Neutral Citation Number: [2019] EWCA Civ 672

Case No: B4/2019/0588

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM
HIGH COURT OF JUSTICE
FAMILY DIVISION
MR JUSTICE MOSTYN
FD18P00796

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/04/2019

Before:

LORD JUSTICE McCOMBE
LORD JUSTICE MOYLAN
and
LORD JUSTICE LEGGATT

- -

Re H (Abduction: Retention in Non-Contracting State)

- -
- -

Mr C Hames QC & Mr M Edwards (instructed by **Wilson Solicitors LLP**) for the **Appellant**
Mr M Hosford-Tanner (instructed by **Duncan Lewis Solicitors**) for the **Respondent**

Hearing date: 11th April 2019

- -

Approved Judgment

LORD JUSTICE MOYLAN:

Introduction

1. The mother appeals from the order made on 28th February 2019 by Mostyn J under The Hague Child Abduction Convention 1980 ("the Convention") for the return of one child to Australia.

2. In my view, the central issue raised by this appeal is, broadly stated, whether the Convention can apply when the act relied on as constituting the alleged wrongful retention took place in a state which is not a party to the Convention. In simple terms, the mother's case is that the judge wrongly decided that it does and his order should, therefore, be set aside. The father's case is that the judge was right to decide that it does and his order should, therefore, be upheld.

3. In addition, the mother contends that the judge wrongly decided that a retention can continue for the purposes of the Convention when it is well established that it is an event which occurs on a specific occasion.

4. The context, in summary, is that the retention in this case took place in Uganda on 23rd January 2018 at which date the child was habitually resident in a Convention State, namely Australia. The proceedings under the Convention have, obviously, been brought in England following the family, including the child, coming here in March 2018.

5. It is relevant to note at the outset of this judgment that, pursuant to Article 38, the Convention is only in force between the United Kingdom and another Contracting State when the latter's accession to the Convention has been accepted by the UK or, more recently, by the EU: see the *International Movement of Children, Lowe Everall Nicholls* 2nd Ed, paras. 17.60 to 17.64. I use the terms Contracting Party, Contracting State and Convention State (and the opposites) interchangeably.

6. The mother is represented by Mr Hames QC and Mr Edwards, neither of whom appeared below. The father is represented by Mr Hosford-Tanner.

Background

7. It is only necessary to set out a brief summary of the background

8. The mother was born in Uganda. She had lived in England since 2000 and is a British citizen. The father is Australian. They met in Australia and began living together there in 2014. Their only child, C, was born in Australia in 2016.

9. On 23rd November 2017 the whole family travelled to Uganda, via Dubai, on tickets with return flights on 23rd January 2018. When they arrived in Uganda the mother told the father that she would "never return to Australia". In his judgment Mostyn J states: "The holiday in Uganda was, on any view, a failure and the parties effectively separated during" their stay there.

10. After having received advice from the Australian High Commission in Kenya, and having failed to persuade the mother to return with C to Australia, the father successfully

persuaded the mother to travel with C to the United Kingdom. This was because the UK is a party to the Convention.

11. The family travelled to England on 16th March 2018. They have been living here since then.

Proceedings and Judgment

12. The father commenced proceedings under the Convention on 29th November 2018. They followed a conventional path, delayed by the Christmas holidays, until their determination by Mostyn J on 28th February 2019.

13. In opposing the father's application, the mother contended that the Convention did not apply because the alleged wrongful retention had taken place in Uganda; that the father had acquiesced in C's retention; and that there was a grave risk that C's return to Australia would expose her to harm or otherwise place her in an intolerable situation. There was also an issue raised about habitual residence.

14. Mostyn J determined that, in accordance with the father's ultimate case at the hearing below, C's retention had taken place in Uganda on 23rd January 2018 when the mother did not return to Australia with C. It was a wrongful retention because it was in breach of the father's rights of custody under the law of Australia which was where, Mostyn J determined, C was habitually resident at that date.

15. Mostyn J rejected the mother's case that the father had acquiesced in the retention and also rejected her case on Article 13(b). There is, rightly, no appeal from any of these elements of his decision.

16. He also rejected the mother's case that the Convention did not apply because the wrongful retention had taken place in Uganda. Her case had been constructed on the terms of Article 1 of the Convention and two House of Lords' decisions, *In re H (Minors) (Abduction: Custody Rights), In re S (Minors) (Abduction: Custody Rights)* [1991] 2 AC 476 and *In re S (A Minor) (Custody: Habitual Residence)* [1998] AC 750. These cases decided that, for the purposes of the Convention, both removal and retention were "events occurring on a specific occasion", Lord Brandon at page 499 G.

17. Mosytn J rejected this aspect of the wife's case because in his view the fact that the retention had taken place in Uganda did not prevent it from being a "justiciable retention" in England. The judge first refers to the retention as "continuing" in [16]. However, his reasoning, in his extempore judgment, is set out in the following paragraphs:

> "[17] Plainly, the fact that the retention started for the purposes of Article 12 on 23rd January 2018 in Uganda does not mean that it did not become a justiciable retention upon arrival in this country. Mr Perkins relies strongly on the terms of Article 1 which, in fact, is not part of our law but obviously is relevant context in which to construe the Convention, which states:
>
> "The objects of the present Convention are –

> (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State …"
>
> [18] It does not follow from that object of the Convention that a retention that commenced outside (sic) a non-contracting state but which was continuing on a later date in a contracting state does not become justiciable in that contracting state. So my basic and fundamental decision is that I reject Mr Perkins's ingenious legal argument which if allowed to run in this case would lead to absurd and unjust results."

As explained below, the words on which the mother's appeal has, in part, focused are "started" and "continuing".

Legal Framework

18. The Convention is, clearly, only effective in a state which has ratified or acceded to it. As Lady Hale said in *In re J (A Child) (Custody Rights: Jurisdiction)* [2006] 1 AC 80, at [22]: "There is no warrant, either in statute or authority, for the principles of The Hague Convention to be extended to countries which are not parties to it". This is subject also to the important caveat referred to in paragraph 5 (above).

19. It is also clear that the Convention is not retrospective. Article 35 expressly provides that the Convention "shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States". As pointed out in the *International Movement of Children*, para 17.65, the effect of this Article is incorporated into domestic law by section 2(2) of the Child Abduction and Custody Act 1985 ("the 1985 Act").

20. As referred to above, not all the provisions of the Convention have been incorporated into English law by the 1985 Act: section 1(2) and Schedule 1. These include the preamble and Article 1. However, the absence of these provisions does not mean that they cannot be referred to for the purposes of understanding "the nature and purpose of the Convention": *In re H*, Lord Brandon at page 498 F/G; and *In re C and another (Children) (International Centre for Family Law, Policy and Practice intervening)* [2019] 1 AC 1, Lord Hughes at [2].

21. I set out a number of the provisions of the Convention below but, in the context of this appeal, it is important to note, first, that, as set out in the preamble, it is designed to "to protect children internationally from the harmful effects of their wrongful removal or retention". This is achieved by establishing "procedures to ensure their prompt return to the State of their habitual residence". The "two fundamental purposes of the Convention (are) to protect children from the harmful effects of international abduction and to secure that disputes about their future are determined in the state where they were habitually resident before the abduction": Lady Hale in *Re K (A Child) (Reunite International Child Abduction Centre intervening)* [2014] AC 1401, at [57]. Further, as Lord Hughes said in *In re C*, at [3], after referring to the preamble and Article 1 (see below): "The general scheme of the Convention is to enable a left-behind parent to make this application in the state to which the child has been taken, seeking return of the child".

22. Secondly, it applies to *any* child habitually resident in a Contracting State at the date of the alleged wrongful retention or removal (Article 4). This is the limit of its application but, equally, there is no other limitation to its application in terms of defining to whom it potentially applies.

23. Thirdly, the obligations to procure the return of the child to the state of his/her habitual residence are placed, although not exclusively, on the authorities (the Central Authority and the judicial or administrative authorities) "where the child is": e.g. Articles 10 and 12.

24. Chapter 1 deals with the "Scope of the Convention". Mostyn J set out part of Article 1. The full text of Article 1 is as follows:

> "The objects of the present Convention are –
> a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
> b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States."

It can be seen that there are two objects. The first refers to children being removed *to* or retained *in* any Contracting State (my emphasis). The second refers to ensuring that rights of custody in one Contracting State are "effectively respected" in "the other" Contracting States.

25. The only other Article which uses the same wording as in Article 1(a) is Article 16 which provides that the authorities of the Contracting State "to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned …". No other provision contains any reference to the location of the retention or, indeed, the manner of the removal.

26. The key concepts which underpin the Convention are "wrongful removal" and "wrongful retention". Neither removal nor retention are defined but Article 3 defines when a removal or retention will be "wrongful". It contains no reference to where any removal or retention has occurred. It provides:

> "The removal or the retention of a child is to be considered wrongful where –
> a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
> b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.
>
> The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or

> administrative decision, or by reason of an agreement having legal effect under the law of that State."

Article 4 defines when a child will potentially be within the scope of the Convention by reference only to the state in which they are habitually resident:

> "The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years."

27. Chapter III deals with the "Return of Children". Article 8 provides that an application can be made either to the Central Authority of the child's habitual residence *or* to the Central Authority of *any* other Contracting State "for assistance in securing the return of the child". Article 9 provides that applications can be transferred from one Central Authority to another if the child is believed to be in another Contracting State. Article 10 provides:

> "The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child."

28. Articles 12 and 13 provide the legal structure for the determination of an application under the Convention. Article 12:

> "Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith. The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment. Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child."

Article 13 provides:

> "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –
>
> a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

> b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
>
> The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. In considering the circumstances referred to in this Article …".

29. I now turn to some of the authorities to which we were referred.

30. The nature of a retention was considered in *In re H, In re S* in which the alleged wrongful removals had taken place before the Convention was in force between the United Kingdom and, respectively, Canada and the USA. It is relevant to note that in *In re H* the children, who were habitually resident in Canada, had been wrongfully removed by the father to India, albeit via England. There is no reference to any consideration of the nature of the removal and whether it had to be *to* a Contracting State. Further, and in my view significantly, when the issue of whether retention could be a continuing state of affairs was being considered, there is no reference to the consequences of the alleged retention having taken place, if anywhere, in India. The same applies to *In re S*, in which the wrongful removal had been from the USA to England. The issue of retention was important in both cases because of the dates of the wrongful removals.

31. In the course of his speech, Lord Brandon set out the preamble and a number of Articles, including Article 1, and the issues which arose for determination. One of those was whether "removal and retention are both events which occur once and for all on a specific occasion, or whether, while removal is such an event, retention is a state of affairs beginning on a specific occasion but continuing day to day thereafter", at page 497C/D. Before answering this point, Lord Brandon made some "preliminary observations", at page 498F to 499C/D:

> "Before addressing the three points in respect of which Mr. Munby challenges the view taken by the Court of Appeal, I would make some preliminary observations about the nature and purpose of the Convention. The preamble of the Convention shows that it is aimed at the protection of children *internationally* (my emphasis) from wrongful removal or retention. Article 1(a) shows that the first object of the Convention is to secure the prompt return to the state of their habitual residence (that state being a contracting state) of children in two categories: (1) children who have been wrongfully removed from the state of their habitual residence to another contracting state; and (2) children who have been wrongfully retained in a contracting state other than the state of their habitual residence instead of being returned to the latter state. The Convention is not concerned with children who have been wrongfully removed or retained within the borders of the state of their habitual residence.

> So far as category (1) is concerned, it appears to me that a child only comes within it if it is wrongfully taken out, i.e. across the frontier, of the state of its habitual residence. Until that happens, although the child may already have been wrongfully removed within the borders of the state of its habitual residence, it will not have been wrongfully removed for the purposes of the Convention. So far as category (2) is concerned, it appears to me that a child can only come within it if it has first been removed rightfully (e.g. under a court order or an agreement between its two parents) out of the state of its habitual residence and subsequently retained wrongfully (e.g. contrary to a court order or an agreement between its two parents) instead of being returned to the state of its habitual residence. The wrongful retention of a child in one place in the state of its habitual residence, instead of its being returned to another place within the same state, would not be a wrongful retention for the purposes of the Convention. The typical (but not necessarily the only) case of a child within category (2) is that of a child who is rightfully taken out of the state of its habitual residence to another contracting state for a specified period of staying access with its non-custodial parent, and wrongfully not returned to the state of its habitual residence at the expiry of that period."

As was pointed out during the course of the hearing by Leggatt LJ, these observations were made in the context of an analysis of the *international* impact of the Convention. They were not directed to the issue we have to decide. Accordingly, Lord Brandon's use of the words in Article 1(a), when defining categories (1) and (2), have to be seen in that context. It is relevant also to note that, when considering the scope of category (2), Lord Brandon does not refer to where the retention has occurred once the child has left his/her home state. He states merely that the child will have been "retained wrongfully … instead of being returned to the state of its habitual residence".

32. Lord Brandon answered the issue referred to above, beginning at page 499D:

> "With regard to the first point, whether retention is an event occurring on a specific occasion or a continuing state of affairs, it appears to me that article 12 of the Convention is decisive."

It was decisive because the period of one year under that Article had to be measured from a specific date, namely the date *of* the wrongful removal or retention. This showed "clearly that, for the purposes of the Convention, both removal and retention are events occurring on a specific occasion" and not a "continuing state of affairs": at page 499G/H. This was repeated by Lord Slynn in *In re S*, at page 767F.

33. In *Re O (Abduction: Settlement)* [2011] 2 FLR 1307 a father had applied for an order that children be returned under the Convention to the USA. The mother conceded that she had wrongfully retained the children in Nigeria. The application had been made when the children were in England for a holiday from Nigeria. Although this was a concession, it was recorded without comment by Black LJ (as she then was) with whose judgment both Pitchford LJ and Wilson LJ (as he then was) agreed. Further, the whole case could have been resolved far more simply if it had been decided that the Convention did not

apply in these circumstances. Instead, the case was determined *under* the Convention by reference to issue of settlement in Article 12 and the exercise of the court's discretion if settlement is established. The Court of Appeal set aside the return order which had been made at first instance.

34. Counsel have only been able to locate one authority in which the central issue referred to above has been considered. Otherwise it is wholly absent from, certainly English and Welsh, jurisprudence since the Convention was implemented here in August 1986. The authority is an unreported decision by Mr Goodwin QC, sitting as a Deputy High Court Judge, on 8th November 2018. He was only referred to *In re C* when deciding, based on the wording of Article 1(a), that the Convention did not apply to a retention in a non-Contracting State.

Submissions

35. I am grateful to counsel for their focused submissions. They can be summarised as follows.

36. Mr Hames' straightforward case is that the Convention does not apply when the act relied upon as constituting the retention took place in a state which is not a party to it. This, he submits, follows from the plain wording of Article 1(a). This means, he submits, that when Article 3 is interpreted with Article 1, removals must be *to* Contracting States and retentions must be *in* Contracting States for them to be within the scope of the Convention at all. During the hearing, he put forward the rationale for this limitation as being that, it is not permissible to apply the rules of the Convention to states that are not parties to it. In his oral submissions he made clear that this limitation extends to removals to and retentions in states whose accession to the Convention has not been recognised by the state determining the application under it.

37. This interpretation would not, he submits, leave parents without a remedy in England and Wales because they could, for example, make an application under the inherent jurisdiction.

38. He relies on *In re H, In re S*; *In re J*; and *In re C*. In his submission, these authorities support his case. First, because of what Lady Hale said in *In re J*, at [22] (as set out in para 18 above). Secondly, because observations in *In re H, In re S* and *In re C* provide persuasive support for the conclusion that the Convention does not apply to a retention in a non-Convention state. These observations include, in particular, the specific references to Article 1(a); that retention is not a continuing state of affairs; the typical example referred to by Lord Brandon (as set out above); and that a removal from a non-Convention State is not within the Convention. He argues that, to apply the Convention even when the child has subsequently arrived in a Convention State, would be to extend its provisions to countries which are not parties to it.

39. Mr Hames points to the judge's use of the words "started" and "continuing" and submits that they demonstrate that the judge failed to follow *In re H, In re S* because, as referred to above (para 32), retention is an event "occurring on a specific occasion". Accordingly, he submits that the judge should have decided that the wrongful retention in Uganda was not within the scope of the Convention and did not become "justiciable" following C's arrival in England. In respect of this submission, I would note that during the hearing

Mr Hames accepted that a wrongful retention in a Contracting State would be justiciable in another Contracting State.

40. Mr Hosford-Tanner submits that the interpretation proposed by the mother in this case would represent a significant constraint on the effective operation of the Convention which is designed to achieve a child's prompt return to the state where they habitually reside. He accepts that an application and a return order can only be made in a state in which the Convention applies and provided that that state has recognised the accession of the state in which the child is habitually resident. However, he submits that the structure of the Convention and its provisions do not require the wrongful retention to have taken place in a Contracting State.

41. He also submits that it is a novel interpretation which gains no support from the *Explanatory Report* by Professor Perez-Vera and has not been suggested before, apart from the unreported decision referred to above, and which did not feature as an argument or as a factor in *In re H; In re S* or in *Re O*. Further, he submits that it would have surprising consequences. As examples, he suggests that it would be hard to explain why the Convention should not apply if the wrongful retention took place during, for example, a stop-over in a non-Contracting State in a flight from Australia to England or a holiday in such a State.

42. Mr Hosford-Tanner also submits that the judge's decision is consistent with the principal objectives of the Convention and its substantive provisions.

Determination

43. Although I have spent some time addressing the central issue raised in this appeal, in my view, the answer could be stated as shortly as it was by Mostyn J, namely that a retention which takes place other than in a Contracting State is a retention which is justiciable under the Convention in a Contracting State.

44. I consider that such a conclusion is consistent with, I repeat, "the two fundamental purposes of the Convention, to protect children from the harmful effects of international abduction and to secure that disputes about their future are determined in the state where they were habitually resident before the abduction": Lady Hale in *Re K (A Child) (Reunite International Child Abduction Centre intervening)* [2014] AC 1401, at [57]. And consistent with Lord Hughes' observation in *In re C*, at [3], that: "The general scheme of the Convention is to enable a left-behind parent to make this application in the state to which the child has been taken, seeking return of the child". These purposes and the general scheme are achieved by ensuring the prompt return of the child to his home state. Indeed, Professor Perez-Vera's report explains that the Convention "places at the head of its objectives the restoration of the *status quo*", at [16].

45. Before addressing the provisions of the Convention, including Article 1, although they might logically come first, I deal with other aspects of Mr Hames' submissions.

46. First, I do not accept that, by rejecting Mr Hames' argument, we would be applying the principles of Convention to non-Contracting States and thereby going against what Lady Hale said in *In re J*. Rejecting his submission does not extend the principles of the Convention "to countries which are not parties to it". There is a fundamental difference

between the removal of a child *from* a non-Convention State, which was the situation in that case, and the situation with which we are concerned. The Convention simply cannot apply when it is not in force in the child's home State. This is not the same as the retention in a non-Convention State of a child habitually resident in a Convention State or the removal of a child habitually resident in a Convention State to a non-Convention State. As I have said, while in the first situation the Convention cannot apply, there is no reason why it should not apply, and a number of reasons why it should apply, in the latter situations to the child if and when he/she travels to a Convention State. Contrary to Mr Hames' submission, this does *not* extend the application of the Convention to non-signatory states because it is only being applied between participating states.

47. Secondly, the mother's proposed interpretation would create considerable difficulties with the operation of the Convention. It is an international convention which, as has often been stated, "cannot be construed differently in different jurisdictions": Lord Browne-Wilkinson in *In re H and Others (Minors) (Abduction: Acquiescence)* [1998] AC 72 at page 87F. I do not, therefore, consider that Mr Hames can gain the support he seeks from the availability of the inherent jurisdiction in England. His proposed interpretation would create, what I consider would be, an artificial construct in and, perhaps more importantly, an unnecessary or, to use Mr Hosford-Tanner's word a "technical", obstacle to the application and effective operation of the Convention. It would provide an easy route for an abducting parent to evade the effect of the Convention either by effecting the retention of the child in a non-Convention State or by initially removing the child to a non-Convention State. I include the latter because, as Mr Hames accepts, his interpretation would apply equally to such a removal.

48. I also do not consider that the other authorities on which Mr Hames relies provide support for his case. The mere fact that Article 1 was referred to in both *In re H*, *In re S* and *In re C* does not, in my view, support his proposed interpretation of the scope of the Convention which was, as he accepts, not addressed in those cases. As referred to above, Lord Brandon was doing no more than using the words from Article 1 in a different context and was not intending to define the scope of the application of the Convention. Indeed, on one view, Lord Brandon's reference to retention as occurring when a child is retained wrongfully out of the state of the child's habitual residence "instead of being returned to" that state, supports the contrary argument.

49. More specifically, I do not consider that the fact that both removal and retention "are events occurring on a specific occasion" mean that they cannot continue to be wrongful and within the scope of the Convention if they occurred in a non-Convention State. Indeed, as referred to above, Mr Hames accepts that a wrongful retention in one Convention State would be justiciable in an application under the Convention made in another Convention State to which the child had subsequently travelled.

50. Further, in my view, the mother's proposed interpretation would be contrary to "the duty of the court to construe the Convention in a purposive way and to make the Convention work": Butler-Sloss LJ (as she then was) in *Re F (A Minor) (Abduction: Custody Rights Abroad)* [1995] Fam 224 at page 229E/H. I recognise that there are limits to this approach but I do not consider that rejecting the mother's argument would even be close to pushing

"at the boundaries", adopting Lady Hale's expression from *Re K*, at [57]. (I would just note that Lady Hale supported the effect of the English courts' approach in that case).

51. Finally, turning to the Convention itself, I consider that the structure and provisions of the Convention in fact point against the proposed interpretation. Apart from the use of the words "to" and "in" in Article 1(a) (repeated in Article 16), all the other provisions and the overall structure support the conclusion that the removal can be to *any* state and the retention can be in *any* state. The focus of the Convention is on procuring the child's return to the state of his/her habitual residence by the authorities of the Contracting State "where the child is". For example, Article 3 defines the terms removal and retention by reference to their impact on rights of custody in the child's home state and makes no reference at all to the location or manner of the removal or retention. Looking at the Convention as a whole and its "fundamental purposes" and other features as referred above (para 44) Mr Hames' case places far too much weight on the broadly stated objectives set out in Article 1 which, in my view, are not designed or intended to limit or define the scope of the operative provisions of the Convention.

52. In my view, the only basic requirements for the application of the Convention are: (a) the child must have been habitually resident in a Contracting State at the date of the alleged removal or retention; (b) the removal or retention must be wrongful; (c) the application must be determined in the Contracting State where the child is; (d) the Convention must be in force between both States.

53. There is no need for removal to be *to* a Contracting State; nor is there any need for the retention to be *in* a Contracting State. For example, the Convention will potentially apply when a child is removed from a Contracting State to a non-Contracting State and then, some weeks or months later, taken to a Contracting State. Accordingly, as in the present case, an application under the Convention can be made relying on a wrongful retention which took place in a non-Contracting State.

54. Mostyn J was, therefore, right when he determined that the wrongful retention in Uganda continued to be a "justiciable retention". I do not consider that, by using the words "started" and "continuing", Mostyn J meant that the retention was a continuing state of affairs rather than an event occurring on a specific occasion. In my view, he meant that the wrongful retention, which had occurred on 23rd January 2018, continued to be a wrongful retention for the purposes of an application under the Convention, in particular in this case because the father had not acquiesced in it, as alleged by the mother.

55. It follows that I do not agree with the observations of Mr Goodwin QC.

56. In conclusion, in my view, the appeal must be dismissed.

Lord Justice Leggatt

57. I agree.

Lord Justice McCombe

58. I also agree.