

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Friday, 7 January 2022

BEFORE:

**CHIEF MASTER SHUMAN**

BETWEEN:

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**IN THE MATTER OF THE ESTATE OF  
AUGEL STEEVES ANDREX PANGO (DECEASED)**

**JENNYFER PANGO**

**Claimant**

**and**

**RINA NZOULOU**

**Defendant**

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The Claimant appeared in person  
**MR KAIHIVA** appeared on behalf of the Defendant

Trial: 6-7 January 2022

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**JUDGMENT**  
(Draft for Approval)  
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**THE CHIEF MASTER:**

1. On 3 June 2021, Augel Pangou died at his home at 19 Stanhope Road, Swanscombe, Kent. The cause of death was sudden adult death syndrome. He was only 45 years old, having been born in Brazzaville, Congo on 28 April 1976. He left his partner of 13 years, Rina Nzoulou, who is the defendant in this claim. She was pregnant with their third child, a son born in November 2021 named Augel, after his father. I will refer to the parties and relevant people in this claim by their first name, and I mean no disrespect by doing so.
2. Augel has six children, Ryela aged 10, Michael aged 7 and Augel who is a baby, and three children from his dissolved marriage to Sylvie. Jennyfer, the claimant, who is aged 21 and lives in France. Leah aged 16 remains living with Rina. Chloe aged 14, was living with Augel and Rina since either 2012 or 2013 but has now returned to live in France. In addition, Rina's two children by an earlier relationship, Emmanuel and Lisa, who are both adults, lived with Augel and Rina.
3. I noticed in the course of evidence that when Emmanuel mentioned Augel, he referred to him as his father and then corrected himself to say "stepfather". What is clear from the evidence before me is that Augel was a devoted father, a loving partner to Rina, and a man loved by his family and by his friends. The loss that his family both here, in France and in the Congo and his friends here, are suffering is compounded by the fact that his family is involved in litigation in the High Court over the disposal of his body.
4. Augel died intestate. Despite having been Augel's partner for 13 years, the mother of three of his children, bringing up another one of his children for 8 to 9 years, and Leah who she continues to bring up, the position for Rina is that the law has not caught up with society. So some people who choose not to enter into marriage or into a civil partnership but rather to live together in a loving and fully committed relationship as cohabitantes, are caught by the intestacy rules. This means that Rina has no automatic right to apply for a grant of letters of administration. Instead, rule 22 of The

Non-Contentious Probate Rules 1987 (the NCP) provides an order of priority for grants in cases of intestacy. In the order of priority, without a surviving spouse or civil partner, the next category of people who can obtain a grant are the children of the deceased. So that means in this case that the person entitled to obtain a grant in the first instance is Jennyfer, the only adult child of Augel.

5. Jennyfer has brought a Part 8 claim, issued on 10 September 2021, against Rina and in the claim form she sets out the orders that she seeks:

- (1) an order that the claimant is the person entitled to possession of the body of the deceased and to make arrangements for its disposal, including the mode and place of burial; and

- (2) insofar as necessary, a limited grant of letters of administration pursuant to section 113 of the Senior Courts Act 1981, the limited purpose being the disposal of Augel's body.

6. Jennyfer's case is that Augel's body should be taken to France for burial so that his final resting place is close to that part of his family who lives in France, which includes his mother Yvette, two of his six children, Jennyfer and now Chloe, his two sisters and extended family members.

7. Rina opposes the claim and seeks an order under section 116 of the Senior Courts Act 1981 appointing her as administrator of the estate of Augel. She wishes Augel to be buried in England, his home for the last 13 years of his life, where she and most of his children live, and in accordance with his written wishes.

### The Law

8. Section 116 of the Senior Courts Act 1981, provides that:

"(1) If by reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this section, would in accordance with probate rules have been

entitled to the grant, the court may in its discretion appoint as administrator such person as it thinks expedient.

(2) Any grant of administration under this section may be limited in any way the court thinks fit."

9. In order to engage the power under section 116, the court must be satisfied, firstly, there are special circumstances which may displace the order of priority set out in rule 22 of the NCP, and secondly, that it is necessary or expedient to displace the normal order of priority.
  
10. In *Buchanan v Milton* [1999] 2 FLR 844, there was a dispute between the natural mother and the adopted mother as to who should be granted letters of administration. Both wished to take possession of the body of their son in order to dispose of the body, either in Australia or in the United Kingdom. The adoptive mother was the person entitled to a grant of letters of administration. The son was an indigenous Australian and his natural mother wished him to be buried in Queensland where he was born. His adopted mother and the mother of his daughter wished him to be buried in the United Kingdom where he had lived the last 20 years of his short life. He died aged 26 in a road traffic accident. The special circumstances relied upon were fact-sensitive to that case. Hale J (as she then was) set out four discrete factors that the court should consider: (1) the views of the natural family; (2) the views of the adoptive family; (3) the interests of his child; and (4) the wishes of the deceased. The court did not accept there were special circumstances and so the adoptive mother was the person entitled to a grant and to have the body released to her.
  
11. There is no property in the body of a deceased person so the deceased cannot bind his personal representatives as to how his body should be disposed of, but of course the wishes of the deceased are important and should be taken into account. In cases where there is a dispute, usually the court only needs to decide to whom the body should be released to, although in suitable cases it does have inherent jurisdiction to give directions as to how the body should be disposed of. In *Hartshorne v Gardner* [2008] 2 FLR 1681, Proudman J considered she could decide a combination of place and method of disposal of the body, which had not been proposed by the parties.

12. In *Oldham Metropolitan Borough Council v Makin* [2017] EWHC 2543, a case concerning the disposal of the body of Ian Stuart Brady, the then Chancellor made an order under section 116 limited to the disposal of the deceased's body and gave directions as to the method by which the deceased's body should be disposed of and said that although the deceased's wishes were relevant, they were not determinative.

### The Claim and Evidence

13. Turning then to the evidence before me, the claim was originally listed for final hearing on 16 December 2021. Two days prior to that hearing, Jennyfer's solicitors came off the record. She attended the hearing remotely from France with no interpreter assisting her and with little understanding in English. Given my concerns that Augel had died on 3 June 2021 and that his body needed to be disposed of promptly and with all due decency, exceptionally, arrangements were made for a court appointed interpreter to be available for the adjourned final hearing. I also caused my order dated 21 December 2021 to be translated into French.
14. I raised back on 12 October 2021, when Jennyfer had counsel representing her and solicitors, whether permission from the relevant French competent authority would be needed in order for her to give oral evidence from France to a court in England.
15. I have already given a ruling at the start of the hearing as to whether Jennyfer and Yvette, both of whom are in France, could give oral evidence. They could not, in my judgment. In summary, in my order dated 21 December 2021, I recited that the French competent authority needed to give permission for a party and witness to give direct evidence from France, in accordance with the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. At paragraph 3 of the order it was a condition of the claimant giving direct evidence that she files by 10 am on 5 January 2022 documentary evidence that the necessary permission had been obtained and, if relevant, also permission for her witness. Jennyfer said that she had forwarded the relevant permission a week ago. All that had been sent to the court was a short further statement from Yvette, in French and translated into English, a document signed by a mayor referring to a burial plot, and a copy of my order that had been translated into French.

16. I did, however, permit Jennyfer to rely on her witness statements and that of Yvette, her witness. These were admitted under the Civil Evidence Act 1995 as hearsay evidence. I bear in mind the considerations set out under section 4 of the Act in respect of what weight to give those statements and in particular that Jennyfer failed to obtain permission from the French competent authority which would have enabled her and Yvette to give oral evidence and be subject to cross examination. Mr Kaihiva, counsel for Rina, took a pragmatic view to this approach and did not object to the admission of these statements.
17. On behalf of Rina, I heard oral evidence from her, tested under cross-examination and oral evidence from her son, Emmanuel, again tested under cross-examination. Counsel also put into evidence witness statements from Thomas Olafo, a friend of Augel's, Laurie Kinzonzi, a friend from childhood of Augel's, both of whom had lived in Congo, then in France and finally settled in the United Kingdom. Leah also made a witness statement. Jennyfer had no questions to ask of Leah, so she was not formally called to give evidence.
18. Both Rina and Emmanuel gave measured evidence which I accept. I found them to be truthful witnesses who, despite the distressing nature of this case for all parties concerned, answered all questions asked by Jennyfer openly and with great humanity. Where there is disagreement in the evidence, I prefer the evidence of Rina and her witnesses.
19. The witness statements, in particular of the parties to this claim, contain a significant amount of contentious matters and cross-allegations, which do not help me to determine the central issue in this case. There was also a joint expert's report from Adam Brand, a handwriting examiner who, since 2001 has provided written reports on questionable documents to solicitors, individuals and companies. His report is dated 26 November 2021 and his qualifications are set out in Appendix 1 to that report.
20. I now go on to consider the special circumstances raised by Rina's counsel and whether it is necessary or expedient for an order to be made under section 116, because if Rina does not satisfy the court that section 116 is engaged, then Jennyfer is the person entitled to a grant of letters of administration. The factors that I particularly have in

mind are the factual background, Augel's expressed wishes, the wishes of Augel's family and friends, the place with which Augel had the closest connection and burial arrangements.

## Factual Background

21. Augel was born in Brazzaville, Congo on 28 April 1976. In 1998 or 1999 he moved to France and apart from returning to Brazzaville in 2007 for about 9 months he remained living in France. In 2003 he acquired French nationality. Augel married Sylvie and they had 3 children, Jennyfer, Lea and Chloe. They subsequently divorced.
22. In 2008 or 2009 Augel moved to the United Kingdom to live here permanently. Augel, who had met Rina many years previously in Congo, started a relationship with her. They lived together with Rina's two children from a previous relationship. They had 3 children, Ryela, Michael and Augel, born after the death of his father. In 2012/2013, when Ryela was around 1 or 2 years old, Lea and Chloe moved to the United Kingdom to live with Augel and Rina. Yvette had asked Augel to look after them.
23. In 2015 Augel's father died. Augel and Rina travelled to the Congo to bury him, that is the last time Augel went to the Congo.
24. After Augel died Chloe returned to France to live. Lea remains living with Rina and filed a witness statement insisting that she wished to give evidence to support Rina and the burial of her father in the United Kingdom.
25. Although Augel was close to Yvette, ringing her quite regularly at weekends he visited France only about 6 times over the course of 13 years. Yvette visited him and Rina in England about three times. Save for Augel's sister Stella visiting in 2009 his family in France did not come to England to see Augel. I will refer to Jennyfer later.
26. Augel worked for DHL as a courier and worked hard 5 days a week from early morning to the evening. He had a full life in England with his partner Rina and their blended family. He had a wide circle of friends here and played basketball regularly. Whilst he loved his family in France his focus and commitment were to his immediate

family in England. As Rina said in evidence inevitably over time with the geographical distance and not seeing his family in France regularly his ties with France became far less strong.

### **Wishes of Augel**

27. Rina wrote to Jennyfer's solicitors before this claim was issued enclosing an extract of Augel's journal. I asked counsel for Rina to refer me to the relevant page number for the English translation, which he was not able to do. However the extract itself is quite simple. It reads (as translated),

*"On my death I would like to be buried in my country of permanent residence."*

Jennyfer alleges this is a forgery. In her first witness statement she alleges that Augel had confided in Yvette that he wished to be buried in the same vault as his mother. She was not present during this alleged conversation. No details are given about this conversation in Yvette's statement. In fact the plot or vault appears to have been purchased after Augel died. I do not accept Jennyfer's evidence in respect of this conversation.

28. Mr Brand in his expert report, which I accept, summarises his conclusions as to the authenticity of Augel's journal at paragraph 1.4:

"It is highly probable that the questioned handwriting, including the signature, was written by Mr Augel Pangou. It is highly probable all documents provided were by the same person. It is probable that the crossing out of the zero and other alternations were written by the same person."

29. I am satisfied on the evidence before me, both the journal written in Augel's handwriting and supplemented by the evidence of Rina, that the journal sets out Augel's wishes. It was written when he was living in England, which was his permanent residence and he wished to be buried in England.

### **Wishes of family and friends**

30. Rina wishes to respect Augel's wishes. She wants to grieve the loss of her partner by attending his graveside. She wants to attend the graveside with his youngest children. As yet they have no real appreciation that their father has died.
31. Notwithstanding this claim, Rina with great humanity in her evidence has spoken about Augel's love for his daughter Jennyfer. She also said that with time and geography comes some distance in relationships. I accept her evidence that Augel's focus was on his young family in the United Kingdom. Jennyfer had visited him only twice in the United Kingdom. Yvette, who undoubtedly enjoyed a good relationship with her eldest and I believe her only son, visited three times. I accept Rina's evidence that the family did not travel regularly to France and focus, as I have said, was on their young family and that they visited France perhaps six times in a 13-year period.
32. I note that both Chloe and Leah spent some 8 to 9 years living with Augel and Rina in the United Kingdom. Rina's clear wish, that of Leah, of the two friends who had given evidence, is that Augel should be buried in Kent. In contrast, Jennyfer and Yvette wish him to be buried in France.
33. Jennyfer and Yvette have placed emphasis in their evidence on Augel's cultural heritage, that it is right that he is buried close to his mother and extended family. But Rina's evidence, which I accept, is that Augel chose to move to the United Kingdom permanently and the evidence in relation to this, which I accept, is set out in her second witness statement at paragraphs 14 and 15. “

*“Augel may have grown up with the African values and customs due to his parents' influence. However, as an adult he did not hold these values in his way of life. He also did not believe in raising his children with those values. In this regard, it is important to note that [Jennyfer] has never visited the Congo, and so knows nothing about these traditions. Augel did not impress these traditions and beliefs on [Jennyfer] when he lived with [h]er and her mother, his ex-wife Sylvie, in the early 2000s.*

*I believe Augel had respect towards elders as this is normal to African culture. However, this does not mean a man cannot form their own values and beliefs as he grows, which was the case with Augel.”*

### **Places to which Augel had closest connection**

34. As I have already said, Augel was born in the Congo. He moved to France in 1998 or 1999. In 2003 he acquired French nationality. He returned briefly to the Congo and then went back to France.
35. In 2008 he moved to the United Kingdom and so for the last 13 years of his life, he lived in the United Kingdom. The closest connection that Augel had was to the United Kingdom. He chose to make his permanent home in the United Kingdom. Whilst of course Congo is his heritage and the part of his adult life spent in France and the part of his family who remain in France, are part of who Augel is. However I am satisfied on the evidence before me that Augel decided to make England his permanent home, unquestionably it is the United Kingdom for which he had the closest connection.

### **Practicalities of burial arrangements**

36. Rina has set out in her oral evidence that upon release of his body arrangements are in place for Augel to be buried in Sidcup. It was a place that he loved, it will be near to his closest family, but all of his family and friends can visit the graveside. In evidence Rina described Augel as having a big group of friends. He had friends, the people he worked with at DHL as a courier. He was embedded in the community, and he was close friends with those he played basketball with.
37. I am satisfied that Rina is genuine in her desire for Augel's family in France to attend the burial and to play an important role in placing Augel to rest finally. The only caveat to that is outside of Rina's control, and that is whether there will be any restrictions as a result of the pandemic as to numbers at the graveside and how family members can travel from France, potentially the Congo.
38. Rina was cross-examined about her future intentions. There is obvious concern for Jennyfer and her family that Augel and his graveside will be visited by Rina, family and friends in England. Reference was made to Rina marrying. I am satisfied on the evidence that Rina's current position, and one does not have a crystal ball as to what the future will hold, that she does not intend to marry. I accept her evidence when she

says Augel was the love of her life and that part of her has gone and all children and other family members have lost somebody who was a devoted father, partner and someone loved by family and friends.

39. For the reasons that I have set out, the factors that I have gone through, I am satisfied that there are special circumstances to engage section 116 and that it is both necessary and indeed expedient for the court to appoint Rina as administrator of Augel's estate.
40. Counsel for Rina has invited me to make a full grant to Rina. Other than being told there is little or nothing in the estate, I know nothing about the assets of the estate. In Rina's witness statement she said that she did not intend to seek a full grant. The issue that comes before the High Court is the disposal of Augel's body and it does not seem to me to be proper to make a full grant to Rina with no information before me.
41. So I will make a limited grant to Rina so that the body of Augel can be released to her so that she can make arrangements for the prompt disposal of Augel's body. In relation to those arrangements, Jennyfer and Yvette must be given as much notice as possible as to when the funeral is taking place and where it is taking place.
42. I am not going to give a direction in relation to this, but this is a family that needs to come together now, and I would hope that Rina is able to speak to Jennyfer and to Yvette and to include them in the arrangements for the disposal of Augel's body. But under law it will be the right of Rina to dispose of his body.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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