

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

Family Division  
1<sup>st</sup> Mezzanine, Queen Building  
Royal Court of Justice  
Strand, London  
WC2A 2LL

Monday, 13 July 2020

BEFORE:

**MR JUSTICE FRANCIS**

BETWEEN:

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**YOUSEF AMINE**

Applicant

- and -

**MAATER TOUATI AMINE**

Respondent

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**MR M JARMAN** appeared on behalf of the Applicant Father  
**MS L TARGETT-PARKER** appeared for the Respondent Mother

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**JUDGMENT**  
(Approved)

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(Official Shorthand Writers to the Court)

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

1. This is the third set of child abduction proceedings pursuant to the 1980 Hague Convention, brought in England in respect of two children, namely Mohammed Ayoub Amine, born on 9 August 2010 who is therefore almost 10 years old and Fatima Zara Amine, born on 19 November 2013 and so she is about six and a half years old.
2. The applicant in these proceedings, as in the previous two, is the children's father Yousef Amine. Their mother is Maater Touati Amine. The father has been represented by Mark Jarman of counsel, who also represented him in both sets of earlier proceedings. The mother has been represented in this hearing by different counsel, Ms Targett-Parker.
3. Given the current pandemic, the hearing was conducted via the Zoom platform. As has become my custom with remote hearings, before the hearing started I ascertained from all concerned that they were content to proceed remotely and the hearing proceeded with the consent of all. In fact, given that the only oral evidence was from Moroccan law experts and some short evidence from the CAFCASS officer, Ms Jolly, this type of summary hearing is, in my view, particularly well suited to this remote platform.
4. Ms Targett-Parker initially invited me to hear oral evidence from the parties themselves. I indicated that these were summary proceedings and that the court would not usually be assisted by oral evidence, but I agreed to keep an open mind on the issue and made it clear that the application for oral evidence could be renewed at any time. In the event the application was not renewed and so I have not taken oral evidence from either of the parties. It was, in my judgment, the correct decision not to renew the application.
5. The parties are divorced and both have dual British and Moroccan nationality. The children also have British/Moroccan nationality and hold British passports. It is not in issue that the father has rights of custody in respect of both children, although the mother has asserted that the father has failed to exercise those rights of custody.
6. The parents were married in Rabat in 2007. The father had moved to London for business purposes in 2002. The mother moved to the UK in 2006. The parties were married in 2007. The children were born in England and always lived here until February 2016, when the family relocated to Casablanca.
7. Before I deal with the current application it is necessary to set out a little of the background in respect of the two earlier sets of proceedings. On 20 December 2017, Parker J delivered a Judgment in which she found that the children had been abducted by the mother from Morocco to England. In those proceedings the father had to apply ex parte for a location order, which was granted on 29 September 2017. A hearing was scheduled for early November 2017 and was then adjourned until 15 November, because of the mother's failure to attend court.
8. The mother defended those abduction proceedings by: (a) a challenge to habitual residence under Article 3; (b) an Article 13A, acquiescence defence; (c) an Article 13B, child objections defence. I note that Ayoub at that time was just seven and a half years old and Fatima was just four years old. I also note that, because of the unlawful

abduction, the father had not seen his children at that time for about 15 months when the mother also raised the Article 13B, intolerability defence. The court was assisted on that occasion, as it has on this, by Ms Jolly from the High Court CAFCASS team.

9. It is obvious from the Judgment of Parker J that the mother has always been extremely bitter about the fact that the father commenced a relationship with another woman. Indeed, on 16 September 2016, the father was arrested for adultery, a criminal offence in Morocco. It is clear that the arrest was because the mother had obtained evidence of the father's affair and reported this to the police, which resulted in him being arrested and charged and imprisoned. Parker J found that the mother accepted that she could have secured the father's release from prison at any time. The father's new partner was also imprisoned; in her case, for two months. It was whilst the father and his new partner were in prison that the mother, as Parker J found, abducted the children to England from Morocco on or about 17 October 2016.
10. There was a dispute before Parker J about where the children were habitually resident. The mother had argued that, by 17 October 2016, seven months after the relocation to Casablanca, the children were still not sufficiently stable in their existence nor integrated into Moroccan society as to render them habitually resident in Morocco. After reviewing what she referred to as "the quartet of modern habitual residence decisions", the judge found that the children were indeed habitually resident in Morocco at the time of their removal to England by the mother and that their removal was therefore unlawful.
11. Parker J made it clear, as I do in this Judgment, that the theme which must permeate all parts of this decision in relation to habitual residence is that of the children and the children alone. The judge took a considerable body of evidence into account and, in particular, she was significantly influenced by an assessment summary and advice from the speech and language therapy service which Ayoub had been attending in England.
12. Three months after their relocation to Morocco, the mother had brought Ayoub back to England for a final session with that service. The third sentence of that report recorded: "MA's mother reported that she and MA's father have decided to move to Morocco on a permanent basis". The same report also recorded that "MA's mother reported that MA has enjoyed learning about Morocco and meeting Moroccan children. He now enjoys interacting with his peers and he likes sharing toys." MA, of course, obviously is a reference to Mohammed Ayoub.
13. Parker J also recorded that she had come to the firm conclusion that the children were undoubtedly habitually resident in Morocco at the date of their removal to England by the mother. With respect to the child's objections, the judge found that the context of what Ayoub had told Ms Jolly was all against the background of what he had been told by his mother. Ayoub also made clear that he missed his father, that he spoke of his father in terms that he had evidently acquired from an adult, assumed to be the mother. Parker J recorded that Ayoub used words which were not appropriate for someone of his age and were "over adult", as she put it. The judge found that Ayoub was over involved in adult preoccupations, either picking up or being told information.

14. Accordingly, the judge rejected the child's objections defence. The judge found that the children were wrongfully removed from a country in which they were habitually resident and that the mother had not established either of the defences. The judge indicated that, even if a defence was made out, her discretion would be that the children should be returned in their best interests and in accordance with the policy of the Hague Convention.
15. The mother sought to appeal the decision of Parker J, but her application was clearly and unequivocally dismissed on paper by Moylan LJ.
16. The mother did not board the plane to Casablanca with the tickets purchased by the father, but flew instead to Marrakesh the following day. Two days later the father requested details of the children's whereabouts from the mother's solicitors. The mother's solicitors said that they were without instructions and applied to come off the court record.
17. On 6 February 2018, the mother left Morocco with the children and arrived in England some time in late February, probably having travelled via Belgium, Luxemburg and also a trip to Egypt. I note that Cohen J, who heard the second set of abduction proceedings, remarked that the mother would have found it difficult to return to England before her application for permission to appeal the decision of Parker J had been determined.
18. And so it was that, in March 2018, the father commenced fresh proceedings for the summary return of the children to Morocco. The final hearing was before Cohen J on 10 and 11 May 2018. On 16 May, Cohen J ordered the return of the children to Morocco by 23.59 on 30 May. Again, the mother sought to appeal and her application for permission to appeal was refused on paper, this time by Davis LJ.
19. Before Cohen J, the mother opposed the father's application on a variety of grounds, arguing that the children were habitually resident in England, that Ayoub had objected to a return and she repeated her Article 13B defence that she had rehearsed before Parker J.
20. I note that Cohen J recorded that both parties come from prosperous families, although no attempt had been made during the proceedings to delve significantly into the extent of their wealth. This may be relevant in the context of the colossal costs that the mother has incurred in now three sets of child abduction proceedings, I will return to this issue later in this Judgment.
21. Cohen J also heard evidence from Ms Jolly from the High Court CAFCASS team. Cohen J couched his findings in broadly similar terms to those of Mrs Justice Parker, finding that Ayoub was using adult language that was acquired rather than expressive of his own views. Cohen J said:

"There were a number of examples where Ayoub's use of language was inconsistent with his age, for example, referring to his father's mistress"

Cohen J also referred to an incident over the weekend of 6/7 May where the children had said that they would like to have a sleepover with their father. Cohen J recorded as follows:

"The next day Ayoub was extremely worried about the mother's reaction to him having a sleepover and the father asked Ayoub if he wanted to speak to the mother. He said he did, but when they rang the mother, she refused to speak to him at first and then became hysterical. By the end, at 5 pm, Ayoub said that he wished to stay longer. Fatima cried that she did not want to return. The mother came to pick them up and filmed the handover."

22. Cohen J found it clear that Ayoub had been under considerable pressure to ally his views with those of the mother. Once again, the mother did not fly with the tickets purchased for her and the children by the father, but took a flight the following day. Her counsel told me, on instructions, that the reason for this was that the representative of Dawson Cornwall, Solicitors, who was to attend at the airport with the passports, arrived late. I expressed surprise that such an experienced firm would create such a difficult situation. I required evidence about this from Dawson Cornwall and when that evidence came in it was clear that it was the mother who was late at the airport. Her excuse then became that she was waiting to hear from the Court of Appeal about her application for permission to appeal.
23. The mother and the children duly arrived back in Morocco on 31 May 2018. As noted above, this was a day later than the final date set by Cohen J. The father attempted Skype contact on numerous occasions after the return of the children to Morocco. In June 2018 the mother made a fresh criminal complaint against the father in respect of his second marriage.
24. In spite of instructing bailiffs, the father was unable to locate the mother and the children and, in July 2018, he applied for a location order from the High Court in London fearing that the children may have been brought back to England again by the mother, so a location order and disclosure orders were made by Russell J on 17 July 2018.
25. On 9 November 2019 the mother again removed the children from Morocco to England. Once again, the father applied for the summary return of the children. Judd J granted a location order and made disclosure orders on 18 December 2019 and the mother was eventually located with the children staying at a Travelodge Hotel in Ilford at the expense of a London local authority.
26. Given the findings of Parker J and Cohen J, I have little difficulty in reaching the obvious conclusion that at the time of removal to England from Morocco in November 2019, the children were habitually resident in the kingdom of Morocco. Like Cohen J, I adopt the test set out in *A v A* [2013] UKSC page 60, as explained in more detail by Hayden in *Re B* [2016] EWHC 174 at paragraph 17. The test adopted is the place which reflects some degree of integration by the children in a social and family environment in the country concerned, which depends on numerous factors, including the reasons for the family's stay in the country in question.

27. Ms Targett-Parker for the mother made the bold submission that the children acquired habitual residence in England the moment they stepped off the plane. As I pointed out during discussion in the hearing, at that stage the children had no home, no school, no family and few friends in England. The fact that they stayed at a Travelodge at the expense of the local authority is clear evidence of their homelessness. I have no hesitation whatsoever in rejecting as plainly wrong any contention that the children acquired English habitual residence the moment they arrived on English soil.
28. A with notice hearing was listed on 14 January 2020 before Judd J. The mother attended as a litigant in person and was directed to file and serve a statement of evidence and the mother's and children's passports were to be surrendered to the tipstaff, where they remain. Contact was to be arranged between the children and the father via Skype.
29. On 23 January 2020, the matter came before Mostyn J, the mother again being a litigant in person. She asserted before the judge that the children were habitually resident in the UK and that the father's consent was not required for her and the children to leave Morocco. The second argument put forward by the mother in these proceedings is that the father was not exercising rights of custody in Morocco.
30. Having recited the history as I have above, I have no hesitation in concluding that the reason why the father was not seeing his children was because he did not know where they were. In my judgment, the mother has continuously denied the children the contact with and society of their father which they need. It is, I am afraid, absurd for her to suggest that the father was not exercising rights of custody in circumstances where he plainly desperately wanted to see his children, but was unable to do so, because he did not know where they were. As Mr Jarman sets out in his skeleton argument in these proceedings, it is difficult to see on any objective analysis how it can be said that the father was not seeking to exercise his rights of custody where: (1) he had applied and obtained two return orders, pursuant to the 1980 Hague Convention; (2) he had made two further attempts to locate the children in England by applying for two location orders in 2018 and 2019; (3) he had applied for orders from the Moroccan court through the divorce process and then further appealed one of the decisions, something I will return to later and (4) he applied for a third time pursuant to the 1980 Hague Convention in December 2019 within four weeks of discovering that the mother had again abducted the children back to England.
31. I have been referred to *Re H (Minors)(Abduction, Custody Rights); Re S (Minors)(Abduction, Custody Rights)* [1991] AC at 476 where Lord Brandon said:

"In my view, Article 3 must be construed widely, meaning that the custodial parent must be maintaining the stance and attitude of such a parent rather than narrowly as meaning that he or she must be continuing to exercise day-to-day care and control."

"If the narrow meaning was adopted it could be said that a custodial parent was not actually exercising his or her custodial rights during a period of lawful staying access with the non-custodial parent. That, it seems to me, cannot be right."

Further, despite agreement to make the children available for contact with the father upon their return to Morocco, and the terms of the Moroccan divorce judgment in July 2019, the children were never made available to the father for the entirety of the time that they were in Morocco.

32. At the hearing on 23 January 2020, the mother indicated that it would now be her case that the father's consent was not required to leave Morocco, by reason of the Moroccan divorce judgment. The father accordingly obtained expert evidence which said that the mother is not permitted to relocate and, further, that the mother even appealed that decision in January 2020 and asked for permission to relocate, that this permission was denied and then the first instance decision upheld.
33. The mother then produced her own expert evidence the date before the listed final hearing on 25 February 2020. This evidence contained the somewhat oblique statement that:

"It was normal for the children to return to their normal country on the other side."

Happily, I have not been invited to decide what that means or to rely upon that opinion.

34. When the matter came before Russell J for a final hearing, she was concerned that the children's wishes and feelings had not been considered, although it had been expressly addressed in the order of Mostyn J. Russell J was also concerned that the expert evidence offered different interpretations and she ordered that there should be a single joint expert report. The parties were unable to agree the identity of the expert report and they took the matter back to court, this time it came before Cohen J to resolve. Instead of choosing one or other the suggested experts, Cohen J determined that there should be a joint report written by the expert contended for by each side. Unhappily, but perhaps predictably, the experts were unable to agree and it was necessary for me to hear evidence from each of them.
35. Both experts gave evidence through the Zoom link and although the link was from time to time troublesome, I have been able to reach a very clear determination in relation to this issue. It is useful to start from the applicable legal principles. Article 179 of the Moroccan Family Code provides:

"The court may at the request of the public prosecutor's office or the child's legal representative, include in the custody decree or any subsequent decision and injunction prohibiting travel by the child outside of Morocco without the prior consent of his or her legal representative. The public Prosecutor's office shall notify the competent authorities about the injunction so that they may take all necessary measure to guarantee the execution of this decision. In the event that permission to travel outside of Morocco with the child is not obtained, the custodian may petition the judge in charge of the expeditious cases to secure such permission. Permission shall not be granted until the judge has ascertained that such travel is temporary and that the child will be returned to Morocco."

36. The jointly instructed experts are El Hassan Assif and Hassam Mazzuzi. Mr Assif was clear that the regular residence of the spouses is based in Morocco pursuant to chapter to 212 of the civil procedure law. He said that the fact that the marital home was in Casablanca and that the fact that the parties were married in Morocco makes it clear that Morocco is the habitual residence of the children. He also referred to the fact that there was a foreign ruling, by which, of course, he was referring to the decisions of Parker J and Cohen J discussed above and that this makes the position even clearer.
37. Mr Mazzuzi argued that, because the Moroccan court rejected the father's request for an injunction pursuant to Article 179, the habitual residence of the children was England. I simply do not understand the logic of this statement and I am afraid that nothing in the oral evidence came close to changing my mind. I am clear that what happened is that the Moroccan court did not accede to the father's application for an injunction pursuant to Article 179 to the Moroccan Family Code. Just because the court was not prepared to grant an injunction preventing the mother and the children travelling, does not mean that they were permitted to relocate without the permission of the father or the court. Both Mr Asif and Mr Mazzuzi were clear that, under Moroccan law, just as with English law, a parent cannot relocate the children to another country without the consent of the other parent or in default, permission of the court. The mother has neither in this case.
38. Mr Mazzuzi further referred me to Article 186 of the Family Code. This provides as follows:

"The court shall take into account the interests of the child when applying the provisions to the present section."

Mr Mazzuzi told me, and I accept, that Article 186 must guide the application of the Code and that, of course, includes Article 179. However, there is nothing in the papers which suggests that the interests of the child application would affect the issue of habitual residence. As I pointed out to counsel during discussion, this seems to me to be no different from saying that the paramountcy principle guides the judicial application of the Children Act 1989. Mr Mazzuzi opined:

"By referring to the ruling issued on 23 July 2019, we find that on the one hand it rejected the husband's request to prevent the wife from travelling with the children outside Morocco without the husband's consent, based on the act that they hold British citizenship and that preventing their mother, without the husband's consent, would affect the rights of her acquisition preventing their British citizenship as well as the health status of the child Mohammed Ayoub, who needs special care that he finds in Britain."

39. It is clear to me that the only proper interpretation is that the Moroccan court declined to accede to the father's application to prevent the mother *travelling* to England with the children. It did not in any sense give permission to the mother to relocate to England.

40. Mr Assif put it this way:

"The husband's request to prevent the wife from travelling outside Morocco with the two children without his approval and the wife's request was to return the two children to Britain and support the appellate decision of the preliminary ruling. By rejecting the husband's request and not accepting the wife's request, the wife became obligated to adhere to the second part of Article 179 of the Family Code by resorting to the regional court to obtain a travel permit for the provisional temporary travel and to ensure that the children returned to Morocco."

He pointed out that this is evidenced by the fact that the first part of the court's jurisdiction, that is this matter's jurisdiction and the second part of the emergency jurisdictions are temporary measures. If I was in any doubt at all about the accuracy of my interpretation of this dispute, it seems to me to be clearly resolved by the fact that the mother unsuccessfully sought to appeal the ruling. If the ruling bears the interpretation which she now wishes me to apply, why on earth would she appeal? The certified translation of the chief president of the Court of Appeal in Casablanca states:

"The wife's request to return the two children, Mohammed Ayoub and Fatima Asarah, to the country of their original and habitual resident, Britain, was dismissed."

In my judgment, this language could not be clearer and I am disappointed that no less than four experts have been instructed in this case, presumably at huge expense, to deal with this rather obvious point. As Mr Assif made it very clear when he said:

"It is a very simple answer, with regard to the fact that the wife does not need any permission to take the children back to England, I am going to answer by a question, why did she request an order from the court if she did not need any permission? Why did she appeal the decision if she is saying that she has the right to come to England anyway? Why did the court allow the father visitation rights on a Sunday between 10 am and 6 pm in Morocco if the children were going to be in England? She does not have the right to take the children according to Article 179. She did not get the agreement of the father and she does not have a court order allowing her to take the children permanently to Britain."

41. It is equally clear to me, from reading the Moroccan papers, that the father's appeal against the refusal of an injunction pursuant to Article 179 was also dismissed. The court took the view that the children:

"Have British nationality and consequently have gained the right to use it, therefore, preventing their mother from travelling with them except with the consent of the husband may injure these rights."

I note the reference here to travelling and not to relocation. In other words, the court and the Court of Appeal in Morocco took the view that the mother should be allowed to bring the children to Britain for visits and for medical treatment. I have already referred to the fact that Ayoub was having help with speech. That is not the same as

allowing them to relocate and, with the greatest of respect to the way that the mother's case has been put, I see this as really very obvious. In my judgement, the mother has completely failed to establish that she has the permission of the Moroccan court to relocate. Indeed, as I have said, the only proper interpretation of the Moroccan documents is that she has permission to travel, not to relocate. I am bound to say that, if English law principles were applied in Morocco, which of course, they are not, an English judge would be very likely to grant the father any application that he might now make under Article 179 were a further one to be made, given that the mother has now unlawfully abducted the children from Morocco to England on no less than three separate occasions.

42. Finally, I turn to deal with the mother's defence that the children object to being returned to Morocco. I have already set out in some detail the way that this defence was dealt with by Parker J and Cohen J. They both concluded that Ayoub was expressing things in an adult way that reflected the fact that he had acquired the views of his mother rather than expressing his own views.
43. Given that the children have hardly seen their father since the judgment of Cohen J, the same surely still applies. As mentioned above, I heard oral evidence from Ms Jolly of the CAFCASS High Court team. This is the third time that she has been involved in this case and she prepared an extremely helpful written report and gave very clear oral evidence. She described the children as being overwhelmed. She said that Ayoub had been influenced, he used adult language, he used “air quotes” around what it means “to be a wife”.
44. Because of the Covid19 pandemic Ms Jolly met with the children remotely, but I am satisfied from everything that she has written and from what she said in her oral evidence that she was able to have a helpful and insightful conversation with the children. Ayoub told her that “we” want to stay in London. I also note that Ms Jolly reports that Ayoub whispered in Fatima's ear and then Ayoub said that Fatima really wants to go home. When Ms Jolly asked what this meant, Ayoub apologised and clarified that it meant that Fatima wants to stay home. Ayoub complained that the father was doing this to them and that his father “has ruined everything”. However, Ayoub also indicated that he would be perfectly happy to visit Morocco.
45. Ayoub will be 10 years old next month and he is, in my judgement, of sufficient age and maturity for me to consider his views. The same does not apply to Fatima, who at the age of only six does not have sufficient maturity or understanding.
46. Based both on what I have read from Ms Jolly, from her oral evidence and from the findings of Parker J and Cohen J, I am satisfied that Ayoub's expressed wishes have been acquired from his mother, who clearly speaks in poisonous terms to them about the father. I dare say that the father has not helped himself by being substantially in arrears with the maintenance that he has been ordered to pay by the Moroccan court, but I have few details about this issue and it would not be right or proper for me to reach any conclusion or say any more about these financial matters, which doubtless will take their course in Morocco. I would certainly urge the father, if he is able to, to make the payments that he has been ordered to make. He may indeed, of course, want to vary those, because, as I understand it, at one point at least the Moroccan payments

were based on English costs, which may be significantly higher than those incurred in Morocco, but that is outside the ambit of this judgment and I say no more about it.

47. I cannot therefore allow the poisoned views of the children to make any difference at all to the decision that I make today. However, I make it clear that were I required to exercise my discretion I would be firmly of the view that the children should return to Morocco. In fact, as I said, I do not even get to this stage of exercising discretion in this case.
48. When submissions ended on Friday, 10 July, that is three days ago, I told counsel that I expected them to have discussed between each other arrangements, both in the event of a return order being made and in the event of me not making such an order. I recognised that foreign travel is difficult at the moment due to the Covid19 pandemic and I will hear submissions now on the likely dates for return. I am, however, clear, that the mother must pay for the flights herself and that she and the children, should return to Morocco as soon as it is regarded as safe for them to do so.
49. I will repeat the orders that were made by Cohen J to ensure that the mother and the children benefit from what we lawyers refer to as a soft landing.
50. Since this Judgment was delivered I have received submissions from the parties about publication. I have come to the clear view that this Judgment should be published on the relevant legal platforms and that the parties should be named. It is unusual to name a family in a children case, but given the mother's behaviour, her three abductions, and the need for this family to settle peacefully, I have reached the clear decision that the Judgment should not be anonymised. Publicity will hopefully also deter the mother from attempting a fourth abduction. I hope that the family will now settle in Morocco and that the children will be able to enjoy the company of both parents, free from further pressure to prefer one over the other.
51. I have also, since delivering this Judgment, heard detailed submissions in respect of costs and I have ordered the mother to pay the father's costs, which I have assessed on the indemnity basis. I express the sincere hope that the mother will now reflect on the damage that her actions have caused her children.

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

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**This transcript has been approved by the Judge**