I ought to refer to one or two passages. In paragraph 71, subparagraph (i), the learned judge said this:

> "An allegation of personal corruption in public office is probably the most serious allegation that can be made against an elected officer of government. Only in exceptional circumstances would it be right to enter judgment against him without giving him the opportunity to confront his accusers and have his side of the story heard."

13. At paragraph 71, subparagraph (x), the learned judge referred to the fact that the property in the name of S&P at The Water Gardens was not the subject of the summary judgment application before him (and it is still not the subject of the summary judgment application before me). What the judge said was this:

> "Part of the case, in relation to the Water Gardens, will have to go to trial against S&P in any event, and it might unbalance the trial if findings of corruption have already been made against Mr. Alamieyeseigha. It would be better for the trial judge to consider all the evidence in the round."

14. In paragraph 72 of his judgment, the judge further developed the idea which he had just expressed in these terms:

> "Since part of the case will have to go to trial, including part of the case against S&P, and since the substratum of the evidence is the same against all the defendants, even those who are not represented, I have come to the conclusion that it would not be

> right to enter judgment even against them. I regard this as a compelling reason for the case against them to go to trial."

15. In paragraph 73, the learned judge, in a passage which I need not read, referred to the circumstances in which it was appropriate and which it was inappropriate to give summary judgment in a case where there was an allegation of fraud. He pointed out that cases can look different at a trial as compared with how they would look on an application for summary judgment where the court is dealing with evidence on paper rather than having the advantage of oral evidence.

16. Mr. Davies QC appeared for the Federal Republic of Nigeria before Lewison J and he appeared again before me on the present application.

The change of circumstances

17. There are said to be two changes of circumstances since the earlier judgment in March 2007. First of all, Mr. Alamieyeseigha has served a defence. That, at least, identifies the contentions which Mr. Alamieyeseigha would wish to put forward if the matter went to trial. Mr. Davies told me that the service of this pleading had served to narrow areas of dispute as compared with the state of affairs at the time of the hearing before Lewison J. Secondly, and more importantly, there have been criminal proceedings against the first defendant, Santolina, the second defendant, S&P, and indeed the third defendant, Mr. Alamieyeseigha, in Nigeria. Those criminal proceedings are, in my judgment, of very great significance and it is important to see precisely what the charges were, what pleas of guilty were entered and what the court (which convicted the first and second defendant) had to say.

18. In the case of Solomon & Peters, there were charges relating to that company in count numbers 7 to 12 inclusive. I will read one of the counts as a specimen. The language of the various counts is similar in each case although it refers to different items of property. Count number 9 is in these terms:

> "That you, Solomon & Peters Ltd. between October 1999 and December 2003, in the Lagos Judicial Division of the Federal High Court did transfer the sum of £241,000 (Two Hundred and Forty-One Thousand Pounds) from Lagos to London to buy the property to wit Flat 202, Jubilee Heights, Shootup Hill, London NW2 3UQ which sum you knew represented the proceeds of crime with the aim of concealing the nature of the proceeds of the said crime and thereby committed an offence punishable under section 14(1) of the Money Laundering Act 2003."

The statute referred to is plainly the statute in Nigeria rather than in the United Kingdom.

19. In the case of Santolina, that company was the subject of a larger number of charges, being those from 13 to 28 inclusive. Again, I will read one charge as a specimen to indicate the general nature of the charges against Santolina. The various charges differ in relation to the subject-matter of the charge but not in the expression of the offence. Count 14 is in these terms:

> "That you Santolina Investment Corporation on or about 23rd April 2004 in the Lagos Judicial Division of the Federal High Court did transfer the sum of £100,000 (One Hundred Thousand Pounds) from Lagos to Royal Bank of Scotland, London which sum you knew represented the proceeds of crime with the aim of concealing the nature of the proceeds of the said crime and thereby committed an offence punishable under section 14(1) of the Money Laundering Act 2003."

20. There were written pleas of guilty both from Solomon & Peters and from Santolina. They were both dated 26th July 2007 and in both cases they were signed by Mr. Alamieyeseigha himself which indicates: first, his control of the companies; and, secondly, his personal knowledge of the matters which were the subject of the charges. Solomon & Peters in their plea of guilty admitted the facts and pleaded guilty to Counts 9, 10, 11 and 12. They did not plead guilty to Count 8. Count 11 was later abandoned although the reasons for that are not clear and it is to be noted that Count 11 was the subject of a plea of guilty in any event. Santolina pleaded guilty to Counts 14 to 28 inclusive. The letter of plea refers to Count 13 but it has been scratched out. It is not clear whether it was scratched out at some later point given that Count 13 was later abandoned by the prosecution. Again, no explanation for that has been provided.

21. I have also been given a note of what was said in court in Lagos, Nigeria on 30th July 2007 when the charges against the companies were considered and the companies were convicted. In the note of the proceedings there is a reference to counsel for the prosecution abandoning Counts 11 and 13 and those counts were then struck out. There is also a note of the second and third accused (that is Solomon & Peters as second accused and Santolina as third accused) pleading guilty in writing in the way that I have described.

22. I also draw attention to the remarks made by counsel for the prosecution in describing the case to the court for the purposes of entering convictions and then sentencing the defendants. What counsel for the prosecution said was that he relied on a large number of pages of the proofs of evidence prepared by witnesses who were intended to be prosecution witnesses. He relied on those passages to show the contract notes that funded the accounts of the accused persons through contracts, kick-backs and outright withdrawal from the accounts of Bayelsa State Government mainly through a bank called Bond Bank. Counsel for the prosecution then referred to further pages from the proofs of evidence. This was apparently for the purpose of showing how the monies were remitted to acquire properties in the United Kingdom. He also referred in terms to the evidence of Mr. Ayeni Olatunde and a Mr. Aliyu Abubakar. It was said that they were used for the purpose of acquiring properties in Nigeria. Counsel for the prosecution then asked the court to accept the statements of accounts of these companies and the evidence of the Bayelsa State Government and asked for a conviction of the relevant corporate defendants.

23. Counsel for Solomon & Peters and Santolina was a Chief Ezekhome. He did not in any way dispute the version of the facts put forward by counsel for the prosecution and he said the following:

> "We have no objection by the plea of guilty by the second to fourth Accused persons."

24. The court gave a short judgment which contains this statement:

> "And upon careful and meticulous consideration of the facts as contained in the charge sheet along with the annexed proof of evidence, particularly the statement of bank officials .... as well as the statement of one Aliyu Abubakar .... this court is satisfied that the second to seventh Accused persons intended to admit the truth of all the essentials of the offences of which they pleaded guilty through their respective representatives. In effect; the prosecution have proved its case beyond reasonable doubt and I accordingly find the second to seventh Accused persons that is the Limited Liability Companies Guilty as charged."

25. There was then a plea in mitigation by Chief Ezekhome who suggested that the devil had influenced the companies in question. The court then passed to the question of the sentence. The order of the court was that the corporate defendants, including Solomon & Peters and Santolina, would be wound up and their respective assets and properties would be forfeited to the Federal Government of Nigeria. There were further specific orders as to specific properties and amongst the properties in question were the three residential properties in London the subject of the application before me, namely, Flat 202 Jubilee Heights; 68-70 Regents Park Road; and 14 Mapesbury Road. Indeed it is to be noted that there was also confiscated the residential property at Water Gardens which is not the subject of the summary judgment application. The court then went on to order confiscation of a large number of identified sums of money which look as if they are intended to be the sums of money in the Royal Bank of Scotland standing in the name of Santolina. It was also ordered that all the proceeds of this confiscation order should be transferred to the Bayelsa State Government.

26. At the hearing before me I asked Mr. Davies, for the Federal Republic of Nigeria, what advantage would be gained by the claimant in pursuing these proceedings in an English court in view of the confiscation orders made in the Nigerian court. He explained in some detail the procedures which would have to be gone through, some administrative and some judicial, before the orders of the Nigerian court could become effective orders in this jurisdiction in relation to properties and monies here. I am sufficiently satisfied that the making of the confiscation orders in the Nigerian court does not make it unnecessary for the claimant to continue with this application before me. It does not make the application before me academic and I am therefore prepared to consider it on its merits.

The relevance of a change of circumstances

27. As I have described, the claimant has already applied for and failed to obtain summary judgment in this action against the first and second defendant, amongst others. The application before me is a second application for summary judgment, this time confined to an application against the first and second defendants. This raises an important question as to when a court should allow a party to litigation to

apply a second time for relief that was refused on an earlier occasion; in particular, when can a party apply on a second occasion for summary judgment when a first application for summary judgment has been made and has failed?

28. In my judgment I can derive assistance from the principles which apply to the making of a second interlocutory application for the same relief as had been sought at an earlier point in the same proceedings. That subject was considered by Patten J in *Lloyds Investment Limited v Christen Ager Hanssen* [2003] EWHC 1740 (Ch) and, in turn, his statement of the principles applicable was approved by the Court of Appeal in *Collier v Williams* [2006] 1 WLR 1945 at 39 to 40. At paragraph 39, in the judgment of the Court of Appeal, there is set out at length a passage from the judgment of Patten J. Patten J in the case before him had described how a High Court Judge could not act as an appellate court in relation to an earlier order made by a different High Court Judge. He then referred to the specific rule, Rule 3.1(7) which was said to be relevant in the case before him. That rule allows the court in a proper case to vary or revoke an earlier order. His judgment then included this passage:

> "Although this is not intended to be an exhaustive definition of the circumstances in which the power under CPR Part 3.1(7) is exercisable, it seems to me that, for the High Court to revisit one of its earlier orders, the Applicant must either show some material change of circumstances or that the judge who made the earlier order was misled in some way, whether innocently or otherwise, as to the correct factual position before him. The latter type of case would include, for example, a case of material non-disclosure on an application for an injunction. If all that is sought is a reconsideration of the order on the basis of the same material, then that can only be done, in my judgment, in the context of an appeal. Similarly it is not, I think, open to a party to the earlier application to seek in effect to re-argue that application by relying on submissions and evidence which were available to him at the time of the earlier hearing, but which, for whatever reason, he or his legal representatives chose not to employ."

In paragraph 40 in *Collier v Williams* the Court of Appeal stated that they endorsed that approach.

29. That statement of the principles applicable would enable me to hear a second application for summary judgment on the ground, amongst other possible grounds, that there had been a material change in the relevant circumstances since the hearing of the first application.

30. For the sake of completeness – although I do not need to rely upon it in this case – I should also refer to the discussion of this point in *Woodhouse v Consignia PLC* [2002] 1 WLR 2558. It is not necessary to refer to the issues more generally arising in that particular case. In paragraph 55 of the judgment of the court there is a reference to a party having a second bite at the cherry. In paragraph 56 the court refers to the importance of limiting repeat applications for effectively the same relief pre trial. But in paragraph 57 there is the following:

> "To take an example: suppose that an application for summary judgment in a substantial multi-track case under CPR 24 is dismissed, and the unsuccessful party then makes a second application based on material that was available at the time of the first application, but which through incompetence was not deployed at that time. The new material makes the case for summary judgment unanswerable on the merits. In so extreme a case, it could not be right to dismiss the second application solely because it was a second bite at the cherry. In those circumstances, the overriding objective of dealing with cases justly, having regard to the various factors mentioned in CPR 1.1(2), would surely demand that the second application should succeed, and that the proceedings be disposed of summarily. In such a case, the failure to deploy the new material at the time of the first application can properly and proportionately be reflected by suitable orders for costs, and (if appropriate) interest. The judge would, of course be perfectly entitled to dismiss the second application without ceremony unless it could be speedily and categorically demonstrated that the new material was indeed conclusive of the case."

31. There is no possible suggestion in the present case that the first application was not presented with all proper competence and indeed skill. I read that passage because it recognises that a second application for summary judgment may be made even when there has not been a material change in the relevant circumstances. It seems to me it must follow, a fortiori, that a second application for summary judgment may be made where there has been a change of circumstances. There is plainly something of a difference of view between the example given in *Woodhouse v Consignia* and the statement of principle by Patten J in relation to cases which do not involve a change of circumstances. That difference of view is not material in the present case because the application is based squarely on a clear change of circumstances and, in particular, the guilty pleas in Nigeria by the two companies, those guilty pleas being made by Mr. Alamieyeseigha on behalf of the companies.

32. I can now turn to the more detailed facts and the material before the court relied on in support of this application for summary judgment. I intend to take the factual material under the following four headings and in this order. I will first deal with Santolina's bank accounts; I will then deal with Flat 202 Jubilee House; I will then deal with 68-70 Regents Park Road; and finally I will deal with 14 Mapesbury Road. It is right to say that the evidence in relation to one of these sets of facts may throw light on others of the items which are the subject of this present application.

The bank accounts in the name of Santolina

33. The case put forward by the Federal Republic of Nigeria is described in paragraph 41(4) of the particulars of claim. I will not read out that paragraph but it identifies the two bank accounts in question and some detail relating to them. In paragraph 44 of the particulars of claim it is pointed out that a feature of the various bank accounts (including the Santolina bank accounts) was that there were very few payments out. There was no indication of a balance between income and expenditure characteristic of a business even if Mr. Alamieyeseigha could have been involved in carrying on

business whilst Governor of a state in Nigeria. What the bank statements show – and I have been taken to the relevant statements – is that money simply accumulated in the accounts although there was an exception in relation to the principal Royal Bank of Scotland account where a sum of £949,000 was paid out, apparently to acquire a property in South Africa.

34. Paragraph 45 of the particulars of claim pulls a large number of strands together and I ought to read it. It says:

> "In the circumstances the Federal Republic of Nigeria will say that it is to be inferred that the bank balances, cash and other investments accumulated by Mr. Alamieyeseigha outside Nigeria since May 1999 .... represent bribes or secret profits obtained by Mr. Alamieyeseigha through the abuse of his position as a Public Officer in Nigeria. In this regard the Federal Republic of Nigeria will rely upon:
>
> (1) the persistent breaches by Mr. Alamieyeseigha of the constitutional prohibition against governors maintaining or operating bank accounts in any country outside Nigeria .... which breaches continued even after, in early 2003, steps were taken to bring proceedings against Mr. Alamieyeseigha for contravention of that prohibition;
>
> (2) the scale of the discrepancy between Mr. Alamieyeseigha's declared assets and income and his undeclared assets;
>
> (3) his use of offshore companies" – and amongst those listed are S&P and Santolina – "bank accounts in Cyprus and trusts in the Bahamas;
>
> (4) the corrupt sources used for the purchases of the London properties as pleaded above" – I interpose the "London properties" include the three properties the subject of the present application –
>
> "(5) the pattern of receipts on the bank accounts which is entirely consistent with the proceeds of theft or corruption and very difficult to reconcile with any ordinary business operation;
>
> (6) upon the discovery by the police of £920,000 in cash at 247 The Water Gardens there being no legitimate explanation from Mr. Alamieyeseigha to hold such an amount in cash; and
>
> (7) the absence of any plausible, legitimate means for Mr. Alamieyeseigha to acquire assets outside Nigeria on such a scale whilst properly discharging his duties as Governor and complying with his constitutional obligation not to hold any other executive office or paid employment in any capacity whatsoever" – and there is a reference made to the relevant statutory provision.

35. Staying with the Santolina bank accounts, Mr. Alamieyeseigha has served a defence in this action. Paragraph 46 of that pleading deals with the bank accounts. At paragraph 46 Mr. Alamieyeseigha pleads that he believes that the source of the bulk of the funds in one of the bank accounts with the Royal Bank of Scotland is his re-election campaign fund in 2003 which had a surplus which was unused. It is said that he had 1.47 billion naira (which I am told is £5 million to £6 million) left unused at the end of the re-election campaign and he gave instructions to his agent to transfer these funds to the Royal Bank of Scotland bank account in the name of "Santolina" in London. Mr. Alamieyeseigha then says that he was not personally involved in the transfer and has no personal knowledge of it or the operation of the relevant account.

36. I have been shown the bank statements which, so far as movements on the account are concerned, are consistent with what is pleaded in the particulars of claim which I have read. I have also been given a witness statement which is the fourth witness statement of Colin Stuart Joseph, solicitor for the claimant. In Schedule 1 to that witness statement Mr. Joseph analyses some 16 transactions which involved transfers from Bond Bank in Nigeria, from the account of Temat Associates, to the Royal Bank of Scotland account in the name of Santolina. The monies that went into the Royal Bank of Scotland account totalled, I think, some £2.7 million whereas the transactions in Schedule 1 totalled, I believe, some £1.54 million. However, they do show a great amount of detail about a large number of the sources for the monies in the relevant bank account.

37. What does emerge, certainly in relation to the monies from Temat Associates, is that the monies feeding the Santolina bank account did not come from a bank account in the name of Mr. Alamieyeseigha. If these truly had been campaign funds then one would have expected to have seen a source bank account identifying Mr. Alamieyeseigha in some way. Instead the monies came from a third party. Secondly, the monies did not come all at once, which one might have expected if one was transferring a surplus from one account to another. The monies came in a large number of separate transactions. Mr. Alamieyeseigha does not explain what his reason was for transferring what he says was his own money in Nigeria to a bank in London. Nor does he explain why it was appropriate to form a company in the Seychelles, to open a bank account in the name of that company and put the money (which he says was his own money) into the name of the Seychelles company.

38. The principal third party from whom the monies came was Temat Associates. Temat was a contractor that did work for the State of which Mr. Alamieyeseigha was the Governor. Santolina has pleaded guilty in the Nigerian criminal proceedings to a large number of charges of money laundering. The guilty plea was made by Mr. Alamieyeseigha himself on behalf of Santolina. The total sums involved came to some £1.5 million or £1.6 million. The prosecutor in the Nigerian court referred to the subject-matter of the charges as being bribes from State contractors. Santolina has not, itself, acknowledged service of these proceedings. It has not served a defence. It has not filed any evidence. It has not sought to put any material before the court to counter the suggestions made by the claimant as to the source of the money being bribes obtained by Mr. Alamieyeseigha. Mr. Alamieyeseigha's defence, namely that the bulk of the monies were excess campaign funds, is obviously untrue in view of the plea of guilty in the Nigerian court.

39. It seems to me that on this state of the evidence the correct finding to make on a summary judgment application is that the monies in the Santolina accounts are indeed bribes received by or on behalf of Mr. Alamieyeseigha from State contractors in return for the awarding of State contracts. As such, in accordance with the Nigerian legal principles identified in the judgment of Lewison J, the fruits of those payments can now be claimed by the Federal Republic of Nigeria. I do not distinguish between the £1.54 million or the £1.6 million which has been proven to come from Temat, a Government contractor, or which were the subject of criminal charges, from the balance of the monies paid in to the Royal Bank of Scotland accounts. Once I reject Mr. Alamieyeseigha's allegation that the bulk of the monies were campaign funds, it seems to me that I should accept the alternative explanation that the monies are bribes which can now be claimed by the claimant

Flat 202 Jubilee Heights

40. This flat is the subject of paragraphs 25 to 28 of the particulars of claim. I will not read out the detail of those paragraphs. They refer to the source of money for the purchase of the flat being Mr. Soberekon and the fact that Mr. Soberekon was a contractor who did indeed have the benefit of a State contract during the time that Mr. Alamieyeseigha was the Governor of Bayelsa State. The defence to the allegations put forward by Mr. Alamieyeseigha is at paragraph 14 of his defence. It is pleaded that S&P purchased 202 Jubilee Heights using a loan from Mr. Soberekon and it is said that the loan was requested and made as between friends.

41. Some evidence given by Mr. Soberekon in Nigeria was to this effect. He had been interviewed by the Nigerian Economic and Financial Crimes Commission on the 28th September 2005. He explained that his company, Consort Engineering, obtained a contract in Bayelsa State in 1999 and he said this:

> "The transfer was made from my account at NatWest Bank London while I was in London. The Governor of Bayelsa State asked me to pay this company for an undisclosed reason. This EBCO Associates UK account in London Trust Bank PLC was given to me by Mr. Alamieyeseigha and I made the transfer of £250,000 which is about in rough figures US$409,000 on 30th September 1999. This is from profit made from the gas turbine overhaul. The funds transferred to EBCO on behalf of the Governor was in appreciation of the contract award to my company by Bayelsa State Government."

42. I have already read Count Number 9 from the charges in the Nigerian court. I have already referred to the plea of guilty made on behalf of S&P. I have also referred to the prosecution statement made to the court which was not contradicted by counsel for S&P. There is no acknowledgement of service by S&P. There is no defence from them. They have not filed any evidence. They have not sought to counter the contentions put forward by the claimant. The defence of Mr. Alamieyeseigha that the monies were a loan is flatly inconsistent with the plea of guilty made by S&P and, in those circumstances, it seems to me the right finding, even on an application for summary judgment, is that the monies used to purchase this flat were obtained by way of a bribe given to or on behalf of Mr. Alamieyeseigha from a State contractor and, on

the Nigerian legal principles I have referred to, they properly can now be claimed as owned by the Federal Republic of Nigeria.

68-70 Regents Park Road

43. The allegation in relation to that property is summarised in paragraphs 33 to 36 of the particulars of claim. The financial arrangements are a little more complicated here than they were in the case of Flat 202 Jubilee Heights. In particular, monies came from a Mr. Ayeni Olatunde and Mr. Aliyu Abubakar and some of the purchase price of the property was borrowed on mortgage from a mortgage lender and then later paid off.

44. As regards Mr. Aliyu, he was interviewed by the Commission in Nigeria on the subject of his dealings with Mr. Alamieyeseigha. On 15th September 2005 he explained his involvement with the transfer of monies to the solicitors who were dealing with the purchase of 68-70 Regents Park Road. He refers to the fact that Mr. Alamieyeseigha asked him to "lend" certain money. He refers to the fact that Mr. Alamieyeseigha has not repaid him and he adds this: "I have not asked him since I am doing business in Bayelsa State." He then refers to the fact that his company was awarded a substantial Government contract at around that time.

45. I have already referred to the charges in the Nigerian criminal proceedings. I ought to refer specifically to Count Number 10. I will paraphrase the charge. It is said that Solomon & Peters did convert the sum of £3 million to buy the property at 68-70 Regents Park Road. The period of time, the subject of the charge, is between July 2002 and October 2003. The mortgage which I have referred to, which was used to assist with the purchase, was redeemed in September 2003 which was within the period of the charge. S&P pleaded guilty to that charge. The guilty plea was made by Mr. Alamieyeseigha. I have referred to the prosecution statement in the Nigerian proceedings which indicates that these charges were related to bribes obtained for the awarding of Government contracts by the Governor of the State. There has been no acknowledgement of service by Solomon & Peters, no defence and no evidence relating to this charge. I ought to refer at this point to the defence put forward by Mr. Alamieyeseigha himself. That is contained at paragraphs 26 to 28 of his defence. He asserts that S&P purchased 68-70 Regents Park Road as an investment property for itself and for Mr. Aliyu and the property is therefore held on trust for Mr. Alamieyeseigha and Mr. Aliyu.

46. In view of the plea of guilty in the Nigerian court, I cannot accept that plea on behalf of Mr. Alamieyeseigha. I make the same finding in relation to 68-70 Regents Park Road as I do in relation to Flat 202 Jubilee Heights. The monies used to buy the property and repay the mortgage were monies obtained by or on behalf of Mr. Alamieyeseigha by way of bribes for the awarding of State contracts in that case.

14 Mapesbury Road

47. The third and last property is 14 Mapesbury Road. The allegation made is pleaded in paragraphs 29 to 32 of the particulars of claim. The money used to buy that property came from Mr. Aliyu (the same Mr. Aliyu to whom I have already referred). There is one curiosity, perhaps, which ought to be noticed. Count number 8 in the Nigerian criminal proceedings related to 14 Mapesbury Road. There was no plea of guilty in