

IN THE HIGH COURT OF JUSTICE,
FAMILY DIVISION

Royal Courts of Justice
Strand
London
WC2A 2LL

BEFORE:

HER HONOUR JUDGE ATKINSON
(sitting as a Deputy Judge of the High Court)

BETWEEN:

Mr O (father)

APPLICANT

- and -

Mrs O (mother)

RESPONDENT

Legal Representation

Indira Ramsahoye (of counsel) on behalf of the Applicant
Sophie Prolingheuer (of counsel) on behalf of the Respondent

Other Parties Present and their status

None known

Judgment

Judgment date: 15 June 2018
Transcribed from Not Provided

Reporting Restrictions Applied: No

“This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.”

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Her Honour Judge Atkinson:

1. The Applicant father and the Respondent mother met in 2010 in Nigeria. They began living together in 2011 when the mother moved to the father's property in Lagos. The father was born in England but has always had dual British/Nigerian nationality. The mother was born in Nigeria and has Nigerian nationality. They have never married. The couple have two children, DA, a boy, who is just five years old, and JA a girl who is now 18 months old. Both children were born in the United Kingdom and, like their father, they are of dual British/Nigerian nationality.
2. In Nigeria the family have continued to occupy the father's property in Lagos. Since August 2017 the mother and the two children have lived in a property, purchased by the father, in Grays, Essex. DA has started at a local primary school and the father has travelled back and forth when he can. It is the father's case that Nigeria is, and remains, their family home and, but for the mother's refusal to return to Nigeria with the children last year, they would be back there now where DA has a school place waiting for him. It is the mother's case that with the consent or acquiescence of the father, she and the children have relocated to England.
3. The father applies for the children to be made wards and for the Court to order their summary return to Nigeria, where issues of welfare can be resolved by the Nigerian Courts. The mother opposes that application and, although she has issued no formal application herself, she argues that she and the children have already relocated. They are settled and, in the circumstances of the case, any welfare decision should be taken here.

Decision

4. After hearing the evidence of the parties, and reading all of the evidence contained in the bundle, I am satisfied that it is in the best interests of each of these children to return to Nigeria where their welfare can be determined in the Nigerian Courts. I would prefer that they did so in the care of their mother and I will invite counsel to consider, at the end of this judgment, how that can be best achieved. Let me explain.

The Law

5. The written arguments before me have been couched in Hague Convention terms. I have been directed, for instance, to consider the issue of habitual residence as being largely determinative of the application. In fact, a decision purely on habitual residence is not determinative of the issues in this case.
6. In an application to invoke the inherent jurisdiction the English Court has jurisdiction on the basis of the child's presence here. If the Court has jurisdiction then the welfare principle applies unless it is excluded. One way in which it might be excluded is by application of the Child Abduction and Custody Act 1985 giving effect to, amongst other things, the Hague Convention. Nigeria is not a signatory to the Convention and so it does not apply.
7. The approach to be taken in a non-Hague summary return application is clearly set out in the House of Lords authority *Re J (Child Returned Abroad: Convention*

Rights) [2005] UKHL 40 and the leading judgment of Baroness Hale. The following principles are of application here.

- a) In a non-Hague case the Court has the power to order an immediate return to the foreign jurisdiction without conducting a full investigation of the merits.
- b) The child's welfare is paramount in that determination and the Court must act in accordance with the welfare of the individual child.
- c) The principles of the convention, in particular the elevation of the principle of return to the home jurisdiction above all but the exceptional welfare considerations set out in that convention must not be applied, even by analogy.

8. The following comments are also of application here. At paragraph 28, Baroness Hale said this:

“There is always a choice to be made. Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child.”

9. How does a judge set about making that choice? Baroness Hale highlights in the judgment a number of factors which may be of relevance. This is a non-exhaustive list of factors.
10. Baroness Hale warns that there is no warrant for introducing a convention type approach, and the most that one can say is that in a case in which there has been a 'removal', the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against doing so has to be made, but the weight to be given to that proposition will vary enormously from case to case.
11. The second point she highlights is that focus will undoubtedly be upon the degree of connection of the child with each country. With which country the child has the closer connection: which is his home country? Factors such as his nationality, where he has lived for most of his life, his first language, his race or ethnicity, his religion, his culture and his education so far will all come into this. It will be important to consider the length of time that he has spent in each country and whether he has been in this country for some time without objection.
12. The differences between legal systems can be relevant. The effect of the decision on the children's primary carer is also something that can be significant. Whilst the Courts are reluctant, Baroness Hale said, to allow a primary carer to profit from her own wrongdoing by refusing to return with the child, sometimes it will be necessary to consider whether it is reasonable to expect her to return and what is to happen to the child if she does not.
13. These factors must all be considered together with any other relevant factors and they may lead to a decision that there should be a swift return to the child's home country, but they may equally lead to a decision that the child's interests would be better served by allowing the dispute to be fought and decided here.

Applied To This Case

14. So, whilst it is not necessary for me to determine the issue of habitual residence, it may be an important factor in determining the issue of summary return if these children have been removed from their 'home country' without the consent of their father. It is necessary then for me to determine the dispute between the parents on this issue.

The Evidence

15. The evidence on this issue comes predominantly from the parents themselves, supported in some instances by documents produced by one or other of them. My assessment of each of them as witnesses is therefore of some importance to my determination of the facts.

The Father

16. I found the father to be an entirely straightforward witness. He is an organised and focused man, who is clear in own mind about his views and his priorities in life. He has very clear views about the importance of education from an early age and about how children should be brought up. It is worth remembering that he is some 20 years the mother's senior.
17. The relevance of this can be seen in their differing approaches to life. He has an established career. He is in a comfortable financial position for which he has worked hard. He is used to being the decision maker. He has been generous in his support of the mother, financing her further education and a business venture that seemingly came to nought.
18. I did wonder whether he was much of a compromiser. What I mean by that is that he struck me as a man who has been used to making decisions in his life, and the lives of his dependents, and I wonder whether he is fully able to see the importance of allowing those dependents to have their voices heard. Whilst the sort of financial support that he has offered the mother is of significance I am not sure he always sees how potentially restricting or stifling it might be for a young woman like the mother to be constantly beholden to him. I should add that I do not have the sense that he has offered his generosity in order to deliberately restrict her.
19. I assess him as a man who believes that she is important to his children and to the children's wellbeing. I consider his conservatism makes him respectful of her as their mother. I am also clear that he loves his children, and they are undoubtedly at the centre of everything that he does and he would not have planned a life which would involve him being parted from them for extended periods of time, in my assessment of him, or them being parted from her for that matter.
20. His decisions in relation to the children are motivated by what he considers to be in their best interests. I am not sure he can yet contemplate that their mother might want something different for them and for herself in life.

21. Nevertheless, he was without doubt the better witness. His accounts have contained far greater detail than the mother's and they are more often supported by documentary evidence. Further my assessment of him as an organised and focused man makes his version of events more believable in the context of how they lived their lives and significantly it makes the mother's version of events difficult to believe.

The Mother

22. I do not wish to add to what I consider to be this mother's evident and genuine distress at her situation. However, she was a very poor witness of events. She has not been assisted by the fact that her first witness statement contained precious little detail, of the sort necessary to raise the issues that she seeks to raise. Worse the arrival of her second witness statement changes some of her accounts and conflicts with the first. Her accounts were lacking in detail, even at the second telling. Finally her account of events did not make sense and simply did not seem likely given the personalities involved.
23. There was an abiding sense throughout her evidence that she was, as counsel for the father put, plugging the holes in her evidence with new or different detail as the case unfolded. There was certainly an appearance that her second statement, and in particular the change in position with regard to the events of 2014/15, was an attempt to meet the evidence that the father had produced which so damaged her original position.
24. Having said that I do have sympathy for her. I consider that the actions she has taken in remaining with the children in this country, in the face of opposition from the father, probably seemed to her the only way in which she can take control of her life.
25. She presented to me as a woman who feels restricted and powerless and without a voice. The things that the father sees genuinely as providing her with the freedom to come and go as she pleases, unhindered by childcare responsibilities and a life free from financial worries, I suspect seemed to her to be the equivalent of placing her in a gilded cage and thereby taking her freedom away. It is a tragedy, having seen them both, that their relationship has floundered in this way.
26. It was interesting to me that when the mother alleged that she had been sexually abused by the father, which she clearly had not been, it transpired that what she meant was that he had pushed her away and refused her sexual advances. She says in her statement that he had refused to have sex with her. She genuinely and honestly judges that to be an abuse. Indeed, it is an upsetting way to treat someone who loves you. I thought that her sense of distress and sadness, and feeling of rejection by the father, was palpable in that moment.

Travel Between England and Nigeria early in the relationship

27. The mother and father first came to the United Kingdom together in August 2011, before DA was born. Before then the father had been a frequent visitor to the United Kingdom, although I am not sure that the mother had ever left Nigeria. Later that year, in October 2011, the mother returned to the United Kingdom to study, financed and sponsored by the father. She completed a Business Management Degree at Edinburgh Napier University.

28. It was during her time studying in Edinburgh that she discovered she was pregnant and DA was born in Edinburgh in April 2013, prior to the completion of her course. During this time the mother lived in a flat in Edinburgh. She suggested that there was talk of purchasing property in Edinburgh and relocating there, something that she did not want to do. This is disputed by the father. I do not need to decide this dispute. Suffice to say that in September 2013 the family went back to Nigeria, the mother's course having been completed.
29. In November/December 2013 the family spent 18 days in the United Kingdom. They next visited the United Kingdom for two short holidays in February and May of 2014. Between July and September 2014 they travelled extensively, for just under six weeks, to London, Dubai and back to London, then back to Nigeria. This was the father's fiftieth birthday year and travel was part of the celebration. There is no suggestion that, during this period, the family was anything other than based in Nigeria and travelling to England and other places for holidays.
30. Between December 2014 and June 2015 the family returned to England and spent an extended period here. The reasons for that visit have been subject to dispute. The mother originally suggested that she and DA relocated to England in December 2014 and her case originally was that any subsequent travel to Nigeria, during 2015 and 2016 and 2017, had just been for a holiday. She has since changed her position on this, but she still maintains that the intention had been, in December 2014, to relocate but in fact they ended up (she and the children) with two homes – one in the UK and the other in Nigeria. Until, she says, the family finally relocated in July 2017. All of this is disputed by father.

December 2014 to June 2015

31. Dealing with the earlier period, what the mother told me was this. There had been an incident between the parents, just prior to the visit in Dec 2014, which she says resulted in an assault. This is disputed and I make no findings on that allegation. In response to that incident it was the father, she says, who suggested that she and DA should relocate to the United Kingdom. In her first statement the mother asserts that the father had told her that DA:

“Would have a better upbringing in the United Kingdom and that she would have more opportunities in relation to work and lifestyle.”

32. In her second statement she stands by the assertion that the plan was to relocate, but accepts that in fact she was unable to work because of her immigration status. She also had to accept there was no attempt made to regulate her permanence in this country making the plan for her to work difficult. She prays in aid the fact that the father rented property in Southport and that DA was registered at a GP and a nursery.
33. In her most recent evidence the mother asserts that she returned to Nigeria with DA for a holiday in May. While she was there she says that she found text messages on the father's phone, which suggested he was having an affair with her best friend, and as a result of that she returned with DA to their 'home' in the United Kingdom before the end of the holiday. However, after discussing the issue with the father they resolved their differences and she and DA returned to Nigeria, to finish what she maintained was a holiday there, and during that time it was agreed that she and DA

would return to Nigeria permanently. Accordingly, in June 2015 she, the father and DA returned to the United Kingdom, packed up and went back to Nigeria to live. Nevertheless she goes on to say that following that time she had two ‘homes’ in the United Kingdom and Nigeria and would regularly travel between both.

34. The father’s evidence was that the trip in December 2014 was planned and intended always to be temporary. He told me that the mother had said she was bored and wanted to take a fashion course and a cake making course. He admits that he was also keen that she should experience western culture. The father thought she would benefit from a long break and agreed that she could go to England to complete some short courses.
35. A property close to the father’s family in Southport was located and rented. It was rented for six months. DA was registered at a GP and at a nursery. The father explained that he did not believe that the children should be given the opportunity to be idle and so, even when temporarily in the country, it was important to him that DA was stimulated through nursery attendance. This also had the advantage of freeing up the mother for her courses. As for GP registration he said DA was very small and it was important that he should be registered for health care.
36. The plan was, according to the father, that they would return home to Nigeria once every two months. In keeping with that they travelled to Nigeria in February and he visited the family in the UK at Easter. When they came back to Nigeria in May, whilst not admitting that he had had an affair, he admitted that there was an argument and on his case the mother left without telling him she was leaving and before the end of their visit. The father’s position was nevertheless it was still intended that they would return to Nigeria at the end of this extended break.
37. Of course the mother has now resiled from her position that they remained permanently relocated after this visit, but she still clings to the proposition that it was intended that should be so, and that they have retained two homes in the two jurisdictions. The evidence, however, points irresistibly away from such a proposition.
38. An examination of the father’s unchallenged travel schedule alone illustrates that such an argument is unsustainable. In addition, in response to that assertion, the father in his first statement produced a great deal of evidence suggesting that they were not living in the United Kingdom after their return to Nigeria in June 2015. For example:
 - a. In WhatsApp exchanges (actually exhibited to the mother’s own statement) sent in May 2015, she refers to the ‘temporary’ home in the United Kingdom and returning back home to Nigeria by June.
 - b. Following the fashion course taken in the UK, the father gave the mother money to start up a business in Nigeria.
 - c. When that came to nothing, she commenced employment in Nigeria with a pension company in April 2016, completing a six month probationary period.
 - d. Registration of DA in nursery or schools in Lagos
 - e. the fact that in 2016 the father had applied for another visitor’s visa for the mother, sponsoring her for another five years, pursuant to which she had limited opportunity to stay in the United Kingdom.

39. The mother produced a series of good luck cards from friends, in order to demonstrate that the intention had been for relocation, but I have difficulty even with that I am afraid. The cards are not dated, they are non-specific, they could just as equally have been written to wave her off as she went off in the December 2014, intent upon spending a decent amount of time in the United Kingdom, in order to complete her courses.
40. Further, in the two years from June 2015 until July 2017, other than the three months that they spent here, from November 2016 to February 2017, preparing for the birth of JA, the family was in the United Kingdom for less than a total period of one month, spread over three visits. That hardly speaks of a family with two homes (the mother's final position) it seems to me.
41. I have no hesitation in concluding that as of July 2017, when the events prompting this application unfolded, this family was very clearly habitually resident in Nigeria. The attempt by the mother to present otherwise was, in my view, a very clear attempt to suggest a stronger connection with the United Kingdom than would otherwise be the case. Standing back and looking at the evidence in relation to the more significant events that have followed, from July 2017, the very same pattern can be identified.

July 2017 onwards

42. I turn now to the events of July to December 2017. It is instructive I think to start with what is agreed about this crucial period and the lead up to it.
43. It is agreed that after the birth of JA, the family was reunited in Nigeria by the end of February 2017. DA returned to school in Lagos. The father was not happy with that school and in March 2017 he reserved a place for DA at a new school, the Priory, another prep school in Lagos, paying a deposit to secure that place. The mother returned to her job in April 2017 after negotiating an extension to her maternity leave.
44. In May 2017 the father identified a property to purchase in Grays, Essex. On 8 July the father paid the first term's fees for DA's place at the Priory, to commence in September 2017. On 10 July the mother told the father she had resigned from her employment. It is agreed that the father expressed surprise at this because the mother messaged him apologising that she did not keep him informed of the decision.
45. Tickets had already been purchased, I think on 8 July, for the family to travel to the United Kingdom and they flew out on 30 July, with tickets booked to return on 2 September. On 4 August the father completed his purchase of the property at Grays. The following day they went to Ikea to purchase some furnishings. On 7 August the mother and children moved in and on 8 August the father applied for a school place for DA at the local primary school. He was offered a place on 15 August. The family did not return on the flights that were booked on 2 September. At about that time DA started school at the primary school in Grays. The place at the school in Lagos remained reserved. All of that is agreed.
46. Pausing there in the agreed history, let me recount briefly what they each say that these facts demonstrate. It is the mother's case that when the family left Nigeria at the end of July 2017 they did so with a (second) plan to relocate to England. The

plan was that they would spend until September in England setting up home, return to Nigeria in September for DA to attend school and say their goodbyes and then relocate finally at the end of December. She insists that the plan changed when the father unilaterally secured a place for DA at school in Grays and refused to allow her to return to Nigeria with the children. She argues that it was his insistence that they relocated far sooner than expected. The father refutes that there was ever a plan and he maintains that his decision to secure a school place was in reaction to the mother's refusal to return to Nigeria.

47. It is for the mother to establish that there was such a plan. She asserts this, she must prove it and she must do so on the balance of probabilities and I am sorry to say that her evidence is sadly lacking in that regard. In her first statement she says:

"We travelled to the United Kingdom on 30 July for our summer holidays. I had already resigned from my job in Nigeria as we intended to relocate to the United Kingdom on a permanent basis by 27 December 2017."

48. No further detail is given about when the decision was taken, what the plan was or what was said. In her second statement the mother seeks to clarify her first statement in the following way:

"All four of us would come to the United Kingdom on 30 July to set up the home and put in place practical arrangements."

That was decided in May 2017 after father had purchased the property in Grays. In fact he had not purchased a property in Grays at that point, May 2017, but I believe that this is the first reference to an agreement to purchase being made in May. There was no more detail about that agreement set out, even in that second statement.

49. In her oral evidence the mother expanded. She said that there had been a conversation between herself and the father when the father had called to say that he had visited a property in Grays where they could live. He gave her the Rightmove link. She said, for the first time, in her oral evidence, that the father had said that the schools were good and that there is a Catholic Church close by. She said that either he or she, I am afraid my note is unclear as to which, had ended the conversation about this by saying:

"We are good to go."

The implication being that they were agreeing to relocate. She said that she made her own enquiries, but at the conclusion of this they both agreed, though it is not said where, when or how, that they would:

"Settle down and see how it is."

50. The next conversation was, according to the mother, on 8 July when she maintains that in furtherance of the plan to relocate they finalised the dates, agreeing that they would fly to the United Kingdom at the end of July, return home on 2 September, so that DA could attend school in Lagos for one term, then finally relocate at the end of the year on 28 December. No mention is made of that conversation in her first

statement. The finalised plan does not appear until the second statement. It is against this background she says that on 10 July she resigned from her employment.

51. Before I even come to the father's account of these events I must comment that I struggle to accept the mother's account. The astonishing lack of detail is significant and telling in my view. It seems highly unlikely to me that plans would be made to relocate their children permanently to another country on the strength of two brief conversations. Further the plan itself seems absurd. The idea that they would secure a place for DA at a school in Lagos from September through to the end of the year at a significant cost, travel to the United Kingdom to make arrangements to relocate, come all the way back to Nigeria, have him start school, confusingly in Nigeria, and then travel all the way back to the United Kingdom in the New Year to complete the relocation does not seem to make sense to me.

52. The father denies that there were any plans to relocate. He does agree that there was an earlier conversation about the possibility of relocating, but he asserts that the focus of the conversation was on making the mother's immigration status permanent in England. He sought some advice and he was told that to relocate, and secure her application for leave, he would have to be in the United Kingdom too. As his business interests and his life was in Nigeria he told me in his evidence that he fairly swiftly:

"Shot down her suggestion of relocation."

53. I accept that evidence as logical and accurate. Any concerns that I might have had about the purchase of property are dealt with by him in his evidence. The purchase of the property at Grays, he told me, was for use when they visited the United Kingdom for holidays. He pointed to the fact that he has organised for there to be monitoring of the property, through ADT a security company, and he points out that he would not have arranged that had the intention been for them to live there permanently.

54. He accepts that he registered DA at a school in Grays but he maintains that that was for no other reason than to ensure that he did not miss out on his education whilst this issue was resolved and, in keeping with this position, he retained the place at the school for DA in Lagos whilst he set about trying to persuade the mother to change her mind, with the assistance and support of friends and family. The registration of the school place is in my view more in keeping with his account than the mother's.

55. Mother says that the plan changed and the registration of DA's school came about because the father changed his mind and he decided that he wanted the mother and the children to remain in the United Kingdom. She fails to explain why that would be? It was not the plan, even on her evidence. What could this father have possibly gained from changing his mind? Living separately from his children? Particularly as he was spending money on a place for DA at school in Lagos. The mother goes further stating that by 2 September she was begging him to allow them to return to Nigeria but he refused saying she and the children must stay. Again this does not make sense.

56. Going back to the agreed facts, on 16 September the father had to return to Nigeria on business and two days later his father unexpectedly passed away. The dates for the funeral coincided with half term and the mother and the children attended the

funeral in Nigeria. Had she wanted to stay in Nigeria then she could have done so then. On 3 November the whole family returned to the United Kingdom. They all had return tickets for 11 November, but those flights were not taken up.

57. The father tells me, and I accept, that the conversation rehearsed on 2 September did take place to the extent that the mother had asked for his forgiveness after an incident, but he was not willing he told me at that point to forgive her, as she had accused him of being a 'bad person' (my words). He is clear, however, that he placed no embargo upon their return to Nigeria and this is demonstrated by the fact that she did return to his father's funeral.
58. The father was asked why he let them return to the United Kingdom after the funeral, if it was not to return to their 'home' in the United Kingdom. He said that he thought that they would return. Apart from anything else, he told me, she had not packed up everything, leaving clothes in the wardrobe for instance. This was confirmed by her in her own evidence. In fact, as I have already said, the tickets to return on 11 August were taken up by none of them.
59. The father returned alone to Nigeria on 18 November for the reading of his father's will on 23rd. On the same day the mother sent the father a list of documents needed for her application for leave to remain. Her evidence was that the father had agreed that she should apply in furtherance of his wishes that she remain. He denies that. Those documents were never provided by the father. Indeed, on 15 December the father wrote to the Home Office to notify them that the mother was continuing to reside in the United Kingdom and that he did not support her application. The father says that he never agreed to support this application, as is demonstrated by his refusal to assist and I accept that.

Findings

60. I have no hesitation in saying that I prefer the account given by the father of these events. There is a complete absence of any confirmatory detail in the mother's first statement setting out these events and her second statement begs more questions than it answers. I consider that the absence of any detail is demonstrative of the fact that she is not telling the truth about these events. The convoluted explanation given as to the arrangements and agreements reached are created in order to explain the things that she was otherwise unable to explain in my view.
61. I am satisfied that there was no agreement to relocate. The family came here in July for a holiday, intending to return so that DA could take up his school place at the Priory in Lagos. They did not return in time for that because the mother refused to go. The father did not insist that she should remain because he intended and wished for her to return. I am satisfied that after she had indicated her refusal he chose, as he is entitled to, to try and persuade her through the assistance of family and friends. He was no doubt buoyed up by her return together with the children for his father's funeral in the October half term.
62. I consider that when the mother made a request for documentation to support her application for leave to remain, it must have become clear to him that she was firm in her view. Again, I accept his evidence that he sought to persuade her, through the assistance of friends and family, until by January of this year had come around he realised that he had to take alternative action. In February, I think 6 February, he

issued proceedings in the Nigerian Courts which he subsequently withdrew realising, and being advised, that that would take him some time and so he issued his application to invoke the inherent jurisdiction in this Court.

63. Against that factual background I turn to consider whether or not it is in the best interests of these children to return to Nigeria to have their welfare determined or whether they should remain here for that decision to be made.

Discussion and analysis

64. The welfare of these children is my paramount consideration. The issue is whether I am satisfied that the welfare of these children is best determined in Nigeria and without a full investigation here.
65. The factual background to the application, as I have found, is that these children have been removed from Nigeria without the consent of their father. Further, in my view, the place with which they have the greater connection is and remains Nigeria. In considering where their 'home' or greater connection is, it is the child's life and experience to date which is material. In trying to make sense, from their perspective, of where their sense of home belongs one must be informed by a variety of factors. Their past experiences, for example. DA and JA have very different experiences because of their ages.
66. It is my very clear view that the country with which DA has the greater connection is Nigeria. Nigeria must be the place where he has the greater number of friends and family and greater strength of connection still. He has a history of Nigeria within his memory. In keeping with this the father told me in his evidence that DA is confused and he asks when he will return to Nigeria. That was not challenged but it is unsurprising. It underlines the importance in his mind of that place. It remains his home. I remind myself that, for DA in particular, spending extended periods of time in the United Kingdom has happened before in circumstances in which he has had access to services such as health and education in this country. So for these children there is an argument that the length of time spent here, pending this determination, does not diminish their connection to Nigeria in the way that it might for children who had not travelled as frequently.
67. JA's position is a little more nuanced. On a strict calculation of days lived in this country, she has spent a greater proportion of her life here than DA has. However, the assessment of connection is not limited to days spent. Just as her brother she has dual nationality. Culturally she is Nigerian, just as her mother, her father and brother. By virtue of her age, her connection to a geographical location is influenced by how connected her primary carer is. It seems to me that this mother continues to be connected to Nigeria through her culture, her race, her ethnicity and the fact that she continues to be a Nigerian national living in the United Kingdom. The children's cultural identity has been maintained also by the visits from their father which have been frequent.
68. For these reasons it is a case, in my view, in which it is convenient to start from the proposition that it is likely to be better for these children to return to their home country for any dispute about their future to be decided there.

69. I am not satisfied that a case against doing so has been made out. There are essentially the following points to be made in favour of the matter remaining here.
70. The first is that the children are settled here, according to the mother. Well they have been here for seven months. As I have already said these are children who have moved between jurisdictions in the past. They will not be settled in such a way that means that they cannot travel with ease back to Nigeria.
71. The mother suggests that the Nigerian Courts will not give her a fair hearing because in Nigeria they favour men. I cannot accept that as a proposition. No evidence has been called to support this.
72. The mother has said that she has nowhere to go in Nigeria now that she is separated from the father. But the father has proposed that the mother can return to the family home where she will be provided with a car, a driver, the nanny will continue to work with her so that she can work if she chooses and financial support has been offered. The father has offered to secure that agreement in Nigeria so that she can be satisfied that it will not be withdrawn pending a determination of the children's futures in the Nigerian Courts. As it happens I am prepared to accept his word on this, but I would be interested to know how long it would take to secure that agreement.
73. All things considered the father argues that the welfare of these children demands that the necessary investigation into their welfare, including consideration of whether they can relocate to this country should be carried out in their home country which is, he says, Nigeria and I agree with that.
74. The factors that I have set out lead me to decide that there should be a fairly swift return to the children's home country in order that these matters can be resolved there. I am very clear that they need to go back and I would like to consider now how and when with counsel.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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