



In the Supreme Court of Bermuda

DIVORCE JURISDICTION

2024: No. 116

BETWEEN:

D

Applicant

- and -

J

Respondent

RULING

Before: **Hon. Alexandra Wheatley, Assistant Justice**

Appearances: **Georgia Marshall of Marshall Diel & Myers Limited, for the Respondent**
Adam Richards of Richards Limited, for the Applicant

Dates of Hearing: 20, 21 and 22 August 2025

Dates of Submissions: 27 and 28 August 2025

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Imerman Application; Confidentiality Between Wife and Husband; Obtaining Documents Without Consent of Spouse; Waiver of Confidentiality if Authorization Obtained; Right to Privacy; Finding of Facts; Defence of Iniquity; Relevance of Confidential Documents; Duty of Counsel When Client Provides Confidential Documents

RULING of Assistant Justice Alexandra Wheatley

INTRODUCTION

1. This is the Respondent's (hereinafter referred to as the **Wife**) application for injunctive relief of the kind described in the case of *Tchenguz v Imerman* [2011] 2 WLR 592 (the **Imerman Application**). She asks the Court to restrain the Husband from using, inspecting, or referring to images of emails from her work account and to require the removal and redaction of those images and any references from his affidavit evidence. The Wife is additionally seeking to restrain the Husband's attorneys from continuing to act on the basis that they have seen the images. Additionally, the Wife alleges that once the images were provided to the Husband's attorneys by their client, they failed to take the steps as set out in at paragraph 56 of the guidance in *UL v BK* [2013] 1 WLR 954
2. The *Imerman* Application was pursued following the filing of the Husband's affidavit of 15 May 2025 (**Husband's May Affidavit**), which exhibited the images. The Wife says the images exist because the Husband accessed her work email account without her permission. The Husband says the Wife voluntarily showed him the emails during a discussion in mid-October 2024 and allowed him to photograph a number of those emails using his phone.
3. The issues that arise are narrow. First, has the Wife proven that the images exhibited to the Husband's May Affidavit were obtained without her permission. Second, if the Wife did not authorise access to her work emails, should the Court (i) grant equitable relief and exclude the images that were captured as a result of the unauthorized access; (ii) order delivery-up and destruction of the images; and/or (iii) restrain the Husband's attorneys from continuing to act on the basis that they have seen the images. The burden of proof lies with the Wife. The standard is the balance of probabilities. The principles guiding the exercise of any discretion, were it to arise, are well known and are set out in paragraphs 19 to 35 of this Ruling.

4. The Court heard evidence over three days. Counsel filed both written skeleton arguments and closing submissions. Oral submissions were presented over one and one-half days. The Husband's case is that there was a frank discussion in October 2024 after he had raised concerns about the true state of the Wife's employment options. It is the Husband's case that the Wife accepted that she had not been clear with him, searched her email using her own device, and then showed him a handful of relevant messages. He says he took photographs of several emails displayed on the Wife's device, later compiled the images into a single set of PDFs for ease of reference, and deleted other copies to avoid holding multiple versions of his spouse's work material on his phone as he believed the material to be sensitive in nature.
5. The Wife's case is that there was no such moment of disclosure and that, instead, the Husband must have accessed her account without authority, using knowledge of her passwords and/or using an open, authenticated VPN session. She says the absence of the original image files with embedded time and date information, i.e. the metadata, supports her account. She says the images were captured over time without her consent, not during a single discussion where she disclosed the emails to him, and that they were curated to create a false impression.
6. Having considered the evidence and submissions, I am satisfied that the Wife has not proved, on a balance of probabilities, that the Husband obtained the images without the Wife's consent. I accept the Husband's account that the emails were shown to him by the Wife in or around 13 October 2024 and that he was permitted to take photographs of those emails. On that finding the Wife's application fails. Had it been necessary to exercise discretion, I would have refused the relief sought for the reasons set out below.

THE EVIDENCE

The Wife

7. The Wife describes the emails as confidential communications concerning her employment. She says the Husband "hacked" into her computer and work account without consent, photographed selected messages, and supplied those images to his attorneys. She denies that she ever showed the emails to the Husband. She also referred to an earlier episode in 2023 involving the Husband accessing her parents' home computer to argue that there is a pattern in the Husband's conduct. She relies on the 2023 incident to support her argument that the Husband was capable of overstepping boundaries in this way.
8. In her evidence the Wife offered a technical explanation of how access could have occurred. She suggested that once she had authenticated the VPN for her work account, her

connection remained live for 24 hours and that the Husband could thereafter enter with only a password to her laptop. She also suggested that he might have known, guessed or inferred one or more of her passwords from other contexts. She points to the creation of PDFs rather than the “*native files*” of the images and says the absence of metadata is telling because it prevents the Court from seeing when the images were taken by the Husband.

9. Additionally, the Wife says that the images show only fragments of the correspondence and that important context is missing. She says that the internal emails were part of lengthy email trains, in which her employment options were discussed in parallel, and that she and her colleagues were seeking temporary solutions to hold her New York position while her ongoing Bermuda court proceedings were underway. The Wife is seeking in another application before the Court an order granting leave to remove the children from Bermuda so that she could return to New York. She rejects the Husband’s interpretation of the messages as proof of a concluded plan for a long-term role based in Bermuda.
10. As to the timing of the Wife making the *Imerman* Application, the Wife says she was taken aback when she discovered the images were exhibited to the Husband’s May Affidavit. She consequently took legal advice as to the appropriate steps to address the issue.
11. It was accepted by the Wife under cross-examination that she did not produce logs, authentication records, or a letter from her employer’s IT department to support a claim of unusual access or failed login attempts. However she says that the log is unhelpful as the identity of the person logging in cannot be distinguished and that the log does not show failed log in attempts. She asserts the logs are not complete or conclusive and as such the Court should not draw a negative inference from the absence of such materials.
12. She also raised claims of privilege over parts of the material and invited the Court to treat some communications as protected by litigation privilege because proceedings were in contemplation. She accepts that the messages before the Court are, in the main, communications between herself and colleagues rather than source communications with legal advisers, but she says some of the exchanges occur against a background of legal advice and should be treated cautiously.
13. The Wife rejects the suggestion that a conversation in mid-October 2024 led to a mutual review of the emails. She says there was no such discussion and that the text exchanges in the same period are not a shorthand reference to any disclosure of email content. She invites the Court to treat the texts as ordinary family logistics and not as evidence bearing on the central question.

The Husband

14. The Husband's account is that he had serious concerns about the true state of the Wife's employment options and that those concerns came to a head in mid-October 2024. He says the Wife then accepted that she had not been honest with him, searched her own emails, and showed him a number of emails. He says he took photographs of several emails on his phone with her permission. He later compiled those photographs into a single set of PDFs and deleted the original images, leaving one set of files to be held for the purposes of the litigation.
15. He says the text exchanges around this period are consistent with both parties having discussed the content of the emails along with the practical steps they then contemplated. He points to the absence of a prompt and direct allegation of hacking in the days after his affidavit was filed and says the delay in formulating the present application tends to undermine the Wife's case that she was the victim of "hacking".
16. The Husband was steadfast in his position that he did not log in to the Wife's account, did not search it without permission, and did not attempt to defeat any security measures. He says the images exist because the Wife herself displayed the messages to him during a discussion and allowed him to take photographs. He also notes that the internal messages themselves are important to the issues in dispute in these proceedings and explain why the October discussion occurred.
17. He says that no audit trail from the employer has been produced to corroborate the Wife's account of unusual activity, failed logins, or device identifiers. He invites the Court to consider that this is material that could readily be obtained and that its absence should count against the Wife where the burden lies with her.
18. On the conversion of images to PDFs, he says the step was taken for ease of reference and to avoid holding multiple copies of a small number of sensitive work screenshots. He also says he did not retain original images because he did not anticipate a challenge to the circumstances in which the photographs were taken. He says he was focused on the content of the messages which he considered to be central to the fairness of the case and denies any manipulation of those images.

THE LAW

19. The authorities cited by counsel also include decisions in which the Court declined to grant relief because of the content of the information itself. The well-known public interest principle is that there is no confidence in iniquity. Where the information discloses

wrongdoing of a kind that engages the public interest in disclosure, a claim based on confidence may fail. The cases relied on show that this defence is carefully controlled and applied only where the circumstances truly justify it.

20. The starting point is the UK Court of Appeal decision commonly referred to as *Imerman*. It establishes that there is no special family-law licence to take, copy, or keep a spouse's confidential documents or data without authority. Ordinary principles of confidence and property apply. If one spouse examines the other's confidential material without permission, or makes and keeps copies of it, that is a breach of confidence. As a matter of principle the court may restrain further inspection or use, and may order the return or destruction of copies. The court also retains a discretion over remedy because the claim is equitable. The discretion includes whether to exclude or admit material said to have been obtained unlawfully, guided by what is necessary for a fair and efficient disposal of the case and having regard to the parties' conduct. These points were the backbone of the parties' submissions on the law.
21. In the case of *Akhmedova v Akhmedov* [2019] EWHC 3140 where Knowles J provided a helpful summary of the principles set by *Imerman*. Paragraph 17 states as follows:

“ **17** The modern principles governing illegitimately obtained documents (that is, documents which belong or are confidential to the Husband) are set out in the decision of the Court of Appeal in *Tchenguz v Imerman* [2010] EWCA Civ 908; [2011] Fam 116. In that case, the wife's brother had obtained confidential documents by accessing the husband's computer without permission and copying them. *Tchenguz* establishes that:

(a) It would be a breach of confidence for X, **without the authority of Y**, to examine, or to make, retain, or supply copies to a third party of, a document whose contents are, and were (or ought to have been) appreciated by X to be, confidential to Y. As a matter of principle, **and in the absence of a defence**, Y would be entitled to restrain any threat by X to look at, copy, distribute, communicate or utilise any such document, and would also be entitled to enforce the return of any such document or copy [paragraph 69];

(b) Y will ordinarily be entitled to obtain an injunction to stop X looking at the documents [paragraph 72] and to prevent X passing on or using the information, **subject to any good reason to the contrary on the facts of the case**; X could also be ordered to return or destroy the documents [paragraph 73];

(c) **A claim based on confidentiality is an equitable claim subject to the normal equitable rules, including a discretion to refuse relief on familiar equitable principles** [paragraph 74]. The Court of Appeal referred to *Istil Group Inc v Zahoor* [2003] 2 All ER 252 at [115], in which an injunction was

refused to prevent use of privileged emails because of the public interest in the disclosure of wrongdoing and to achieve the proper administration of justice;

(d) A husband can claim confidentiality against his wife [paragraphs 84-89];

(e) There is no principle (previously referred to as the “Hildebrand Rules”) by which a person can engage in self-help by obtaining information which might otherwise be concealed or destroyed [paragraphs 106-107 and 139];

*(f) However, **a claim for breach of confidentiality may be defeated by showing that the documents revealed unlawful conduct or intended unlawful conduct by Y** [paragraph 142]. Tchenquiz was not such a case because it was “not suggested that the documents themselves disclose measures taken to defeat the wife's claim”;*

(g) The court will wish to strike a fair balance between two competing concerns, being (a) that X should not obtain an improper benefit of being able to use Y's confidential documents which have been unlawfully obtained, and (b) that Y should not dispose of or hide documents which he is or may become obliged to produce, and that Y should find it more difficult to hide his assets [paragraph 149];

(h) Although illegitimately obtained evidence is admissible, the court has a discretion to exclude it [paragraphs 170-177].”

22. In this jurisdiction, *Imerman* has been adopted and applied in *G v G* [2015] Bda LR 92. In this case it was found that whilst documents in a home might be physically accessible it does not remove their confidential character if they concern private or professional matters.
23. Two further English authorities cited by the parties explain how the discretion on admissibility operates in practice. In *Jones v University of Warwick* [2003] 1 WLR 954, the UK Court of Appeal affirmed that evidence obtained improperly may be admitted or excluded depending on what fairness requires. The court looks at the importance of the evidence, the nature of the impropriety, and case-management considerations. *L v K* [2014]¹ 2 WLR 914 provides practical guidance in family cases post-*Imerman* about rapid delivery-up and sequestering of confidential material, and about the use of “clean” teams or independent attorneys where needed to protect the integrity of the process. These decisions do not confer rights of self-help; they set out how the court manages the consequences if it has happened. Knowles J usefully summarized the duty of attorneys when presented with confidential documents/information by their client as follows at paragraph 18 in *Akhmedova*:

¹ Also commonly referred to as *UL v BK*.

“18 The principles in *Tchenguiz* are applied, in a practical sense, in *UL v BK* (see para 56 at (3)–(4)). The relevant part of the guidance contained therein requires solicitors who receive such documents: (a) to return the documents to the other party’s solicitors, who (as officers of the court) can then ensure they are preserved and that proper disclosure is given, or (b) in the event that the other party does not have solicitors acting for him, to obtain directions from the court. In such circumstances the court is likely to direct that independent counsel be appointed to give proper disclosure.”

24. The power to restrain legal representatives was also raised. Counsel referred to *Prince Jefri Bolkiah v KPMG* [1999] 2 AC 222 HL, which emphasises the court’s protective jurisdiction to prevent the misuse, even subconscious misuse, of confidential information that has come into a firm’s possession. In family cases this principle has been applied by analogy to situations where one side’s lawyers have been exposed to the other’s confidences through self-help. The jurisdiction is not punitive; it is used where necessary to eliminate a real risk of misuse. It follows that restraint is exceptional and must be tailored to what is needed to protect fairness.
25. Mrs Marshall, on behalf of the Wife, referred to *Imerman* and *G v G* as the core authorities and invited the court to apply the consequences that ordinarily flow from self-help: exclusion of the material, delivery-up and destruction, and where necessary restraint of the opposing lawyers who have seen it. Mrs Marshall also relied on *Jones* and *L v K* to support robust case-management measures to restore a level playing field.
26. Mr Richards relied on a further line of authority about “no confidence in iniquity”. The point is that the law of confidence does not protect communications that reveal wrongdoing of a kind that engages the public interest in disclosure. This was considered in *Istil Group v Zahoor* [2003] EWHC 165 (Ch) and was discussed by Knowles J in *Akhmedova*, with a modern summary of the public-interest analysis in *Saab v Dangate & Ors* [2019] EWHC 1558 (Comm). The thrust of these authorities, as they were put in argument, is two-fold: first, where the documents themselves reveal iniquity, a claim for breach of confidence may fail; second, even if breach is made out, equitable relief may be refused because the wider demands of justice outweigh the confider’s claim to restraint. Mr Richards argues that the same principle applies here; the Wife disputes it and says the threshold for iniquity is high and not met.
27. Two practical points also arise from the authorities cited. First, the procedural handling of disputed material is important. *G v G* and *L v K* contemplate swift, practical steps to neutralise any advantage from self-help while safeguarding proper disclosure. Where a party has passed material to their lawyers, immediate sequestration and delivery-up are the norm pending directions. Second, *Bolkiah* shows that restraining solicitors is a serious step

reserved for cases where lesser measures cannot remove a real risk of misuse. The focus is protective, not punitive. The court tailors its orders to the real risks identified.

28. The parties disagreed on privilege. Mrs Marshall argued that parts of the email exchange are privileged, citing cases like *Three Rivers*, *Starbev*, and *Sotheby's* to explain the tests. She said legal advice privilege covers confidential lawyer-client communications for legal advice, and litigation privilege applies to communications made mainly for litigation that is ongoing or expected. She also noted that simple possibility of litigation isn't enough; there must be reasonable anticipation and a primary purpose of litigation. Mr Richards argued the emails don't meet these criteria. If privilege applies, it prevents use of the emails, but the party claiming privilege must prove it.
29. Mrs Marshall also cited Mr Justice Peter Jackson's summary in *BR (Proof of Facts)* [2015] EWFC 41 as a reminder of basics that govern the factual stage of an *Imerman* application. In the recent Bermuda case of *A v B* [2024] SC (Bda) 66 app. (28 November 2024), I addressed the law surrounding fact findings hearings at paragraphs 13 through 17 of this Ruling. For the purposes this case there is no need to repeat the law on fact finding hearings as these principles are not being contested. *A v B* echoes those same features referenced in *BR (Proof of Facts)*.
30. In summary, the court acts on evidence, not speculation. The burden lies on the party who asserts a fact. The standard is the balance of probabilities and does not change with the seriousness of the allegation or its consequences. That framework applies to the central factual question in an *Imerman* Application: did the applicant prove that the documents were obtained without authority?
31. Within *Imerman* itself, two features of the equitable discretion were stressed by both counsel in submissions. First, because breach of confidence is an equitable claim, the court can refuse some or all relief on familiar equitable principles. That includes the clean-hands doctrine; the court may decline to assist a party whose own conduct offends equity. Second, while material obtained unlawfully may be admissible, the court has power to exclude it where it is necessary for a fair trial or to save costs, considering the importance of the evidence, the parties' conduct, and case-management needs. The Court therefore undertakes a balancing exercise between privacy and fairness. These points were relied on by the Husband to argue that, even if breach were established, the Court should refuse relief; and relied on by the Wife to argue that, on these facts, exclusion and cleansing orders are necessary to vindicate the process.
32. Bringing these authorities together, the legal questions for this application are dealt with in stages. The first and determinative question is factual: has the Wife proved, on a balance of

probabilities, that the emails were obtained without her permission? If she has not, the *Imerman* claim fails at the threshold and no further relief arises.

33. Secondly, if the Wife has proved, on a balance of probabilities, that the emails were obtained without her permission, the court then considers equitable relief. The court then addresses admissibility and case management: whether any information should nonetheless be admitted; whether it is necessary to exclude it to secure a fair trial; and whether ancillary steps, including sequestering and directions for clean teams, are required to restore a level playing field.
34. Within the second stage, the Court also considers any iniquity arguments. If the material itself reveals wrongdoing of the type discussed in *Akhmedova, Istil and Saab v Dangate & Ors* [2019] EWHC 1558, relief may be refused outright, or the balance of discretion may favour admitting the information in order to prevent the court being misled. These are fact-sensitive inquiries that turn on each particular case. At this stage the court identifies the least invasive orders necessary to protect confidence and fairness: typically delivery-up and destruction of copies, restraints against inspection or use, and, where needed, measures addressing attorneys' exposure.
35. The authorities advanced by both sides confirm that the court's aim is not to reward wrongdoing or to hamper legitimate adjudication. *Imerman* prohibits self-help and protects confidence, but it also recognises that the court must do justice on the real facts. Hence the overarching emphasis on discretion: the court balances privacy with the need for a fair trial, informed by the content and significance of the material, the manner of its acquisition, and the parties' conduct. It is against that framework that I determine this application.

FINDINGS AND ANALYSIS

36. I make my findings on the balance of probabilities, having considered the demeanour of the witnesses, the consistency of their accounts, the consistency of those accounts with contemporaneous documents, and the objective probabilities. I have also considered what material was available to be produced and what inferences, if any, should be drawn where obvious sources of corroboration were not placed before the Court.
37. On the central factual issue, I find that the Wife has not proved that the Husband obtained the emails without her permission. There is no audit trail from the employer, no authentication logs, no device records and no technical letter from IT to corroborate a pattern of unusual access or failed logins that would be expected if a third party had been entering her account over time. Moreover, no security protocols have been presented from the Wife's employer which would for example address any password requirements, i.e. if a

certain number of characters, numbers, special characters is required or how often passwords are required to be changed, and the like. The Wife accepted that such materials exist or could be obtained. Their absence matters where she bears the burden of proof.

38. By contrast, I accept the Husband's account that there was a discussion on or around 13 October 2024 during which the Wife showed him emails on her work laptop and permitted him to take photographs of several screens. His account has been consistent across his affidavit, his skeleton argument and his oral evidence. It coheres with the general tenor of the text exchanges in the days that followed. Those exchanges do not use specific wording references included in those emails, but they read naturally as messages between people who had just had a candid discussion about matters surrounding one of their respective employments.
39. The Wife invited me to treat the text messages as ordinary logistics unrelated to any disclosure of email content. In isolation that is possible. When read alongside the Husband's consistent account, the context of the litigation, and the content of the internal messages themselves, the more likely explanation is the one the Husband advances. It also explains why only a limited number of screenshots exist and why they focus on particular exchanges.
40. I turn to the matter of delay. The Husband's affidavit exhibiting the images was filed on 15 May 2025. The correspondence that followed did not set out a clear allegation of hacking. Requests for "*native images*" and metadata were made without any explanation of their purpose. The first general allegation of unlawful access emerged later, followed by the present application later still. In a case where a party truly believed that a secure work system had been breached, one would expect a prompt, clear complaint, engagement with the employer's IT team, and the production of corroborative material. The absence of such steps tends to undermine the probability of the Wife's account. I do not accept that such requests emerge in the usual disclosure practice in matrimonial proceedings where such requests lack any context as to why the information is being requested.
41. I next consider the argument about metadata. Converting photographs to PDFs may remove embedded information about the time and date the photographs were taken. In some cases that may be significant. In this case, given my findings about how the images came to be taken, the point does not carry weight. The Husband gave a straightforward reason for compiling and deleting the images. He wished to hold a single set for use in the litigation and not to retain multiple copies of the Wife's sensitive work material. In family litigation that approach is understandable. The absence of "*native images*" does not prove the absence of authority and I do not accept the Husband discarded the native images in an attempt to cover his tracks.

42. The suggestion that the Husband searched the Wife's account over several months and at unusual hours is not supported by any independent material. If there had been repeated and extended access of that kind one would expect that the employer's logs would show such activity. The Wife did not put forward records that demonstrate it despite being put to proof of such and more importantly, despite her admission she had possession of such a log. I do not find it likely that such activity occurred as described in her evidence.
43. Furthermore, the Wife's evidence was inconsistent surrounding her employer's logs as she initially stated that she was notified of suspicious activity by her employers. In cross-examination, she identified the notification as being from a member of Company A's IT Team; however, after further cross-examination admitted it was in fact her who deemed there to be the alleged "*suspicious activity*". In her evidence she identified two separate occasions of what she deemed to be "*suspicious activity*", but when asked why she had not produced them she said that she would require permission from her employers to provide them.
44. I have considered the earlier episode in 2023 involving the Wife's parents' home computer. That episode does not prove what happened here. It has limited probative value on the determinative question of whether the Wife did or did not show the Husband the emails in October 2024. My focus is on the evidence related to that period and the events in dispute on this application. No pattern of conduct has been shown.
45. I do not accept the argument that internal messages can be read only as short-term employment possibilities for the Wife. The ordinary meaning of the language used in the extracts placed before me suggests that a viable Bermuda-based solution existed in that her current role could be moved to Bermuda as it was considered to be "*global*", that it was discussed as a "*sure thing*" that could be kept in reserve, and that the Wife understood that such an option would be damaging to the position she intended to take in her application seeking leave to remove the children from the jurisdiction. That is consistent with the Husband's account of why the October discussion occurred and why the messages mattered.
46. The Wife raised privilege, but did not provide sufficient evidential foundation to establish legal advice privilege or litigation privilege over the internal work communications in issue. The messages I have considered are, in substance, exchanges with colleagues about employment options. On the material presented, privilege has not been made out and it does not affect the outcome of this application.
47. I have not overlooked the point made in submissions that people sometimes speak loosely in internal corporate emails and that fragments can be misunderstood when taken out of context. I accept that caution is needed. In this case, however, the plain language of the

extracts is clear enough to support the inferences drawn by the Husband, and those inferences support his account of the October discussion.

48. In relation to the Wife's position that the Court should discount the emails as cherry-picked fragments of a wider train of correspondence. The limited number of screenshots is explained by the circumstances in which they were taken and by the nature of the discussion the Husband describes. It was neither necessary nor proportionate to capture every surrounding message to preserve the gist of what mattered. The Court is capable of reading the extracts cautiously, and of giving them such weight as is justified by their content and by the other evidence.
49. Taking the evidence as a whole I find, as a fact, that the Wife showed the Husband a selection of emails on her work laptop between 13 and 15 October 2024 and permitted him to take photographs of several of those messages. On that finding the essential ingredient of the Wife's *Imerman* Application, i.e. lack of authority, is not proved. The application must therefore be dismissed.
50. In case I am wrong on the factual finding, I address discretion. Even if the images had been obtained without authority, I would have refused the relief sought. The content of the emails are central to issues the Court must resolve in the wider proceedings. The discretion to exclude evidence obtained unlawfully exists, but it is to be exercised so as to secure a fair trial. On these facts exclusion would risk obscuring the true picture and impede a just outcome.
51. Equally, I would not have restrained the Husband's attorneys from continuing to act. That order is a severe step reserved for circumstances in which lesser measures cannot protect fairness. Here, on my primary finding there is no foundation for such an order. Even if there had been an unlawful obtaining, the material is now known and is central to the case.
52. For the avoidance of doubt, both counsel noted during oral submissions that they were unable to find any case authority that addressed circumstances where the party accused of wrongly accessing confidential information of the opposing party with a finding that confidentiality was deemed to be waived due to the accusing party giving authority/access to the confidential information/documents. In such circumstances, which now arise in this case, guidance was requested as to the correct procedure for counsel considering the protocol set out in *L v K*² to follow where a firm's client has advised the attorneys that the confidential information has been obtained with the authority of the spouse.

² See paragraph 24 above.

53. In my view, the duty of counsel in such instances would not fall within the remit of *L v K*. It was clear to the attorneys for the Husband how the Husband obtained the images of the Wife's work emails, i.e. with the permission of the Wife. Therefore, had I found in favour of the Wife that the Husband obtained the images unlawfully, I still would not have admonished Counsel for not following the usual protocol of *L v K* given the explanation provided to them by their client.

CONCLUSION

54. The Wife has not proved that the Husband obtained the images without permission. I accept the Husband's account that, during a discussion in mid-October 2024, the Wife showed him the relevant messages and allowed him to take photographs of several email messages. On that finding the application must be dismissed.
55. Had it been necessary to consider discretion I would have refused to exclude the information or to restrain the Husband's lawyers. The emails bear directly on issues that will have to be decided in the Wife's Leave to Remove Application and exclusion would risk unfairness. The proper course is that the images and the references to them remain in the Husband's evidence. The Husband is entitled to his costs of the application and I order as such to be paid on an indemnity basis, to be taxed if not agreed.

DATED this 15th day of **September 2025**



ALEXANDRA WHEATLEY
ASSISTANT JUSTICE OF THE SUPREME COURT