Case No: FD13P02234

Neutral Citation Number: [2017] EWHC 2336 (Fam)
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 September 2017

Before :

Mr David Williams QC
Sitting as a Deputy High Court Judge

- -

Between :

IJEOMA NKEM EGENEONU	**Applicant**
- and -	
LEVI BERNARD EGENEONU	**Respondent**

- -
- -

Hassan Khan and Charlotte Baker (instructed by **Bindmans**) for the **Applicant Mother**
Edward Flood (instructed by **Duncan Lewis**) for the **Respondent Father**

Hearing dates: 11,12 and 19 September 2017

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JUDGMENT

See Also Annex.

Mr David Williams QC :

1. This is my judgment in the application by Ijeoma Nkem Egeneonu for the committal to prison of her ex-husband Levi Bernard Egeneonu (also known as Bernard Nkem). Ms Egeneonu alleges that Mr Egeneonu is in contempt of court. I shall set out the allegations later in this judgment.

2. All of the allegations of contempt are linked to and are a product of the retention of the parties' children in Nigeria in autumn 2013 following which they were made wards of court on 22 November 2013. The children (who remain wards of court to this day) are:

- Chidera Ogemdi Egeneonu (M) (26.4.2002)
- Odinakachi Arinzechukwu Egeneonu (M) (11.3.2005)
- Ifeanyichukwu Munachimso Egeneonu (M) (11.6.2007)

On 30 January 2014 Ms Justice Russell delivered a judgment after a contested hearing. She concluded that the children remained habitually resident in England and Wales as at the time wardship proceedings commenced and that the court therefore had jurisdiction to make the children wards of court and to make orders concerning them. As no final order has been made on the wardship application and as the children remain wards of court this court retains jurisdiction over them to this day. As I shall return to later the question of whether this Court or the courts of Nigeria have jurisdiction over the children is a legal fact which has played a significant role in how the case has evolved.

3. The Applicant is their Mother who is represented by Hassan Khan and Charlotte Baker (instructed by Bindmans). The Respondent is their Father who is represented by Edward Flood (instructed by Duncan Lewis) I shall refer throughout this judgment to the parties respectively as the Mother and the Father. Counsel and solicitors for both parties are specialists in international child law and I have been greatly assisted by that expertise in the way the case has been prepared and conducted in court.

4. In accordance with the Lord Chief Justice's Practice Direction of 26 March 2015: Committal for Contempt of Court – Open Court this hearing has taken place in open court. The press have attended parts of the hearing and have applied for the release of the parties Skeleton Arguments/Position Statements.

5. There is a substantive hearing on the wardship application listed for 25th September. I have not been provided with all the information about the substantive matters and have not sought to delve into it too far given the possible risks of prejudicing the position of the Father by hearing about facts or matters which don't truly relate to the committal issue before me. Inevitably there is some cross-over because one of the central issues within the Committal application is whether the Father has been honest about the current whereabouts of the children and his ability to make plans for and implement their return if that was what the court was to order. However it is NOT a live issue within these Committal proceedings whether the Father is currently in breach of an order to actually return the children to this jurisdiction.

6. This is the second application that has been made for the Father's committal to prison. On 6th March 2015 the Father was found guilty of 9 counts of

contempt of court. They are set out in the order of 8th May 2015 as amended under the slip rule on 8 March 2017 by Mr Justice MacDonald [B-C89-94]. I do not need to set them out in full but they covered:

a) Obtaining travel documents to enable him to leave the UK,

b) Leaving the UK and travelling to Nigeria,

c) Breaching a non-molestation undertaking in March 2014 by phoning the mother and saying he would never return the children from Nigeria and putting pressure on the mother to withdraw her wardship application by making threats to her and her family,

d) Failing to produce the children and to return them to the UK by 14 February 2014,

e) Failing to book tickets to effect the return of the children,

f) Failing to attend hearings on the 5th, 14th and 20th March 2014.

7. On 8th May 2015 the Father was sentenced to a total period of 1 years imprisonment by Mr Justice Roderick Newton. However because the Father had left the jurisdiction on or about 6 February 2014 and remained in Nigeria the sentence of imprisonment was not implemented immediately. Between May 2015 and early 2017 the wardship proceedings continued and on 18 January 2017 the President delivered a judgment on the Mother's application for Declaratory Relief. Although the father had not attended any court

hearings relating to that application or the wardship including the committal, between January 2014 and January 2017 he had engaged with the court process by filing documents and I believe by instructing solicitors.

8. The sentence of imprisonment imposed by Mr Justice Roderick Newton was eventually activated when the Father was arrested under the Committal Warrant on 26 March 2017 he having returned to the UK in late February or early March 2017. The Father will be released from that sentence on 26 September 2017 pursuant to s.258 Criminal Justice Act 2003, he having served one-half of the sentence.

This Committal Application

9. The application to commit the Respondent father was issued on 4th August 2017. It sets out 13 Grounds. [A- B9-15]. It was supported by the 3rd Affidavit of the Mother which included 38 exhibits running to a few hundred pages. That now comprises Bundle B. A copy of the Application, Affidavit, Exhibits and a draft order made on 29 June 2017 was served personally on the Father on 7 August 2017 by a process server. An Affidavit of Service is at [A-D32] Directions were given by Roberts J on 8th August and the application was listed before MacDonald J on 30th August with a 2 day time estimate. On 22 August 2017 the Father signed a statement which referred to a number of other documents. That statement along with other statements and documents (including a number of letters from the children) and amounting to a couple of hundred pages now comprise Bundle C.

10. On the 30th August the hearing was adjourned because:

a) the father had recently dispensed with the services of his solicitors [see letter at C-C1133] and legal aid was only transferred to his new solicitors that day , and

b) the father had complained of being unwell [See F's letter to the court written at the RCJ at [A-D36-37] although when examined by a medical officer he was said to be fit to come into court and to participate in the hearing and thereafter did so. [See Recital A- B18, para 9].

11. The matter was listed before me on 11 September for 2 days. For reasons which I haven't explored counsel for the Father had not received full instructions from the Father and I allowed Mr Flood until about noon on Day 1 to see the Father to ensure that he was fully instructed. Having had that opportunity Mr Flood was able to confirm that the Father sought to rely on the statement of 22 August 2017 and the other statements referred to therein and did not wish to file a further statement. At that stage Mr Flood indicated that the father would wish to give evidence.

12. As referred to above the Committal Application contains 13 Grounds in respect of which the Father's committal to prison is sought. I indicated to Mr Khan at the outset of the hearing that I considered the range and duplication of allegations contained within the Committal Application together with various procedural defects might present practical and forensic difficulties to the just determination of the application and that a more precise focus on those

allegations which were not affected by technical procedural barriers and which properly reflected the nature of the wrong-doing alleged might be appropriate.

13. As a result of re-consideration of the basis of the Grounds both prior to the commencement of this hearing and subsequently, not all of the Grounds are pursued. I consider that to be sensible and appropriate. Mr Flood, not surprisingly, had no objection to them not being pursued and that course of action has simplified the legal and evidential landscape to some degree. As I do not consider it fair to leave them unadjudicated (or on the file) and thus technically capable of resurrection I propose to dismiss those Grounds which are not pursued.

14. Set out below is a Table of the Grounds together with the details of whether they are pursued or not. Given that each of the parties have referred to the allegations by number I do not intend to change the numbering notwithstanding the fact that only 8 of the original 13 allegations are live.

Ground No	Nature	Status
1	Continuing failure to return of children in breach of order to return them by 14 Feb 2014.	Not pursued as order required return by set date and F committed for non-compliance with that. No further order was made requiring return,
2	Father has brought about important and major steps in the children's lives in the knowledge that they are wards of the court and without the prior consent of the court. In particular (a) He has brought about changes in their whereabouts, residence and those charged with their care, (b) He has brought about material changes in relation to their education, (c) On his account he has changed their	Pursued

	names. [It is alleged these are in breach of the prohibition inherent in wardship that no significant step may be taken without the permission of the court.]	
3	Breach of non-molestation undertakings	Not pursued –duplicated by 4
4	Breach of non-molestation order made on 30.1.2014 which provided that The father shall not intimidate, harass or pester the mother whether by himself or instructing or encouraging anyone else to do so The father shall not whether by himself or instructing any other person to do so, use or threaten violence against the mother. In that (d) Not pursued (e) Not pursued (f) Between March and November 2015 when the respondent was unrepresented he sent numerous and lengthy documents' to the applicants solicitors and to the court which contained insults against the applicant. This was extremely upsetting and constituted intimidating, harassing and pestering behavior. These documents also contained threats of violence against the applicant and her family. (g) Between March and May 2015 the respondent sent or instructed another person to send correspondence to the applicant's solicitors containing threats against her and her family and explicitly seeking to cause her to withdraw the wardship proceedings. This was extremely upsetting constituted intimating, harassing and pestering behavior and amounted to threatening violence. (h) On 11 November 2016 the respondent sent a document to the applicant's solicitors which contained threats of	Pursued

	violence against her and her family. This was extremely upsetting, constituted intimating, harassing and pestering behavior and amounted to threatening violence. (i) On 8 March 2017 the respondent attended at the applicant's home and sought to gain entry. This was extremely frightening and constituted intimidating, harassing and pestering behavior. (j) On 12, 14 and 19 March, the respondent attended at the applicant's church knowing that she was likely to be there and with the intention of harassing, intimating and pestering her. On 12 and 19 March he acted in a harassing, intimidating and pestering manner directly towards her and on all three occasions harassed her by seeking to cause others to influence her to withdraw the wardship proceedings.	
5	Interference with administration of justice by seeking to intimidate M to drop proceedings	Not pursued. Partly duplicated by Ground 3 & 4
6	Breach of occupation order	Not pursued. No warning notice on order and allegation also incorporated within 3/4
7	Breach of s.12 AJA by publishing of information relating to the proceedings.	Not Pursued. No reason given but having regard to the publicity that has been given since 2015 the disclosure of material prior to 2015 has been overtaken.
8	In breach of provisions in orders dated 15 April 2014, 19 June 2014, 1 December 21014, 3 February 2015, 6 March 2015, 9 March 2015, 19 May 2015, 30 July 2015, 28 September 2015 and 18 December 2015 all of which had penal notices attached and were brought to the respondents attention in accordance with provisions in those orders, he failed to attend the hearings listed on 19 June 2014, 9 March 2015, 8 May 2015, 19 May 2015, 30 July 2015,	Pursued 4 of the allegations

	28 September 2015, 18 December 2015 and 25 January 2016.	
9	Filing documents with a false statement of truth	Pursued (but acceptance that this is inextricably linked to Allegation 10, 12 and 13) and permission sought to pursue.
10	By paragraph 1 of the order of Mr Justice Baker dated 7 June 2017 the respondent was ordered to provide the following information by 16 June 2017: (a) address(es) at which the children are living; (b) telephone number(s) and electronic addresses) for the children and any adult responsible for their care; (c) identities of all adults resident at the same address as the children; (d) names and addresses of schools and names and contact details of the head teachers of the said schools; (e) all information within his possession concerning the children's whereabouts. The respondent has failed to provide this information by 16 June or at all and/or has provided false information.	Pursued
11	By paragraph 2 of the order of Mr Justice Baker dated 7 June 2017 the respondent was ordered to facilitate telephone contact between the children and the applicant and to provide a telephone number and details of the time and day that she could call by 16 June 2107. The Respondent has failed to provide the required information by 16 June or at all and has failed to facilitate telephone contact.	Pursued
12	By paragraph 3 of the order of Mr Justice Baker dated 7 June 2017 the respondent was ordered to provide initial proposals for the children's return to the jurisdiction by 16 June 2017. The respondent has failed to provide this information by 16 June or at all.	Pursued
13	By paragraph 3 of the order of Mr Justice Baker	Pursued

	dated 7 June 2017 the respondent was ordered to file and serve a statement by 4pm 21 June 2017 setting out his full and detailed final proposals for the return of all the children, the steps he has taken to obtain travel documents for the children, the communications which he has had with those in Nigeria whom he has instructed and whom he proposes to secure and/or facilitate the return of the children to England, their country of habitual residence, exhibiting all corroborative written material The Respondent has failed to provide this information by 16 June or at all.	There is an error in the Committal application which recites the date for compliance at 16 June when in fact it was required by 21 June. I do not consider that there is any injustice to the Father in amending this error; I suspect it was probably a cut and paste error.

15. In the course of the Mother's case Mr Khan sought permission to adduce some further documents totalling 8 pages which dealt with aspects of the evidence in relation to Ground 8 – non-attendance of the Father at hearings. That application was not opposed by Mr Flood and I concluded that pursuant to the over-riding objective that permission to admit that further evidence should be granted.

16. At the conclusion of the Mother's case I gave Mr Flood the opportunity to make an application in respect of the issue of whether there was 'No Case to Answer' and Mr Flood confirmed he had no application at that stage.

17. I then reminded the Father that the time had come when he could give evidence if wanted to but I explained that he had the right to remain silent and the right not to incriminate himself. I also explained that adverse inferences could be drawn if it seemed appropriate to do so. The Father chose to give

evidence and throughout his evidence he chose to answer all questions put to him.

18. As a result of the additional time needed to take instructions from the father at the commencement of the hearing we were unable to conclude the matter in the two days allowed. I therefore listed a third day on 20th September. At the conclusion of the evidence I gave directions for the filing of Written Submissions from Mr Khan on Thursday 14th September and from Mr Flood on 19th September by which time he and his solicitors would have been able to conduct a legal visit to the Father to discuss the Mother's submissions. I made clear that Mr Flood would also be able to speak to his submissions. Mr Khan's junior Ms Baker was available to attend in his place; he having a prior commitment which he could not move.

19. The parties have provided me with their Written Submissions together with an agreed note of telephone conversations between the mother and Chief Samuel Osuji and Grace Ishiozo. I heard submissions Ms Baker from Mr Flood this morning.

The Law

Committal for Contempt of Court by breach of an order: Substantive Principles

20. The summary of the substantive law of contempt in relation to the breach of an order below derives from the following cases.

    a) *London Borough of Southwark v B* [1993] 2 FLR 55

    b) *Mubarak v Mubarak* [2001]1 FLR 698

c) *Re A (Abduction: Contempt)* [2008] EWCA Civ 1138, [2009] 1 FLR 1

d) *Re S-C (Contempt)* [2010] EWCA Civ 21, [2010] 1 FLR 1478

e) *Re L-W* [2010] EWCA Civ 1253, [2011] 1 FLR 1095.

f) *Re J* (Children) [2015] EWCA Civ 1019

g) *Y v Z* [2016] EWHC 3987 (Fam)

I do not intend to set out the relevant extracts of the judgments in their entirety but I have read Mr Khan's Position Statement of 8 September 2017 and his note 'Procedure in Committal Hearings' as well as other materials in distilling this summary and Mr Floods closing note.

21. The principles are:

a) The contempt which has to be established lies in the disobedience to the order.

b) To have penal consequences, an order needs to be clear on its face as to precisely what it means and precisely what it prohibits or requires to be done. Contempt will not be established where the breach is of an order which is ambiguous, or which does not require or forbid the performance of a particular act within a specified timeframe. The person or persons affected must know with complete precision what it is that they are required to do or abstain from doing. It is not possible to imply terms into an injunction. The first task for the

judge hearing an application for committal for alleged breach of a mandatory (positive) order is to identify, by reference to the express language of the order, precisely what it is that the order required the defendant to do. That is a question of construction and, thus, a question of law.

c) Committal proceedings are essentially criminal in nature, even if not classified in our national law as such (see *Benham v United Kingdom* (1996) 22 EHRR 293 at [56], *Ravnsborg v. Sweden* (1994), Series A no. 283-B);

d) The burden of proof lies at all times on the applicant. The presumption of innocence applies (Article 6(2) ECHR)

e) Contempt of court involves a contumelious that is to say a deliberate, disobedience to the order. If it be the case that the accused cannot comply with order then he is not in contempt of court. It is not enough to suspect recalcitrance. It is for the applicant to establish that it was within the power of the defendant to do what the order required. It is not for the defendant to establish that it was not within his power to do it. That burden remains on the applicant throughout but it does not require the applicant to adduce evidence of a particular means of compliance which was available to the accused provided the applicant can satisfy the judge so that he is sure that compliance was possible.

f) Contempt of court must be proved to the criminal standard: that is to say, so that the judge is sure. The judge must determine whether he is sure that the defendant has not done what he was required to do and, if he has not, whether it was within his power to do it. Could he do it? Was he able to do it? These are questions of fact.

g) It is necessary that there be a clear finding to the criminal standard of proof of what it is that the alleged contemnor has done that he should not have done or in this case what it is that he has failed to do when he had the ability to do it. The judge must determine whether the defendant has done what he was required to do and, if he has not, whether it was within his power to do it.

h) If the judge finds the defendant guilty the judgment must set out plainly and clearly (a) the judge's finding of what it is that the defendant has failed to do and (b) the judge's finding that he had the ability to do it.

Committal for Contempt of Court: Procedural Issues

22. The following principles relating to the procedural aspects of applications for committal for breach of a court order also emerge from the authorities referred to above. I have also considered the following decisions:

a) *L (A Child)* [2016] EWCA Civ 173 in particular the judgment of Theis J,

b) *Cherwayko v Cherwayko* (No 2) (Contempt, contents of application notice) [2015] EWHC 2436 (Fam) Parker J.

23. The need for compliance is based on rules of natural justice in that:

a) A person needs to know in advance of committing an act or omitting to do an act that there are potentially penal consequences in acting or omitting to act and,

b) A person accused of contempt of court is entitled to a fair hearing both under the European Convention and in domestic law.

As well as the court's own duty counsel and solicitors have their own independent duty to assist the court, particularly when considering procedural matters where a person's liberty is at stake.

24. The principles are:

a) There must be complete clarity at the start of the proceedings as to precisely what the foundation of the alleged contempt is: contempt in the face of the court, or breach of an order.

b) Prior to the hearing the alleged contempt should be set out clearly in a document or application that complies with FPR rule 37 and which the person accused of contempt has been served with. The question is 'would the alleged contemnor, having regard to the background against which the application is launched, be in any doubt as to the substance of the breached

alleged'? Provision of particularisation of allegations in an attached affidavit is insufficient, and the application itself must include the pleaded assertions. There is an important distinction between the charges made and the facts supporting them.

c) Autrefois acquit and convict applies.

d) If the alleged contempt is founded on breach of a previous court order, the court must be satisfied that the person accused had been served with that order, and that it contained a penal notice in the required form and place in the order.

e) Whether the person accused of contempt has been given the opportunity to secure legal representation, as they are entitled to. By virtue of the quasi-criminal nature of committal process, Article 6(1) and Article 6(3) ECHR are actively engaged (see *Re K (Contact: Committal Order)* [2002] EWCA Civ 1559, [2003] 1 FLR 277 and *Begum v Anam* [2004] EWCA Civ 578); Article 6(1) entitles the respondent to a "a fair and public hearing"; that hearing is to be "within a reasonable time". Article 6(3) specifically provides for someone in the position of an alleged contemnor "to defend himself in person or through legal assistance of his own choosing", The accused is also entitled to "have adequate time and the facilities for the preparation of his defence" (Article 6(3)(b)).

f) Whether the judge hearing the committal application should do so, or whether it should be heard by another judge.

g) Following the conclusion of the applicant's evidence, the respondent is entitled to make a submission of 'no case to answer'.

h) Immediately prior to the commencement of the Defence case the person accused of contempt must be advised of the right to remain silent. The court must inform the accused of the possibility of adverse inferences being drawn against them if they choose not to give evidence.

i) If the person accused of contempt chooses to give evidence, the court must warn them about self-incrimination and their right not to incriminate themselves. The court must inform the accused of the possibility of adverse inferences being drawn against them if they choose not to answer any questions.

See section 35 of the Criminal Justice and Public Order Act 1994) and Khwaja v Popat [2016] EWCA Civ 362 per McCombe LJ and paragraph 81.28.4 of Civil Procedure 2015 Vol. 1 (p.2460) as follows*:*

> *A person accused of contempt, like the defendant in a criminal trial, has the right to remain silent (Comet Products UK Ltd. v Hawkex Plastics Ltd. [1971] 2 QB 67, CA). It is the duty of the court to ensure that the accused person is made aware of that right and also of the risk that adverse inferences may be drawn from his silence (Interplayer Ltd. v Thorogood [2014] EWCA Civ 1511, CA…*

j) Before the court moves to sentencing the contemnor must be given an opportunity to mitigate or to purge his contempt.

25. Pursuant to paragraph 13.2 of PD37A, the Court is empowered to 'waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice has been caused to the respondent by the defect'. Per Lord Woolf in *Nicholls v Nicholls* [1997] 1 FLR 649:

> *While the requirements of Ord 29, r 1 are there to be observed, in the absence of authority to the contrary, even though the liberty of the subject is involved, we would not expect the requirements to be mandatory, in the sense that any non-compliance with the rule means that a committal for contempt is irredeemably invalid.*

Waiver is now based on the interest of justice and whether the alleged contemnor would suffer an injustice or prejudice. There is no longer a threshold of exceptionality, and the court has to ask itself 'did the alleged contemnor have enough information to meet the charge'? While an attached affidavit could not provide the particularisation required of a notice, it could justify the waiver of a defect. *Cherwayko v Cherwayko* (No 2) (Contempt, contents of application notice) [2015] EWHC 2436 (Fam).

Evidential Issues and Inference in Committal.

26. Although quasi-criminal in nature both the legal teams for both the mother and the father accept that hearsay evidence in admissible.

27. The Mother submits that the principles deriving from the criminal law, in particular the provisions of s.103 of the Criminal Justice Act 2003 should be applied to these committal proceedings. In particular the Mother submits that the courts previous findings in 2015 that the Father was in contempt of court are relevant both:

a) To his propensity to commit further breaches court orders or the law generally (CJA 2003 103(1)(a)) and,

b) To his propensity to be untruthful (CJA 103(1)(b))

Given that section 103 applies to the admission into evidence of previous convictions it seems to me that if s.103 applies it probably applies by analogy rather than directly. In *R v Hanson* [2015] EWCA Crim 824the Court of Appeal explained that the purpose of the provision was to assist in evidence based convictions – not convictions based on prejudice – where the particular circumstances justified such inferences being drawn.

28. Under section 103(1)(a) in determining whether to admit evidence of previous convictions in support of propensity to commit offences the court has to consider whether

a) The history of convictions establishes a propensity to commit offences of the kind charged

b) Whether that propensity makes it more likely that the Defendant has committed the offence charged

c) Whether it is unjust to rely on the convictions and

d) Whether the proceedings will be unfair if they are admitted.

29. The Court of Appeal said that in relation to propensity to commit offences the fewer the previous convictions the weaker the evidence of propensity was likely to be and gap between the commission of the earlier offences and the offences charged was relevant. In relation to propensity to lie the Court said

previous convictions might be relevant where truthfulness in the instant case was an issue and where the previous convictions showed the jury had disbelieved the accused or where the offences themselves (i.e. making false representations) showed a propensity to untruthfulness.

30. As set out above the accused in a committal has a right to remain silent. Having been advised of that right, that the burden of proof on the Mother and the implications of exercising that right or the right not to answer questions the Father chose to give evidence and to answer all questions that were put to him. There is therefore no need for me to consider further the circumstances in which inferences might be drawn.

Permission to Apply for Committal

31. In relation to Ground 9 permission is required and sought to apply to commit the Father, in relation to the allegation that the father has made false statements of truth pursuant to r.37.17 FPR 2010. The application C2 indicates that permission was sought to make the application [B2] elaborated in the mother's statement in support of her committal application [C15, para 43]. It is evident from the FPR and the authorities that permission is anticipated to be sought as a preliminary issue and before any substantive application is issued. In the context of this case I can understand why it was not sought given the number of other matters for which permission was not required and the desirability of avoiding some sort of parallel process. In any event as I pointed out to Mr Khan at the outset the reality is that the application in respect of the alleged false statements of truth are inextricably linked to the subsequent Grounds 10, 12 and 13. Only if the contempt alleged

in those Grounds was proven would Ground 9 get off the ground and if they are proved, the wrong-doing inherent in them is not added to much, if at all, by the filing of a false statement; indeed they are simply two sides of the same coin. This is not the sort of case which the provisions are more apt for, where there is strong independent evidence of falsity which is not bound up with the findings on the other substantive allegations.

The Evidence

32. The Court Bundle comprises 3 files containing several hundred pages. The evidence comprised:

a) The Mother's statement and Exhibits

b) The Father's various statements and exhibits

c) The oral testimony of:

- The Mother
- The Father
- Pastor Samuel
- Nnena Ibirim

Witnesses

33. I need to assess the credibility of the Mother and the Father as witnesses. Both gave evidence in English and without an interpreter. All of the statements they have filed have been provided in English and I am satisfied that both of them

are able to express themselves well in English and have a very good understanding of it. They are both fluent English speakers although both speak with a degree of accent; the mother more than the father. Only occasionally did I have difficulty in understanding the mother – with the father I had no difficulty and believe I understood him well.

The Mother

34. There is one principal statement made by the mother in relation to this set of proceedings and many more in the earlier proceeding but which have been produced in support of the parties cases in the committal. I do not intend to rehearse them here but I have read them. The mother gave evidence in a restrained and at times rather flat manner. I got the impression that she was rather worn down and tended to moderate her expression – perhaps in an attempt to distance herself somehow from the content of what she was saying. However at times she seemed on the verge of tears but brought herself under control. She came across as a fairly intelligent and moderate character. She became somewhat agitated when forced to concede that she had misled her GP and benefits agency over her mental health but in the main she maintained her composure and I thought she tried to answer questions asked of her. At times – as I will relate below – she was spontaneous and I thought was clearly reliving real events.

35. The Father says she is generally unreliable [C-C1118a-19] (i.e. her changing accounts re finances) and Mr Flood emphasizes this in his Written Submissions. In her oral evidence she accepted she lied to state authorities about her mental illness. I remind myself pursuant to *R-v-Lucas* that a witness

may tell lies about one thing for many reasons but it does not necessarily mean they are lying about all things. To mislead a doctor and then subsequently a benefits agency is a serious matter but it does not mean the mother lies about all matters. The matters which the Father refers to at C-C1118a-19 up to paragraph 30 largely relate to historic matters which were 'live' in the hearings in January 2014 and March 2015. Notwithstanding those matters the judges at both hearings considered the mother to be a credible witness and none of the father's criticisms of the mother seem to have found any traction with Russell J or Roderick Newton J. I am not in a position at this hearing to try to explore that evidence – and nor did Mr Flood seek to cross-examine the mother on those aspects. The relative weakness of the Father's criticism of the credibility of the mother is illustrated by his asserting that her claim that he unlawfully retained the children in Nigeria is wrong. Given that Russell J found that he had retained them and the remainder of these proceedings has been on the basis that the Father did retain the children in Nigeria without the Mother's consent the Father's recent statements including that of 27 June 2017 show not only the weakness of his argument that the mother is not a credible witness but also his on-going denial of previous court judgments.

36. I need to survey a much wider canvas. I do not consider the Mother to be an inherently unreliable witness. In fact in general she remained broadly composed and measured. She was not given to hyperbole or to exaggerated use of language. If anything I formed the clear view that she tended to try to keep her emotions under control and in so doing tended to understate matters. This was perhaps most apparent when she described 'not being happy' when she saw quite explicit threats to her safety and that of her family in the

Divorce Dissolution document and the letter from Mekus Iwuala in which her life and the life of Darlington Osuji were put under threat. Her account from the witness box was broadly consistent with that given in her statements and with that given by other witnesses. Any differences in fine detail are unsurprising given the passage of time and the way people recall things. It is well recognised in the courts and supported by research that a number of different individuals will recall matters differently. Her demeanour in the witness box was at times angry or upset, she certainly feels strongly and has issues she wishes to emphasise but overall she attempted to answer the questions.

37. I shall deal with Pastor Samuel and Nnena Ibirim later in the judgment.

The Father

38. There are a great number of statements made by the Father in relation to this set of proceedings and earlier proceeding but which have been produced in support of the parties' cases in the committal. I do not intend to rehearse them here but I have read them.

39. The father is articulate and I consider him to be intelligent – probably highly intelligent. He was confident in the witness box and seemed eager to enter the witness box and to have his say. In the witness box and in his documents he expresses himself forcefully both in the delivery of the evidence and in the language he uses to express himself. He asserted he never tells lies and is a man of principle. Although mostly he was self-assured at times when he seemed to be under pressure he seemed to resort to bluster to avoid answering

a question. Underlying his evidence I think there was and probably still is a profound sense of injustice that the English court has exercised jurisdiction over his children. Until relatively recently it is clear that he has always maintained that the English court should not have exercised jurisdiction, that it was wrong legally to do so, was disrespectful to the Nigerian courts and orders and to the family culture. He is convinced that he has been done a wrong AND that he is in the right.

40. At times he is disarmingly frank – for instance in relation to his non attendance at court. Mr Flood says this, for instance, along with some other aspects of his evidence where he did not avail himself of opportunities to avoid adverse findings shows that he is generally a truthful witness. Mr Flood says that the Father's acceptance of the fact that if he is released there would need to be a negotiation over the children also illustrates his frankness; he could simply have said he would return them. However there are many instances where his evidence was shown to be wholly unbelievable and untruthful and when he was evasive.

a) When questioned about discussions with Chief Sam before he went to prison he claimed they had talked and discussed this case but he was evasive and seemed unwilling to give any details. He was unable to produce any document showing he had surrendered control of the children.

b) In relation to the letters written by the children he claimed not to know they were being written and that Chidera had done of it his own volition. Why would he not know – if he was speaking

with Sam/Grace - that they had written letters to the judge and to him. Even more so considering he was also speaking to the children. The idea they would not have told him is fanciful.

c) He believes there is some sort of conspiracy against him and said this was the reason he was not produced on 7th June 2017. This is consistent with the general tenor of his previous documents which have asserted that this case is an example of white supremacy and a continuation of the oppression of blacks by whites. The order itself records his non-production was due to an administrative mix-up.

d) In his statement at C-C1096 and C-C1127a – he said he couldn't contact people who could assist with return but he now accepts that he has been in contact with Sam and Grace who he says now have Parental Responsibility.

e) He was evasive when asked about Sam and Grace's housing situation. I got the impression that he was not really familiar with their housing set up and sought to avoid giving details and when pressed was unable – particularly in respect of Grace's home to give any real information about it. Given that is where he says the children spend most of their time when not in school this is surprising.

f) He said he went to Pastor Samuels's church to worship – why shouldn't he he say? But he alleges Pastor Samuels is a Muslim, a drug dealer and attempted to assassinate him. It

simply is beyond comprehension that he would voluntarily go there if that were the case and if it is not the case, the allegations are so serious it casts doubt on his credibility generally. That sort of serious allegation against a cast of individuals litters the father's documents.

g) The father alleged that the mother agreed in November 2016 that the children could remain in Nigeria and that he returned to England to implement this. This contradicted his position that he returned to serve his prison sentence. When pressed he said this was only said in a phone call and there was no documentary evidence relating to it. This is a surprise given the father's ability to communicate. That there should be no e-mail, SMS, letter or anything is incredible.

h) He said he didn't go to see the Mother when he went to the church but he wanted to seek an accommodation with her. It seems those are mutually contradictory.

i) He said he had come to England to serve his sentence ' *to set her free, set me free and set the children free I would come here to go to prison*' and yet when he arrived he did not surrender but sought persuade the mother to reach an accommodation. I did not find his explanation of waiting for his solicitor to get forms convincing.

j) His evidence in relation to the threats contained within the Divorce document was simply incredible. He maintained that

his intention was not to prevent her speaking to the children when the letter said the exact opposite.

k) He continues to deny the basis of the committal; saying I never stopped the children coming here.

l) When asked where the children were in December 2013 he confidently asserted they were all in boarding school. When I queried this in relation to their ages he changed his evidence and said only the eldest was.

41. I conclude that the Father is not generally an honest witness. He has disregard for the truth and will say sometimes whatever comes into his head and at others – when more considered he says what he believes will best serve his ends. He is capable of telling the truth – as I say sometimes he is disarmingly frank but that is not the overall nature of his evidence. I remind myself again of the Lucas direction and that because the Father has lied on one issue does not mean he has lied on all. However in contrast to the Mother's occasional dishonesty – which was largely confined to peripheral rather than core matters – the Father's was on a much wider scale and went to the root of the substantive issues. Where there are differences I therefore prefer the Mother's account to the fathers unless there is independent corroboration of the Father's evidence.

Previous Judgments

42. In her judgment of Ms Justice Russell found:

a) the Father's case in December 2013 was he could not return the children as they were under the control of Sam Osuji [B- C50, § 16].

b) that despite Father's assertion that he had no knowledge of the whereabouts of the boys and that he had left them in the care of a minder and a driver and that he could not contact them, that it was more likely than not that he knew where they were and that they were safe [B-C55 §24]. She concluded his evidence and his attitude did not support his asserted case that the children had travelled to Nigeria as part of a permanent move and that he now no longer knew their whereabouts or had control over them. She made a specific finding recorded on the order [B-C60] that he the Father had control of and knowledge of the whereabouts of the children and is able to cause their return to the jurisdiction of England and Wales from Nigeria.

c) the mothers evidence and the extrinsic documents and evidence were consistent with the children only having travelled to Nigeria for a holiday and that they were not in her family's custody.

43. In his judgment Mr Justice Roderick Newton concluded that the totality of the evidence including the adoption of devices by the father to delay matters and dishonesty by the Father and his brother together with the believable evidence of the mother were sufficient to make him sure that 9 findings of contempt were made out. Subsequently the judge adjourned sentencing to give a pause

for reflection. That pause was clearly aimed at the Father and intended to give him an opportunity to avoid imprisonment by returning the children. Far from meeting with some movement and concession by the father the adjournment led to the Father filing another Affidavit challenging the January 2014 judgment and describing the Mother's claim for custody of the children as an 'abomination' [B-C136] and challenging the jurisdiction of the English court and asserting that he the Father had the God-given right to decide the future of the children [B-C149].

FINDINGS The Grounds: Conclusions

44. In reaching my conclusions I have applied the criminal burden and standard of proof. Where I say I am satisfied about a matter it means I am sure about that matter – not that I consider it more likely than not. I have at all times approached the determination on the basis that it is for the Mother to prove the alleged breach and to prove that it was possible for the Father to comply with the order.

45. Mr Khan submits that the previous convictions of the Father demonstrate a propensity to commit the contempts the subject of the current committal application and that I can and should take the previous convictions into account as a relevant matter when determining whether the Father has committed. I have not found it necessary to bring the provisions of s.103 CJA 2003 to bear. The written and oral evidence together with the previous findings made by Russell J and Roderick Newton J have proved sufficient to enable me to faithfully apply the criminal standard of proof without reliance

upon the technicalities of s.103 CJA propensity whether in respect of the commission of the contempts or propensity to be untruthful.

GROUND 2: breach of wardship.

46. The father gave evidence that he certainly prior to May 2015 he had not appreciated that the effect of the wardship was to prevent him taking any significant step. Later he suggested he had not understood the effect of wardship until the currency of this latest set of proceedings and in re-examination Mr Flood asked him to clarify when he came to understand the effect of wardship. I am satisfied that by May 2015 he understood the effect of wardship. Mr Khan spent some time on the issue basing his examination on the Father's own statements in particular that [B-C149] and F's evidence was sufficiently clear to me that I suggested to Mr Khan that May 2015 was probably a sensible baseline and that prior to that date there was certainly room for doubt as to Father's understanding. The emphasis of the Father's case on this issue as at other times was that the English court had no business making orders in respect of the children; they were Nigerian children in Nigeria and the Nigerian court had jurisdiction over them. The Father believed they had been wards erroneously because they could he understood, only be made wards if they had been maltreated in England; which they had not. As his statement of April 2015 made clear he considered the actions of the English court to be wholly wrong (the January 2014 judgment he described as an "**OPEN RAPE OF JUSTICE"** and the March judgment as a "**complete FARCE")** and under-pinned by white supremacy. The Father told me that at that time and for some considerable time thereafter that he had been filled with

anger and a sense injustice about what the English court had done. He says that this anger has now abated and that he wishes to seek peace; hence his return to England. I conclude that during the period January 2014 through to 2017 he has exercised his parental responsibility to undertake significant steps in the children's lives without the permission of the court – and without reference to the Mother. He accepted in evidence that he had changed the children's schools and had changed where they lived. I conclude that from May 2015 he did this knowing that the wardship order prohibited this.

47. However the prohibition contained within FPR 2010 PD12D para 1.3(b) [and explained in Kelly-v-BBC [2001] 1 FLR 197] does not expressly provide for criminal penalties in the event that such a step is taken without permission. The usual form of order making children Wards dated 30 January 2014 [B-C59-62] does not contain any Warning although it does contain a Warning Notice about the consequences of breaching other parts of the order. I accept Mr Flood's submissions that the Wardship order is not susceptible to an application to commit due to:

    a) Its lack of clarity as to what was permitted and what was forbidden

    b) The absence of a clear warning as to consequences.

As will be clear from what I have said above I do not accept Mr Flood's submissions in terms of the evidence about the Father's ability to change the homes and schools of the children.

48. In those circumstances I do not consider that the application in respect of Ground 2 can meet the primary substantive requirement for clarity nor the substantive and procedural requirement for clear warning of penal consequences for breach. Ground 2 is dismissed.

49. For the future if it is contemplated that a party might take such steps and that committal might be sought it would be prudent either from the outset or at such later point when it is considered that breaches might occur or re-occur to specifically endorse on the order a WARNING Notice or Penal Notice as may occur with other orders and to explain what may or may not be done.

GROUND 4

50. The issue of whether this application cut across the Family Law Act 1996 scheme which provides criminal penalties was answered by the fact that these orders were made in the Inherent Jurisdiction not under the FLA.

51. The order was made immediately following the conclusion of the hearing before Russell J when the Father was present. The injunctions replaced the provisions of the undertakings given personally by the Father on 17 December 2013. The father left the jurisdiction on or about 6 February 2014 and it is not clear that the order was personally served on him. However I consider in the particular circumstances that it is just to dispense with personal service pursuant to FPR 37.8 given that the Father was present in court and had notice of its terms thereby. In addition to that it is clear that Father has had a copy of the order because he himself makes reference to it in his own documents and he was committed for contempt of court in relation to other provisions of that

order. Furthermore he was found guilty of contempt in March 2015 for breaches of similar if not identically worded undertakings given in December 2013. I therefore do not consider there to be any doubt that the father was aware of the injunctions and their meaning and effect by the time the earliest of the breaches now pursued occurred in March 2015.

52. In respect of Ground 4(c) the e-mail sent to M's solicitors on 25 March 2015 was plainly directed at M. It says 'Please you need to ask Ijeoma..'. The language used 'an abomination', [they] 'are in serious trouble', '..face the anger.' The tenor of the e-mail is clearly intimidating, harassing and pestering and was intended so to do – primarily I conclude to seek to persuade the mother to abandon the proceedings in England.

53. In respect of Ground 4(d) although the e-mail from Mekus Iwuala of 22 May 2015 appears to be consistent with a pattern of communication from the father in which threats were made I am not satisfied to the criminal standard that it was sent at the instruction or encouragement of the Father. It seems that even within the Mother's family (see what Chief Sam had to say) there is a degree of anger or embarrassment at the situation. Although I generally have concluded that the mother is a credible witness her response to the questions about the existence of Mekus Iwuala was such that I was left wondering whether she was being wholly honest about this cousin. I therefore cannot conclude so that I am sure that this e-mail was either sent by the Father under another's name or that it was sent under his instruction.

54. In respect of Ground 4(e) the Dissolution of Marriage document is a document which was prepared by Father. It is not a court document emanating from the

Nigerian court nor is it a document the Father submitted to the Nigerian court and copied to Mothers solicitors. It is a document prepared by the father for the Mother to read. It commences 'Please inform Ijeoma that..' It goes on to contains a warning to the Mother not to speak to or make contact with the children without the Father's consent. Breach of the warning is said to provoke the anger of a variety of groups including vigilante groups. The document says 'This is very serious. Ijeoma must not ignore this warning for her own safety and for the [family members] supporting her.' The language is explicitly threatening violence and is intimidating, harassing and pestering. The mother said she feared for her safety if she were to return to Nigeria and she feared for the safety of her family members referred to. Her use of expressions such as "I was not happy' cannot be interpreted as meaning she was only unhappy, angry or frustrated. I understood from the totality of what she said and her demeanour and the context of the threats that she was genuinely fearful.

55. In respect of Ground 4(f) I am satisfied that the father attended the mother's home on 8 March 2017 and attempted to gain entry using an old key. The father had arrived back in the UK on 6 March with the intention as I find of seeking to persuade the mother to withdraw the proceedings. It would be natural for him to attempt to make contact at the home address. The Mother's account of his attendance given from the witness box was clear and convincing; it was told spontaneously and with a degree of emotion which I thought was consistent with her reliving events. Her account is supported by a contemporaneous attendance note taken by her solicitors at [B-C356] which records the Mother telling them on 8 March 2017 that 'Bernard is here on my

doorstep banging on my door'. The Father's suggestion that the Mother is fabricating this incident and Mr Flood's submission that the absence of mention of this from the Mother's 12th Statement show it is untrue hold no water against the combination of the contemporaneous attendance note and the Mother's account. I am sure that in attending the Father intended to seek to further his aim of persuading the mother to withdraw proceedings and to do so he tried to gain entry and was banging on the door and calling out. The attendance note records the solicitor's impression (limited as it must necessarily be over a telephone) that the Mother was shaken and afraid. I am satisfied that the Mother felt intimidated, harassed and pestered by the visit.

56. In respect of Ground 4(g) the father accepts that he visited the church on the dates alleged. He also accepts that he approached the mother. There is a slight divergence in their accounts of precisely what he said when he went down on his knees before the Mother. There is a much wider divergence in respect of what else he said and how he behaved during that visit and subsequently. I heard evidence from Pastor Samuels who had previously given a statement. Mr Flood is right to point out that there is some divergence between his statement and his oral evidence as to what occurred before he took the Father into his office. In his written statement he said he saw the Father 'abusing' the mother but in oral evidence he said he could not hear what was being said; the overall impression he got was of what might best be described as a 'scene' developing and that he sought to resolve it by inviting the Father into his office. Overall I found Pastor Samuel to be a credible witness who spoke with spontaneity and was willing to acknowledge a lapse of memory. He did not seek to fill in blanks but told what he could remember. In respect of the

attendance at church on Sunday 12 March I conclude that F attended to seek to persuade Mother to abandon her action. The Father's evidence about why he returned to England was completely contradictory. At one point he said he returned to serve his sentence at another he said he returned to seek to implement an agreement they had reached in November 2016 for the children to remain in Nigeria and to persuade Mother to end the proceedings. He said he attended the church that day because it was his church. Quite why he would do that when Pastor Samuels is (on the Father's account) a Muslim and had been involved in a plot to assassinate him was not clear. The Father attended at the church to initiate his plan to exert pressure on Mother; his opening was to seek forgiveness or peace by effectively prostrating himself in front of the mother before her Church community. I have no doubt that was intended to harass or pester her in a way that would further the father's goals. I do not believe the Mother was present on 14th March and I am not satisfied that anything said or done on that occasion amounts to a breach of the order. In respect of the visit on the 19th March it is right that this was a meeting initiated by Pastor Samuel. In it I am satisfied that the Father said he would meet any condition the mother imposed if she would drop the proceedings. However when she named her condition of the return of the children I am satisfied on the evidence of Pastor Samuel and the mother that the father said initially he could not afford it and when the church and the mother offered to pay that he said over his dead body. The father has used similar language [B-C151] in communications and his impulsive statements are consistent with earlier statements such as that to Pastor Samuels that the children were at a boarding school contactable on a number which turned out to be completely false when

Pastor Samuels rang it. I am satisfied that the mother found this obstructive behavior and fruitless meeting upsetting and frustrating and that it amounted to the father pestering and harassing her.

GROUND 8

57. The Mother elected only to pursue non-attendance in respect of the hearings on 19 June 2014, 9 March 2015, 19 May 2015 and 25 January 2015; her team recognizing that the orders in respect of the hearings on 8 May 2015, 30 July 2015, 28 September 2015 and 18 December 2015 were not drafted in such a way as to make pursuance of committal fair.

58. Although they pursue the non-attendance on 19 June 2014 I do not consider it fair to permit that matter to proceed. The previous committal application was issued on 28 May 2014 and was heard on 6 March 2015. Non-attendance at a hearing some 9 months before that committal ought in fairness to the Father have been dealt with then. The father himself observed from the box that he considered there to be an issue of 'double jeopardy'. Whilst in strictly legal terms there is not an issue of double jeopardy as he was not tried in respect of that non-attendance in March 2015 I do consider it ought to have been dealt with then by an amendment to the Notice and Ms Baker was unable to provide any information as to why that had not been done. Applying the over-riding objective and rules of natural justice I do not consider it appropriate to allow it to be pursued now.

59. However that leaves 3 hearings which the orders show the Father did not attend. In respect of all of the hearings the Father freely admitted that he had

not attended and accepted that he had known of them but had been in a state of anger and frustration at what he saw as the injustice of the English court proceeding. Mr Flood submits that the phrase "must attend' may mean attendance other than in person. He submits that some of the orders which refer to the Father not having attended 'in person' illustrate how orders ought to be drafted to make absolutely clear that attendance means the personal attendance of the individual. He submits that some of the orders are poorly drafted. His submissions also appear to contain an element of mitigation but I will treat them as including a submission that the words "must attend" do not necessarily mean in person and the obligation can be met by submitting documents etc. I do not accept this submission. The words must attend are plain and simple – attendance involves personally coming to court. That is the meaning in plain English. I do not consider that there is any lack of clarity in the wording. The penal notices also can have no other import.

60. In respect of the orders requiring his attendance on 9 March they were made on 1 December 2014 [B-C390A] and 3 February 2015 [B-C395A.] Each contains an appropriate Penal Notice, each identifies the hearing and each provides a means of service by SMS and/or e-mail. The documents show that the orders were served. Mr Flood's criticism that the order made on 9 March 2015 does not recite that the father was aware of it is irrelevant to the issue in these proceedings. I find that the orders were properly made, drafted and served and that the Father wilfully failed to attend.

61. In respect of the hearing on 19 May 2015 the order of 9 March 2015 [B-C407] contains a penal notice, identifies the hearing date and the need for attendance

and makes provision for service. This order appears to have been sent by SMS message and the sealed order by e-mail [B-C479] [The reference by Mr Khan to B-C477 of service of an order seems on closer inspection to refer to the order of 6 March]. I find that the orders were properly made, drafted and served and that the Father wilfully failed to attend.

62. In respect of the hearing on 25 January 2016 the Father was ordered to attend by order dated 18 December 2015, [C441]. The order contained provision for service on the father by SMS and e-mail. The documents show service by e-mail but not SMS but I consider it just to waive that defect given `I do not consider there to be any injustice having regard to the other methods of service.

63. I find that the orders were properly made, drafted and served and that the Father wilfully failed to attend.

GROUND 9: Filing a document containing a false statement of truth.

64. I shall park this Ground at this stage and return to it after I have addressed Grounds 10-13 inclusive.

GROUNDS 10-13;

65. Although the 4 Grounds all articulate distinct areas of non-compliance at their heart the key to all four lies in the answer to the question of whether the Mother has shown that the Father maintains control of the children from afar but is not telling the truth about his position. Sub-sets of this key question comprise the essence of the 4 Grounds:

a) Is the father providing honest and accurate information about the whereabouts of the children or is he wilfully providing inaccurate information?

b) Is the father providing honest and accurate information about how the children can be contacted or is he wllfully obstructing contact?

c) Can the father affect the return of the children and is he wilfully failing to provide accurate information (whether initial proposals or final) about how that might be affected?

66. In respect of grounds 12 and 13 the issue arises as to whether I need to be satisfied that it is within the Father's power to affect their return so as to make it appropriate to insist that he makes proposals for their return. If he is right that he has no power over them then it would not be possible for him to comply with the order to make initial or final proposals. On the other hand if the mother can make the court sure that the farther does have control over them and could if he chose effect their return then the failure to make a proposal would be a breach of the order. Likewise if the father has control of the children then he could provide accurate information about their whereabouts and how contact could be affected. Conversely if he does not have control and thus up to date knowledge then a failure to provide accurate information would not be a breach as it would not be within his power.

67. Both Ms Baker (after some initial reluctance) and Mr Flood in general terms agree that this is a proper approach to the determination of these Grounds. So can the Mother establish so that I am sure that the Father does have control

over the children and thus could comply with the 4 elements of the order made?

68. The mother's case is that the father has for some considerable time delegated the care of the children to his sister Caroline Nwankwo (or Caro or Chitru) and that she has been caring for them. The Mother says she has been unable to establish where the children are in school.

69. The father's case (although it has varied slightly – see my assessment of his credibility above) is that since late 2013 they have been in boarding schools (it is not clear to me when he says the younger 2 commenced boarding) and that when not in school they have been cared for primarily by the mother's sister Grace Ichiozo. The father says he has had the children with him at the family home on occasions and that sometimes they are cared for by Chief Sam Osuji. He says that Chidera is about to start University but he is not sure where and that the Odinakachi and Ifeanyi have recently returned to boarding school.

70. In advancing their respective cases both parties have ranged far and wide over current and historical matters in support of their respective cases. In this judgment I have focused on the matters which seem to me to point conclusively to the answer. That is not to say that there are not many other arguments or items of evidence which might point in another direction and if I do not mention them all it is because I cannot rehearse every relevant matter without making this judgment inordinately long (it is already very long) and unwieldy.

71. The starting point I believe must be that in January 2014 Russell J concluded that the father then had knowledge and control despite his contention that he

did not. I think it is relevant that even at that stage the Father was asserting that Chief Sam Osuji had custody of the children and that at that stage Chief Sam Osuji was explicitly denying that he did. The father had also said that he had left the children in the care of a driver and a nephew and at other times in the care of Prof Madu and that he did not know their current situation as he was in the UK and could not contact the carers. Russell J not only considered that the Father was an unreliable witness but made findings of fact as to the circumstances in which the children came to be in Nigeria and concluded that they had been retained there without the Mother's consent and against her will by unilateral action of the father. She rejected the father's contention that he did not know where the children were and concluded that the father had on-going control over them and knew their whereabouts. That was a clear demonstration of the Father exercising unilateral control over the children to the exclusion of the only other person at that time with parental responsibility. It is significant that at a time when the Father was in the UK he was asserting that he had no control over the children and had little or no knowledge of their whereabouts or situation and that his evidence was found to be untrue. His current assertions in the various documents filed in June and July 2017 in purported compliance with the order of 7 June 2017 are a mirror of his asserted position before Russell J.

72. Since then the Father has at various times asserted the fact of his having complete control over the children by reason of custom and tradition and in purported compliance with decisions of the Nigerian court. See for instance his statement of 29 April 2015 § 25a or the Dissolution of Marriage document at [B-C227] In his oral evidence the Father freely acknowledged that he had

determined all issues relating to the boys whilst he was in Nigeria from Feb 2014 until March 2017 and Mr Flood acknowledged that he had a custody order from the Nigerian court in 2014 which remained extant as far as we knew. The father said:

> *When I was available I would take them to my home. I could take them whenever I wanted. I am the father.*

73. In telling me what would happen if he was released the Father said there would be a negotiation over the future of the children based on their welfare. This also illustrates his on-going control – it has not been taken by Chief Sam – although I suspect that such a negotiation would probably be akin to that which took place with Pastor Samuel.

74. The Mother maintains that the Father's sister Caroline Nwankwo (or Caro) has had care of the children for the majority of the time. She says she was speaking to Caroline until about November 2016 and that there was no doubt that Caroline was caring for them. In calls Caroline would give her some information about the children but would never allow her to speak to them. The Mother says that on one occasion she heard one of the children speaking in the background to his aunt confirming he had finished a task. So sure was the Mother that the children were with Caroline that she arranged for a friend who was travelling to Nigeria to take a parcel of clothes/shoes to them. Nnena Ibirim has provided a statement [B-C254] and she attended court to give evidence. She contacted Caroline and made arrangements to meet her to hand over the parcel. I thought her evidence was reliable. Of course much of her evidence was not challenged because the father does not dispute that she travelled to Nigeria with clothes for the children and that she was in contact

with Caroline to deliver them. Ms Ibirim had never met Caro but had seen a picture of her and said she recognized her and spoke to her and that during the meeting Caro took a call and confirmed it was 'Bernard' on the phone. Ms Ibirim had been hoping to see the children but Caro had not brought them. The Father's challenge to Ms Ibirim's evidence was that it was not in fact Caro who met her but a police officer who had been given Caro's SIM card and who was impersonating her. Ms Ibirim was clear the person she gave the box to was Caro or Chitru as she knew her by. I thought her evidence was reliable and it was of course largely corroborated by the Father's own version of these events save for the bizarre suggestion that someone impersonated Caro and had her SIM card. I am unable to understand why arrangements would have been made by Caro to receive items for the children when she was not caring for them and why someone would have been sent to impersonate her. The father's account is simply incredible and I accept Ms Ibirim's evidence.

75. The father said that he came to England because his anger and frustration had abated and he came to serve his prison sentence so that a resolution could be reached. If that were the case he would have travelled to England expecting to be in prison either for 1 year or for 6 months (if well informed legally) However in the same section of his oral evidence he also said that he came to England to seek a resolution with the mother – the clear implication being that it was to avoid being imprisoned. One way or another he was contemplating being absent potentially for some time and yet he did not feel it necessary to take any steps to make formal arrangements (by way of a court order or other formal document delegating PR to Grace and Chief Sam). I feel sure he

would have taken steps in advance to address the care of the boys in his absence if there was any doubt in his mind about whether he retained control or not– particularly given what happened in 2013/14 when he says he was out of touch and control. The only logical explanation in the circumstances of this case for him not making arrangements is that he did not consider it necessary to do so because he was sure he would retain long-distance control and that those in Nigeria would do his bidding. In his documents filed on or about 16 June he stated that the children were in the care of Grace and Chief Sam (although on his evidence they would still have been at school then) but made no mention of them having PR and said [B-C275] that he had no means of contacting them to assist in facilitating a return. However by 27 June 2017 the Father had obviously been in contact with them (as he accepted in cross examination) as he was able to state that the community had intervened. That Grace and Chief Sam had been given parental responsibility and that the community had now decided they were not to return to England because of the Father's incarceration. I note that this hardly explains the Father's failure over the period 2013 to 26 March 2017 to return the children.

76. I think it is significant that in 2013/14 the Father whilst stating he had no control over the children and whilst vehemently disputing the jurisdiction of the English court and asserting that of the Nigerian court, agreed with the mother and gave undertakings to the court in support of a voluntary return of the children to England. This included asserting that he had booked tickets for them when in fact he had not. Russell J concluded that this was a device to buy himself time. After the hearing on 30 January 2014 the father left the jurisdiction in breach of an order and was subsequently found to be in

contempt of court and in breach of various orders and undertakings. The fathers position in this latest round of litigation show a similar pattern. In March in discussions with Pastor Samuel and the Mother he asserted that the children would return over his dead body – and the fact that they had not returned between 2014 and 2017 is ample evidence that he did not wish them to return – being in absolute control of them as he was.

77. After he was detained and incarcerated a different picture has emerged. The father now maintains that he is willing for the children to return but matters are out of his control. The similarity between 2017 and 2013/14 is I consider significant. I have no doubt that the Father was in control of the children before he left Nigeria and that he left without making any arrangements knowing that he would remain in control and people would do his bidding according as he says to Nigerian court orders and custom that gives custody to Fathers.

78. Considerable reliance is placed by Mr Flood and the Father on the notes of the transcript of the conversations between the mother and her brother Chief Sam Osuji and her older sister Grace Ishiozi. He also invites me to be cautious about the note of the conversation between the solicitor and Sam and Grace given the difficulty in hearing the recording of the later conversations. Whilst I accept that caution in dealing with summaries of conversations is wise there is a considerable difference between listening to a recording of a conversation which takes place on speaker phone and participating in a conversation with another English speaker. Furthermore the significant aspect of the solicitor/Chief Sam conversation is consistent with what Chief Sam was

saying back in 2014. The audio tapes are not easy to decipher. The transcript is helpful but adds little of substance to what can be gleaned from the audio tapes. What is clear is that both Chief Sam and Grace are not very forthcoming – indeed they appear to be unwilling to speak openly. Chief Sam Osuji is not co-operative because of the problems that the case has caused for him by airing family dirty linen in public in particular with a conflict between the Nigerian and English courts. However neither says the children are living with them or say anything that would come close to suggesting they are. However neither denies that the children are living with them. The most obvious conclusion that can be reached from the tapes is Sam and Grace is that they would prefer not to be drawn into the proceedings, would like the mother to deal with matters with them directly and without the involvement of lawyers. However I consider that the tapes do support the Mother's case because:

a) There is nothing in them that gives even the slightest hint the children are with them – no slip of the tongue, no accidental reference or anything which might be expected if they were holding back,

b) Their references to the mother knowing where they are suggests that they are somewhere other than with Sam and Grace.

c) The risk to the mother of an inadvertent disclosure in ringing them in her solicitor's presence when she knew the children were with them would be immense.

79. That impression is consistent with what was said to the Mother's solicitors when she rang Chief Sam and Grace. [B-C301-3. He stated that the children were not in his custody and Grace said she has nothing to say and they should settle it in Nigeria. That also is consistent with the much earlier letter filed by Chief Sam's solicitors and dated 7 Jan 2014 confirming the children were not in his custody at a time when the Father was maintaining that they were.

The Children's Letters

80. Within the Father's documents are letters apparently written by the children. [C-C1134 -1137] I do not know whether they are the children's or not. They are addressed variously to 'Mummy' or the Presiding Judge. They are dated around 3 June. Their contents relate to the imprisonment of their father, the wickedness and dishonesty of their mother and their unhappiness with her. They obviously support the Father's case, including about how the children came to be in Nigeria which contradicts findings of this court. Chidera appears to have read documents filed in these proceedings.

81. Further letters appear at [C-B5]. They purport to have been sent by Chidera to the court. Again I am not sure whether they are written by the children or not. They are similar in content to the June letters. They are variously addressed to the Judge, to daddy, and the President. They say their mother is wicked and evil, that she is a liar. Chidera says he is living with auntie Grace. The contents of the letters from boys still only aged 15, 12 and 10 is alarming if it is indeed them writing it.

82. The Father was unable to give any adequate explanation of how they came to be written. Indeed he gave the ludicrous explanation that Chidera had discovered the case on the internet and had instituted the letter writing. Given it is clear he has been in contact with those caring for the children whilst in prison – notwithstanding his earlier assertion that was not, and that he has been in touch with the children directly I think it more likely than not that the letters were written at his instigation by or on behalf of the boys and with their contents dictated or influenced by the Father or those caring for them. The fact that these letters have been sent to the court on two separate occasions in an attempt to support the father's case adds further to the weight of evidence that the father remains in control of the boys. The fact that he has had contact whilst he is in prison but he has not ensured they have contact with the mother who is under no such restriction is significant.

83. If the children were largely cared for by Grace and were at the schools the father said it seems to me that it would be the easiest thing in the world for the father to produce evidence of these matters. He could put forward school reports, photos of the children at home and at school, details of any medical treatment they have had. If Chief Sam and Grace had acquired parental responsibility no doubt it would be in a court order the father could produce. It is clear that he himself has a custody order from the Nigerian court and Chief Sam is apparently a lawyer of some description.

84. Any one item of evidence taken on its own might only suggest that the Mother's account is the truth and the father's is false. Other items of evidence that I have not rehearsed might point one way or another. The constellation of

all of the evidence that I have set out above together with my conclusions as to the general credibility of the Mother and the Father make me sure that:

a) the father retains control over the children at the present time and has done since their retention in Nigeria.

b) they are not living with Grace Ishiozo or Sam Osuji. Up until late 2015 they were living with Caroline Nwankwo and it is probable she is still involved in their care although I am not in a position to make any findings as to their current residence or schooling.

c) the father knows their whereabouts and could provide accurate information in that respect.

d) the father could effect their return to England if he chose to do so and could therefore set out initial and final proposals for their return.

e) the father could institute contact if he chose to do so.

85. I am satisfied so that I am sure that the Father could have complied with the orders of Baker J. I am sure that it was possible for him to do so had he chosen so to do. I am sure that he has provided false information in relation to those or has declined to give information he could have given. I consider his stated change of heart and desire to co-operate to be empty words. If he was truly co-operating and desirous of a change he would affect the return of the children.

86. Having reached these conclusions I do not consider it necessary to deal with Ground 9. In the context of this case it is the obverse of the Father's failure to comply with the orders.

87. That is my judgment. In respect of the Committal Application I find the following Grounds proved.

a) Ground 4 (c), (e), (f), (g), (h).

b) Ground 8 in respect of the dates 9 March 2015, 19 May 2015 and 25 January 2016.

c) Grounds 10, 11, 12 and 13.

88. I will adjourn to allow Mr Flood and the Father an opportunity to consider matters before proceedings to sentencing.

LATER

SENTENCE

Ground 4: 6 months (concurrent)

Ground 8: 3 months consecutive to Grounds 4 and 10, 11, 12 and 13.

Ground 10, 11, 12, 13: 12 months on each concurrent

JUDICIARY OF
ENGLAND AND WALES

THE HON. MR JUSTICE WILLIAMS

11 October 2017

Dear Chidera, Odinakachi and Ifeanyi

My name is David Williams and I am a judge in England.

I have been hearing about your family – it is a very sad situation. It particularly troubles me that you are living in Nigeria and your mum and dad are in England.

I think you know that dad is in prison in England. That is because the English court had told him he could not do certain things and that he must bring you back to England. Because he disobeyed the court another judge sent him to prison.

You may already know that your dad and mum have been in court again this last month. You may also have heard – if you haven't I am sorry to have to break some bad news – that your dad has been sent to prison again. The judge who has sent him to prison is me. I have done this because your dad has once again disobeyed orders made by the English court. The decision was mine. It was not your mum's decision. The responsibility for your dad now being in prison is his for not obeying the Court.

I have seen some letters which say they are from the three of you. They are addressed to your mum and your dad and to the court. I don't know if they are really from you. If they are I am very sad to see how you feel.

In 2013 the English court made you its 'wards'. That means that the English court has a responsibility to make decisions about you and to do its best to help ensure you are safe, well, happy and doing the best you can.

I hope that in the near future you will come to England so that I (or another judge) can see you and so that you can see a court social worker and so we can hear what you want. We can then decide what is best for you and your dad and your mum.

In the meantime I hope you are keeping well and studying hard at school.

Mr Justice Williams

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