



Neutral Citation Number: [2020] EWHC 1117 (Fam)

IN THE HIGH COURT OF JUSTICE  
FAMILY DIVISION

No.FD20F07001/FD20F07002

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday, 28 February 2020

Before:

MR JUSTICE MACDONALD

HM

Applicant

- and -

DM

Respondent

\_\_\_\_\_  
MISS REBEKAH WILSON (instructed by Duncan Lewis Solicitors Ltd) appeared on behalf of the Applicant.

THE RESPONDENT did not appear and were not represented.

\_\_\_\_\_  
**J U D G M E N T**

*Transcribed by **Opus 2 International Limited**  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
civil@opus2.digital*

THE HONOURABLE MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

**MR JUSTICE MACDONALD:**

- 1 This is an application made in the urgent applications list for a female genital mutilation protection order pursuant to Part 1 of Schedule 2 of the Female Genital Mutilation Act 2003. It was issued on 14 February 2020.
- 2 The applicant for the order is HM. She is the mother of S, born in August 2016 and T born in July 2019. The application issued by the applicant is supported by a statement of evidence from the applicant, signed with a statement of truth on 20 January of this year. The applicant is represented before the court today by Miss Wilson of counsel, who has provided a helpful Position Statement in relation to this application.
- 3 The application is advanced by the applicant mother on the basis that both children are at risk of female genital mutilation. The circumstances that give rise to that alleged risk are set out in her statement. The applicant alleges that, when she was in Nigeria, she was the subject of female genital mutilation after her birth in 1985. She alleges that that female genital mutilation was carried out by her uncle, DM, who is the respondent to this application. She asserts that the mutilation was supported by her parents. While she says she was too young to remember the event itself, she says she is willing to undergo a medical examination to confirm that mutilation. She also asserts that her younger sister, V, who was born in 1990, was likewise the subject of female genital mutilation.
- 4 Thereafter the applicant alleges that when she was 16 years old, she was forced to marry her husband, who was around 40 years old at the time. She asserts that was not a good marriage and that she was physically and emotionally abused. She gave birth to twins in Nigeria in 2011, a boy and a girl. She asserts that the baby girl was subjected to FGM when she was three months old.
- 5 When those children were around three years old, the applicant asserts that she decided to come to the United Kingdom, telling her husband that she needed medical assistance which she could not obtain in Nigeria. The applicant says that she signed a medical form and her husband paid for her to come to the United Kingdom but forbidding her to take her two children with her.
- 6 The applicant asserts in her statement that she arrived in the United Kingdom on a medical visa which permitted her to stay here for six months. She states that, shortly after her arrival on a medical visa, she contacted her husband in Nigeria and informed him that she was not going to return as she could not face going back to that jurisdiction, notwithstanding the fact that she had left her twin children there. In response to being told of her decision, the applicant asserts that her husband was abusive and threatened to pour acid on her and to kill her, were she ever to return to that country.
- 7 The mother has had two children whilst in this jurisdiction, as I have observed. Firstly, S and, secondly, T. Those children are by different fathers. She is no longer in a relationship with either of the fathers.
- 8 It is apparent from the applicant's statement that she has been the subject of immigration control, although the precise circumstances of that immigration control are at present unclear on the evidence before the court. Miss Wilson has endeavoured to take instructions today from her client after not being able to establish from the applicant's immigration solicitors precisely what the position is.

- 9 In her statement in support of the application, the applicant informs this court that she was permitted to stay in the United Kingdom, presumably pursuant to the medical visa, until 2 June 2014. In 2016 she made an application under the Human Rights Act 1998 to stay in the United Kingdom, but that application was refused, and her solicitor advised her that she should apply for asylum. At some point in 2017, the applicant says she received a letter from the Home Office informing her that she was liable to be detained and deported. She tells the court that she claimed asylum for herself and her daughter on 20 December 2017.
- 10 The current position in relation to the immigration status of the applicant is, as I say, unclear. She appears to have failed to attend her asylum interview on 23 May 2018, a fact that she concedes in her statement. She also sets out in her statement that she was given a further appointment with the Home Office on 3 December 2019 but likewise did not attend that appointment; and there is a suggestion in her statement that her asylum application has either been withdrawn or refused. The applicant now confirms to the court through Miss Wilson, that there is currently no deportation order in place in respect of her or either of the two children. It is within that context that the applicant comes before this court seeking a female genital mutilation order.
- 11 As I have already alluded to, the basis of the risk the applicant contends supports the making of such an order today, is threats she asserts were issued historically in Nigeria by her uncle in relation to the use of female genital mutilation. The applicant submits that because of those threats, that as I say have been uttered historically and, in relation to the more recent past, she says have been repeated by her uncle, the two children in this jurisdiction are at risk of female genital mutilation.
- 12 From that brief summary, it can be immediately seen the forensic difficulty that arises in relation to the applicant's application. The children who she contends are at risk of female genital mutilation are in *this* jurisdiction. The man she contends is at risk of perpetrating female genital mutilation on those children is in *Nigeria*. Within this context, there is absolutely no evidence before the court to suggest that DM is likely to come to this jurisdiction. There is likewise, at this point in time, no evidence before the court that the children with whom this court is seised, are likely to go to Nigeria in circumstances where the mother is clear that she does not wish to return to that jurisdiction and in circumstances where the mother has confirmed that, notwithstanding her immigration difficulties, there is currently no deportation order in place in respect of her or the children.
- 13 In those circumstances, I am satisfied that there is simply no evidence before the court to suggest that the children are currently at risk of female genital mutilation in the way that the mother describes. In those circumstances, it would not be appropriate for this court to grant a female genital mutilation order.
- 14 It is, as Miss Wilson points out in her Position Statement, right to repeat that female genital mutilation is an abhorrent practice. It is right that this court in appropriate cases grants orders which are designed to protect children and adults from that abhorrent practice and the court has jurisdiction to do so under the 2003 Act. However, that jurisdiction has to be exercised on the basis of *evidence*. The court must have before it evidence that establishes a risk of female genital mutilation to the requisite standard, namely, on the balance of probabilities, before it grants such an order. I am entirely satisfied in this case for the reasons that I have given, that there is no such evidence before the court in this case at this time.
- 15 In circumstances where the application is not supported by the requisite evidence, and in circumstances where there is no suggestion on the face of the papers that that evidence is likely to be forthcoming in the near future, either in the form of evidence suggesting that the

uncle is coming to England or in the form of evidence suggesting that the applicant will be sent to Nigeria with her children, I am not satisfied in this case, in addition to being satisfied that no order is appropriate today, that it is appropriate to adjourn this matter and to give directions for further evidence. The application is not supported by the required evidence today, and I see no prospect at this point in time of that evidence being forthcoming such that it would be appropriate to adjourn this application rather than dismiss it.

- 16 For all those reasons, and having regard to the information currently before the court, there is no evidence upon which the court could properly make the order sought today and I dismiss the application for a female genital mutilation order.
- 17 That is my judgment.

**THE HONOURABLE MR JUSTICE MACDONALD**  
**Approved Judgment**