Neutral Citation Number: [2025] EWHC 204 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

No. FD24P00488

Royal Courts of Justice
Strand
London, WC2A 2LL

3 February 2025

Before:

Mr Justice Harrison

(**In Private)**

Re C (A Child) (Recognition of Nigerian Adoption)

Mr Richard Thompson (instructed by K&S@Law solicitors) appeared on behalf of the applicants

Mr Thomas Jones (instructed by the Treasury Solicitor) appeared on behalf of the Secretary of State for the Home Department

Hearing date: 24 January 2025

Mr Justice Harrison:

Introduction

1. I am concerned with a little girl to whom I will refer as C. She was born in Nigeria in 2017 and is now aged 7. The applicants, to whom I shall refer individually as 'the mother' and 'the father', adopted C in Nigeria in 2018. They now ask the English court to recognise that adoption.

2. The applicants have been represented by Mr Richard Thompson. On 29 October 2024 an order was made for the proceedings to be served on the Secretary of State for the Home Department ('SSHD') to enable her to consider whether to participate. She took up that invitation and has been represented before me by Mr Thomas Jones. I am grateful to all parties, but especially to Mr Jones for providing the court with a comprehensive and helpful skeleton argument, in which he has presented the law in neutral terms, together with an accompanying bundle of authorities.

3. I heard oral evidence on 24 January 2024 from the mother and from the father, each of whom was cross-examined by Mr Jones. Having listened carefully to the evidence I came to the conclusion that both applicants were patently honest witnesses, doing their best to assist the court. I accept their evidence.

4. At the conclusion of the evidence I received brief closing submissions from Mr Jones and Mr Thompson. Mr Jones made it clear that the SSHD adopts a neutral stance in relation to the application. After hearing submissions I reserved judgment.

5. C has not been made a party to the proceedings. It would in my view have been preferable for her to be a party so that her standpoint could be considered independently. I have considered whether I should now take steps to enable this to happen, but have decided not adopt such a course. The process of joining C and appointing a Cafcass guardian would result in significant delay. C's childhood to date has already been blighted by delay in the legal system. There are ongoing proceedings before the Upper Tribunal which have been adjourned to await this court's decision on recognition. Those proceedings are listed for hearing on 3 February 2025 and would have to be further adjourned if I was unable to conclude this application before then.

Ultimately, I consider that an adjournment would be contrary to the overriding objective. I have considerable information before me about C's circumstances. As I will explain below, I have decided that her Nigerian adoption should be recognised. Based upon the evidence of the mother and the father (which I accept) I am entirely satisfied that the outcome I propose accords with her wishes, her primary wish in this context being to be able to join her mother and father in England and live a normal family life with them.

Background

6. The mother was born in Nigeria and is now aged 56. She holds dual Nigerian and British nationality (the latter was acquired in 2019). She was previously married and divorced and has no children from that marriage. She is a qualified nurse. She first entered the United Kingdom in 2005 as a student nurse. Following an appeal she was granted a work permit in 2009. At the time of grant she had, however, left the United Kingdom. In March 2009 she obtained entry clearance to re-enter the United Kingdom as the holder of a work permit until 2014. In March 2014 she was granted indefinite leave to remain and thereafter (as recorded above) she obtained British citizenship. I understand that she is not currently working. I have seen a letter from her general practitioner which sets out that she has a number of health conditions.

7. The father was also born in Nigeria and originates from Imo State. He is aged 52. He has Nigerian nationality. In July 2016 he applied for entry clearance as a spouse of the mother, which was granted in October 2016. In 2019 he was granted an extension of his stay. In November 2024 he was granted indefinite leave to remain in the United Kingdom. He said in evidence (and I accept) that he intends to apply for British citizenship. He is a support worker, assisting the elderly in independent living.

8. The father had a previous relationship, from which he has two children, D and L. Sadly, these children's mother died soon after the birth of the younger child, L. D is a university student. L has completed school and intends also to go to university. Both of these children presently live in Nigeria.

9. The applicants first met in 2013. At the time the mother was living in England and the father in Nigeria. They married in Nigeria at the end of 2014, later renewing their

vows at an Anglican church in England. During the early part of the marriage the mother and the father were living in separate jurisdictions: she in England and he in Nigeria. As I have already recorded, the father applied for and was eventually granted entry clearance to join his wife in the United Kingdom.

10. The applicants' marriage led to them having discussions about adopting a child. The mother's evidence, which I accept, was that she was keen for the two of them to have a child together to cement their union. She was unable give birth to a child and so adoption was the chosen route.

11. The applicants started exploring the potential to adopt a child in Nigeria in 2016. At that time the father remained living in that jurisdiction. From the documents I have seen, it appears that they made an application to the relevant authority in Imo State, Nigeria (the Ministry of Women and Vulnerable Group Affairs ('the Ministry')) and also directly to an orphanage called Love Care Child Centre ('LCCC'); the latter application is recorded by LCCC as having been made on 25 February 2016.

12. After submitting the adoption application, the father received the spousal visa for which he had applied and was able to join the mother in England. He did so on 28 October 2016. Since that time, the applicants have lived together in Bournemouth.

13. C was born in May 2017 to her 19 year old birth mother ('BM') in Imo State. Soon after her birth, BM came to a decision that she was unable to care for her and delivered her to the care of LCCC. The information I have about BM is limited. She is reported by LCCC to have been a 'student' who was unable to care for the child as a result of being 'unemployed'. C's birth father ('BF') abandoned BM following C's conception. Attempts by LCCC to contact him following the birth proved abortive.

14. A letter dated 26 April 2021 from Mr Onyinye of the Ministry records that BM gave her 'consent' 11 days after C's birth (I have not seen the letter of consent but it is referred to as being attached to a letter dated 15 May 2017 from LCCC to the Ministry; I assume that it is a form of consent to C being placed in the care of the orphanage as opposed to a consent to adoption in view of the content of the Home Study and Investigation report to which I refer below). A second letter from Mr

Onyinye records that C was willingly handed over to LCCC. The orphanage reported the matter to the Ministry and thereafter came to a decision that it was in C's best interests to be 'given up for adoption'.

15. On 7 November 2017 LCCC wrote to the Ministry seeking authority to place C with the applicants, allowing them to 'legally foster' C. Approval was given by the Ministry on 14 November 2017. I have seen a certificate from LCCC recording that C started living with the applicants on 16 November 2017. That same day an order was made by the Chief Magistrate at the Family Court of Imo State of Nigeria authorising this placement with them. The order also directed the 'Child Development Officer' to conduct periodic checks at the applicants' home in Imo State and assess their suitability for an adoption order. The proceedings were listed for a return date in February 2018. Despite what is recorded in this order, it is the mother's evidence that the parties were each living and working in England at the time and therefore not in a position to remain living continuously with C in Nigeria for a period of three months, which is a standard requirement (unless it is waived) before an adoption order can be made in Nigeria.

16. On 19 November 2017 C was Christened in an Anglican church in the father's hometown in Nigeria.

17. By virtue of an order made by the same Chief Magistrate in February 2018 C was formally adopted by the applicants. The respondents to the proceedings by which she was adopted were LCCC and the Child Development Officer. The order records that the applicants were represented by counsel. Consistent with the mother's evidence, the order also waives the requirement for the applicants to have fostered the child for three consecutive months. The order contains a provision whereby the adopters reserve the right to travel with C to their place of residence in 'the United State of America'. This must be a typographical error.

18. The court was provided with a 'Home Study and Investigation' report from the Chief Development Officer. The report contains a positive recommendation that it is in C's best interests to be adopted by the applicants. I record that all necessary consents 'were accessed' save that of BM 'because she was at large'.

19. C's birth certificate, which is dated 13 March 2018, records the applicants as being her parents. Mr Onyinye explains that it is typically the case in Nigeria that children who are placed for adoption are not issued with an original birth certificate; the reason for this is that birth mothers often consider the birth to be 'stigmatizing' and wish to avoid being formally linked with the baby. This appears to have been the case here.

20. Mr Onyinye summarises the adoption process in his letter as follows:

> 'That the child was duly and properly adopted by the adoptive parents, who went through the process as stipulated by the State as guided by The Child Rights Law. The process started at the Ministry with an application and ended at the Family Court in the State with the Suit Number [Number provided] and an Adoption order dated February, 2018. The required interface between the Motherless Babies Home, the Ministry, the adoptive parents and the family court were duly observed to birth this adoption (sic).'

21. Since her adoption, C has been mainly cared for in Nigeria by a series of professional nannies engaged by the applicants. A nanny was first employed in 2016 to look after the father's older children after he relocated from Nigeria to England. C and the older children were brought up together and lived in a rental apartment in Anambra State. In 2019, D moved out to go to university; C and L continued to live with a nanny. More recently, I understand that C and L have been cared for by a family friend.

22. C suffers from poor health. As recorded in the judgment of the First-tier Tribunal (see below) she has had bronchial asthma for a number of years and has been diagnosed with sleep apnoea and adenoid hypertrophy. She has had surgery for these conditions; the mother's oral evidence was that this surgery has led to a significant improvement in her health.

23. The parties have travelled a number of times to Nigeria to spend time with C and the two older children. The mother travelled there twice in 2018, the father accompanying her on the second trip. There was then a significant gap when they were unable to travel as a result of the mother's poor health and the Covid pandemic. Since 2021 they have been to Nigeria at least once a year, staying there for several weeks at a time and

enjoying family life with C and L (most recently in a property which they had built on land provided to them by the family).

24. In her oral evidence, the mother told me (and I accept) that the applicants speak to C every morning before school and again in the evening after she comes home from school.

25. On 15 May 2021 the applicants applied for entry clearance for C to enter the United Kingdom. This was refused on 18 August 2022 pursuant to paragraph 316A of the Immigration Rules. The basis of the refusal, amongst other things, was that the decision maker was not satisfied that 'there has been a genuine transfer of parental responsibility' to the applicants. Mr Jones summarised the position at paragraph 24 of his skeleton argument as follows:

> 'In effect, as Nigeria is not listed within the Adoption (Recognition of Overseas Adoptions) Order 2013, and as the High Court had not recognised the adoption order, the Home Secretary could not be satisfied that there had been a genuine transfer of parental responsibility.'

26. C lodged an appeal against this refusal and her appeal was allowed by the First-tier Tribunal on 4 April 2023. The tribunal also considered an appeal by L against a refusal to grant entry clearance in her case and this too was allowed.

27. Tribunal Judge Shazia Khan found each of the applicants to be credible witnesses and gave weight to their evidence. The Judge further recorded that there was no issue as to the reliability of the documents emanating from the Ministry and the Court in Nigeria to which I have referred above and made a finding that C was lawfully adopted in Nigeria. She held that there was no evidence to suggest that this was an adoption of convenience. The Judge also held that although the day-to-day care of the children was undertaken by a nanny, the applicants retained responsibility for C and financially supported her (their involvement was corroborated by letters from C's school and her doctor). The Judge further found that there was a strong bond between C and her half-sister L. At paragraph 44 of the judgment, the Judge said as follows:

> 'I have been concerned about the welfare of [C]. I have considered what her best interest would be. I have considered NO and KO carefully. I find that they

> are parents who have taken a real interest in the welfare of their children. They have ensured that the children are properly cared for using the services of a professionally nanny. I find that in this case, C's best interest is to remain with [L] and to be reunited with her adoptive parents. I have allowed [L]'s appeal. The second Appellant is a very young child who has been abandoned by her birth parents, she suffers from health problems and will require surgery as part of her treatment. The only real family she knows are her adoptive family. I find that if [C] was separated from [L], then this would have a serious adverse impact on her welfare given the length of time she has lived with [L]. A child this young would need the support and assistance of her family to recover from any surgery. Therefore, I find the refusal of leave would have unjustifiably harsh consequences for C and test of exceptional circumstances is met.'

28. The Judge also made a clear finding as to the existence of 'family life' between the applicants and C for the purposes of Article 8 of the ECHR (a proposition not disputed before her by the SSHD). She held that the refusal of entry clearance was 'of such a gravity as to engage article 8'. The refusal was made 'in accordance with the law' and was held to be 'necessary in a democratic society'. The Judge, however, found that it was disproportionate and therefore in breach of Article 8.

29. The decision of the First-tier Tribunal in relation to C (but not L) was the subject of a further appeal by the SSHD to the Upper Tribunal. The appeal was allowed on 2 August 2024 by Deputy Judge Farrelly. The Judge held that the analysis conducted by the FTT had failed to give sufficient weight to the fact that the Nigerian adoption had not been recognised in the United Kingdom; this was a material error of law which meant that the decision could not stand. Judge Farrelly also saw no basis for the FTT's conclusion that there existed 'exceptional circumstances', which had not been identified in the decision below, commenting that:

> 'As the [SSHD] points out in the application, it was open to [the applicants] to demonstrate that the Nigerian adoption met the law applicable in the United Kingdom and met the safeguarding provisions. The judge refers to general considerations only.'

30. Judge Farrelly set aside the decision of the FTT and directed that the appeal (which I take to mean the applicants' appeal against the decision to refuse C entry clearance) be listed for a de novo face-to-face hearing at the Upper Tribunal. That hearing, as I have said above, is now listed on 3 February 2025.

31. As is recorded by Judge Farrelly in the order made on 2 August 2024, on 6 June 2024 the Immigration Rules changed. Paragraph 316A of the rules, upon which the previous refusal to grant entry clearance was based, was deleted. The position is instead now governed by the Appendix Adoption to the Immigration Rules, to which Mr Jones drew my attention. This Appendix, as Mr Jones explained, sets out the current requirements which must be met before an adopted child can come to the United Kingdom from overseas. Two of these are set out at paragraphs AD 16.1 and 16.2. Paragraph AD 16.5 then goes on to provide that:

> 'If the requirements in AD 16.1. and AD 16.2. are not met [I interject that they are not met in this case], the adoption must have been recognised by order of the High Court in the UK.'

32. As a consequence of this relatively new provision, the outcome of the application before me is likely to affect the stance which the SSHD takes in respect of the extant appeal against her decision to refuse C entry clearance. Mr Jones sets out the position at paragraph 26 of his skeleton argument:

> 'As confirmed in the witness evidence filed on behalf of the Secretary of State, if the High Court were to recognise the adoption, then it is likely that the appeal to the Upper Tribunal would be withdrawn given that C's entry clearance would likely be granted by virtue of paragraph 16.5.'

33. Ultimately decisions about immigration are a matter solely for the SSHD (subject to the process of appeal which exists in relation to such decisions). I have to determine the application before me on its merits without regard to how my decision might influence the SSHD in relation to her own decision-making.

The law

Recognition of an overseas adoption

34. I gratefully adopt the comprehensive summary of the law relating to the recognition of an overseas adoption (and in particular an adoption order made in Nigeria) set out by Gwynneth Knowles J in *Re G (Recognition of a Nigerian Adoption)* [2024] EWHC 2769 (Fam) at paragraphs 14 to 20, which I replicate for ease of reference at paragraphs 35 to 41 below.

35. 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.

36. Section 9(6) of ACA 2002 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.

37. 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.

38. 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.

39. 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."

40. 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."

41. 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.

42. The four criteria alighted upon by Sir James Munby in Re N (A Child) derive from the Court of Appeal's majority decision in *Re Valentine's Settlement* [1965] Ch 831, where the leading judgment was given by Lord Denning, MR. The first of those criteria requires *both* of the applicants for adoption have been domiciled in the relevant state at time when the adoption order under consideration was made there. It is apparent from Lord Denning's judgment that he considered that there were two bases upon which an overseas adoption should be recognised, which he termed 'international comity' and 'principle'. He said (with my emphasis):

‘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.* 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. Now it has long been settled that questions affecting status are determined by the law of the domicile. This new status of parent and child, in order to be recognised everywhere, must be validly created by the law of the domicile of the adopting parent. You do not look to the domicile of the child: for that has no separate domicile of its own. It takes its parents' domicile. You look to the parents domicile only. If you find that a legitimate relationship of parent and child has been validly created by the law of the parents' domicile at the time the relationship is created, then the status so created should be universally recognised throughout the civilised world, provided always that there is nothing contrary to public policy in so recognising it. That general principle finds expression in the judgment of Scott L.J. in *In re Luck's Settlement Trusts, Walker v. Luck.* I think it is correct, notwithstanding that the majority in that case created a dubious exception to it. But it is an essential feature of this principle that the parents should be domiciled in the country at the time: for no provision of the law of a foreign country will be regarded in the English courts as effective to create the status of a parent in a person not domiciled in that country at the time: see *In re Grove, Vaucher v. Treasury Solicitor* [37] (legitimation by subsequent marriage); *In re Wilson, decd., Grace v. Lucas* [38] (adoption). I ought to say, however, that in order for adoption to be recognised everywhere, it seems to me that, in addition to the adopting parents being domiciled in the country where the order is made, the child should be ordinarily resident there: for it is the courts of ordinary residence which have the pre-eminent jurisdiction over the child: see *In re P. (G. E.) (An Infant).* The child is under their protection and it would seem only right that those courts should be the courts to decide whether the child should be adopted or not.

> In my opinion, therefore, 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.'

43. As the time *Re Valentine's Settlement* was decided, it was a requirement for the making of an adoption order in this jurisdiction that the applicant for adoption should be domiciled in England or Scotland: section 50(1) of the Adoption Act 1950. Lord Denning was thus able to conclude that domicile was a pre-requisite to recognition of an overseas adoption whether the matter was considered through the lens of comity or by the application of common law principles.

44. It is, however, no longer a requirement that each applicant be domiciled in England and Wales in order for the courts of this jurisdiction to make an adoption order in favour of a couple. Section 49 of the ACA enables the court to make an adoption order in a favour of a couple in circumstances where (a) only one of them is domiciled in a part of the British Islands or (b) both of them have been habitually resident in a part of the British Islands for a period of not less than a year ending with the date of the application.

45. Given the way in which the law has developed, it seems to me to be at least arguable on an application of Lord Denning's comity principle that, where a couple seeks recognition of an overseas adoption at common law, it may no longer be necessary to demonstrate that *both* applicants were domiciled in the relevant overseas jurisdiction in order for the court to recognise an adoption, if they otherwise fulfil the jurisdictional criteria in section of 49 of the ACA 2002 transposed to the overseas jurisdiction in question. I raised this point with counsel before I started hearing evidence as there existed a possibility that I could conclude that one, but not both, of the applicants was domiciled in Nigeria at the relevant time. I have not, however, heard full argument on the point. Given my factual conclusions on domicile, it is not a point that has an impact on my decision.

Domicile

46. In *Barlow Clowes International Ltd (In Liquidation) & Ors v Henwood* [2008] EWCA Civ 577 at paragraph 8 Arden LJ summarised a number the principles relevant to the question of domicile. She said:

'The following principles of law, which are derived from Dicey, Morris and Collins on The Conflict of Laws (2006) are not in issue:

(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 (Dicey, pages 122 to 126).

(ii) No person can be without a domicile (Dicey, page 126).

(iii) No person can at the same time for the same purpose have more than one domicile (Dicey, pages 126 to 128).

(iv) An existing domicile is presumed to continue until it is proved that a new domicile has been acquired (Dicey, pages 128 to 129).

(v) Every person receives at birth a domicile of origin (Dicey, pages 130 to 133).

(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 (Dicey, pages 133 to 138).

(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 (Dicey, pages 138 to 143).

(viii) In determining whether a person intends to reside permanently or indefinitely, the court may have regard to the motive for which residence was taken up, the fact that residence was not freely chosen, and the fact that residence was precarious (Dicey, pages 144 to 151).

(ix) A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently, or indefinitely, and not otherwise (Dicey, pages 151 to 153).

(x) When a domicile of choice is abandoned, a new domicile of choice may be acquired, but, if it is not acquired, the domicile of origin revives (Dicey, pages 151 to 153).'

47. In *Barlow Clowes*, Arden LJ also 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. It was further held that:

    (a) Given that a person can only have one domicile at any one time, he must have a singular and distinctive relationship with the country of supposed domicile of choice. That means it must be his ultimate home or the place where he would wish to spend his last days.

    (b) The fact that residence is precarious or illegal is a circumstance that is relevant to the question of intention (but the fact that presence is illegal does not prevent residence).

    (c) A person can acquire a domicile of choice without naturalisation. On the other hand, citizenship is not decisive.

Discussion and conclusions

48. Out of the four criteria for the recognition of an overseas adoption derived from *Re Valentine's Settlement* and subsequent authorities (set out at paragraph 38 above) I am satisfied that (b), (c) and (d) are satisfied in this case.

49. I have considered an expert report as to Nigerian law prepared by Mr Abimbola Badejo of counsel in respect of the adoption. He sets out that:

    > 'There is a subsisting order from a court of competent jurisdiction in Nigeria that order remains valid and the consequences under Nigerian law of changing the status of the child to an adopted child'
    >
    > and
    >
    > 'The essential characteristic of a Nigerian adoption and an English adoption are the same in all material respects.'

50. That evidence has not been challenged by the SSHD and I accept it.

51. I further accept that I should not refuse to recognise the adoption on public policy grounds. It is not the type of egregious case which falls within that principle.

52. So far as domicile is concerned, the evidence of the mother on this issue (with which the father expressly agrees) is set out at paragraph 19 of her second statement as follows:

> 'Although my husband and/or both of us were not domiciled in the foreign country at the time of the foreign adoption, my husband has lived in foreign country and shortly before the adoption took place. My husband has been domiciled in Nigeria all his life save for his coming to join me in the UK.'

53. I am not bound by the applicants' own assertions as to domicile and have considered the matter in the light of the principles summarised in *Barlow Clowes*.

54. So far as the mother is concerned, her domicile of origin was Nigeria. The question is whether at some stage she acquired a domicile of choice in this jurisdiction. In my judgment, the evidence is very clear that she did so, at the latest, in 2014 when she was granted indefinite leave to remain. Thereafter she proceeded to acquire British citizenship. She has made her home in this jurisdiction and I find that she intends to remain here permanently or indefinitely. This conclusion is strongly supported by the fact that she has remained living here with her husband despite the applicants' children including C being unable to join them. My conclusion as to her intention is also supported by the steps she has taken to achieve immigration status for C to allow her to join her parents here. I also accept her evidence on the point.

55. The father too has a domicile of origin in Nigeria. The evidence is less clear as to whether he has acquired a domicile of choice in this jurisdiction. On balance I am satisfied that he has done so. He came to England in October 2016 to join his wife here. She was by that time living here with an intention to do so permanently or indefinitely. He took up employment here. He left behind his children, but has taken steps to procure the ability for them to join their family here. He has now secured indefinite leave to remain in this jurisdiction and intends, as I accept, to obtain British

citizenship as soon as he can. I accept his evidence that he intends to make England his permanent home. In my judgment, he acquired a domicile of choice in England and Wales relatively soon after he moved here in October 2016, probably in early 2017. It follows from this that he was domiciled in Nigeria at the time when the applicants first made an adoption application to the LCCC, but domiciled in England by the time of C's birth and certainly by the time that the adoption order was made.

56. It follows from my conclusions as to domicile that the first of the *Re Valentine's* criteria is not met. It would not be met even if I were to hold that for reasons of comity it is now sufficient to demonstrate that only one of the applicants was domiciled in Nigeria at the material time.

Article 8 ECHR

57. In common with MacDonald J in *QS v RS*, I am satisfied on the facts of this case that the strict application of the rule as to status conditions in *Re Valentines Settlement*, 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 applicable in this country, would result in an interference in the Article 8 right to respect for family life of the mother, the father and C. That interference cannot be said to be either necessary or proportionate.

58. I accept first of all that the mother and the father sought advice before making an application for adoption. They wrongly understood that an adoption in Nigeria would be recognised in England and Wales.

59. Despite my conclusions as to the domicile of the applicants at the time of the adoption order, Nigeria is a country with which each of them has very substantial connections. They have each been domiciled there for the majority of their lives. The father was domiciled there at the time of the adoption application. They both retain Nigerian nationality. They have significant family ties in that jurisdiction and travel there on a regular basis. They have a home there. In no sense can they be described as adoption tourists.

60. I also find that this was not what is sometimes termed an adoption of convenience: one motivated primarily by a desire to achieve immigration status for a child with whom the applicants have a limited connection. I accept the evidence of the mother that the applicants wanted to adopt a child to cement their own marriage in circumstances where they were unable to conceive a child together. It my view it was entirely logical and natural for them to pursue the application in Nigeria, the country of which they were both nationals and where the father was both resident and domiciled (when the application was made). By making the application in Nigeria they stood the best chance of achieving a cultural match.

61. I accept the oral evidence of both the mother and the father as to the love and commitment they have shown to C, with twice daily video calls and annual trips to Nigeria to spend time with her as a family. Although they have delegated C's day-to-day care to nannies, they have retained overall parental responsibility for her (assisting for example with homework and making decisions about medical care). The mother became visibly emotional in evidence describing the relationship she has with C and recounting C's repeated pleas to her to be allowed to come to England to join the people she considers to be her parents. C has been brought up with L and, to a lesser extent, D and clearly has strong bonds with them. I have no doubt that the children see each other as siblings. The applicants have also demonstrated significant financial commitment to C.

62. Most pertinently the applicants are the only parents C has ever known. They are an integral part of her family life. They are recorded on her birth certificate as her parents. Their wider family is, for C, her extended family too. C's birth family have played no role in her life.

63. A failure to recognise C's adoption by the applicants would amount to a denial of her status. In the eyes of the court her parents would be BM, who abandoned her at birth, and her BF, who abandoned BM following C's conception. From her perspective this would be profoundly wrong.

64. In all of the circumstances, I have determined that I should accede to the application for recognition of C's adoption and do so.