Neutral Citation Number: [2024] EWHC 2888 (Fam)

Case No: FD24P00234

**IN THE HIGH COURT OF JUSTICE**
**FAMILY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 November 2024

**Before**:

**MR DAVID LOCK KC**
**SITTING AS A DEPUTY HIGH COURT JUDGE**

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**In re A (a Child) (Recognition of Nigerian Adoption: common law test)**

**IN THE MATTER OF AN APPLICATION BROUGHT BY THE ADOPTIVE MOTHER** — **Applicant**

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**Dr. Onyoja Momoh** (instructed by **Oliver Fisher Solicitors**) for the **Applicant**

Hearing date: 8 November 2024

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# Approved Judgment

**This judgment was delivered in private. 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 child 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.**

**Mr David Lock KC:**

1. In this matter the applicant, Mrs O, applies for an order that the adoption of her daughter, who is known in the family as A should be recognised at common law. The applicant is presently living between the UK and Nigeria. Her husband, Mr H is living in Lagos where he provides care to A. The purpose of the application is to enable the applicant to be able to make an application to the Secretary of State for the Home Department ("**SSHD**") for A to come to live with her in the UK on the basis that A is a member of the applicant's family. There is no respondent and the SSHD was invited but declined to become an Interested Party.

2. The applicant is represented by Dr Onyoja Momoh. I am very grateful to her for her assistance.

**The facts.**

3. The background which has led to this application is set out in the applicant's witness statements. Mrs O was born in Nigeria in 1972 but moved to live in the UK with her family in about 1978. In later years, she spent time in other countries for work, including in the USA, but returned to settle in Nigeria in about 2013, when she married Mr H. The evidence suggests the applicant has retained substantial connections with Nigeria throughout her life even if she has spent periods of time away from her home country. She says:

*"I was born in Lagos, Nigeria, began my primary education in Nigeria and spent the entirety of my early childhood in Nigeria. My parents, grandparents, aunts, uncles and cousins, were also born in Nigeria and I have therefore always been surrounded by Nigerian culture and heritage. I have always considered myself Nigerian and regard this as an important aspect of my identity*"

4. A was born on 19 March 2015 and is now aged 9. Her father was the applicant's brother, X. Mrs O's evidence, which I accept, explained that X suffers with long-term severe health challenges, including bipolar disorder and an addiction to non-prescription drugs. A's mother was X's then partner, Y. Sadly, Y also struggled with substance misuse and had what Mrs O described as a "chaotic lifestyle". As a result, Y was unable to provide any proper or consistent level of care for A, and Mrs O reports that A was exposed to emotional and physical harm. She explains how Y had no fixed abode after her family had disowned her as a result of her drug taking, and that she engaged in illegal activities to fund her substance misuse. Mrs O explained how Y would regularly abandon A with various friends or acquaintances whilst she disappeared for days or weeks at a time. Due to this chaotic lifestyle, A was never enrolled at a nursery or pre-school.

5. Mrs O explained in her evidence that X had, in effect, abandoned A at birth in that he never provided care for A. She also explained how A came to be permanently living away from her Mother as follows:

*"In February 2018, Y contacted my family and informed them that A was dead, and she required money to fund the burial. After failing to provide a location for A's body/remains, my family submitted a police report, and it was at this point that Y admitted she had been lying and disclosed where she had abandoned A. Y then relinquished her care of A stating that she did not have the resources to care for her any longer and my older brother, rescued A and brought her to the family home. A has been in the care of the paternal family since this date.*

*As I was working in the UK at the time, and my brother, A's biological father, was unable to care for her due to his health difficulties, A was initially cared for by my father and my younger sister E, however, I retained responsibility for all of A's outgoings including her health and educational needs.*

*Following the death of my father in 2019, E relocated to the UK, and A began residing with my husband. I returned to Nigeria, soon afterwards and on 25 September 2019, after my brother relinquished parental rights to me with a notarised undertaking, I became A's legal guardian ….*

*A has just completed year 3 in primary school. Despite her difficult start in life, she is perfectly healthy, smart and kind. She enjoys playing games on her tablet, playing football, dancing and singing. A also attends Stage school on the weekends and has recently had the opportunity to attend a performing arts workshop abroad where she performed on stage. It fills me with such pride and joy to see her enjoying life and living it to the fullest. She is growing into a remarkable young lady, and I couldn't be prouder of everything she has achieved. A has made our family complete, and we love spending time together. As a family, we enjoy movie nights, swimming, playing cards and trying new cuisines from all around the world*

*Due to the exceptional amount of upheaval, A has experienced in her short life, it was never our intention to relocate to the UK, however, in August 2021, we were the victims of loan fraud, after we made an investment in a 'sham' company. This completely depleted our family finances, and whilst we were able to support ourselves through our savings for a few years, in 2023, it became evident that I would need to return to work.*

*I was unable to obtain sufficient employment in Nigeria, and consequently, in March 2023, I resumed my employment in finance. This is a UK based role, and consequently, I have been commuting between London and Nigeria for*

*over 17 months. I return to Nigeria every 3-4 weeks for approximately 7 days so that I can spend time with A and my husband, however, this arrangement is becoming untenable.*

*A is my main priority in life, and it was always my intention to be fully present during her upbringing. I miss spending time with her every day, be it, preparing for school, playing games, eating meals or just being in each other's company and it is for this reason that I seek an Order under the inherent jurisdiction of the High Court for recognition of A's adoption, so that we can live together as a family in the UK. My husband and I are both British citizens and therefore the only restriction on us relocating to the UK is A's lack of status"*

6. Mrs O explained the process she had followed to adopt A in Nigeria. She said:

*"We elected to proceed with the 'relative adoption' pathway so that we could provide A with protections, rights and permanent stability as expeditiously as possible. It is, and always has been, our intention to care for A jointly as a family unit.*

*In early 2020, we instructed a Nigerian lawyer with the relevant expertise on Nigerian adoptions so that we could begin the process of adopting A, and he led us through the process from start to finish.*

*On 5 August 2020 we visited the Ministry of Women's Affairs to inform them of our decision to adopt A. On this date, they conducted interviews with us both and provided us with the appropriate form to complete.*

*We were then asked to submit the following documentation:*

*i. Application for adoption*
*ii. Consent letter from husband*

*iii. Adoption references*

*iv. Attestation of birth*

*We submitted all of the required documents, and the Ministry of Women's Affairs commenced their own investigation, which included an interview with the Chief Magistrate of the Family Court in Chambers, an investigation into the whereabouts of the biological mother and a Child Study Report.*

*Once they had concluded the interviews, their investigation and due diligence and analysis of our documentation, our application to adopt A was approved. Our application was then filed with the Magistrates Court of Ogun State with a view of obtaining a court order for the adoption of A.*

*A hearing was then listed in open court, where the order for adoption was given. The final stage of the proceedings involved processing and documenting the order."*

7. Mrs O has provided a copy of the certificate signed by X confirming his consent to Mrs O becoming A's Guardian and the consent form he signed to support the adoption. There was no consent from A's biological mother because, by the time the adoption process was commenced, she could not be located.

8. The adoption was approved by an order made by the Chief Magistrate of the Abeokuta Magisterial District in Ogun State, which lies in South-Western Nigeria. In my judgment, the evidence very clearly shows that:

   a. An application was made by Mrs O to the appropriate court in Ogun State for an order providing for her to adopt A; and

   b. The outcome of the application was that an order was made by the Magistrate providing that A's previous parents, should cease to be her legal

parents and that Mrs O had become A's mother for the purposes of the law of the state of Ogun.

9. Thus, for the purposes of the law in Nigeria, the evidence clearly establishes that Mrs O is A's mother under Nigerian law. The question for me is whether that means that Mrs O should be recognised at A's mother for the purposes of the common law of England and Wales, which is the law which I have to apply.

**The UK statutory position.**

10. Nigeria is not a signatory to the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. It follows that provisions relating to children adopted in a country which has ratified this convention are not applicable in this case.

11. Section 66 of the Adoption and Children Act 2002 ("**the 2002 Act**") provides that, in that chapter, the term "adoption" includes at section 1(e) "*an overseas adoption*" and at section 1(f) "*an adoption recognised by the law of England and Wales and effected under the law of any other country*". An "overseas adoption" is defined in section 87 of the 2002 Act as meaning "*an adoption of a description specified in an order made by the Secretary of State, being a description of adoptions effected under the law of any country or territory outside the British Island*". It is common ground that the Secretary of State has not made such an order with respect to adoptions in Nigeria because that country is not included in the Schedule to the Adoption (Recognition of Overseas Adoptions) Order 2013. It follows that A's can only be recognised for the purposes of UK law if it is recognised under section 1(f).

12. Section 9 of the Adoption and Children Act 2006 provides:

> *"(1) This section applies if the Secretary of State has reason to believe that, because of practices taking place in a country or territory outside the British Islands (the "other country") in connection with the adoption of children, it*

*would be contrary to public policy to further the bringing of children into the United Kingdom in the cases mentioned in subsection (2).*

*(2) The cases are that a British resident—*

*(a) wishes to bring, or cause another to bring, a child who is not a British resident into the United Kingdom for the purpose of adoption by the British resident, and, in connection with the proposed adoption, there have been, or would have to be, proceedings in the other country or dealings with authorities or agencies there, or*

*(b) wishes to bring, or cause another to bring, into the United Kingdom a child adopted by the British resident under an adoption effected, within the period of twelve months ending with the date of the bringing in, under the law of the other country.*

*(3 ) It is immaterial whether the other country is a Convention country or not"*

13. The SSHD has made such an order with respect to Nigeria, namely the Special Restrictions on Adoptions from Abroad (Nigeria) Order 2021. The reasons for the order are stated to be:

- *difficulties confirming the background and adoptability of children;*
- *unreliable documentation;*
- *concerns about corruption in the Nigerian adoption system;*
- *evidence of organised child trafficking within Nigeria; and concerns about weaknesses in checks completed by Nigerian authorities in relation to adoption applications from prospective adopters who are habitually resident in the United Kingdom and therefore are likely to in fact be intended to be intercountry adoptions. This includes weaknesses in pre and post adoption monitoring procedures. There is an absence of checks as to*

*whether the adoption is intended to be an intercountry adoption in light of the habitual residence of applicants and accordingly whether prospective adopters have been assessed and approved by a UK adoption agency and issued with relevant UK authority documentation (e.g. certificate of eligibility to adopt) to proceed with an intercountry adoption from Nigeria*.

14. This application is not directly impacted by this provision because Mrs O is not seeking to involve the adoption agencies in the UK in relation to A's adoption and she has waited for more than 12 months after the date when the adoption order was made in Nigeria before applying for this Declaration. However, I note that the UK government has concerns about the robustness of the processes followed by the Courts which make adoption orders in Nigeria. That, of course, does not suggest that every adoption order made in Nigeria has been obtained improperly. I accept that the Nigerian courts are, in many cases, making entirely proper adoption orders after conducting proper inquiries. However, the existence of the 2021 Order perhaps suggests that I should pay special attention to the processes that have been followed by the Nigerian Court before concluding that they have been followed.

**The legal framework applying to the recognition of foreign adoptions.**

15. Whilst the present law relating to the recognition of foreign adoptions is now largely driven by immigration concerns, older cases concerning the recognition of foreign adoptions appear to have been mainly concerned with the rights of children under wills and trusts. The common law rules were developed in these wills and trusts cases, as summarised by the decision of the Court of Appeal *In re Valentines Settlement* [1965] Ch 831. That decision was summarised in the masterly judgment of the former President, Lord Justice Munby, in *In re N (A Child)* [2018] Fam 117. Lord Justice Munby noted the applicable principles as follows:

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

(2) The child must have been legally adopted in accordance with the requirements of the foreign law.
(3) The foreign adoption must in substance have the same essential characteristics as an English adoption;
(4) There must be no reason in public policy for refusing recognition.

16. These are the tests that I will apply.

**Common law test 1: Domicile.**

17. Domicile is a common law concept. I accept that Mrs O had a domicile of origin in Nigeria because that is where she was born and that was the domicile of her parents. It would have been possible for Mrs O to have changed her domicile if she had moved to another country with the intention of residing in the new country permanently or at least for an indefinite future: see *Bell v Kennedy* [1868] LR 1 Sc & Div 307. The evidence does not suggest that her stays out of Nigeria have ever been accompanied by that form of permanent intention. By 2021, when A was adopted, Mrs O had been living in Nigeria for a number of years. She and her husband were working there and it appears that, at that stage, they had no intention of living in any other country. I thus accept that Mrs O was domiciled in Nigeria at the time of the adoption order. The first common law criteria is therefore satisfied.

18. I will leave the second common law criteria until last because it is the most contentious.

**Common law test 3: The foreign adoption must in substance have the same essential characteristics as an English adoption**.

19. Mrs O has obtained two expert opinions from Abimbola Badejo Barrister in England and Wales, Barrister and Solicitor of the Supreme Court of Nigeria. His first statement dated 17 September 2024 states:

*"The legal effect of an adoption order under the Adoption Law of Ogun State is similar to what obtains under English law"*

20. I accept that evidence. It is consistent with the conclusion reached by Mrs Justice Theis in *X (Recognition of Foreign Adoption)* [2021] EWHC 355 (Fam), albeit that case was about the adoption laws in a different state in Nigeria. This test is thus satisfied.

**Common law test 4: There must be no reason in public policy for refusing recognition.**

21. I accept that there may be cases where there are grounds to be concerned that a child may be being brought to the UK for the purposes of manual labour, other forms of servitude or for immoral purposes. This is a point that would normally be raised by the SSHD. As I mentioned above, the Secretary of State was given the opportunity to intervene in this case but declined to do so. There is nothing in the papers which suggests that there are any public policy reasons for refusing recognition in this case. I thus consider that this test is met.

**Common law test 2: The child must have been legally adopted in accordance with the requirements of the foreign law.**

22. The most contentious issue here is the second common law test, namely that the applicant is required to prove that the child must have been legally adopted in accordance with the requirements of the relevant foreign law. Before turning to the evidence in this case, it may be helpful to look at the background and reasoning that led to this element of the test so that the proper ambit of the test can be understood.

23. In *In re Valentines Settlement* Lord Denning at p 841 explained the common law position, quoting from In *re Goodman's Trusts*, as follows:

*"The family relation is at the foundation of all society, and it would appear almost an axiom that the family relation, once duly constituted by the law of*

*any civilised country, should be respected and acknowledged by every other member of the great community of nations. That was a legitimation case, but the like principle applies to adoption.*

*But when is the status of adoption duly constituted? Clearly it is so when it is constituted in another country in similar circumstances as we claim for ourselves. Our courts should recognise a jurisdiction which mutatis mutandis they claim for themselves: see Travers v. Holley [1953] P. 246, 257; [1953] 3 W.L.R. 507. We claim jurisdiction to make an adoption order when the adopting parents are domiciled in this country and the child is resident here. So also, out of the comity of country when the adopting parents are domiciled there, and the child is resident there.*

*Apart from international comity, we reach the same result on principle. When a court of any country makes an adoption order for an infant child, it does two things: (1) it destroys the legal relationship theretofore existing between the child and its natural parents, be it legitimate or illegitimate; (2) it creates the legal relationship of parent and child between the child and its adopting parents, making it their legitimate child. It creates a new status in both, namely, the status of parent and child"*

24. Thus, this part of the rule appeared to be framed by asking the question whether, in accordance with the law of the country where the adoption took place, the adoption was "*duly constituted*" by the law of that country in the sense that an adoption order was made by a court in that country that was entitled to make the order and, as a consequence, the order was legally effective in that country. Lord Denning suggests that the order should be recognised under the comity principle provided the legal effect of the order was to extinguish the rights of the natural parents and to create parental rights for the adopted parents. Lord Denning then went on in that case to hold that the courts of this country will only recognise an adoption in another country if the adopting parents are domiciled there and the

child is ordinarily resident there. As I have indicated above, that is not an issue in this case.

25. It seems to me of some importance that those judgments use the word "*status*" in relation to the efficacy of the adoption order. This is shown by the dissenting judgment of Salmon LJ (as he then was) which said:

> *"This is because our courts, observing the comity of nations, generally recognise the status which the laws of a foreign country confer upon any children ordinarily resident there by reason of an adoption order made by the courts of that country in favour of adoptive parents domiciled there at the date of the adoption. The exact status and its incidents conferred by adoption differ according to the country in which and the date upon which it was made"*

26. The child's "status" in this sense is, in my judgment, changed by a legally effective adoption order being made by the court in the country where the order was made. As long as that order is legally effective in the country in which the order was made, the child has new legal parents for the purposes of the law of that country and has thus changed his or her status to being an adopted child with new legal parents. That, it seems to me, is what this part of the test is properly focused upon.

27. The next relevant case *T, M v O.C.C, C* [2010] EWHC 964 (Fam). In that decision Hedley J referred the tests in *Re Valentines Settlement* and also back to a previous decision of Ryder J in *D v D (Foreign Adoption)* [2008] 1 FLR 1475 saying

> *"The key questions seem to be: first, was the adoption order obtained wholly lawfully in the foreign jurisdiction ..."*

28. The evidence in the *D v D* case confirmed that the adoption order in that case had been obtained by a process which fully followed the Hindu law of adoption in

India, and led to a valid court order under Indian law. However, the words of the test as to whether the order had been obtained "*wholly lawfully*" were not used by Ryder J (as he then was) in that case. Hedley J explained what he meant by "wholly lawfully" as follows when referring to the expert evidence at paragraph 14:

> *"First, she satisfies me that this adoption was obtained fully in compliance with the laws and procedure of Nicaragua; the order was and remains valid in that jurisdiction"*

29. That form of words is not wholly clear. The words could suggest that the focus of the High Court should be on whether the legal process in the country where the adoption order was made was legally effective in that jurisdiction. Alternatively, the words Hedley J used could be interpreted to mean that the High Court in England should carefully examine each stage of the foreign court process with the aim of the High Court satisfying itself that each stage was completed in accordance with the law of the state where the adoption order was made. The test as to whether the order had been obtained "wholly lawfully" in the country in which the order was made were repeated by Hedley J in *Re (A Child) (Recognition of Indian Adoption)* [2012] 1 FLR 1487, but the meaning of those words was not further explained.

30. As I noted above, the leading recent case on foreign adoptions is probably *Re N (Child) (Secretary of State for the Home Department intervening)* [2016] EWHC 3085 (Fam), a decision of Lord Justice Munby at first instance. After analysing these cases Munby J said at paragraph 92:

> *"It will be noted that Hedley J did not extend the list of relevant criteria beyond those which had appeared in Re Valentine's Settlement, and that his comparison between the two systems was, consistently with Re Valentine's Settlement, confined to concept and not process, substance rather than safeguards"*

31. The expert evidence prepared for this case appears to me to have assumed that this court was required to examine the process followed by the Nigerian Court in order to ask itself whether the High Court is satisfied that the Nigerian Court was entitled to make the order that it made, based on the evidence that was before the foreign court at that hearing. Thus, in effect, the expert invited the High Court to look carefully at the process followed by the foreign court as opposed to just focusing on whether the outcome of that process created an effective order within that overseas jurisdiction. It seems to me that this approach has four drawbacks. First, the High Court will not necessarily know what evidence was led before the foreign court. Secondly, unless a detailed judgment is given, it may be unclear what evidence was accepted and what evidence was rejected by the foreign court or the reasons that the court came to its decisions. Thirdly, it may be unclear whether, and to what extent, the foreign court legitimately decided to waive any procedural requirement under the law of that country (assuming it was able to do so). Finally, if the focus is on comity of respect, it appears disrespectful for a UK court to pick over the details of the process followed by a foreign court in coming to its decision and, in effect, express a view as to whether the foreign court was entitled to reach the decision that it did. Finally, even if the High Court were to have reservations about whether the foreign order ought to have been made, if the High Court reaches the decision that the order was made and was legally effective in the foreign jurisdiction, any reservations could only suggest the order would be potentially voidable if it were to be challenged. Any reservations may not justify a decision that the order should be treated as being void *ab initio* because, at least under the law of this Court, orders made by courts take effect until set aside, even if there are procedural questions as to whether the order ought to have been made: see for example *R (on the application of Majera (formerly SM (Rwanda)) v Secretary of State for the Home Department* [2021] UKSC 46. As a matter of principle, I would therefore have been surprised if the approach taken by the expert was the proper approach.

32. Having read the relevant cases, I doubt that, in a normal case, I am entitled to look beyond the order apart from asking whether it was effective to change the child's

status to being an adopted child and whether the applicant thereby became the child's parent under the law of Nigeria. In my judgment, if the answer to those questions is "Yes", that is highly likely to be sufficient to meet this part of the test propounded by Lord Denning in *In re Valentines Settlement*. This is, I think, the point that Lord Justice Munby was seeking to make at paragraph 92 of *Re N* by referring to outcome and not process, and was implicitly referred to by Theis J at paragraph 84(8) of *In re X (Recognition of Foreign Adoption)* [2021] EWHC 355 (Fam) where at paragraph 84(8) of Mrs Justice Theis' judgment she said:

> *"Even if the above analysis is incorrect, I am satisfied that the adoption order is subsisting, as is accepted by Mr Nsugbe and Mr Badejo, and is unlikely to be set aside"*

33. In this case the expert, Mr Badejo, explained that adoption law in Nigeria is a matter for individual states and not a matter for the federal government. The federal government has passed a Child Rights Act 2003 and that some Nigerian states have adopted that statute to govern their own procedures. This adoption order was made in Ogun State which has its own "Adoption Law of Ogun State 2006", and thus adoptions in Ogun state are governed by that law and not by the Child Rights Act 2003.

34. Mr Badejo's evidence was that only persons who were "*resident in Ogun State"* could lawfully adopt children in that state. He raised a concern that the information that he had suggested that Mrs O was resident in Lagos at all times and thus he questioned how an order could have been properly made to allow her to adopt A by a court in Ogun State given that, as he understood matters, she was not living in Ogun State. That objection does not appear to take account of the fact that the order granting the adoption gives an address for Mrs O within Ogun state.

35. Mrs O responded to this concern by explaining that her husband was working at this time in Ogun State and that the couple maintained a house in that state where

they spent time, and thus she was accepted by the court to be "resident" in both Lagos and Ogun State. Mr Badejo invited the High Court to be sceptical of that evidence. He said:

> *"Paragraph 19 of the applicant's first statement indicates that she returned to Nigeria in 2019. In the guardianship document of 25th September 2019 her address is recorded as the address in Lagos State. It is necessary for the applicant to confirm when she moved to the address in Abeokuta as well as supply evidence that she actually resided at that address. She should provide evidence such as bank statements or any utility bills"*

36. Mr Badejo was not called to give evidence at the final hearing and this additional level of evidence was not provided by Mrs O. I accept that Mr Badejo was doing his best in accordance with what he understood his duty to be. I carefully considered whether I ought to adjourn this case so that Mr Badejo could give oral evidence on the issues but considered it was not necessary because, for the reasons explained above, this part of the common law test ought to focus on whether the order made by the court in Ogun state was effective in Nigerian law, not on the process followed by the Ogun state court or whether, on the evidence before this Court, I could reach a view as to whether the Ogun state court had sufficient evidence before it to make the adoption order.

37. This case illustrates the problem with an approach which focuses on the procedure followed by the Nigerian court. This court does not know precisely what evidence was before the Nigerian Court and, unless there is a full written judgment setting out the reasons of the Nigerian Court, cannot know what intellectual process was followed by that court in making its adoption decision. If there is any suggestion that the adoption order was obtained for an improper purpose or was fraudulently obtained, this court will not recognise the adoption order. However, it will do so by applying the fourth test not the second test. That fourth tests provides a residual power for the court here to prevent the adoption being recognised in the UK notwithstanding that the adoption order in Nigeria was

legally effective: see *Re N* at paragraph 129. That suggests the second test is primarily about outcome and not process.

38. I therefore consider that there must be very limited grounds which could justify this court conducting a detailed examination of the evidential issues that were before the Nigerian court in order to ask itself whether, in the opinion of the High Court in London, the court in Nigeria ought to have made the order it decided to make. I do not consider that this is what is meant by the expression Hedley J used when he said that he had to be satisfied that the order had been obtained "wholly lawfully" in Nigeria.

39. However, in case I am wrong on this point, I accept that the Ogun state court was entitled to find that Mrs O was resident in Ogun state. In coming to that conclusion I was assisted in addressing this issue by reading the judgment of Theis J in *Re X* That case also concerned a dispute about whether a person could have more than one residence under Nigerian law. Mrs Justice Theis had to rule in a dispute as to whether a residence test was met for someone who had more than one home. She considered the evidence and said at paragraph 84(6):

> *"It was, in my judgment, open to the Nigerian court to conclude that the requirement in section 134 (1) (b) was met as it provided some of permanence, some degree of continuity or expectation of continuity. These are long standing connections. The role of this court in determining whether this requirement is met is to consider whether such a conclusion was open to the Nigerian court, which in my judgment it was. It is not for this court to say whether the Nigerian court should or should not have come to that conclusion"*

40. That approach is consistent with UK law because it is well established in UK law that a person can have more than one place of "residence": see for example *Fox v Stirk* [1970] 2 QB 463. In that case Lord Denning said "... *a man can have two*

*residences. He can have a flat in London and a house in the country. He is resident in both*".

41. In this case the evidence confirmed that Mrs O and her husband had an address in Ogun State where they spent some time because that was where Mr H worked. Accordingly, applying the test adopted by Mrs Justice Theis in *X (Recognition of Foreign Adoption),* it was plainly open to the court in Ogun State to accept that she had a sufficient degree of connection to the state to be resident there. It is several years since the case was heard by the Magistrate and there is no detailed note of the evidence that was before the magistrate. It may be that no one took this point because it was simply not seen by the court as an issue that needed to be explored. Given she had an address in the state, the extent of her residence there was a matter for the court in Ogun state, not for this court. I cannot conclude that the court granting the adoption order erred in law because they ought to have further inquired into Mrs O's residence qualification.

42. The second issue that troubled Mr Badejo was whether it was open to the court in Ogun state to properly conclude that A had been "abandoned". His overall conclusion was:

> *"On the evidence if the account in the applicant's statement is accepted, the mother of the child clearly abandoned the child. The same cannot be said of the father who simply was not able to care for the child due to his health challenges"*

43. Thus, Mr Badejo invited the court to conclude that the order had not been obtained "wholly lawfully" in Nigeria because there was no abandonment and thus no declaration should be granted by this court.

44. I cannot accept that this a correct interpretation of the evidence. I also cannot accept that it was not open to the Court in Nigeria to be satisfied that A had been abandoned. It appears clear that, from her birth, X never took an active part in

parenting A because of his drug and mental health problems. Thus, A was left in Y's sole "care" from birth because she was abandoned by her father. Parents have parental responsibilities to their children and "abandonment" in this context must mean the act of giving up those parental responsibilities and leaving the parenting to others, including the other parent. Applying this approach, the only inference from the evidence is that X abandoned his child from birth. The fact that he was prepared to confirm his failure to provide parenting to A by signing a guardianship in favour of other members of his family and then agreeing to an adoption cannot change the fact that he never provided any parenting to her because he was leaving it to others to carry out his parental responsibilities. In my judgment it is plain that it was open to the court in Ogun state to conclude that A had been abandoned by both parents and made its ruling on the basis of that conclusion. In any event, I am unable to carry out any meaningful analysis as to how or why the court in Ogun state came to that conclusion but the order was, as the Child Study Report makes clear, made on the basis of abandonment and that is a proper ground under the relevant law.

45. I thus do not accept that there is anything in the objections raised by My Badejo. They do not prevent the order made by the magistrate being legally effective to change the child's status and thus the second condition is fully satisfied.

46. I should also make it clear that, if I were wrong about any of the above matters, I would have decided that (a) A was already part of Mrs O's family having lived in her family unit since 2017, (b) to the extent that the strict application of the common law tests resulted in an inability of this court to recognise Mrs O as being A's mother for all purposes, that constituted an interference with Mrs O's rights under article 8 ECHR, and (c) on the facts of this case any strict application of the common law tests would have been an unjustified interference with Mrs O's article 8 rights and thus I would have been obliged to make the Declaration Mrs O seeks in order to give effect to those rights.

47. I am therefore prepared to make the Declaration that Mrs O seeks. That will not, of itself, lead to A being able to come to live in the UK but will mean that she should be recognised as part of Mrs O's family for all purposes.