



Neutral Citation Number: [2021] EWFC 69

Case No: MA20P02143

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/08/2021

Before :

THE HON. SIR JONATHAN COHEN

Between :

Mikias Yakob Padia	<u>Applicant</u>
- and -	
Yakub Padia	<u>1st Respondent</u>
- and -	
Almaz Manbegirot Gebrye	<u>2nd Respondent</u>

Mikias Yakob Padia in person
Yakub Padia in person
Almaz Manbegirot Gebrye in person

Hearing dates: 21-22 July 2021

Approved Judgment

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THE HON. SIR JONATHAN COHEN

This judgment was delivered in private. The judge has subsequently authorised the publication of this judgment.

The Hon. Sir Jonathan Cohen :

1. I have been hearing an application by Mikias Yakob Padia (Mikias) who seeks a declaration as to whether or not the first respondent Yakub Padia (Yakub) is his parent. The second respondent to the application is Mikias's mother Almaz Manbegirot Gebrye ("Almaz").
2. The application is brought pursuant to Section 55A Family Law Act 1986. Jurisdiction is provided by reason of Yakub being domiciled in England and Wales.
3. Mikias was born on 31 October 1985 in Addis Ababa, Ethiopia. Almaz is Ethiopian and it is accepted that Almaz and Yakub had a sexual relationship while Yakub was working at a school in Addis Ababa. It is Yakub's case that the relationship terminated in November 1984. Almaz says that it came to an end in April 1985 when she informed Yakub that she was pregnant by him and declined to have a termination.
4. During the hearing I heard evidence from all 3 parties. I have read a number of statements from other witnesses the most material ones coming from IA and CB. I have also looked carefully at the results and reports of two DNA tests dated 13 September 2001 and 2 February 2021.
5. Both DNA studies give a very high probability of Yakub being the father. However, it is vital to emphasise that the DNA tests only provide one part of the picture. The probability of paternity depends also on other evidence relevant to the case. I have to examine carefully the events of 1984-1985 as well as what happened between the parties after Mikias's birth. To use the words of the SJE's reply to questions prepared by Yakub:

A DNA test is not an isolated source of evidence, as factors have led to the use of said test. The DNA test is taken to support the evidence already established.

Events of 1984-1985

6. I shall first examine the relevant events of 1984-1985. In doing so it is material to mention that the calendar primarily used in Ethiopia is the Amharic calendar. This calendar has 13 months and has what I was variously told a 7-8 years difference from the Gregorian calendar. The parties accepted that I should approach dates in this case with a degree of caution and not put excessive reliance upon them.
7. The circumstances of Almaz and Yakub meeting in 1984 are hotly in dispute between them. Yakub's case is that he and his two house mates, IM and AH, were out at a bar when Yakub was, to put it colloquially, picked up by Almaz. Yakub says that against his better judgement he entered into a sexual relationship with Almaz, implicitly at her instigation. Almaz's case is very different. She said that she heard that there was a cleaning job going in the building where Yakub lived and she went along to try to obtain it. She says that she met Yakub and was offered the job and thereafter worked as his cleaner and maid. She was just 20 years old at the time and needed an additional job to her work in a café to try and make ends meet.
8. Yakub worked at an international school in Addis Ababa. He lived in a building in which his room was on the first floor and on the second floor lived IM and AH.

9. In her statement Almaz described how her duties involved cleaning the apartment and washing clothes and buying vegetables. When asked how the language barrier was dealt with, as Almaz spoke Amharic and Yakub spoke English, she said that they muddled through and that Yakub would give her a shopping list in English of what he wanted purchased and she would take it to the market where English speaking traders would provide her with the items.
10. She said that initially her relationship with Yakub was simply that of employee: employer and it was only after a period of time that Yakub asked her to socialise with him and their relationship became romantic.
11. Yakub says that he never employed Almaz and that the relationship was purely a sexual one.
12. Yakub says that their relationship ended in November 1984 and that by January 1985 he was involved with another woman. Almaz says that there was no other man in her life at the time and that it was only in about March/April that she began to suspect that she was pregnant. She says that she took a test which revealed that she was around 2-3 months pregnant. She told her uncle who was upset and he pushed her into telling Yakub. She says that Yakub told her to abort the child and that when she refused, her relationship with Yakub broke down. As a result of the awkwardness she resigned her employment.
13. She says that before the child was born Yakub told her that he would be leaving the country but would return. He did not leave an address. Yakub did leave the country during summer 1985, travelled to India for a holiday, and then made his way back to England. He says that he had no idea that Almaz was pregnant until sometime later after the birth when he received in England a letter from IM informing him that Almaz was alleging that he was the father of Mikias.
14. In 1986, when Mikias was about 6 months old, Almaz went to the school and asked for Yakub's address. She said that if it was not provided she would go to the British Embassy. The principal of the school, now deceased, said that he would see what he could do and he later informed Almaz that IM, a fellow teacher at the school, had contacted Yakub and received a reply that Yakub would support Mikias by paying a monthly sum towards the keep of Mikias and his mother.
15. Yakub accepts that for the next 5 years he paid a monthly sum to Mikias. Yakub's explanation, which I found curious, was that he was damned if he did and damned if he did not. If he did not pay, people would accuse him of refusing to accept that he was the father, whilst if he did pay they would come to the same conclusion. The payments were made for 5 years, which he says was the requirement of a father under Ethiopian law, and then ended with him providing Almaz with the funds to buy a sewing machine. On his own case, Yakub never said that he was not the father at this time.
16. It is Yakub's case that in fact the likely candidate as father was AH because he says that he saw Almaz going into AH's room one evening. He said that AH was not a man to face up to his responsibilities and that he did not challenge AH that he was the father until many years later.

17. When Mikias reached the age of around 10 years, Almaz began to feel that she simply did not have the money and ability to support him and she placed Mikias in a Catholic orphanage. She kept in touch with Mikias who was later transferred to a church orphanage in Addis Ababa. During a visit to the church she met Father CB. She explained to him that she wanted Mikias to meet his father. CB was familiar with the school in which Yakub had taught as he had chaplaincy duties there. He knew of Yakub and had been told by IM that Yakub had made the payments described. He was able to find Yakub and on his return to England CB contacted Yakub and told him that Mikias wanted to know his extended family and he arranged to meet and to speak with Yakub.
18. CB says that during one of his early conversations, Yakub admitted having sexual relations with Almaz while she worked for him and that he never denied that he was Mikias's father. He also acknowledged that he had sent money to Almaz to help support Mikias. CB says that he persuaded Yakub that he should have a DNA test and that was duly carried out by the Forensic Science Service Paternity Analysis Unit based in West Yorkshire.
19. The FSS report is dated 13 September 2001. It is not entirely clear to me how many tests were carried out. The Unit uses the technique of DNA profiling in which a pattern of bands specific to an individual is revealed. The report says that this technique routinely targets 10 areas on the DNA molecule, but that in this case further testing had also been carried out.
20. Half of the profiling reveals bands which a child inherits from its natural mother and the other half of which is inherited from its natural father. In all of the DNA tests carried out, with the exception of one test, the paternal bands present in the profile of Mikias are present in the profile of Yakub. This is a result, the tester says, that would be expected if Yakub was the natural father.
21. Much of the focus has been on the one mismatch in the bands which was not present in the profile of either parent. One possible explanation for this result is that a harmless rare genetic event called a mutation has taken place which has the effect of altering a DNA band that is passed from parent to child. This can result in the child in having a band which is not present in either of the parents' profile. In this case the results would be consistent with the mutation in the paternal band in the child.
22. The analysis of the result considered two alternatives:
 - i) That Yakub is the natural father of Mikias and a genetic mutation had taken place, or
 - ii) An unknown man, unrelated to Yakub, is the natural father of Mikias.
23. Analysis of the results shows that the DNA profile obtained from the child is approximately 710 times more likely if Yakub is the natural father of Mikias. This translates to a probability of paternity of 99.86%. This statistical evaluation does not account for a close male relative of Yakub being the natural father but Yakub has ruled this out. The conclusion is described as providing "moderately strong evidence to support the assertion that Yakub is the natural father of Mikias".

24. CB said that he remained in contact with Yakub until October 2019. On the last occasion that they spoke Yakub made it clear that he did not wish to know Mikias and CB says that Yakub became hostile towards him. He says that it was in this last conversation between them that Yakub mentioned for the first time to him that someone else was Mikias's father.
25. In 2011 Yakub sent to Mikias 5 emails setting out his account of events. All persons in the account are given false identities by Yakub. It is clear to me that the purpose of this was to ensure that nothing written could be used against Yakub. The tone of them is self-justificatory and presents Yakub as a victim who did his honourable best to provide support for a child who was not his.
26. There matters lay until Mikias became determined to establish the reality of his paternity. He instituted proceedings because he wants to know who is his father and, if it is Yakub, so that he can make an application for British citizenship. It was in the course of those proceedings that an order was made for a further set of DNA tests to be carried out by AlphaBiolabs.
27. Those tests compared 25 markers of which there was once again a single mismatch. Taking that into account the test resulted in the conclusion that they support the hypothesis that it is 21,204,093 times more likely that Yakub is the father of Mikias than another untested individual of the same population. This translates into the probability of parentage of being 99.9999999%.
28. Yakub has done a great deal of research into DNA tests. He is obviously an intelligent and scientific man. He says that he did chemistry and biology at university and then a degree and masters in psychology and has taught for some 12 years. He says that he has a very good understanding of statistics and has done a lot of internet searching. It was with that degree of knowledge that he asked a series of questions to the expert tester from which I quote the following questions and answers:

9. You have reported on a single mismatch. The FSS reported a similar mismatch and that it would be on the paternal band in the Applicant. Please confirm whether you agree with this.

Reply

Without the technical data from the FSS report we cannot confirm that it is the same mutation but both mutations did appear on the paternal side of the DNA.

12. Is it possible, however unlikely, that two unrelated people could have a full set of 25 bands that match?

Reply

Yes, in the case of the FSS report, you could potentially find someone after 710 tests on unrelated individuals to find a similar test. However, our testing of 25 markers now means you would have to test 21,204,093 people before you found someone with that same profile. With further testing, and increasing the number or tested markets, this number could again increase. Statistically there were -37 people in the

population of India in 1985 out of a population of 784million that could have this profile. This is statistically, not a guarantee.

13. *Apart from statistics, are there any means of ascertaining whether a genetic mutation or any explanation you have offered in question 4 has actually occurred?*

Reply

There is no way to ascertain that a mutation has occurred and the mismatch is not due to other factors. However, with further testing there are ways to get even more data and strengthen the DNA reports issued. You could test related males who to eliminate them as potential fathers to the point that the only feasible explanation is a mutation.

21. *Many scientists say that humans and chimpanzees have 99% similarity in their DNA. Is the similarity between humans at an even higher level? Could we therefore expect a high level of similarity between the DNA of unrelated people?*

Reply

Yes the similarity between human to human is higher. Approximately 99.6% of the DNA is shared. The other 0.4% makes up the highly variable sections of DNA that are used in generic comparisons. This 0.4% is about 12million areas of variability in the 3.2 billion that make up the human genome.

24. *Please confirm that the probability of paternity you have cited is purely on the DNA testing and does not take into account the circumstances of the case.*

Reply

Yes the probability of paternity we have calculated is based on the DNA test alone. We don't know any circumstances of the case.

26. *Would the following be appropriate conclusions to draw from the DNA profiling the expert has carried out:*

a) The current test results verify the previous test results and confirm the samples were taken from the same people;

Reply

The current test suggests that they were taken from the same people but this cannot be verified without comparable technical data or collection records.

b) It is possible that [Mikias] is the offspring of [Yakub] but only if an event had taken place on conception that altered one of the paternal bands of [Mikias]; and

Reply

Yes.

c) There is no evidence to indicate that a genetic mutation or similar event has taken place.

Reply

The test has been performed based on the hypothesis that the test participants are related as parent and child or they are unrelated; a mutation would be the only reasonable explanation for observing such a mismatch result unless the sample donors are closely related in an alternative manner that was not disclosed.

27. *The previous FSS report states the following:*

“The probability of paternity depends not only on the DNA evidence but also on other evidence relevant to the case. The DNA figure should only be used to multiply the strength of the other evidence.”

Would you concur with that and advise that the DNA evidence is not used in isolation?

Reply

A DNA test is not an isolated source of evidence, as factors have led to the use of said test. The DNA test is taken to support the evidence already established.

29. The thrust of Yakub’s submissions to me are that as 99.6% of DNA is shared, the fact that 24 of the 25 tests that were carried out showed identical bands is not statistically significant. He says there is nothing of value that can be gained from these tests. It seems to me the fallacy of his argument is exposed by the answer to the question at 21 namely that it is the 0.4% that are used in making the comparisons.
30. I simply do not accept that the finding of the tests which are supportive of Mikias’s case are of little or no relevance. In themselves they are probative of nothing but they need to be seen in the context of all the other evidence.
31. Yakub asked during the hearing that I should adjourn so that further tests could be carried out on skin colouring. It was Yakub’s contention that Mikias’s colouring and degree of hairiness were more consistent with him having a European father rather than an Indian father which is Yakub’s ethnic background.
32. Yakub supported this contention by producing a picture of AH and his children. He invited me to compare skin and facial likeness. I refused to go down this path. I am not an expert in these matters. There was nothing that struck me as showing a particular likeness, but I would be straying way beyond my expertise to draw conclusions.
33. However, Mikias had carried out an ancestry test by way of saliva sample. They show on the face of it that the likelihood is that Mikias has one Ethiopian-Eritrean parent and one Indian parent. Yakub rightly points out that there is no established chain of custody in such tests and suggests that Mikias might have got someone to do the test for him. The test was not court sanctioned and I do not place reliance upon it.
34. I refused Yakub’s application. It is made far too late in the proceedings. There was no offer to pay the costs thrown away in the adjournment. More importantly, I felt that the

chances of Yakub accepting any test which did not provide 100% certainty as being too low to justify an adjournment. Such tests can never provide 100% certainty.

35. Moreover, I found Almaz's evidence convincing. In particular, I found her account of the geography of the apartment where Yakub lived and the way that she carried out her duties for him to be persuasive. Likewise her account of her disclosing her pregnancy and his desire for an abortion. Her evidence was balanced and she willingly volunteered that Yakub had been very good to her and that she had no bad feelings towards him.
36. On the other hand, I found Yakub's account of being shocked at being accused of paternity months after the birth and his explanation of the circumstances in which he made voluntary financial provision for five years to be unpersuasive. I regard it as most unlikely that voluntary payments would have been made by Yakub for this prolonged period without Yakub denying paternity to anyone or even suggesting to AH that he should accept some responsibility if anyone other than Yakub was the father. The failure by Yakub ever to deny paternity to CB until 2019 when asked to take a second DNA test is also significant.
37. It follows that I do not accept Yakub's case that he last had sexual relations with Almaz in November 1984. I am satisfied that the relationship continued until about April 1985.
38. That does not mean that Yakub might not also have been having a sexual relationship with his other lady friend. This ties in with Almaz's evidence that after she became pregnant she was told by the other woman that Yakub used to date her. Almaz said that she was upset by the news and so left her alone.
39. Putting all this evidence together, oral, written and scientific, I am satisfied on the balance of probabilities to a high extent that Yakub is indeed the father of Mikias.
40. This is not a decision that I take lightly as it is a matter of great importance to all concerned. However, having weighed up all the evidence, I am firmly of the conclusion that it is appropriate that I should make the declaration of parentage sought by Mikias.

Costs

41. I am asked to make an order for costs by whichever party wins the case. It would not be proper for me to carry out a summary assessment of costs in circumstances where there appears to be a very large disparity between what is claimed as incurred by Mikias and by Yakub. Mikias had wrongly been charged VAT by the solicitors he consulted as they recognise after I told Mikias to take this up. I have been provided by him with schedules totalling either some £16,700 of which £14,250 has been paid or a sum of approximately double this sum. I do not know how this larger sum could be correct since Mikias has been self-representing for all or most of the time. I am told by Yakub that his total costs are some £6,600.
42. It is Mikias who has had to make most of the running in this case. I order that Yakub should pay Mikias's costs on a standard basis to be assessed if not agreed and that he should make an interim payment of £8,000. I order that payment of the sum on account be made within 21 days from the date of handing down judgment but I will receive further submissions in writing by no later than 7 days of the handing down of this

judgment on the interim payment if either party wishes to make representations on this issue.