



Neutral Citation Number: [2023] EWCA Civ 623

Case No: CA-2023-000933

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
Mr Justice Francis
FD23P00226

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 June 2023

Before :

LORD JUSTICE LEWISON
and
LORD JUSTICE BAKER

N and A (1996 HAGUE CONVENTION: ARTICLE 13)

Edward Bennett (instructed by Goodman Ray) for the Appellant
Michael Gration KC and Kitty Broger-Bareham (instructed by Bindmans LLP) for the Respondent

Hearing date : 26 May 2023

Approved Judgment

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LORD JUSTICE BAKER :

1. On 17 May 2023, Francis J made an order in proceedings brought by a mother in respect of her three children, N (a boy now aged six, rising seven), A (a girl, four, rising five) and D (a boy, now aged two). The children’s father filed a notice of appeal against the order and, on 19 May 2023, Moylan LJ granted permission to appeal and listed the appeal for an urgent hearing before us on 26 May. At the conclusion of the hearing, this Court informed the parties that the appeal would be allowed in part for reasons to be given at a later date. This judgment sets out my reasons for agreeing with that decision.
2. The appeal concerns the application of the provisions relating to jurisdiction in Chapter II of the 1996 Hague Convention on the jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children. Both the United Kingdom and Ukraine are Contracting States to the Convention.
3. The basic rule is found in Article 5(1):

“The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.”
4. The next articles contain provisions relating to refugee children (Article 6), abducted children (Article 7), requests for the transfer of jurisdiction to a State better placed to assess the child’s best interests (Articles 8 and 9), and children whose parents are in divorce or separation proceedings (Article 10). None of those provisions are relevant to this appeal.
5. Article 11(1) provides:

“In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.”

Article 12(1) provides:

“Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.”

Articles 11(2) and 12(2) provides that measures taken under respectively Article 11(1) and 12(1) shall lapse as soon as the authorities having jurisdiction under Articles 5 to 10 have taken measures or decisions as may be required by the situation.
6. Article 13 provides:

“(1) The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

(2) The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.”

7. In *Re J (A Child) (Reunite International Child Abduction Centre intervening)* [2015] EWCA Civ 329; [2015] 3 WLR 747, at paragraph 34, Black LJ said, concerning the 1996 Hague Convention and Council Regulation (EC) 2201/2003 (Brussels IIa):

“In so far as the submissions to us suggested that the inherent jurisdiction of the English courts was unaffected by these instruments, and remained there in the background awaiting the call, it is not a suggestion I can accept. Where one or the other instrument applies, recourse can only be had to the inherent jurisdiction if that is permitted by the jurisdictional code that that instrument establishes. The decision of the Supreme Court in *A v A and another (Children: Habitual Residence)* [2013] UKSC 60, [2014] AC 1 demonstrates this in relation to Brussels IIa and I see no reason why matters should be different in relation to the 1996 Hague Convention.”

At paragraph 74, she added:

“The instinctive reaction of the English lawyer in these circumstances is to reach for the inherent jurisdiction. However, in my view, it cannot assist here. In so far as it concerns jurisdiction, the whole purpose of the 1996 Hague Convention, as with Brussels IIa, is to determine, as between Contracting States, the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child (see Article 1(1) a)). That would be defeated if, notwithstanding an absence of jurisdiction under the Convention, a Contracting State were to be able to assume jurisdiction by virtue of a domestic rule.”

8. The decision of the Court of Appeal in *Re J* was reversed by the Supreme Court ([2015] UKSC 70) on unconnected grounds. Black LJ’s observations about the inherent jurisdiction were not challenged before the Supreme Court and were subsequently endorsed by this Court in *Re I-L (1996 Hague Child Protection Convention: Inherent Jurisdiction)* [2019] EWCA Civ 1956, [2020] 1 FLR 656 (per Moylan LJ at paragraph 89).

9. Much of the history of the present case is disputed but in summary the background is as follows.
10. The family comes from Ukraine. The father was born in Uzbekistan in 1982 and the mother was born in Ukraine two years later. They met in 2009 and were subsequently married. The three children were born in 2016, 2018 and 2021 respectively. At all times up to March 2022, the family lived together in Kyiv.
11. On 2 March 2022, following the Russian invasion of Ukraine, the family left Kyiv and travelled to Germany. Later that month, applications were made in the names of the mother, father, three children and maternal grandmother for UK visas under the Homes for Ukraine Scheme. The circumstances in which the applications were made are disputed between the parties. In particular, it is the father's case that he made no application in his own name.
12. On 27 April 2022, the mother, three children and maternal grandmother came to this country under the scheme and were placed in accommodation in the Midlands. The father remained living in Ukraine but visited this country every month between June and October 2022.
13. In October, with the mother's agreement, the father took the two elder children, N and A, to Thailand. From there, he took them back to Ukraine where they arrived on or about 28 October. The circumstances in which he took them there are disputed. It is the mother's case, denied by the father, that this was an unlawful abduction by the father and that he acted without her consent.
14. For the next six months, N and A lived in Kyiv with the father at the former matrimonial home. They returned to the pre-school they had attended before the war. The mother visited Ukraine herself on several occasions during this period, although it seems that she only saw the children on limited occasions. Meanwhile, the youngest child, D, remained with the mother and maternal grandmother in this country.
15. On 16 November 2022, divorce proceedings were issued in Ukraine in the mother's name. There is a dispute between the parties as to whether the proceedings were issued in fact by the mother or by the father acting fraudulently in her name. Both parties subsequently issued child maintenance proceedings in Ukraine, the father in respect of N and A, the mother in respect of D.
16. On 15 March 2023, the mother applied to the English Central Authority for the summary return of N and A to England and Wales under the 1980 Hague Child Abduction Convention. The application was transmitted to the Ukrainian Central Authority. As at the date of the order under appeal, no application under the 1980 Convention had been filed in the Ukrainian courts.
17. On 11 April 2023, the father issued proceedings in the district court in Kyiv seeking an order that N and A reside with him.
18. On 19 April, the mother travelled to Kyiv and stayed for a few days in the family home, spending time with N and A and on occasions taking them to pre-school. According to the father, she met social workers who were preparing a report for the district court proceedings concerning the children.

19. On 24 April 2023, in circumstances which are disputed between the parties, the father and the two elder children travelled to Warsaw in Poland. The children stayed in a hotel in the city where they were looked after by two of the father's employees. The father's case before the judge below was that he had taken this step because he was intending to make a brief visit to the UK and did not think it safe to leave the children in Kyiv without a parent in case events led them to be stranded there.
20. On 26 April, the father visited the mother's home in this country. According to the mother, he demanded that D be handed over to him so he could take him back to Ukraine. On the father visiting the mother's address, no one answered the door and the property appeared to him to be empty. The father left the property without the child.
21. On the same day, the mother issued these proceedings in the Family Division under the inherent jurisdiction of the High Court seeking inter alia an order that N and A be returned to this country and an order prohibiting the father from removing D from her care. On the same day, she applied without notice to the father to the urgent applications judge, Judd J, who made a location order (which included an order authorising the Tipstaff to seize the father's passport) and an order preventing the father from removing D from the jurisdiction or from the mother's care, and listed a return hearing.
22. On the following day, 27 April, the location order was served on the father. Under the powers granted to the Tipstaff under that order, the father was arrested and his passport seized. On the following day, the father was produced before Mr David Rees KC. He informed the court of the children's whereabouts in Poland and his evidence was corroborated by evidence by telephone from one of his employees in Warsaw who was looking after the children. At the end of the hearing, the deputy judge made all three children wards of court. The father was released from custody but the court made a prohibited steps order preventing him leaving the jurisdiction until the next hearing. The court also extended the order that his passport be held by the Tipstaff and the order preventing him removing D from the mother's care or from the jurisdiction, and listed the proceedings for a further hearing on 4 May with ancillary case management directions. The order included a recital that the father had stated that there were ongoing proceedings about the children in Ukraine, that he challenged the English court's jurisdiction, and that the court had stated that this required further consideration at the next hearing.
23. The hearing on 4 May took place before Sir Jonathan Cohen. The order made at the end of that hearing included a recital that the father "continued to challenge the jurisdiction of the English court and, in addition, submitted that the *lis pendens* provisions set out in Article 13 of the 1996 Hague Convention were engaged in this case". Under the order, the judge extended the wardship and gave a series of further case management directions including for a further hearing on 12 May for the court to consider (a) the father's application to leave the jurisdiction, (b) whether the court was restrained from considering the question whether N and A should be returned to this jurisdiction, and (c) if the court was not so restrained, the mother's application for them to be returned here. The judge gave further case management directions for a later hearing about jurisdiction if required. Without prejudice to that issue, he directed the father to file a statement as to the older children's living arrangements and his proposals for their future care.

24. In the event, no judge was available on 12 May and the next hearing took place before Francis J on 17 May. At that hearing, the mother's case was that the older children had been unlawfully abducted by the father at the end of the visit to Thailand, that it was in their interests to be reunited with the mother as soon as possible, and that the English court had the power under the inherent jurisdiction to make orders concerning the children's welfare which it should exercise by ordering their return. The father contended that, irrespective of whether the English court had substantive welfare jurisdiction in respect of the children, it was restrained from exercising such jurisdiction by virtue of the *lis pendens* in Article 13. Furthermore, as the two older children were not present in the jurisdiction, the court could not exercise any jurisdiction in respect of them under Articles 11 or 12. In a position statement filed on behalf of the father, Mr Edward Bennett submitted that the English court should not list any substantive jurisdiction hearing or provide for the filing of evidence relating to such a hearing until the Ukrainian court had determined whether or not it had jurisdiction under the 1996 Hague Convention. If the Ukrainian court determined that it had jurisdiction and opted to exercise it, the English court was obliged to relinquish or cede its jurisdiction. He therefore argued for the English proceedings to be stayed. The father also asked for the return of his passport on the grounds that N and A had been separated from him for three weeks and needed to be reunited with him so they could return to Ukraine.
25. In his judgment, Francis J recorded that he had no reason to doubt that the Ukrainian legal system was operating properly but added that he was "bound to take into account the war situation in Kyiv ... and to understand the mother's real anxiety about the children going back to the city". He continued;

"I have to deal with the obvious welfare concerns but I have to of course apply the law. Not for the first time sitting in this court, I find there is a conflict between the overwhelming desire to do what is right for the children and the constraints placed upon that overwhelming desire by the statutory framework."

He indicated that he accepted Mr Bennett's submission as to the law regarding Article 13 but added

"I am asked to deal with something that is without precedent. I need to balance [the] clear and careful legal arguments Mr Bennett puts forward and the desire to do the right thing as a judge in the Family Division."

26. The judge then announced his decisions – to stay all proceedings in this country, except the wardship, to require the Tipstaff to continue to hold the father's passport and to direct the mother to bring the children back to this jurisdiction. He explained his reasons for these decisions in the following terms:

"I am, uniquely in my own experience, allowing the inherent jurisdiction of the High Court to trump the statutory framework in truly exceptional circumstances. These circumstances are, firstly, I don't think it would be appropriate for a judge of the Family Division to make an order to allow a father, [where] there is a question mark if he is an abductor, to collect the children and take them to Kyiv or perhaps anywhere else. It does not seem

something safe for me to order. In my judgment, it would be wrong for me to make an order to require the children to go back to Kyiv, with so much tragedy and so much uncertainty in the news about this.”

27. At the conclusion of the hearing, the judge ordered inter alia
- (1) under paragraph 8 of the order, that the mother should travel to Warsaw and effect the return of N and A to England and Wales forthwith;
 - (2) under paragraph 9, that the father should encourage the paternal grandfather and the two employees looking after the children in Warsaw to facilitate the return of the children to the mother’s care;
 - (3) under paragraphs 9 and 10, that the passports and birth certificates of the older children be released by the Tipstaff to the mother’s solicitors, in the case of the passports for onward transmission to the mother, in the case of the birth certificates to be held by the solicitors to the order of the court;
 - (4) under paragraph 12, that the passport order be varied such that the father’s passport be returned by the Tipstaff and held by the father’s solicitor to the order of the court; and
 - (5) under paragraph 13, that the matter be listed for further directions within 48 hours of the children returning to this country.

The order also included a number of recitals including that

“for the avoidance of any doubt, the court made no findings of fact or determinations in relation to (i) jurisdiction; (ii) whether the *lis pendens* provisions of Article 13 of the Hague Convention are engaged in this case; (iii) any alleged abduction (by either parent) and made this order to guard the safety of these children in the exceptional circumstances of this case and the children being physically present in Poland without any parent to exercise parental responsibility.”

An application for permission to appeal against paragraph 8 of the order was refused by the judge.

28. On 18 May, the mother suspected that the children had been moved to Kyiv from Poland and that the father had left the jurisdiction. She made an urgent without notice application to Francis J the following morning. The father’s solicitor was then required to provide information to the court about the whereabouts of the children and father. It was confirmed by the father’s solicitors that the father had not left this country. It was asserted that it had been the paternal grandfather, allegedly acting without the father’s knowledge, who had taken or caused the children to be taken back to Kyiv. The judge discharged paragraph 12 of the order made on 17 May and instead directed that the Tipstaff should continue to hold the father’s travel documents until further order. He listed the matter for a further hearing on 24 May and ordered the father to attend. Recital 10 of the order made on 19 May, headed “Respectfully Requests”, provided:

“The court having made no determination on jurisdiction or habitual residence, the Ukrainian authorities are invited to give all possible assistance of securing the return of the children to the jurisdiction of England and Wales.”

29. On the same day, 19 May, the father’s solicitors promptly filed a notice of appeal against the order of 17 May relying on the following grounds of appeal:
- (1) The judge erred in making an order for the subject children to be “returned” from Poland to England utilising, as the order’s jurisdictional foundation, the inherent jurisdiction.
 - (2) The judge erred in making a substantive order in welfare for [the] children’s “return” to England on the basis that he was expressly deferring any formal determinations relating to jurisdiction and *lis pendens*, until after the return order was effected.
 - (3) In circumstances where the appellant was correct in his submissions on the relevant jurisdictional framework and the consequent impact on the court’s powers (if any), the judge erred in making an order that the children be “returned” from Poland to England.
 - (4) The judge erred in declining to return the appellant’s passport and those of the two older children to him.
30. Later on the same day, permission to appeal was granted by Moylan LJ and the order of 17 May stayed pending determination of the appeal.
31. In his skeleton argument filed on behalf of the mother responding to this appeal, Mr Michael Gration KC submitted that, in the light of the children’s return to Kyiv, the question whether the English court had power to make the order made by Francis J for the return of the children to this jurisdiction from Poland was now academic since it was no longer capable of being executed. In those circumstances, Mr Gration proposed that (1) paragraphs 8 and 9 of the order (for the mother to collect the children from Poland and return them to this jurisdiction and for the father and paternal grandfather to facilitate that return) be discharged; (2) given that the children were now back in Ukraine and that the courts in that country were seised of proceedings in relation to the two older children which appeared to have been issued first in time, the English proceedings in respect of those children (but not D) be stayed pursuant to Article 13, and (3) the father’s passport be returned to him to enable him to return to Kyiv to look after the children.
32. Mr Gration submitted that, as the appeal was now academic, it should be dismissed, but invited this Court to make orders in line with his proposals set out above, or alternatively arrange for the matter to be listed before Francis J for that purpose. On behalf of the father, however, Mr Bennett did not accept that the appeal was academic. He submitted that Francis J’s order had been made without jurisdiction and that, if it stood uncorrected, it might mislead the Ukrainian authorities who, under the subsequent order of 19 May, had been “respectfully requested” to give all possible assistance to secure the return of N and A to this jurisdiction.

33. This Court accepted Mr Bennett's argument. Where there is the possibility of an English order being recognised or enforced in a foreign jurisdiction, a challenge on appeal to the validity of the order could not be said to be academic. Furthermore, if the principal ground of appeal was correct and the order of Francis J had been made in breach of the provisions of the 1996 Convention, there would be a risk not only that the Ukrainian court might be misled in these proceedings but also that other courts in other proceedings might be misled as to the English court's understanding of the scope of its inherent jurisdiction. We therefore proceeded to hear oral submissions on the merits of the appeal.
34. Grounds 1, 2 and 3 in effect raised the same point. The father had issued proceedings in Ukraine for an order that the older children live with him. That application preceded the mother's application in this country under the inherent jurisdiction. Accordingly, it was argued on behalf of the father that Article 13(1) precluded the English court considering the mother's application. Mr Bennett submitted that the judge plainly recognised the restrictions on his powers imposed by the Convention but decided that, given the danger to the children if they returned to Kyiv, it was necessary to exercise the inherent jurisdiction to order their return to this country. Mr Bennett submitted that, in reaching that decision, the judge failed to follow the decisions of this Court in *Re J* and *Re I-L*. The existence of the prior proceedings in Ukraine prevented him from exercising any jurisdiction that this court might have under Article 5 and recourse to the temporary jurisdiction granted under Articles 11 and 12 was not open to him in respect of N and A because they, unlike D, were not physically present in this country. Furthermore, as the *lis pendens* provisions under Article 13 were plainly engaged, it was not open to the judge to take the course reflected in recital 5 of making no determination in relation to jurisdiction or whether Article 13 was engaged.
35. On behalf of the mother, it was submitted in response that, at the time of the hearing before the judge, it was unclear whether Article 13(1) applied so as to require the court to stay the proceedings. The limited information before the judge did not demonstrate that the father's application to the Ukraine court was for "corresponding measures" within the meaning of Article 13(1). At the date of his order, there had not been any acceptance by the courts of either country relating to jurisdiction. By making the order, the judge was not usurping jurisdiction but rather taking steps to "hold the ring". Given what Mr Gratton described as the "catastrophic" actions of the father, and the fact that Kyiv was under regular bombardment, the judge had not been wrong to make the order for the return of the children to this country.
36. Under ground four, Mr Bennett submitted that if, as he contended, there had been no jurisdiction to order the return of the older children to this country, it was manifestly in their interest to be returned to their home in Kyiv. In those circumstances, the father should have been allowed to collect them from Warsaw and resume caring for them at home. Mr Bennett recognised that the judge had been concerned, given the history, that, if his passport were returned to him, the father might move the older children elsewhere or attempt to remove D from the care of his mother. Mr Bennett submitted, however, that the father's explanation for taking N and A to Warsaw had been reasonable, that there was no realistic prospect that the father would take them anywhere except Kyiv and that it was overwhelmingly in their interests to be reunited with him as soon as possible.

37. I quite understand why Francis J was concerned about the welfare of N and A, given their young ages and the worrying news reports from Kyiv. As Black LJ observed in *Re J*, “the instinctive reaction of the English lawyer in these circumstances is to reach for the inherent jurisdiction”. Nonetheless, as Francis J frankly acknowledged, there is no doubt about the law. Under the 1996 Convention, if, at the time of the commencement of the English proceedings under the inherent jurisdiction, a request for “corresponding measures” had been made to the Ukrainian court which was still “under consideration”, this court was obliged under Article 13 to abstain from exercising any jurisdiction it may have in respect of the children.
38. Having considered the material put before the judge, I reject the submission that there was any reason to doubt that the application to the Ukraine court was for “corresponding measures”. The “Practical Handbook on the Operation of the 1996 Child Protection Convention” (2014) published by the Hague Conference on Private International Law states at paragraph 4.31:

“The term “corresponding measures” is not defined in the Convention but it appears that, for Article 13 to apply, the requests before both Contracting States must be the same or similar in substance.”

The translation of the documents from Ukraine indicates that the father’s application was to determine the children’s “place of residence”, meaning to determine whether they should live with him. To that end, the Ukrainian court has asked for an assessment by the local “Service for Children and Families”. The mother’s application to the English court under the inherent jurisdiction was for, inter alia, the return of N and A to this jurisdiction and “to their mother’s care”. The relief sought in the two proceedings was therefore the same or similar in substance. Both courts have been asked to exercise a welfare jurisdiction to decide where and with whom the children should live. Accordingly, under Article 13 the English court was required to abstain from exercising such jurisdiction as it might have under Article 5 unless and until the Ukraine court declined jurisdiction under Article 13(2).

39. Furthermore, as the two older children are not in this country, the English court has no jurisdiction to make urgent orders in respect of them under Article 11 or provisional orders under Article 12.
40. The mother is fully entitled to argue that N and A should be with her in this country. But unless it declines jurisdiction the dispute as to where they should live must be resolved by the Ukraine court.
41. In the circumstances, the appeal under grounds 1, 2 and 3 must be allowed, the orders for the return of N and A to this country set aside, and the proceedings in relation to them under the inherent jurisdiction stayed. The stay does not extend to D who remains in this country with his mother. The proceedings under the inherent jurisdiction in relation to him may continue.
42. So far as the passport orders are concerned, I am unpersuaded that the judge was wrong to make the order he did, at least so far as the father’s passport was concerned. Given the allegations as to the father’s conduct, and the concern about a possible abduction of D, the judge was entitled to conclude that the father’s passport should not be released

to him at that point. In the event, however, the parties have agreed that, as the children are back in Kyiv in the family home, their welfare requires that they be reunited with him and that in those circumstances the passports of the father, N and A, and the elder children's birth certificates, be returned to the father.

43. For those reasons, I concluded that the appeal should be allowed under grounds 1 to 3 and approved an order in the terms appended to this judgment.

LORD JUSTICE LEWISON

44. I agree.

APPENDIX

- A. UPON hearing junior counsel for the appellant, Mr. Edward Bennett, and leading and junior counsel for the respondent, Mr. Michael Gratton K.C. and Ms. Kitty Broger-Bareham;
- B. AND UPON it being agreed between the parties that, irrespective of the outcome of this appeal, the appellant's passport and travel documents, the passports and travel documents of the two elder children, and their birth certificates, currently held pursuant to orders of the Family Division, are to be returned to the appellant forthwith,

IT IS ORDERED THAT:

1. The appellant's appeal against the order of Francis J dated 17 May 2023 is allowed on Grounds 1, 2 and 3.
2. The appellant's appeal against the order of Francis J dated 17 May 2023 is dismissed on Ground 4.

BY CONSENT, IT IS ORDERED THAT:

3. Paragraphs 8 and 9 of the Order of Francis J dated 17 May 2023 in proceedings with Case No. FD23P00226 are set aside.
4. The respondent is released from her undertaking, given to Francis J on 17 May 2023, to return the children [N and A] to England & Wales forthwith.
5. The wardship in relation to the children [N and A] is discharged.
6. The proceedings with Case No. FD23P00226:
 - a. are remitted to the Family Division, with any future hearings not to be before Francis J;
 - b. are stayed insofar as they concern the children [N and A], each party having leave to apply on notice to a judge sitting in the Family Division for that stay to be lifted;
 - c. are listed for a directions hearing concerning [D] within 14 days of the date of this order, subject to confirmation with the Clerk of the Rules.
7. Paragraphs 11 and 12 of the Order of Sir Jonathan Cohen dated 4 May 2023 in proceedings with Case No. FD23P00226 are set aside.
8. The English Court's respectful request, contained within Recital 10 of the Order of Francis J dated 19 May 2023 in proceedings with Case No. FD23P00226, to the Ukrainian authorities to give all

possible assistance to secure the return of [N and A] to the jurisdiction of England & Wales, is withdrawn.

9. The location, passport and other orders of Judd J dated 26 April 2023, Francis J dated 17 May 2023, and Francis J dated 19 May 2023 directed towards the Tipstaff in relation to the appellant, [N and A] (d.o.b. 22.07.18) are discharged. The Tipstaff is directed to return the appellant's passports and travel documents to him forthwith.
10. The respondent's solicitors shall forthwith return to the appellant the passports and birth certificates of [N and A] (d.o.b. 22.07.18).
11. The port alerts currently in place pursuant to the location order and other orders directed to the Tipstaff and issued on 26 April 2023, 17 May 2023 and 19 May 2023 in respect of the appellant, [N and A] are discharged. For the avoidance of doubt, the Port Alert in relation to [D] (d.o.b. 28.03.21) shall continue in accordance with the said location order.
12. In the event that the appellant wishes to pursue an application for the costs of this appeal, (1) the appellant shall file and serve brief written submissions in support of that application no later than 7 days after the hand down of judgment in the appeal and (2) the respondent shall file and serve brief written submissions in response no later than 14 days after the hand down of judgment.
13. Any application by the appellant for costs shall be considered and determined on the papers, unless the court directs otherwise.
14. There shall be a detailed assessment of the respondent's publicly funded costs.