



Neutral Citation Number: [2023] EWFC 18

Case No: LV16-LV17

**IN THE FAMILY COURT**  
**Sitting at the Royal Courts of Justice**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 2/2/2023

Before :

**MRS JUSTICE THEIS**

Between :

	<b>B and C</b>	<b><u>Applicants</u></b>
	<b>- and -</b>	
	<b>D</b>	<b><u>1<sup>st</sup> Respondent</u></b>
	<b>- and -</b>	
	<b>X and Y</b> <b>(through their children's guardian)</b>	<b><u>2<sup>nd</sup> – 4<sup>th</sup></u></b> <b><u>Respondents</u></b>

**Mr Tom Wilson (instructed by Goodman Ray) for the Applicants**  
**D did not attend**

**Mr Andrew Haggis ( instructed by Berkson Family Law Solicitors) for the Children**

Hearing date: 2 February 2023

**Approved Judgment**

MRS JUSTICE THEIS DBE

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

**Mrs Justice Theis DBE :**

**Introduction**

1. The court is concerned with applications concerning two children, X aged 9 and Y aged 6. The applicants, B and C, seek adoption orders in relation to both children.
2. The adoption application was issued as long ago as 17 February 2021. The delay has been caused by reasons wholly unconnected with the merits of the application. The delay has, understandably, been very frustrating and distressing for the applicants. Ever since X and Y were placed in their care they have remained wholly committed to providing secure and stable care for the children, which the orders they seek will support.
3. Sadly, X's parents died. X's father before he was born and his mother during childbirth. He was initially placed with an aunt, before moving to live with the applicants in February 2014, aged three months.
4. Also, sadly, Y's mother died shortly after Y's birth. Y's father was unable to care for Y and relinquished her care to a family member, who looked after Y until she moved to the applicants care in October 2016, aged six months, with Y's father's consent. Y's father supports this application and remains in contact with the applicants and Y. He cares for Y's two half siblings who live with him in Nigeria.
5. The adoption application is supported by the local authority who undertook the necessary enquiries to complete the Annex A report and the Children's Guardian.
6. The Secretary of State for the Home Department ('SSH'D') has been notified of this application and has confirmed to the court that she does not wish to intervene, or make any representations.
7. The applicants are represented by Mr Tom Wilson, instructed by Jemma Dally at Goodman Ray. They are both acting pro bono, taking on the case in late 2022. The court is extremely grateful to them for doing this. The applicants have greatly benefitted from having their undoubted expertise in this area. Their clarity of approach has been of great assistance to the court.

**Relevant background**

8. For the purposes of this judgment it is only necessary to give a summary of the background.
9. The applicants are British nationals, were born here and married in 2000. They worked in Nigeria for 14 years between 2005 and 2019.
10. The children were placed in their care in 2014 and 2016 in the circumstances described above.
11. The applicants made applications to the court in Nigeria to secure their position with the children. In relation to X they secured a Guardianship order in September 2014. In March 2017 both children were made the subject of adoption orders in favour of the

applicants and permission was given for them to travel to the UK with the children. In 2019 both children secured a residence permit with indefinite leave to enter the UK.

12. Following their return to this jurisdiction with the children in 2019 the applicants sought orders to secure their position regarding the children here. They gave notice to the relevant local authority of their intention to adopt in June 2020 and made their adoption application in February 2021.
13. The children remain in the applicants care. All the evidence reports in glowing terms the applicants excellent care and commitment to both of the children.

### **Procedural History**

14. Separate adoption applications were made for the children. Although hearings were listed in May and September 2021, they had to be vacated as there were delays in completing the Annex A report. The local authority had commissioned the Intercountry Adoption Centre (IAC) to prepare the Annex A report which was filed in October 2021.
15. At the first effective hearing on 1 November 2021 the matter was re-allocated to be considered at High Court Judge level and listed before MacDonald J on 25 January 2022. The Children's Guardian was directed to file his reports on each child before that hearing. His reports are dated 17 December 2021.
16. At the hearing on 25 January 2022 MacDonald J acceded to the submissions on behalf of the Children's Guardian that the correct route to deal with this matter was by way of applications seeking recognition of the adoption orders made in Nigeria pursuant to the inherent jurisdiction and a declaration pursuant to section 57 Family Law Act 1986. MacDonald J granted permission for the *'applications to be amended in the face of the court'* so that they were deemed to be for *'formal recognition of the adoption orders'* and the order made directions relevant to those deemed applications, including providing for the instruction of an expert to provide evidence of the relevant Nigerian law. The matter was listed for a final hearing in March 2022.
17. Unfortunately there then followed a delay of some 11 months focussed on the attempts to secure expert evidence in light of the Legal Aid Agency's ('LAA') decision to refuse the necessary funding. The matter first came before me as an urgent application in February 2022 seeking directions due to difficulties in the LAA authorising the fees to instruct an expert with a view to keeping the hearing listed in March 2022 to remain effective. I made directions on 15 February 2022 and 18 February 2022, which included directing enquiries to be made regarding other experts and for the papers to be disclosed to the Attorney General.
18. The Attorney General informed the court on 23 February 2022 that they did not seek to intervene in the proceedings.
19. The hearing before MacDonald J on 3 March 2022 was ineffective due to the lack of expert evidence and the matter was re-listed on 4 May 2022. That hearing too was ineffective due to delays in the expert instruction. The matter came before me again on 19 October 2022 and directions were made listing the matter for final hearing on 9 December 2022.

20. Mr Wilson and Ms Dally agreed to take on the case prior to the hearing on 9 December 2022 and they raised the issue of whether the matter should proceed under the original adoption applications. Following discussions with Mr Senior for the Children’s Guardian, it was agreed that was the correct route. That course avoided the issues that still remained regarding expert evidence.
21. On 9 December 2022 final agreed directions were made that led to this hearing which made clear that the original adoption application is being considered at this hearing.

### **Discussion and Relevant Legal Framework**

22. The court is very grateful for the clarity in Mr Wilson’s skeleton argument.
23. The written submissions on behalf of the Children’s Guardian at the hearing on 25 January 2022 advocated the *‘appropriate procedure in such cases is to seek to have the Nigerian adoption recognised as valid in this jurisdiction and only then if for some reason this could not be achieved to pursue a domestic application for adoption’*.
24. Mr Wilson takes issue with that approach. He relies on *Re N (Recognition of Foreign Adoption)* [2017] 2 FLR 297. In that case Sir James Munby recognised an Indian adoption for the purposes of English law applying the common law rules and made a domestic adoption order under the Adoption and Children Act 2002 (‘ACA 2002’). In that case the applicants were able to satisfy both routes. In *Re N* having set out his reasons for recognising the Indian adoption, Sir James Munby turned to consider the adoption application under the ACA 2002. He stated at [160] to [162]:

*“160. I have set out the procedural history of the application. It is apparent that all the formal prerequisites for an adoption under the 2002 Act have been complied with. There is the fact, given the declaration I have made, that the applicant is already recognised in English law as being N’s mother, but Ms Cronin points to section 51(4) of the 2002 Act as permitting the court to make an adoption order in such a case.*

*161. That an adoption order is very much in N’s interests, now, for the last few days of her minority, and hereafter throughout her life, is, in my judgment, clearly demonstrated by the materials I have referred to in paragraphs 36-38 above. Sales LJ’s analysis in S v Bradford Metropolitan District Council and another [2015] EWCA Civ 951, [2016] 1 WLR 407, demonstrates that there is no objection in principle to my making an adoption order in a case like this, just because the child is almost an adult, if that is the outcome demonstrated, as in my judgment it manifestly is here, by a proper application of the determining principles set out in sections 1(2) and 1(4) of the 2002 Act. Ms Cronin submitted that I should make an adoption order because, by conferring British citizenship on her, N will be assured of her right to go on living with the applicant in this country, thereby giving her security in the full enjoyment of her family life which is not assured merely by recognition of the Indian adoption. As Ms Fottrell put it, an adoption order is necessary to safeguard, now and into the future, the established and central relationship – legal and factual – between N and the applicant, her mother. I agree with Ms Cronin and Ms Fottrell.*

*162. In my judgment it is manifestly in N’s best interests, now and throughout her life, that I make the adoption order the applicant seeks.”*

Mr Wilson relies on *Re N* to demonstrate that the court is able to make orders that recognise a foreign adoption and, at the same time, make an adoption order under the ACA 2002. As a consequence, he submits, there is no hierarchy as to how the court should deal with these applications and rejects any suggestion that in cases where there is a foreign adoption order the court should go down the recognition route first. In this case the applicants can meet the criteria under the ACA 2002 and, as set out below, there are good reasons why that application should proceed. The submissions made by Mr Wilson are accepted by Mr Haggis, on behalf of the Children's Guardian. I agree with Mr Wilson's analysis. Each case will turn on its own particular facts as to which route those seeking adoption orders should take, with no priority being given to any one particular route.

25. In his skeleton argument Mr Wilson sets out the reasons why the applicants seek an adoption order under the ACA 2002 as follows:
- i) *The applicants recognise that the process of recognition is both legally and evidentially more complex. Notwithstanding efforts made over the last 12 months, they accept that, in order to recognise the adoptions:*
    - a) *The court would need to determine the question of their domicile in Nigeria at the relevant time, which, in the circumstances of this case, is factually complex.*
    - b) *The court would require further expert evidence addressing, in considerably more detail, the manner in which the adoptions complied with Nigerian law.*
  - ii) *There are identity and legal benefits to the children of being the subject of a domestic adoption order, conferring upon them British citizenship (see *Re N (Recognition of Foreign Adoption)*, at [161]-[162], for an analysis of the welfare benefits of such an outcome).*
  - iii) *From the applicants' perspective, as parents of these children and having cared for them for the vast majority of their lives, there is no emotional, psychological or identity benefits to a recognition of the Nigerian adoption orders as opposed to the making of a domestic adoption order. Indeed, as set out in the preceding paragraph, it is to the contrary. The applicants' adoption of the children is an important part of their life story that is neither diminished nor erased by the making of an adoption order. The children's identity needs in respect of their Nigerian heritage and their adoption there are amply met by the applicants' commitment to, and understanding of, the children's cultural heritage.*
26. They provide compelling reasons why the children's welfare is best met by proceeding with the application for adoption under the ACA 2002.
27. Turning to the adoption application itself, Mr Wilson sets out how the applicants meet the preliminaries to adoption as required by the ACA 2002 as follows:

- (1) The applicants are eligible to adopt the children as they have been habitually resident in the UK for more than 12 months and/or were domiciled in the UK at the time of the application (s 49(2) and (3) ACA 2002).
  - (2) The applicants are both over 21 years (s 50(1) ACA 2002).
  - (3) The children are eligible to be adopted, they have not attained the age of 18 years and are not married (s 47 (8) and 49 (4) ACA 2002).
  - (4) The applicants gave notice to the local authority of their intention to adopt each child more than three months and less than two years after they made the adoption application (s 44(2) and (3) ACA 2002).
  - (5) X moved to live with the applicants in February 2014 and Y in October 2016. The adoption application was made in February 2021 so the children had had their home with the applicants for more than 3 years at the time when the application was made (s 42 (5) ACA 2002).
28. Mr Wilson rightly corrects a reference in the Annex A report to s 83 and 84 ACA 2002. Those provisions and relevant regulations do not apply in this case, as neither of the applicants were habitually resident in the UK at the time when the children were brought here in 2019. The applicants had spent the preceding 14 years living in Nigeria. Also, the children travelled to the UK more than a year after the Nigeria adoption orders were made.
29. Turning to the question of parental consent the court needs to be satisfied either that the parent consents to the making of an adoption order or their consent can be dispensed with (s 42(2)(a) and (c) ACA 2002). Rule 14.10 Family Procedure Rule 2010 provides that consent should be given in the relevant form or '*a form to the like effect or otherwise as the court directs*'.
30. The issue of consent does not arise in X's case as both his parents are dead and the applicants were appointed his legal Guardians in Nigeria in October 2014. Y's mother died shortly after her birth. Y's father consents to the adoption order being made. The evidence of his consent is from a number of sources:
- (1) A letter written by the father on 13 October 2016 in which he gives his consent stating that he was not just consenting '*for the purpose of upbringing and education. She will become totally their child*'.
  - (2) Ms Minchin, the author of the Annex A report spoke to the father on 7 September 2021 and records as follows:  
  
*'During my video call with [Y's] birth father [D], [D] stated his wish for [Y] to be adopted by [B and C]. He felt unable to offer the necessary care to [Y] following her birth, given the death of [Y's] birth mother. He had a discussion with other members of [Y's] wider family and village community, arriving on the decision for [Y] to be adopted by [B and C]. He understands the parental rights he stands to lose over [Y] pursuant to the making of an adoption order; he relinquished his parental rights in Nigeria in relation to [Y] within her*

*Nigerian adoption several years ago and understands the courts in the UK are now going through the same legal process.'*

- (3) The father continues to have some intermittent telephone contact with Y and remains in contact with the applicants and continues to be entirely supportive of the application.
31. This evidence demonstrates the court can be satisfied that the father consents to this court making an adoption order and that such consent is given *'unconditionally and with full understanding of what is involved'* as required by s52(5) ACA 2002.
32. The requirement to make an adoption order having been met, the court needs to turn to consider whether making these orders will meet the lifelong welfare needs of each of these children having considered the welfare checklist set out in s 1 (4) ACA 2002.
33. The comprehensive Annex A report undertaken by Ms Minchin fully supports an adoption order being made for both children. As part of her enquiries she spoke to X's aunt, who cared for him after his birth for the first three months before he was placed in the applicants' care. She was fully supportive of this application as she wanted X *'to be adopted by the [applicants] in the UK just as he was in Nigeria'*. Ms Minchin describes X being very settled in the applicant's care, observing they are the only parents he has known. As part of her analysis in supporting her recommendation for an adoption order to be made she considers that the order is supported by X's wider family as providing for X's stability and security and states that *'adoption will allow the attachments which exist between [X and the applicants and Y] to strengthen, thereby providing [X] a secure base from which to establish his own identity and life'*.
34. In relation to Y the Annex A report records Ms Minchin's discussion with the father and explores with him the reasons for supporting the adoption order being made, confirming that it not only has his support but also of the wider family. Y has clearly settled in the applicants care, like X they are the only parents she has known. The applicants are very open with Y about her wider family and do not seek to withhold any information about them from Y.
35. As to the ability of the applicants to meet the needs of the children Ms Minchin observes that she had witnessed the applicants be *'responsive, engaged and attuned to their children's needs. I have seen them implement guidance and boundaries; provide for the children's physical needs; treat them with respect and kindness; respond to the children's requests for help, play, and comfort; and engage with them in creative activities, learning activities and high energy activities. In addition, their commitment to the children is evidenced in their commitment to the adoption process.'*
36. It is important for the court to consider that, if adoption orders are made, this does not have an adverse effect on their identity needs or understanding of their life stories and cultural heritage. In this respect, Ms Minchin is very clear about the applicants ability to meet those needs, stating in her report: *'The information obtained from visits ascertains that the children appear comfortable and happy in their home in the UK where they have been for over two years, and in the care of their adoptive parents, in whose care they have each been for the majority of their lives. Furthermore, it is clear that the children have been supported to thrive in*

*their social, educational, religious and wider family experiences, and have been supported to integrate both their Nigerian and UK family cultures.'*

37. Ms Sally Frances provided an update to these reports dated 11<sup>th</sup> January 2023. She undertook her own enquiries and echoed the recommendations of Ms Minchin, noting the children's positive school report, the '*natural affection*' in the family, and that the children appeared '*happy and content*'. When she visited the family she records in her report she '*observed a lot of natural affection between the family members from full hugs to stroking of hair and faces. The family clearly have a loving, secure and trusted bond that has grown over time.*' She concludes her report as follows '*During my visit I observed and interacted with a well-established family. Each person has their place and was clearly a valued family member. I have no issues or concerns in relation to the couple's ability to effectively parent [X and Y] into adulthood.*'
38. Mr Smith, the Children's Guardian, reflected these positive observations from Ms Minchin and Ms Frances in his report for each child dated 17<sup>th</sup> December 2021. For each child he concluded it was his '*firm recommendation*' that they be adopted by the applicants. That view has been repeated in the updated position statement on his behalf filed for this hearing which includes the following:
- 'Every opportunity is taken to respect and maintain the children's cultural background including contacts with Nigeria. The family are well versed in Nigerian culture, having lived there for many years, and continuing to have regular contact. They are thus well placed to maintain these links...*
- ...From a welfare perspective, the Guardian does not have concerns about these children. The applicants provide excellent and loving care for the children, which the Guardian is confident will continue for the remainder of the children's childhood.'*
39. Having considered all the evidence, I am in no doubt that making these adoption orders will meet the lifelong welfare needs of each of these children. The applicants' undoubted love and unconditional lifelong commitment to these children shines out from all the reports and has the admiration of the Court. An adoption order will provide security and stability for each of these children which their lifelong welfare needs require.