SHERIFF APPEAL COURT

[2024] SAC (Civ) 45
EDI-B231-16

Sheriff Principal A Y Anwar KC (Hon)
Sheriff Principal C Dowdalls KC
Appeal Sheriff R D M Fife

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL A Y ANWAR KC (HON)

in the appeal in the cause

FARZANA ASHRAF

Pursuer and Appellant

against

RICHARD DENNIS, THE ACCOUNTANT IN BANKRUPTCY

Defender and First Respondent

and

BILL CLEGHORN as ADMINISTRATOR
UNDER SECTION 128 OF THE PROCEEDS OF CRIME ACT 2002

Party Minuter and Second Respondent

Pursuer and Appellant: Murdoch, sol adv; Murnin McCluskey
Defender and First Respondent: Heaney; Harper Macleod LLP
Party Minuter and Second Respondent: Manson; Morton Fraser MacRoberts LLP

7 November 2024

Introduction

[1] This summary application is the latest in a number of unsuccessful attempts by the appellant, Ms Ashraf, to forge a path to her ultimate aim, namely, to obtain the real right of

ownership to Flat 1/1, 82 Polworth Gardens, Edinburgh ("the property"). Ms Ashraf has spent 22 years in pursuit of that aim.

[2] While seeking to make progress in her attempt to obtain the real right, she has faced many legal hurdles. One such hurdle arose on 8 March 2023; on that date, the sheriff refused to allow receipt of Ms Ashraf's minute of amendment in this summary application. As a consequence, decree of dismissal was granted on 6 December 2023. Ms Ashraf has appealed against the interlocutor of 6 December 2023 and in doing so has sought to bring under review the interlocutor of 8 March 2023. It is accepted by the parties to this appeal that, unless receipt of the minute of amendment is allowed, Ms Ashraf's summary application is irrelevant and the sheriff was correct to dismiss it.

[3] The question for this court is whether the sheriff erred in his refusal to allow Ms Ashraf's minute of amendment to be received on 8 March 2023? We consider the sheriff did not for the reasons we explain below.

Background

[4] Mohammed Younas acquired title to the property in November 1990. Mr Younas is Ms Ashraf's brother. On 7 September 1993, Mr Younas was sequestrated; the first respondent, the Accountant in Bankruptcy ("AiB") was appointed as his permanent trustee and was vested with his estate, including the property.

[5] In April 2001, the AiB invited Mr Younas to buy the equity in the property from him; the property was burdened with a standard security. Following Mr Younas's conviction and sentence to 10 years' imprisonment for two offences of being concerned in the supply of drugs in September 2001, a confiscation order was made against him. In 2002, Ms Ashraf and her sister advised the AiB that they, rather than Mr Younas, wished to purchase the

equity in the property. On 3 October 2002, missives were concluded. £25,000 was paid to the AiB in two instalments in July 2002 and June 2003. The original intention was that the AiB would, in return for payment, grant a disposition of the property to Ms Ashraf and her sister who would by deed of variation take over responsibility for the sums secured against the property. On 21 October 2003, for reasons which have not been explained to this court, the solicitor acting for Ms Ashraf and her sister wrote to the AiB in the following terms:

> "…our clients, Farzana and Ruksana Ashraf have decided that they do not wish the title of the property to be transferred to their names.
>
> The title of the property is therefore to remain in the name of their brother Mohammed Younas and once you have paid the dividend to his creditors and obtained your own discharge, we shall be obliged by you issuing your usual letter of comfort to ourselves."

[6] The AiB was discharged as Mr Younas's trustee on 9 September 2004. Subsequently, on 23 August 2005, the AiB sent a letter to Mr Younas which noted that no disposition or other conveyance transferring Mr Younas's interest in the property had been executed by the AiB. Paragraph 5 of the letter was in the following terms:

> "the Accountant by execution of these presents confirms that she has abandoned and renounced and hereby renounces and abandons any claim to Mr Younas' share and interest or former interest in and to [the property]."

The AiB suggested that Mr Younas may wish to keep the letter in a safe place:

> "as, when you eventually dispose of the property, either through a future sale or through your will, evidence of title may be required and, in the absence of a disposition, difficulties may arise."

[7] In September 2012, Mr Younas was again convicted in the High Court of being concerned in the supply of drugs. The Crown sought a confiscation order under the Proceeds of Crime Act 2002. Following a determination hearing, which involved a competing claim by Ms Ashraf to the property, the Lord Ordinary determined on

11 November 2014 that the property belonged to Mr Younas (*HM Advocate* v *Younas, Ashraf & Ashraf* [2014] HCJ 123 at para [52]). There was no basis upon which the property could be exempted from the confiscation order. The second respondent, Mr Cleghorn, was appointed as administrator in terms of section 128(2) of the 2002 Act to take possession of, manage, realise and otherwise deal with Mr Younas' property on 8 March 2016.

[8] In correspondence prior to the issuing of the confiscation order, those acting for Ms Ashraf sought to persuade the AiB to issue a disposition in accordance with the missives. In a response dated 11 April 2014, the AiB advised that they had been discharged on 9 September 2004; however, they would have no objection to title to the property being transferred to Ms Ashraf and her sister if a sheriff were to sign a disposition transferring the property.

[9] Further correspondence followed. By email of 3 December 2015, the AiB advised that they "would have no locus to now sign a disposition which would now require to be signed by Mr Younas." On 14 December 2015, in a further email, the AiB explained that they had now been advised that the missives remained valid between the parties. They would sign a disposition under the original conditions set in 2002; however, they advised that before doing so, they would need to be provided with the following: (i) an interlocutor re-appointing the AiB as trustee in the sequestration of Mr Younas; (ii) a deed of variation for the standard security over the property; and (iii) a signed letter from Mr Younas consenting to the transfer. The AiB also reiterated that, alternatively, Mr Younas could simply sign the disposition in favour of Ms Ashraf.

[10] Following receipt of that letter, Ms Ashraf lodged this summary application at Edinburgh Sheriff Court in February 2016. When raised, the summary application contained a single crave seeking only the re-appointment of the AiB as Mr Younas' trustee. The

summary application was sisted on 7 July 2016 pending determination of proceedings before the Court of Session.

[11] Ms Ashraf sought to vary the confiscation order issued on 8 March 2016 to exclude the property from its ambit. The petition failed before the Lord Ordinary (*HM Advocate* v *Younas & Ashraf* 2018 SLT 227). A reclaiming motion was refused by the Second Division (*HM Advocate* v *Younas & Ashraf* 2018 SLT 1303). An application to appeal to the Supreme Court was also refused.

[12] The sist of this summary application was recalled on 16 September 2022. Following further procedure, Ms Ashraf's newly instructed agent moved to amend the summary application by adding further craves: (i) to ordain the AiB to implement the missives by executing a disposition; (ii) alternatively, to ordain the AiB to issue a Letter of Comfort; and (iii) a crave for the expenses of the summary application. That was opposed by both the AiB and Mr Cleghorn primarily on the grounds that any obligations incumbent upon the AiB in terms of the missives having prescribed, the proposed amendment was irrelevant.

[13] There are two further noteworthy matters. Firstly, the second respondent, Mr Cleghorn, has taken steps to enforce the confiscation order of 8 March 2016. He raised an action for possession against Ms Ashraf and Mr Younas seeking to eject them from the property. Decree of ejection was granted on 12 September 2023. The appeal against that decision was refused by this court on 10 May 2024. Mr Cleghorn has not enforced that decree pending the resolution of this appeal. Secondly, this court determined at a hearing on competency on 22 May 2024 that Ms Ashraf's attempt to appeal the interlocutor of 8 March 2023, via a challenge against the later interlocutor of 6 December 2023, was competent (*Ashraf* v *Accountant in Bankruptcy* 2024 SLT (SAC) 181). Prior to the hearing on competency, Ms Ashraf had sought to lodge a minute of amendment in identical terms to

that lodged at first instance. Sheriff Principal Wade KC refused to allow that amendment, noting that it would be inappropriate to do so when this appeal was concerned with the very issue of whether the minute of amendment ought to have been allowed by the sheriff. We now proceed to consider that issue.

The sheriff's interlocutor of 8 March 2023

[14] It was argued by both respondents that the obligation in the missives had prescribed, under long negative prescription, on 3 October 2022. Ms Ashraf contended that was not the case; instead, she submitted that the letter dated 11 April 2014 amounted to a "relevant acknowledgement" from the AiB, for the purposes of section 10(1)(b) of the Prescription and Limitation (Scotland) Act 1973.

[15] The sheriff was not persuaded. He determined that the letter of 11 April 2024 acknowledged that there had been an agreement under the missives and the AiB had provided an undertaking not to challenge Ms Ashraf's attempt to obtain a disposition or thereafter challenge her title. The letter stated a number of facts. The letter was not an unequivocal admission that the obligations in the missives continued to subsist or that the AiB considered they were binding.

[16] Accordingly, in the exercise of his discretion, the sheriff refused to allow receipt of the minute of amendment. As Sheriff Principal Wade KC has already noted, the consequence of that decision was that Ms Ashraf's application to re-appoint the AiB remained extant but without any evident purpose (*Ashraf* v *Accountant in Bankruptcy* 2024 SLT (SAC) 181 at para [7]). Ultimately, the summary application was dismissed on 6 December 2023.

Legislation

[17] The statutory provisions of the 1973 Act relevant to his appeal, provide as follows:

> **"7.— Extinction of obligations by prescriptive periods of twenty years.**
> (1) If, after the date when any obligation to which this section applies has become enforceable, the obligation has subsisted for a continuous period of twenty years—
>
> (a) without any relevant claim having been made in relation to the obligation, and
>
> (b) without the subsistence of the obligation having been relevantly acknowledged,
>
> then as from the expiration of that period the obligation shall be extinguished:
>
> …
>
> **10.— Relevant acknowledgment for purposes of sections 6 and 7.**
> (1) The subsistence of an obligation shall be regarded for the purposes of sections 6, 7 and 8A of this Act as having been relevantly acknowledged if, and only if, either of the following conditions is satisfied, namely—
>
> (a) that there has been such performance by or on behalf of the debtor towards implement of the obligation as clearly indicates that the obligation still subsists;
>
> (b) that there has been made by or on behalf of the debtor to the creditor or his agent an unequivocal written admission clearly acknowledging that the obligation still subsists."

Submissions for the appellant

[18] Ms Ashraf was represented by Mr Murdoch, solicitor advocate. It was submitted that the sheriff erred in concluding that no relevant acknowledgement had been made within the prescriptive period in terms of section 10(1)(b). On a proper construction, the letter dated 11 April 2014 from the AiB clearly acknowledged an ongoing entitlement for Ms Ashraf to insist on the transfer of the title to the property into her name.

[19] *Esto* the sheriff had not erred as to his interpretation of the letter dated 11 April 2014, Ms Ashraf contended that the email dated 14 December 2015 contained a relevant

acknowledgement such that prescription was interrupted. It was accepted that the sheriff had not been addressed on the contents of that email. Mr Murdoch submitted that, as the email was referred to in the pleadings and had been lodged as a production, the sheriff ought to have had regard to it nevertheless and, if necessary, ought to have convened a further hearing to discuss its import. He invited this court to exercise its discretion to consider this email in the interests of justice.

[20] Finally, the purchase price was paid to the AiB in 2003. Acceptance by the AiB of that sum, it was argued, also amounted to a relevant acknowledgment for the purposes of section 10(1)(b). It was acknowledged that this argument too had not been advanced before the sheriff.

[21] In the course of submissions, the court queried how Ms Ashraf proposed to take matters forward, in the event that her appeal was successful. Mr Murdoch accepted that if the minute of amendment were allowed and matters returned to the sheriff court with Ms Ashraf obtaining the orders she sought in this application, that would create a conflict between her real right to the property and the confiscation order. Further litigation would be inevitable to resolve the parties' separate rights.

Submissions for the first respondent

[22] Receipt of Ms Ashraf's minute of amendment was a matter of discretion for the sheriff. The sheriff's decision could only be revisited if he: (i) had failed to instruct himself properly on the law to be applied to the task; (ii) took account of an irrelevant matter; (iii) failed to take account of relevant matters; or (iv) had come to a decision that no other reasonable sheriff would have reached. No such error had been made by the sheriff.

[23] Ms Ashraf alleged a failure by the sheriff to consider the email of 14 December 2015; however, it had not been referred to before him. The same was true of the argument regarding the payments of 3 June 2003. Consideration of either point on appeal was a matter of discretion for this court; however, the interests of justice favoured the respondents and the new arguments should not be allowed. Ms Ashraf had raised the summary application 8 years ago; the matters which she sought to rely upon now were available to her when the application was raised in 2016. No reason was given for the delay. The respondents were prejudiced by the lateness of the motion to amend.

[24] Even if the minute of amendment was allowed, the AiB could not grant a disposition of the property. The AiB had been discharged on 9 September 2004; more pertinently, they had renounced any interest they had in the property on 23 August 2005. The property was re-vested in Mr Younas. The AiB could not comply with the declarator being sought in the proposed amended crave. While that argument was not specifically before the sheriff, the sheriff's note indicated he was alive to the issue.

[25] If the court allowed receipt of the minute of amendment, the case would revert back to the sheriff and the amendment procedure would take its course. As and when Ms Ashraf moved for the minute and answers to be allowed, the AiB would again challenge that motion.

Submissions for the second respondent

[26] Counsel adopted the submissions of the AiB. An appellate court should only interfere with a discretionary decision in a limited set of circumstances (Macphail, *Sheriff Court Practice* (4th ed.) at paragraph 18.159). An appeal against a discretionary decision should not be allowed merely because the appellate court would have exercised the

discretion in a different way (Macphail *op cit*.). One of the limited bases upon which an appellate court can proceed to review a discretionary decision is where there was a "misdirection in law" when the discretion was exercised (Macphail *op cit* at paragraph 18.160). This appeared to be the basis upon which Ms Ashraf's appeal proceeded.

[27] When considering whether or not to review and overturn a discretionary decision involving an evaluative judgment based upon the application of legal principle, an appellate court should be concerned to identify that there is an obvious error in law and not simply a matter in relation to which there could reasonably be a difference of opinion as to how the law should be applied (cf. *Arbitration Appeal No.1 of 2019* 2019 SLT 1309 at paras [14] - [15]).

[28] The sheriff had been correct to hold the letter dated 11 April 2014 did not amount to a relevant acknowledgement to interrupt prescription; there was nothing in that letter which satisfied section 10(1)(b) of the 1973 Act. As such, the sheriff had not been misdirected in law. The attempt to rely upon: (i) the email dated 14 December 2015; and (ii) the payments made by Ms Ashraf to the AiB in June 2003, ought to be rejected for four reasons: (i) the sheriff could not be said to have misdirected himself when he had not been invited or required to consider matters which had only come to be relied upon during the course of the appeal; (ii) this court had already considered whether Ms Ashraf could rely upon the email of 14 December 2015, as the email was the foundation for the minute of amendment that Ms Ashraf invited Sheriff Principal Wade KC to receive at the competency hearing; she had refused to do so (*Ashraf* v *Accountant in Bankruptcy* 2024 SLT (SAC) 181 at paras [23] - [28]). If the interests of justice did not call for receipt of the minute of amendment during the appeal then the same result ought to apply at the end of this appeal; (iii) the proposition that the email of 14 December 2015 was a relevant acknowledgment was

irrelevant or, at least, of doubtful relevancy. The terms of the email are not clear and unequivocal in recognising the subsistence of the obligation contained in the missives of 2002; and (iv) Ms Ashraf's attempt to rely on the payments to the AiB was misconceived. That was not performance towards implement of the obligation identified in the proposed amended crave 2. In order to amount to a relevant acknowledgment for the purposes of section 10(1)(b), the conduct must be "clearly referable" to the particular obligation which the pursuer seeks to enforce (*Agro Invest Overseas Ltd* v *Stewart Milne Group Ltd & others* [2019] BLR 187 at paras [135] - [136]). If the payment was made pursuant to an obligation in the missives it was the obligation incumbent upon Ms Ashraf and her sister. It was certainly not performance of an obligation to deliver a disposition.

[29] In any event, the proposed craves in the minute of amendment were inept as the AiB cannot perform the orders sought. Counsel submitted that position was put before the sheriff and could be found in the second respondent's pleadings at Answer 3.

[30] Counsel moved for expenses to be awarded on the solicitor and client, client paying scale on the basis that Ms Ashraf's conduct was prolonging the litigation, even though it would not secure her a practical outcome.

Decision

[31] It is trite to observe that no party has a right to amend their pleadings. Amendment is entirely a matter for the discretion of the court. As a general rule, amendment of pleadings will be allowed if it is necessary for the purpose of determining the real question in controversy between the parties and if allowing it would not result in injustice to the other party. In the exercise of its discretion, the court will have regard to the stage which the action has reached, the procedural history, whether there has been a delay in seeking the

amendment and any explanation for such delay, the nature of the amendment, the prejudice to the other party and any conditions which may be imposed to address that prejudice (Macphail, *Sheriff Court Practice*, 4th ed, paragraph 10.14).

[32] An appellate court will only interfere with a discretionary decision on one or more of the conventional grounds for doing so: a failure to exercise a discretion, unreasonableness, a misdirection or error of law, the taking into account of irrelevant material or omission of relevant material or the decision is "plainly wrong". The very nature of a discretionary decision is that different minds may reach a different result. The question, as framed by Lord Fraser of Tullybelton in *G* v *G (Minors: Custody Appeal)* [1985] 1 WLR 647 at page 652 (and approved by the Inner House in *McTear* v *Imperial Tobacco Ltd* 1996 SC 514 at pages 516 - 517) is whether the first instance judge "has exceeded the generous ambit within which a reasonable disagreement is possible."

[33] The issue of prescription had been the primary focus of the submissions before the sheriff. It was not disputed that unless the obligations under the missives had been "relevantly acknowledged" they had been extinguished by the operation of long negative prescription in terms of section 7 of the 1973 Act rendering the proposed amendment irrelevant. Ms Ashraf invited this court to conclude that the sheriff erred in the proper construction of the terms of the letter of 11 April 2014; he ought to have determined that the letter constituted an unequivocal written admission clearly acknowledging the obligation, in terms of section 10(1)(b) of the 1973 Act.

[34] We do not agree that the sheriff has misdirected himself. In the letter of 11 April 2014, the AiB acknowledged that an agreement had been reached for Ms Ashraf and her sister to purchase the property and that, sums having been paid, the AiB had no further interest in the property. The AiB notes that they would have no objection to the transfer of

the title "by the sheriff" and will not seek to challenge title. The letter amounts to no more than a summary of the relevant background and a statement by the AiB that they would not become involved any further in matters related to the property; they conveyed their decision to take a passive role. It does not amount, on any reading, to an unequivocal written admission that clearly acknowledges any subsisting positive obligation to deliver a disposition in terms of the missives. Quite the contrary. It is instructive to note that the letter was issued during an exchange of correspondence with Ms Ashraf in which she explicitly sought the delivery of a disposition by the AiB. The AiB did not agree to provide one nor acknowledge that they were under any obligation to do so. Indeed, the words "disposition" and "missives" are nowhere to be found in the letter of 11 April 2014.

[35] Nor do we accept that the sheriff erred by failing to take account of a material consideration, namely the email of 14 December 2015. It was candidly accepted by Mr Murdoch that there had been a failure to refer the sheriff to this letter. This was described as an oversight. We are not persuaded that in adversarial proceedings, and particularly those in which parties are represented, there is an obligation upon the sheriff to identify, and invite parties to address him on, material matters which are not advanced in submissions. Mr Murdoch was unable to refer us to any authority to persuade us otherwise. While we note that there are very brief averments in Ms Ashraf's pleadings relating to the email of 14 December 2015, the sheriff properly addressed the arguments before him, focussing on the matters the parties chose to advance.

[36] We were invited to consider the question of whether to allow the minute of amendment *de novo* having regard to the terms of the email of 14 December 2015. The exercise of the discretionary power of an appellate court to have regard to additional material which was not before the sheriff is informed by the circumstances of each case. The

question to be addressed is whether justice requires regard to be had to the additional material. It is important to note that the present dispute is one in a long history of proceedings spanning at least 12 years involving Ms Ashraf and the question of her rights to the property. The email of 14 December 2015 cannot properly be described as additional material, nor did it become available to the parties after the hearing before the sheriff. On the contrary, the email was referred to in pleadings but not relied upon before the sheriff in submissions. The only explanation offered was that there had been an oversight. Ms Ashraf and those advising her were, or ought to have been, aware of the email of 14 December 2015 and of its relevance to the arguments advanced. The email was referred to by Ms Ashraf in her evidence when she sought to vary the confiscation order (see *HM Advocate* v *Younas & Ashraf* 2018 SLT 227 at para [9]). The email of 14 December 2015 prompted the raising of these proceedings. In those circumstances, it is not in the interests of justice for this court to consider the question of amendment of the pleadings *de novo* having regard to the terms of the email of 14 December 2015.

[37] If we had been persuaded to consider the matter *de novo* in light of the email of 14 December 2015, we would have refused to allow Ms Ashraf's minute of amendment to be received. Firstly, the proposed amendment is of doubtful relevancy, the application has poor prospects of success and the orders sought may be incapable of being implemented. The email of 14 December 2015 attached conditions to the granting of a disposition by the AiB which included (i) a requirement for an interlocutor reappointing him; and (ii) a signed letter from Mr Younas consenting to the transfer. Neither an interlocutor nor Mr Younas' consent had been necessary when the missives were entered into. The email was not an unequivocal written admission clearly acknowledging that the obligation to deliver a disposition still subsisted, but rather an expression of a willingness to provide a disposition

if certain pre-conditions, which were dependant on the actions of those other than the AiB, were met. Even if the email was capable of interrupting prescription, the AiB maintained their position that, having renounced and abandoned their interest in the property by letter dated 23 August 2005 at the request of Ms Ashraf and her sister, they were no longer in a position to deliver a disposition; the property had re-vested in Mr Younas and the craves sought to be introduced by way of amendment were incapable of satisfaction. No argument was advanced on behalf of Ms Ashraf to persuade us that the letter of 23 August 2005 was not fatal to the orders she now sought. Secondly, we note that these proceedings were raised in 2016. We have not been provided with any satisfactory explanation as to why this minute of amendment was tendered 8 years later nor why the proceedings were sisted for 6 years. Thirdly, we note that notwithstanding an awareness of an intention to lodge this application, or an awareness that these proceedings remained extant, both the Outer House and the Inner House refused Ms Ashraf's attempts to exclude the property from the confiscation orders granted in relation to Mr Younas. Mr Cleghorn is now in lawful control of the property by order of the Court of Session dated 8 March 2016 and he has obtained decree of ejection. The sheriff and the Sheriff Appeal Court had been aware of this application when dealing with the action for ejection and removal. There is therefore, considerable force in the submission made on behalf of Mr Cleghorn that the outcome of this application is academic. Fourthly, Ms Ashraf and her sister were aware that there was "a mechanism through which she could take title without involving further the Accountant in Bankruptcy" (see *HM Advocate* v *Younas & Ashraf* 2018 SLT 227 at para [37]); Mr Younas could grant the disposition sought. Ms Ashraf, however, took a conscious and deliberate decision not to seek transfer of title from the AiB (see *HM Advocate* v *Younas, Ashraf & Ashraf* [2014] HCJ 123 at para [49]). She also took a conscious and deliberate decision

between 2004 when the AiB was discharged, and 2016 when the second confiscation order was granted, not to have the missives implemented by having a disposition signed by her brother. Lady Wise described this application as "too little too late" (see *HM Advocate* v *Younas & Ashraf* 2018 SLT 227 at para [45]). We agree with that analysis. The remedy lay in Ms Ashraf's hands and she has, for reasons not explained, refused to exercise it.

[38] Finally, it was submitted that the payment of the purchase price in 2003 by Ms Ashraf and her sister amounted to a relevant acknowledgment for the purposes of section 10(1)(a) of the 1973 Act. That argument was not advanced before the sheriff. It is not foreshadowed in the pleadings. For the reasons we have explained in para [35], Mr Murdoch was correct not to have pressed this submission with much conviction. In any event, this submission is entirely misconceived.

[39] Section 10(1)(a) requires that there has been such performance by or on behalf of the debtor towards implement of the obligation as clearly indicates that the obligation still subsists. The particular obligation which Ms Ashraf seeks to enforce is the obligation on the part of the AiB to deliver a disposition. A relevant acknowledgement in terms of section 10 must be clearly referable to that obligation, for it to be effective to interrupt prescription (*Agro* (*supra*) at paras [135] - [136]). Plainly, payment of the purchase price was an obligation incumbent upon Ms Ashraf and her sister in terms of the missives. It is irrelevant for the purposes of considering performance by the AiB towards implement of the obligation to deliver a disposition.

[40] We are not persuaded that the sheriff misdirected himself in law, failed to take account of material factors, or otherwise erred in the exercise of his discretion in refusing to allow the minute of amendment to be received. Accordingly, we shall refuse the appeal. It

was agreed that if the minute of amendment were not allowed to be received, Ms Ashraf's application lacked any purpose, was irrelevant and ought to be dismissed.

[41] Parties were agreed that expenses should follow success. Accordingly, we shall grant the expenses of the appeal in favour of the first and second respondents. Ms Ashraf sought the expenses of the earlier hearing on competency. She had successfully opposed an attempt to have the appeal dismissed as incompetent. We agree that it is appropriate that any award of expenses should reflect that success.

[42] We are not persuaded that expenses should be granted on a solicitor and client, client paying basis. Viewing this application in isolation, rather than in the context of the history of related proceedings, we do not consider there to be a sufficient basis for concluding that the manner in which it has been conducted has been unreasonable.

Disposal

[43] We refuse the appeal and adhere to the sheriffs' interlocutors dated 8 March 2023 and 6 December 2023. We find the appellant liable to the first and second respondents for the expenses of the appeal. We find the first and second respondents liable to the appellant for the expenses of the competency hearing. We refuse the second respondent's motion for the expenses to be awarded on the solicitor and client, client paying scale.