Neutral Citation Number: [2024] EWHC 2769 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/10/2024

Before:

MRS JUSTICE GWYNNETH KNOWLES

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Re G (Recognition of a Nigerian Adoption)

- -

Mr Stuart Whitehouse for the Applicant
Ms Eva Holland for the child
Mr Mark Smith for the Secretary of State for the Home Department

Hearing date: 8 October 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 31 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE GWYNNETH KNOWLES

This judgment was delivered in private [and a reporting restrictions order OR transparency order is in force]. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Gwynneth Knowles:

1. These proceedings concern a little girl who I have called G. She was adopted by Mrs B, the applicant, in one of the States of Nigeria on 17 June 2016. The application by Mrs B is for the recognition of this adoption order under common law. Mrs B lives in England and wishes G to join her here. G is presently living with Mrs B's cousin in Nigeria. I have used initials to refer to G, Mrs B and the Nigerian State where both lived in order to minimise any chance that they may be identified following publication of my judgment.

2. G is a party to the proceedings and her interests are represented by her Cafcass guardian, Lauren Doyle, from the Cafcass High Court Team, and Ms Holland from Cafcass Legal. In January 2024, the Secretary of State for the Home Department ("SSHD") was granted permission to intervene in the proceedings and her interests are advanced by Mr Smith. Mrs B is represented by Mr Whitehouse.

3. I have read all the papers in the bundle, considered detailed position statements submitted by the advocates. At the hearing, I heard oral evidence from Mrs B and from the expert witness, Mr Badejo, and listened to submissions. I indicated that I would reserve my decision and judgment for a short time.

Background

4. Mrs B was born in Nigeria and remains a citizen of that country. Between 1996 and 2014 save for a brief period in the UK between 2005-2006, Mrs B lived in Italy and became an Italian citizen in 2013. She married Mr B, an Italian national, in 2009 and separated from him in 2014. In 2014, she returned to Nigeria to live with her family though she made several trips to Italy during this time. Since November 2016, Mrs B has lived in England and she was granted EU settled status in April 2023. She now has indefinite leave to remain in the United Kingdom. She is employed in the care sector as a social worker and has her own home which is subject to a mortgage.

5. Almost immediately after her birth, G was found abandoned. A document from the Nigerian Police dated 6 November 2015 stated that the director of a maternity and orphanage home brought a baby girl, aged about a day old, to the charge room and reported that G had been abandoned, all efforts to locate her parents having proved abortive. G was handed to the maternity and orphanage home for her care and protection. G seems to have been found by an anonymous *"Good Samaritan"* near a local primary school. G's birth certificate dated 3 February 2017 stated that her date of birth was in October 2015 which does not accord with the account of her abandonment, describing her as only being a day old on 6 November 2015.

6. Mrs B met G at the orphanage very shortly thereafter and applied to adopt her on 10 November 2015. That application set in train a period of monitoring and welfare checks conducted by the Ministry of Women's Affairs and Social Development. Initially, G remained living in the orphanage and had regular contact with Mrs B. In January 2016, the allocated probation officer completed a social enquiry report, indicating that Mrs B lived in a three bed property which required repair work to the windows. She was reported to have obtained a cot for G. On 2 February 2016, the probation officer recommended that Mrs B be granted a temporary release order in respect of G, meaning that G could live with her pending the court's decision. Mrs

B's accommodation was deemed suitable for G and it was noted that Mrs B wished to adopt because she could not have a biological child of her own. G was placed with Mrs B on 3 March 2016, the probation officer having agreed to release her to Mrs B's care. A report from the probation officer dated May 2016 described Mrs B's home as very suitable for bringing up a child. G's parents were said to be unknown and could not be traced. Visits and monitoring had taken place and G was described as doing well in the care of Mrs B. The report recommended that approval be given to Mrs B to proceed to court and formalise the adoption of G.

7. In June 2016, an adoption order for G was granted in favour of Mrs B, following a hearing at which Mrs B was present. The court's order recorded that G was an abandoned juvenile whose parents and other relatives were not known and could not be traced. It authorised Mrs B to adopt G and to assume the full parental rights, duties, and obligations of a natural parent. The probation officer was to carry out effective supervision of G until she was 18 years old. At the time the adoption order was made, Mrs B was still married and she provided a written consent to the adoption order from her estranged husband. In September 2016, the probation officer provided a further report, noting that Mrs B had moved to another property which was described as being very suitable for the upbringing of G.

8. In November 2016, Mrs B moved to the UK in order to find sufficiently well remunerated employment since she needed more funds to care for G. G was left in the care of Mrs B's sister and, since 2022, G has lived with one of Mrs B's cousins after Mrs B's sister moved to Canada. Follow-up reports from the probation officer indicate that G is well looked after though she is reported to have difficulties concentrating and had *"slow learning ability"*. A letter from a consultant paediatrician dated August 2023 confirmed that G has a diagnosis of cerebral palsy with generalised seizures and that she is prescribed medication to control them. A school report dated January 2024 noted that G was struggling in school, remaining in the nursery environment rather than the primary school classroom. In October 2017, a court hearing approved a change of name for G, removing the surname of Mrs B's husband. Mrs B was not present in court when this occurred though her lawyers were.

9. In November 2019, Mrs B sponsored an application for G to join her in the UK which was refused in March 2021. In June 2021, Mrs B renewed her application but this was likewise refused in September 2021.

10. Passport information demonstrates that Mrs B visits G regularly as much as her work diary permits and provides financially for all her needs. Mrs B has enrolled G in an appropriate school and paid for additional learning support for G given the concerns about her learning difficulties. Mrs B is in regular communication with G and her carer several times a week. G is a beneficiary of Mrs B's estate.

Procedural History

11. Mrs B's application was issued in the family court on 2 March 2023 and allocated quickly to a judge of the Family Division given the international element. At the first directions hearing in April 2023, G was joined as a party and the UK Border Agency was required to respond to a request for information about Mrs B's immigration status. The planned hearing in July 2023 was adjourned because Mrs B was planning to travel to Nigeria in response to concerns about G's health and her seizures. The

hearing in October 2023 approved the instruction of Mr Badejo, an expert in Nigerian law; granted disclosure of the papers in these proceedings to the SSHD; and invited the SSHD to confirm whether she wished to intervene in the proceedings.

12. At a pre-hearing review on 16 January 2024, the SSHD sought permission to intervene in the proceedings, raising questions as to whether the Nigerian adoption complied with the local domestic law. MacDonald J granted the SSHD's request and the final hearing was adjourned. The matter came before me in April 2024 when I agreed to a further adjournment to July 2024 to allow for an addendum report from Mr Badejo. Following the receipt of that report, the SSHD indicated that she wished to question Mr Badejo at the hearing and asked if a day of court time could be made available. There was insufficient court time in July and the matter was adjourned once more to a final hearing on 8 October 2024.

The Law

13. I am grateful to Ms Holland for providing a comprehensive summary of the relevant law and case law which I have largely adopted.

14. Pursuant to section 66(1) of the Adoption and Children Act 2002 ("ACA 2002"), the meaning of adoption includes a *"convention adoption"* (s.66(1)(c)); an *"overseas adoption"* (s.66(1)(d)); or an *"adoption recognised by the law of England and Wales and effected under the law of any other country"* (s.66(1)(e)). Nigeria is not a member state of the 1993 Hague Convention for the Protection of Children and Co-operation with respect to Intercountry Adoption (Adoption (Intercountry Aspects) Act 1999, Schedule One). Nigerian adoption orders granted prior to 3 January 2014 were designated *"overseas adoptions"*. However, Nigeria is no longer included in the *"overseas adoption"* list in the Adoption (Recognition of Overseas Adoptions) Order 2013/1801. Nigerian adoptions effected after 3 January 2014 can be recognised only pursuant to s.66(1)(e) of ACA 2002 if they are recognised at common law.

15. Section 9(6) of ACA grants the Secretary of State for Education the power to declare that special restrictions are to apply for the time being in relation to the bringing in of children to the United Kingdom for the purpose of adoption from a particular country. Special restrictions were imposed by the Secretary of State for Education in relation to adoptions from Nigeria by the Special Restrictions on Adoptions from Abroad (Nigeria) Order 2021 ("the 2021 Order"), which came into effect on 12 March 2021. The concerns about Nigerian adoptions were summarised in the Order as follows:

a) difficulties confirming the background and adoptability of children;

b) unreliable documentation;

c) concerns about corruption in the Nigerian adoption system;

d) evidence of organised child trafficking within Nigeria;

e) concerns about weaknesses in the checks completed by the Nigerian authorities in relation to adoption applications from prospective adopters who were habitually resident in the United Kingdom and therefore are likely to, in fact,

be intended to be intercountry adoptions. Weaknesses are identified in pre-and post-adoption monitoring procedures.

The Order states that it was made in response to significant child safeguarding concerns due to issues affecting the intercountry Nigerian adoption system. This was based on evidence received through international partners including Central Adoption Authorities and diplomatic missions.

16. Under the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008, a request can be made to treat an individual case as an exception to a special restriction imposed under ACA 2002. In deciding whether a case is exceptional, the Minister will consider all the information provided which is relevant to the individual facts and circumstances of the case. Rule 6 of the 2008 Regulations lists a number of matters which must be taken into account when exceptional cases are being considered as follows:

a) The circumstances leading to the child becoming available for adoption, including whether any competent authority in the State of origin has made a decision in relation to the adoption or availability for adoption of the child;

b) the relationship that the child has with the prospective adopters, including how and when that relationship was formed;

c) The child's particular needs and the capacity of the prospective adopters to meet those needs;

d) and the reasons why the State of origin was placed on the restricted list.

17. In this context, the only route through which an adoption order made in Nigeria can be recognised in this jurisdiction is under common law. The common law test for recognition of a foreign adoption was considered by Sir James Munby, the then President of the Family Division, in Re N (A Child) [2016] EWHC 3085 (Fam). Re N provided a magisterial overview of relevant judgments on this topic and, having undertaken that exercise, the President confirmed four criteria for recognition as follows:

a) The adoptive parents must have been domiciled in the foreign country at the time of the foreign adoption.

b) The child must have been legally adopted in accordance with the requirements of the foreign law.

c) The foreign adoption must in substance have the same essential characteristics as an English adoption.

d) There must be no reason in public policy for refusing recognition.

18. The decision in Re N also rejected the proposition that the child's best interests were a factor that fell to be considered when deciding whether to recognise an adoption at common law. As far as the question of public policy was concerned, the President emphasised that the principle of public policy in this context had a strictly limited function and was properly confined to particularly egregious cases. In coming to that

conclusion, the President relied on a passage from *Dicey, Morris & Collins, The Conflict of Laws*, ed 15, 2012, para 20-133, cited as follows [paragraph 129]:

> *"If the foreign adoption was designed to promote some immoral or mercenary object, like prostitution or financial gain to the adopter, it is improbable that it would be recognised in England. But, apart from exceptional cases like these, it is submitted that the court should be slow to refuse recognition to a foreign adoption on the grounds of public policy merely because the requirements for adoption in the foreign law differ from those of the English law. Here again the distinction between recognising the status and giving effect to its results is of vital importance. Public policy may sometimes require that a particular result of a foreign adoption should not be given effect to in England; but public policy should only on the rarest occasions be invoked in order to deny recognition to the status itself."*

19. The decision in Re N also addressed the impact of Article 8 of the European Convention of Human Rights ("ECHR") and endorsed the approach taken by MacDonald J in QS v RS and T (No 3) [2016] EWHC 2470 (Fam). In that case, MacDonald J considered whether an application under the court's inherent jurisdiction for recognition of an adoption order made in Nepal could succeed notwithstanding a concern that the applicants could not be said to have been domiciled in Nepal at the time the adoption order was made. In paragraphs 100 and 104, MacDonald J held as follows:

> *"I am satisfied that in determining an application for the recognition of a foreign adoption at common law and an application for a declaration pursuant to the Family Law Act 1986 s. 57 the court must ensure that it acts in a manner that is compatible with the Art 8 right of the mother, the father and T to respect for family life. Further, within this context, and after much anxious deliberation, I am satisfied that the strict application of the rule as to status conditions in Re Valentines Settlement to the very particular circumstances of this case, with a concomitant refusal to recognise the adoption lawfully constituted in Nepal in terms which substantially conform with the English concept of adoption by reason of the failure to comply with status conditions as to domicile or habitual residence applicable in this country, would result in an interference in the Art 8 right to respect for family life of the mother, father and T that cannot be said to be either necessary or proportionate."*

> *" My conclusion does not amount to a decision that the rule in Re Valentines Settlement is incompatible with Art 8 of the ECHR per se. Rather, it amounts simply to a decision that the application of that common law rule in the very particular circumstances of this case would breach the Art 8 rights of the parents and T ... I make clear that my conclusions are grounded in an application of the cardinal principles incorporated into our domestic law by the Human Rights Act 1998 and the jurisprudence arising out of the ECHR."*

20. In KN & Anor v RN and Ors [2023] EWHC 712 (Fam), MacDonald J restated the above considerations in a case involving the recognition of an adoption order granted in Nigeria. Paragraphs 65-67 set out in further detail his analysis of the existence of family life for the purpose of Article 8. In that case, MacDonald J was not satisfied that the circumstances of the adoption in Nigeria of one of the two children met the

criteria in Re Valentines Settlement given the concerns about the evidence in respect of the birth mother's consent. However, he determined that the strict application of Re Valentines Settlement and a refusal to recognise the Nigerian adoption order would constitute an interference in the Article 8 right to respect for family life of the applicants and both children which was neither necessary nor proportionate.

21. In KN, Macdonald J also summarised the relevant law in respect of domicile at paragraph 61:

"With respect to the question of domicile, as observed by Theis J in ELO v cLO (Recognition of a Nigerian Adoption Order) [2017] EWHC 3574 (Fam), citing the decision of the House of Lords in Mark v Mark [2006] 1 AC 98, the object of determining a domicile is to connect the person with a particular system or rule of law determining personal or family status or property rights. Within this context, and noting that the cases make it clear the court is concerned with the ties that bind a person to a chosen domicile and the strength and durability of those ties, Theis J provided a helpful summary of the relevant principles as follows:

"[53] In Barlow Clowes International Ltd (In Liquidation) & Ors v Henwood [2008] EWCA Civ 577, Arden LJ summarised a number of uncontentious principles relevant to this case:

i) A person is, in general, domiciled in the country in which he is considered by English law to have his permanent home. A person may sometimes be domiciled in a country although he does not have his permanent home in it.

ii) No person can be without a domicile.

iii) no person can at the same time for the same purpose have more than one domicile.

iv) an existing domicile is presumed to continue until it is proved that a new domicile has been acquired.

v) Every person receives at birth a domicile of origin.

vi) Every independent person can acquire a domicile of choice by the combination of residence and an intention of permanent or indefinite residence, but not otherwise.

vii) Any circumstance that is evidence of a person's residence, or of his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice. In order to acquire a domicile of choice the intention of residence must be fixed and for the indefinite future".

In the Barlow Clowes judgment, Arden LJ noted that *"the domicile of origin is tenacious"* (paragraph 85), indicating that strong evidence was needed to show that an alternative domicile of choice had been acquired.

The Evidence

22. What follows is a summary of the written and oral evidence pertinent to the issues before the court.

Mrs B

23. Mrs B confirmed that she had instructed a lawyer to assist her at the adoption hearing in June 2016. She also confirmed that her estranged husband had consented to the adoption by writing a letter to the court and submitting a copy of his birth certificate. Mrs B said that she had been present at the court hearing and had been questioned about why she wanted to adopt G. She confirmed that, at the time, G was living with her. Mrs B said that she had endeavoured to obtain all the documents in the adoption proceedings from her lawyers in Nigeria but had been unable to do so because, as she said, *"they got fed up"* with her repeated requests. She confirmed that she had filed with the Nigerian court all the documents which had been requested.

24. Responding to questions from the SSHD, Mrs B confirmed that she had travelled to the UK in 2005 and, in August 2005, had been convicted and sentenced to 12 months' imprisonment for an offence of dishonesty. She had made a claim for asylum in this jurisdiction but this was refused in 2006 and she returned to Italy shortly thereafter. She had not disclosed this conviction to the Nigerian police when seeking a certificate of good character to accompany her application to adopt G. She had obtained Italian citizenship in about 2013 and had applied for an Italian passport in 2014. She had returned to Nigeria after the breakdown of her marriage in 2014 to seek comfort from her family. Mrs B described a struggle to conceive a child with her husband and her failure to do so contributing to the breakdown of her marriage.

25. On her return to Nigeria, Mrs B said that she was volunteering in the orphanage in which G was placed. On learning that G had been abandoned, Mrs B asked to adopt her. Thereafter, she had regular frequent contact with G at the orphanage until such time as G was placed with her, providing equipment and the like to support G's care. Shortly after G was placed in her care, Mrs B confirmed that she had returned to Italy for about a month in an effort to get her old job back so that she could financially provide for G. That trip was unsuccessful though Mrs B was motivated by dreams of a better life abroad in which she could provide for G's needs. At the time of the adoption hearing, Mrs B stated that she was not thinking about moving abroad. However, by October 2016, Mrs B travelled to the UK to obtain paid employment so as to better meet G's needs. She said that she had made good arrangements for G with her extended family. Mrs B confirmed that she was the person ultimately responsible for G's care and the person to whom others looked for decisions about all aspects of that care.

26. The written evidence provided support for the care arrangements made by Mrs B after her departure to the UK. It was clear that she visited G regularly and as often as her finances would allow.

Mr Badejo

27. Mr Badejo is a dual qualified English and Nigerian lawyer with experience of the family court in both jurisdictions. He has also acted as an expert witness on Nigerian law in this jurisdiction. He had limited experience of the State in which G's adoption took place and had not himself appeared in any adoption cases. However, he had spoken to Nigerian child welfare/probation officers about adoption and had studied court papers in Nigerian adoption proceedings. He noted that there was almost no

published case law about children's welfare emanating from the lower court in which G's adoption had occurred.

28. Mr Badejo's reports set out the adoption law of the Nigerian State in which G had been adopted and highlighted that the best interests of the child were the court's primary consideration. He noted that this permitted a liberal interpretation as to the provisions of adoption law because the views of court welfare/probation officers were that it was always in the child's best interests to be adopted in a forever home rather than to remain living in an orphanage. The Nigerian adoption legislation also required an investigation of the applicant's suitability to adopt and of the welfare of the child to be adopted. Mr Badejo noted that the reports of the probation officer said very little indeed about Mrs B's suitability to adopt, focussing more on the physical environment of her living accommodation. Moreover, the adoption order made by the court did not, on its face, record that the court took into account the best interests of G throughout her childhood but this did not mean this issue was not considered by the court. Mr Badejo thought it more likely than not that the court had considered Mrs B suitable to adopt given the indication in one of the probation officer's reports that G was doing well in her care. In his oral evidence, Mr Badejo was firm in his view that the adoption order would not have been made if the court had not been satisfied about Mrs B's suitability. He noted that the probation officer was present at the hearing and would have been available to answer any questions about this issue which the court might have had.

29. The adoption law of this particular Nigerian state required the child to have been in the care of the applicant for a period of at least three consecutive months prior to the date on which the adoption order was made. Mr Badejo noted that Mrs B had been in Italy for about a month during this period but advised that, provided she had directed G's care during this absence, this particular condition would be satisfied as there was no requirement for G to be in the physical care of Mrs B during this time. Finally, adoption law required an applicant to give 12 months' notice of their intention to adopt before the making of an adoption order. In his oral evidence, Mr Badejo opined that this was a procedural issue rather than an issue which went to the validity of the adoption order. He was of the view that the court would not delay in making an adoption order if this was in the child's best interests and knew of many cases in which infants had been adopted at less than a year old. He pointed out that strict application of the notice requirement would prohibit the adoption of any child in Nigeria below the age of one year and also observed that the process of adoption in Nigeria was less rigorous than its equivalent in this jurisdiction.

The Children's Guardian

30. I did not hear oral evidence from the children's guardian but I read her report with care. She had met with Mrs B at her home in Manchester and had met G via video-call. She did not meet G again as G had very little understanding about who the guardian was and the nature of the proceedings in this jurisdiction.

31. Mrs B described her involvement with G both prior to her move to this jurisdiction and afterwards. G is not aware that she is adopted and calls Mrs B *"mommy"*. G knows that Mrs B is her primary mommy though she has used that word previously to describe Mrs B's sister and more recently her cousin. It was evident to the guardian that G is part of a large extended family based in Nigeria, the UK and Canada. The

family know of G's circumstances and G knows them. Mrs B described frequent telephone and video calls to G each week and said that she was in touch often with her cousin about G's care. G was apparently distressed when she parted from Mrs B and found their separations hard to manage. Mrs B was clear that she thought G's welfare would be enhanced by joining her in the UK.

32. The guardian's report makes plain her view that, despite the absence of information/documentation about the adoption process relating to G, there was sufficient information to demonstrate that Mrs B had engaged appropriately in that process and that she had a connection with G from when G was a month old. Mrs B had maintained the role of mother to G despite the geographical separation and she was exercising the parental responsibility granted to her by the Nigerian adoption order. The guardian was of the view that Mrs B was a conscientious parent with a good knowledge of G's special needs and she had made provision for those needs to be met by paying for G's education and health. Recognition of an adoption order in this jurisdiction would affirm the parent-child relationship that exists between Mrs B and G and provide legal status in this jurisdiction to the only family that G had ever known. If the court made the order sought, the guardian hoped that G would be permitted to enter the UK to live with Mrs B and to receive the necessary education and health support.

The Positions of the Parties

33. What follows is a brief summary at the conclusion of the evidence.

34. On behalf of the SSHD, Mr Smith made plain that she was neutral to the application as a whole but sought a rigorous examination of whether all the requirements of Re Valentine's Settlement had been met in this case. The key issues were (a) Mrs B's domicile at the time of the adoption order and (b) whether G was legally adopted in accordance with the requirements of Nigerian law.

35. As to domicile, Mr Smith submitted that Mrs B was domiciled in Italy during 2006-2013. She had sought a better life outside Nigeria and had acquired Italian nationality. She had returned to Nigeria to seek emotional support from her family but had travelled to Italy in March 2016 to get her job back. Her domicile remained in Italy as she never intended to reside permanently in Nigeria.

36. As to the requirements of Nigerian adoption law, the notice period of 12 months had not been complied with and appeared to have been waived in G's best interests. Mr Smith submitted that this lent some weight to the concerns about weak checks set out in the adoptions restricted list. Though he acknowledged a good motivation on the part of Nigerian child welfare/probation officers not to delay a child's adoption into a forever home, this also acted as an incentive not to apply the strict letter of the law. He also drew attention to Mrs B's lack of openness about her criminal conviction in the UK and the failure to obtain the adoption papers from her Nigerian lawyers. As far as suitability to adopt was concerned, Mr Smith submitted that it was very unclear how the court knew Mrs B was a suitable person or whether adoption was in G's best interests. Mr Smith made no submissions on the application of Article 8 and suggested that Mrs B could apply to adopt in this jurisdiction by seeking a certificate of eligibility and applying to the family court in this jurisdiction.

37. Both Mr Whitehouse and Ms Holland invited me to make the order sought. They each submitted that Mrs B had retained her domicile of origin in Nigeria; had returned to Nigeria to live when her marriage broke down; and had only returned to Italy briefly in March 2016 for financial reasons.

38. Insofar as the formalities of the Nigerian adoption process were concerned, both relied on a letter from the probation officer dated 2 October 2024 confirming that Mrs B had submitted all the necessary documents to the Nigerian court. Mrs B had moreover continued to direct G's care whilst she was in Italy during the three month notice period. Moreover, the reports from the probation officer addressed Mrs B's suitability from a practical perspective but also confirmed that G was doing well in her care. As to the twelve month notice period, Ms Holland submitted that the court appeared to have applied a liberal interpretation of the law in the best interests of G.

39. Both Mr Whitehouse and Miss Holland submitted that there were no concerns about Mrs B's motivation and actions and thus no reason to refuse recognition on public policy grounds. No party disputed the real connection between Mrs B and G for the purpose of Article 8. Even if some of the matters in Re Valentine's Settlement were not made out on the facts of this case, a refusal to grant recognition would be a disproportionate interference in the family life of Mrs B and G.

My Analysis

40. For the reasons I set out below, I am satisfied that I should recognise G's adoption by Mrs B in Nigeria pursuant to s.66(1)(e) of ACA 2002. In coming to this decision, I have been mindful of the proper concerns about Nigerian adoptions set out in the Special Restrictions on Adoptions from Abroad (Nigeria) Order 2021. I have also approached Mrs B's oral evidence with some caution given her admitted lack of frankness about her UK conviction when approaching the Nigerian authorities for a police check.

41. The criteria for recognition at common law remain those in Re Valentine's Settlement, of which two are in dispute in this case. For the avoidance of doubt, I am quite satisfied that the two other criteria are made out and deal with these shortly. First, there is no dispute that adoption in the relevant Nigerian state had the same essential characteristics as an English adoption. Mr Badejo's report provided ample evidence in support of that conclusion. Second and leaving aside concerns about the lawfulness of the Nigerian adoption procedure, I am satisfied that there is no public policy reason for refusing recognition. The contents of the children's guardian's report make plain the strength of the ties between Mrs B and G and the absence of any concerns about immorality or mercenary conduct reinforce my view on this issue. I am satisfied that there is no evidence of conduct contrary to public policy in this case.

42. Turning to the first disputed criterion, namely that of domicile, this is not straightforward. Mrs B clearly had a domicile of origin in Nigeria but had acquired a domicile of choice in Italy from about 2006 onwards. This was demonstrated by her employment and residence there; her marriage to an Italian national in 2009; and her acquisition of Italian nationality in about 2013. Her ties to Italy remained sufficiently strong that it was the first place she turned to when she realised she needed to earn sufficiently to meet G's needs. However, a domicile of origin is tenacious in its nature and Mrs B had returned to Nigeria in 2014 after the breakdown of her marriage. She

sought consolation from her family and her church about her inability to bear a child and began to volunteer at the orphanage to which G was conveyed after being found abandoned. At that time, and certainly by the time she applied to adopt G in November 2015, I consider that she had resumed her domicile of origin in Nigeria. Her trip to Italy for about a month in March 2016 was motivated by her need to provide financially for G but proved unsuccessful as Mrs B returned to Nigeria in April 2016. In her oral evidence, Mrs B admitted that she wanted to work abroad so that she could give G a better life and thus moved to this jurisdiction in November 2016. That aspiration in 2016 did not mean that she had retained her domicile of choice in Italy since it was quite clear thereafter that, despite her link to that country, she did not return there and indeed took steps to bring her marriage formally to an end. Standing back and looking at the facts in the round, I am satisfied that Mrs B was domiciled in Nigeria at the time she adopted G in June 2016.

43. The second disputed criterion presents a much greater problem than Mrs B's domicile. There is absolutely no doubt that this court has not seen all the papers relating to the adoption of G. Despite her apparent endeavours, Mrs B failed to obtain these from her lawyers and such documents as are available do not resolve some of the uncertainties about the legal process. The relevant Nigerian adoption act provides that an application for adoption must be made in the form as may be prescribed. Some of these documents such as Mrs B's application form and medical certificate of fitness eventually found their way into the bundle of evidence but several key documents were missing. Shortly before the hearing, the Nigerian probation officer who had been supervising Mrs B's care of G provided a letter to the court confirming that Mrs B's application had provided the necessary documentation.

44. The matters which have troubled the court were the assessment of Mrs B's suitability to adopt; the assessment of G's best interests; the period of three months during which Mrs B cared for G prior to the adoption hearing; and the requirement for 12 months' notice to be given of an intention to adopt.

45. The investigation of Mrs B's suitability to adopt and an assessment of G's welfare is not well-evidenced. The reports from the probation officer concerned themselves almost entirely with the suitability of Mrs B's home rather than whether she was, in other respects, a suitable adopter for an abandoned baby. There was little information about G other than the circumstances in which she had been found and a passing reference to G doing well in Mrs B's care. The adoption order provides no clue as to whether the adoption court considered both matters and the only real evidence is that of Mrs B who remembered being asked questions in court about her motivation to adopt. What if anything can the court properly infer about the Nigerian adoption process in this regard? I have approached this issue cautiously but, given the presence of the probation officer in court and the opinion of Mr Badejo, it strikes me as very unlikely that the court would not have considered G's welfare and Mrs B's suitability to adopt. Accepting Mrs B's oral evidence, she was clearly asked for information which went to the issue of suitability which supports the inference I am prepared to draw about the adoption hearing. Further, had Mrs B not been considered suitable to adopt G, I very much doubt that the probation officer would have recommended that G be placed with Mrs B at the beginning of March 2016, a mere four months after Mrs B had asked to adopt her.

46. The SSHD drew my attention to the three months when Mrs B was caring for G prior to the adoption hearing and submitted that her trip to Italy for about four weeks from late March to late April 2016 suggested that this criterion was not made out. On this issue, I accept the evidence of Mr Badejo who told me that he had experience of such situations in other adoption cases where the court went on to make an adoption order. Though the relevant law stated that the child had to be *"in the care of the applicant"*, Mr Badejo commented that this did not mean that the child had to reside with the applicant at all times. Mrs B was clearly the person in charge of the child's care during the relevant period. I am satisfied that this requirement of the relevant adoption law was made out.

47. Finally, the relevant adoption law requires the applicant to inform the social welfare officer of their intention to adopt the child at least twelve months before the making of an adoption order. This is a mandatory requirement which was not met as G was adopted by Mrs B some eight months after she had notified the social welfare authorities of her intention to adopt G. It is difficult to know why this occurred given the lack of documentary information about these proceedings in Nigeria. Mr Badejo's evidence that the court must have decided to disapply this requirement because it was in G's welfare and best interests to do so struck me as a reasonable inference for this court to draw. Whilst mindful of the concerns about corruption in the Nigerian adoption system, I observe that, in these circumstances, the court order made plain that (a) lawyers and the magistrate were present; (b) Mrs B was present; and (c) the probation officer was present. Mrs B's oral evidence that she was asked about her suitability to adopt also suggests that the hearing was not a mere tick box exercise. Further, the adoption order stated that G was to be known by a name which included Mrs B's then married name. When she divorced, Mrs B instructed lawyers and returned to court in 2017 to obtain an order changing G's name to remove any reference to her former husband. That order was available to me in the bundle. Her application in that regard struck me as the action of a person who wanted to do the right thing legally as far as G was concerned. Thus, drawing those strands together, I have concluded on fine balance that I can rely on Mr Badejo's evidence and find that the court disapplied the notice requirement in G's best interests.

48. Thus, I find that G was lawfully adopted in accordance with the requirements of the relevant Nigerian law. Even if I am wrong about this last matter such that the criteria in Re Valentine's Settlement have not been made out, I am satisfied that there exists de facto family life between Mrs B and G for the purposes of Article 8 of the ECHR. I accept the evidence of the children's guardian in that regard together with the evidence in the bundle demonstrating Mrs B's practical, financial and emotional commitment to G since she met her in November 2015. No party sought to persuade me otherwise. Thus, I find that the strict application of the common law rules in Re Valentine's Settlement and the concomitant refusal to recognise G's Nigerian adoption would constitute an interference in G's and Mrs B's Article 8 rights which could not be said to be necessary or proportionate in a democratic society. Where family life exists between Mrs B and G, I am clear that the court cannot refuse to recognise or engage with the actual situation on the ground. Here, G is ultimately dependent on Mrs B; has been adopted by her in Nigeria; and recognises her as *"mommy"* despite their geographical separation. In that context, a decision to refuse to recognise G's adoption would not take into account the actual reality, namely that G cannot be integrated into her adoptive family by means of the creation of a

permanent legal relationship in this jurisdiction. G would be Mrs B's daughter in Nigeria but not recognised as such in the UK where her mother lives; has indefinite leave to remain and intends to stay.

49. Thus, I recognise G's adoption by Mrs B at common law. I note that the restrictions set out in the 2021 Order do not constitute a blanket prohibition since a request can be made to treat a case as an exception to a special restriction imposed pursuant to the Adoption and Children Act 2006 and, in deciding whether a case is exceptional, the Minister will consider all the information provided which is relevant to the individual facts and circumstances of the case.

50. Finally, and for the avoidance of doubt, I accept the submission of Ms Holland that Mrs B does not have a readily available alternative remedy. Section 83 of ACA 2002 does not apply as G has no permission to enter the UK. Mr Smith suggested that Mrs B could pursue a domestic adoption by seeking a certificate of eligibility and applying to the family court in this jurisdiction. This route was not, however, readily available without considerable delay.

Conclusion

51. Thus, I grant the application for recognition of the Nigerian adoption at common law. The immigration consequences of my decision are a matter entirely for the SSHD.

52. That is my decision.