Neutral Citation Number: [2021] EWHC 355 (Fam)

Case No: FD18P00195

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/02/2021

Before:

MRS JUSTICE THEIS

- -

Between:

X	**Applicant**
- and -	
SSHD	**Intervener**

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- -

Ms Kathryn Cronin (instructed by **Goodman Ray**) for the **Applicant**
Ms Claire van Overdijk (instructed by **SSHD**) for the **Intervener**

Hearing dates: 12th and 13th January 2021
Judgment: 18 February 2021

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Approved Judgment

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MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. 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.

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email.
The date and time for hand-down is deemed to be 2.00PM on 18th February 2021.

Mrs Justice Theis DBE:

Introduction

1. This matter concerns the application by X (hereafter referred to as "X") for recognition of her Nigerian (Anambra State) adoption from Nnewi Chief's Magistrate Court on 28 December 2016 of Z (hereafter referred to as "Z"), who was born on 3 June 2014. The Secretary of State for the Home Department ("SSHD") is an intervener and opposes the application.

2. The application is made under the Court's inherent jurisdiction and by reference to the common law principles in *In re Valentine's Settlement [1965] Ch 831*. Those principles are clear and have been reiterated in subsequent cases, including *N (A child), Re [2016] EWHC 3085 (Fam)* where Munby P noted the applicable principles as follows:

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

   (2) The child must have been legally adopted in accordance with the requirements of the foreign law.

   (3) The foreign adoption must in substance have the same essential characteristics as an English adoption.

   (4) There must be no reason in public policy for refusing recognition.

3. X states each of these criteria are met. Initially the SSHD took issue with (1) and (2). In their closing written submissions the SSHD refined her position to submitting that (2) is not met in this case, relying on what the SSHD states is a failure to meet the requirements of one particular provision in the applicable statutory provisions in Anambra State, where the adoption order was made.

4. The matter was listed for two days, 12 and 13 January 2021. The court heard the oral evidence of X, and the experts on Nigerian law, Ms Atojoko-Omovbude instructed on behalf of X, and Mr Nsugbe Q.C. SAN, instructed by the SSHD. Directions were made for closing written submissions and the matter listed for the hand down of this judgment on 18 February 2021.

5. It is of some concern to the court that this application is dated 2 April 2018. The delay in this hearing taking place has been due to a number of factors, including the availability of experts to provide reports, their response to additional questions and availability to give evidence. In addition, there have been delays in submitting orders to the court for approval (notably between January and July 2020). These factors need to be considered in the context where since July 2019 the applicant's legal team and their expert have acted pro bono, as X was unable to continue to meet her legal fees.

Relevant background

6. X was born in the United Kingdom when her parents were living here on temporary visas. She is a dual British/Nigerian citizen.

7. At the age of 3 months X returned with her parents to Nigeria to live at the family home in Anambra State. Anambra is X's home State, she lived there with her family from then until the age of 25 years. This remains the State where her family home is. X is building/renovating her retirement home in the area where she grew up. As a result of changes in 1991 the latter property is now in neighbouring Enugu State, although the family home remains in Anambra State.

8. X had all her schooling and university education in Nigeria. Her husband was Nigerian, they married in 1999, separated in 2006 and divorced in 2014. X came to this jurisdiction in 1991, trained initially as a bus driver, then a nurse, and has worked and purchased a property here. X has spent each of her holidays since 1991 (save for two occasions when she visited her brother in the US) with her family in Nigeria, staying at the family home in Anambra State.

9. X is the parent of three children, all born in Nigeria. She gave birth to her eldest child, (hereafter referred to as "B"), at the age of 16 years. B was placed in the care of her aunt. For many years X and B were unaware of their true relationship. They are now and X reports they have a close relationship.

10. X adopted an infant (hereafter referred to as "C") on 20 November 2012 and Z on 28 December 2016. C was abandoned by unknown parents and Z was voluntarily relinquished by her birth mother into the care of the government owned Model Community Children's Home in Awka. C was one month old and Z ten months old when they were placed in X's care.

11. When C's adoption order was made by the Nnewi Magistrates Court in November 2012 Nigerian adoption orders were 'designated Overseas adoptions' in accordance with *the Adoption (Designation of overseas Adoptions) Order* 1973. As such they were automatically recognised in England and Wales, in accordance with the Adoption and Children Act 2002 (ACA 2002). C is therefore treated in law in this jurisdiction as if she were born to X (section 67 ACA 2002).

12. The 'overseas adoption' list was revised with effect from 4 January 2014. The replacement statutory instrument is *The Adoption (Recognition of Overseas Adoptions) Order 2013.* It included only those countries who had ratified the Hague Convention of 29 May 1993 on Protection of Children and Co-Operation in Respect of Intercountry Adoption ("Hague Convention"). As Nigeria is not a signatory to the Hague Convention, it was no longer on the 'overseas adoption' list. This change was not known by X until she was advised Z's adoption was not automatically recognised in this jurisdiction and the need for X to make this application.

The evidence

13. In her three statements and oral evidence X set out her own and Z's background. X is the eldest of 7 children and describes in some detail her strong family connections to Nigeria, and Anambra State in particular.

14. X describes how she gave birth at the age of 16 years and the family removed the child at birth, placing the child with an aunt. X grew up understanding this was her sister until she found out more recently the true nature of their relationship.

15. X's decision to come to this jurisdiction in 1991 was driven primarily by her wish to help support her family in Nigeria. In her statements she describes how she undertook agency work in care homes and hospitals, often living in inadequate short term rented accommodation. X trained to become a bus driver and through that work was able to purchase her own home. She re-trained as a nurse whilst continuing to work and graduated as a registered nurse in July 2001. Since then she has worked as a staff nurse in hospital and practice nurse in GP surgeries.

16. X returned to Nigeria in 1999 to get married to a Nigerian man she had known at secondary school. They married in Lagos, celebrated with a large traditional customary wedding in X's home village in Anambra State and a white wedding here. Her husband joined X here. There are no children from their marriage, due X's inability to conceive naturally for medical reasons. According to X they separated in 2006 in difficult circumstances, in 2007 X sold the property they had lived in and purchased her current home. In 2012 X's father returned the dowry, which she said equated with a divorce in Nigeria and X divorced him in this jurisdiction in 2014.

17. In her statement and oral evidence X set out her continued strong connection with Nigeria. Most of her family remain living there. Save for two occasions she has spent every holiday in Nigeria, her eldest daughter is there, X has purchased a property she is renovating and some land which she intends to retire to in the next 10 years. X speaks Igbo in Nigeria and when meeting her Nigerian friends here, and will wear traditional Nigerian clothes for special events here, or in Nigeria. As she states in her statement *'I am still very connected to what is going on in Nigeria and feel most comfortable and confident in clothing that identifies me as Nigerian'.* X remains in very regular contact with her family in Nigeria and emphasises her strong roots there. She describes her relationship with her eldest daughter as being *'very close and her presence there [in Nigeria] is a strong bond'.* She describes Nigeria as her *'home and I want and intend to return there'.*

18. In her first statement X sets out the background to her decision to adopt. Although her relationship with her eldest daughter is now strong she described her sadness at not being able to have had any involvement in her early life and upbringing. After seeing an advert in a local paper for adoptive parents she explored with the local authority where she lives here the option of adopting, in particular a child she shared a cultural background with. X reports it was not encouraging, as she was informed the local authority preferred married couples, not single adopters. It was then X decided to explore adoption in Nigeria and decided to make contact with the orphanage, due to her own experience of having had a child out of wedlock.

19. On 12 June 2007 X wrote to the Ministry of Social Welfare, Children and Women's Affairs ("the Ministry") with her application to be considered as an adoptive parent for a child. In that letter she states that she originated from Anambra State and that she lived and worked in London. The application was supported by letters from her Church in Nigeria, her brother and her doctor in Nigeria confirming she was in good physical and mental health.

20. C was born on around 23 March 2008, was found abandoned at the Model Motherless Babies Home ("the orphanage") and taken into care by the Ministry. The identity of her birth parents are unknown. C was placed in X's care on 23 April 2008 and has remained in her care since. X signed a fostering agreement confirming she would care

for C and bring her up as her own. X states it was known that she was living and working in the UK. X outlined when they came to assess her that any child would be in the day to day care of X's mother. X said as part of the assessment they met her mother and took copies of X's passport, together with details of her property and work here.

21. X visited C three times in Nigeria before applying for the adoption there. X's father died in late 2009. X recalls visiting more, but accepts there is no evidence of that in her passport. During this time she maintained regular video calls with C and financed all aspects of her care and needs, as well as making other decisions relating to C's day to day care and upbringing. X said she remained in contact with the Ministry, had knowledge of their home visits and views on adoption in preparation for X's travel there in 2012.

22. X returned to Nigeria on 13 November 2012 to make an application to adopt C in the Nnewi Magistrates Court. X said a further social work visit took place on 15 November and the Chief Social Welfare Officer prepared a report to recommend X as being suitable to adopt C. The report considered X and C's relationship and that C was strongly bonded with X and the wider maternal family.

23. The final adoption hearing took place on 19 November 2012. X attended court with a representative from the Ministry. The adoption order was made and attached to X's statement is the home study report, the order, the transcript of the hearing, as well as a letter from the Ministry dated 20 November 2012 giving X permission to take C out of Nigeria.

24. X wished to adopt a second child and applied to the Ministry in May 2013 to approve her as an adopter for a second child.

25. Z was born on about 3 June 2014. Her birth mother's name and family identity is recorded by the orphanage, the birth father is unknown. Z's mother, accompanied by her own parents, brought Z to the orphanage on the day of her birth and abandoned her there. In a letter dated 29 December 2016 from the Ministry Mrs Oguji, Director of Child Development at the Ministry, confirms Z's birth was not registered until after the adoption order was made.

26. X states she was approved as an adoptive parent for a second child and introduced to Z when she travelled to Nigeria in March 2015. Z was placed in her foster care in April 2015. As before, X returned to London due to her work, Z was cared for by X's mother, and the Ministry were aware of the position. X provided financial support and made the decisions about Z's day to day care and welfare. X returned to Nigeria to be with the children in July/August 2015 and on 29 November 2016. The adoption hearing took place on 28 December 2016.

27. As with C's adoption, X attended the hearing unrepresented and the Ministry sent a representative to Court to present the case. The Ministry supported the application to adopt. Ms Oguji, the Director of Child Development at the Ministry, filed a number of documents in support of the application. They included a home visit report dated 27 December 2016, an intake report dated 26 December 2016, the statement dated 27 December 2016 confirming the Ministry support for the application and an affidavit

of facts which also confirmed the Ministry's view that adoption was in Z's best interests.

28. X's statement describes the Ministry representative confirmed to the judge the circumstances of Z's placement, including the fact that X was living in England. X states the judge was satisfied she met the criteria for the making of an adoption order and that adoption was in Z's best interests. In her second statement X provides details of what she recalls was discussed at the hearing when she answered questions from the judge, these included matters relating to her family, work and care of the children. The adoption order was made with permission for X to take her out of the jurisdiction to live. The adoption order was signed by the magistrate, the summary note of the hearing doesn't appear that it was. Following that order Z's birth was registered and X is named as her only parent. A report summarising the steps taken, confirmation of adoption and authority to travel out of Nigeria are all dated 29 December 2016.

29. X wanted C and Z to remain in the care of her mother, albeit being financially supported by X with X making the decisions about their care and upbringing. X says this is because she wanted them to experience the same traditional upbringing she had. X said she is registered at the children's school as their mother and the teachers contact her to discuss matters relating to the children.

30. In her third statement X confirms she travelled to Nigeria in October 2018 and in June 2019. She has not been able to visit since, due to the Covid restrictions and her own ill health.

The adoption process

31. The Nigerian adoption orders in this case were made pursuant to the Anambra Child Rights Law 2004 ("CRL") which mirrors the Child Rights Act 2003 passed by Nigeria's National Assembly. Section 134 CRL provides that an adoption order shall not be made unless the following requirements are met:

(a) the applicant or, in the case of a joint application, one of them, is not less than twenty five years old and is, at least, twenty-one years older than the child;

(b) the applicant, or in the case of a joint application, both or, at least, one of them and the child are resident in the same State;

(c) the applicant has been resident or, in the case of a joint application, both of them have been resident in the State in which the application is made for a period of, at least, five years;

(d) the applicant is a citizen or, in the case of a joint application, both applicants are citizens of Nigeria;

(e) the child has been in the care of the applicant for a period of at least three consecutive months immediately preceding the date on which the order is made; and

(f) the applicant has, at least twelve months before the making of the order, informed the social welfare officer of his intention to adopt the child.

32. The focus of the SSHD's submissions relate to s 134 (1) (b) which it is submitted was not met, as X was not *'resident'* in the State when the adoption order was made. Initially the SSHD also challenged whether the requirement in s 134 (1) (c) was met, but now accepts in her closing submissions that Mr Nsugbe could not categorically find that the adoption order was deficient on this basis. It is accepted the other requirements are met.

33. Section 3 CRL states that *"In every action concerning a child, whether undertaken by an individual, public or private body, institution or service, court of law or administrative or legislative authority, the best interests of the child shall be a primary consideration".*

34. Section 136 CRL requires the court before making an adoption order to satisfy itself (among other issues) "*whether the order, if made, shall be for the welfare and best interests of the child due consideration for this purpose being given to the wishes of the child having regard to his age and understanding".*

Expert evidence

35. The focus of the court's consideration of the expert evidence will relate to the remaining issue between the parties, namely what the requirement for residence means in section 134 (1) (b).

36. This issue was initially raised by Mr Badejo, the first expert instructed on behalf of X. X's solicitor's letter dated 15 November 2017 to Mrs Oguji asks why the adoption order made no reference to section 134 (1) (b) and (c) CRL, how the court interpreted the resident requirement under those provisions and whether the Ministry sought for any of those requirements to be waived. This letter was responded to by Mrs Oguji on 21 January 2017 stating that X *'fulfilled all the conditions required for the grant of an adoption order and as such there was no need for a waiver'*. Further information was requested, which included asking why the court summary made no reference to section 134 (1) (b) and (c) and whether consideration was given to those requirements. Mrs Oguji responded on 30 August 2018 and stated that the court will only make reference to documentation presented by the Probation officer, so if section 134 (1) (b) and (c) were not pleaded the court would not refer to them in the order. In that letter Mrs Oguji sets out the broad way residence is considered, including the ties with the State, having a home in the State, regular visiting and the person being known and vouched for in the community. She confirmed that there was no requirement for all reasons to be written in the order and that once an adoption order is granted it is not subject to scrutiny by the Ministry. Any irregularity can either be corrected by the court itself or by a higher court of record.

37. In his report Mr Badejo took issue with Mrs Oguji's response, stating *'In my opinion, a person is resident in a place where that person lives. It involves a degree of permanence to the place. It connotes physical presence that is not mere fleeting or transitory'.* He stated he was *'not sure how the court could be satisfied on the evidence that the applicant was resident in the state at the time the order was made'* and concluded that he did not consider section 134 (1) (b) was made out. He took issue with any reliance by Mrs Oguji on customary law, which he did not consider was permissible to use as an aid to statutory interpretation. There is a valid subsisting adoption order but in his opinion no evidence that all the statutory requirements were

met. Mr Badejo accepted the order had taken effect and it was not in Z's interests to revoke it and he characterised the status of the order as voidable but unlikely to be challenged. Mr Badejo did not give oral evidence.

38. The SSHD instructed Mr Nsugbe, who practices in this jurisdiction and is a solicitor and barrister of the Supreme Court of Nigeria since 1986, with experience in practice in both jurisdictions. He states he has advised in a large number of matters involving Nigerian Law, including matrimonial disputes whether at customary law or statute, including giving expert evidence on Nigerian law in this jurisdiction. He was admitted to the rank of Senior Advocate of Nigeria in 2005.

39. In his opinion dated 16 November 2018 he stated that it cannot properly be argued that X was resident in the State at the time of the adoption. He agrees with Mr Badejo that the order was non-compliant with section 134 (1) (b) and that criteria was not waived or addressed consequently, in his opinion, the magistrate erred in making an order in respect of which not all of the mandatory grounds had been satisfied. |In his opinion the error is of a kind which probably makes the order voidable rather than void ab initio and notes *'It was one the Chief magistrate had the power to make but such power was exercised erroneously as opposed to one which lacked jurisdiction or validity altogether'*.

40. Ms Nsugbe provided a number of supplementary reports. In the first dated 21 February 2019 he was asked whether the Anambra Court's jurisdiction to make an adoption order depended on the Court being satisfied that the applicant was a resident in the State. In his response he noted that to his knowledge there were no Nigerian cases on this issue and English authorities on such jurisdictional issues would be persuasive for a Nigerian Court. He outlined the competing arguments as to whether the absence of any one or all of the section 134 criteria is a matter which goes to the court's jurisdiction and the validity of the order.

41. Ms Chide Atojoko-Omovbude is a Nigerian barrister who had provided an expert report on behalf of X, the report is dated 21 December 2020. In that report she confirms she was called to the Nigerian Bar and licensed to practice as a barrister and solicitor in 2004. She states she has a particular interest in child and family law and has advised and represented parties in adoption cases. She wrote the only textbook on adoption in Nigeria called 'Adoption of Children in Nigeria' which she describes as being used by lawyers, judges and academic researchers. In her report she takes issue in the way Mr Badejo and Mr Nsugbe have considered the requirement in section 134 (1) (b) for X to be resident in Anambra State at the time of the adoption order. She notes that it is possible to have a residence in more than one place at a time, X maintains a home in Anambra State and her regular presence there. In her report she refers to the cultural norms associated with residence, what she terms customs and traditions and cultural practices. In her opinion waiver did not arise as X had satisfied the residency requirement through the ancestral history and linkage of X to Anambra State.

42. In his second supplementary report, dated 7 January 2021, Mr Nsugbe responded to the report from Ms Omovbude. In summary he rejected her opinion as wrongly introducing notions of custom and tradition into straightforward statutory interpretation. He considered, contrary to the opinion of Ms Omovbude, that X leaving her children with her mother does not evidence that she is resident in

Anambra. He regarding it as *'overly speculative'* to state the magistrate considered X's cultural links or the various connotations of residence in making the adoption order.

43. Both Ms Omovbude and Mr Nsugbe gave oral evidence. Ms Omovbude denied the suggestion by Ms van Overdijk that her report had not answered the questions in her letter of instruction or that she had dealt with issues not covered in those instructions. She referred to what was set out in her book about residence, the cases she referred to, stating that residency remains a subject of discussion. She also denied the suggestion that she was conflating citizenship with residency. Ms Omuvbude accepted the hierarchy of law as described by Mr Nsugbe and stated that there was no reported Nigerian family law cases that addressed the issue of residency.

44. In his oral evidence Mr Nsugbe was pressed about his experience in family law and accepted that he had been involved more in advisory work than court based work. He was troubled by the fact that section 134 (1) b) and c) were not mentioned and the judge did not pronounce herself satisfied about those provisions, although he accepted that magistrates' records can be deficient and mistakes are made.

Submissions

45. In their characteristically comprehensive submissions both Ms Cronin and Ms van Overdijk have set out their respective positions with admirable clarity.

46. Ms Cronin takes issues with the analysis undertaken by Ms Nsugbe. In her submission the extended and varied caselaw that has considered the terms 'residence' and 'resident' are clear indicators that these terms are not plain and unambiguous, they reflect abstract concepts requiring, as Ms Cronin puts it, analysis and explanation. Ms Cronin relies on the case authorities referred to by Mr Nsugbe. She submits none of the definitions referred to in the cases require the high degree of connection, permanence and stability as advocated by Ms Nsugbe.

47. In her closing submissions Ms Cronin relies on *Grace v Commissioners for Her Majesty's Revenue and Customs* [2009] EWCA Civ 1082 where the Court of Appeal considered a summary of the law dealing with the definition of 'residence' complied by Lewison J in the court below and referred also to a list of factors compiled by a Special Commissioner in *Shepherd v HMRC* 92005) SPC 494 apparently approving both. Lloyd LJ, with whom Dyson and Waller LJJ agreed said as follows:

5. … Lewison J summarised a number of relevant factors in paragraph 3 of his judgment, and at the end of his judgment he referred back to, and described as impeccable, another list provided by Dr Brice in her decision in an earlier case about another airline pilot, Shepherd v HMRC (2005) SPC 00484, from which, as it happened, Lewison J had heard and dismissed an appeal: [2006] EWHC 1512 Ch.

6. Lewison J's summary is as follows:

"(i) The word "reside" is a familiar English word which means "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place": Levene v Commissioners of Inland Revenue (1928) 13 TC 486, 505.

This is the definition taken from the Oxford English Dictionary in 1928, and is still the definition in the current on-line edition;

(ii) Physical presence in a particular place does not necessarily amount to residence in that place where, for example, a person's physical presence there is no more than a stop gap measure: Goodwin v Curtis (1998) 70 TC 478, 510;

(iii) In considering whether a person's presence in a particular place amounts to residence there, one must consider the amount of time that he spends in that place, the nature of his presence there and his connection with that place: Commissioners of Inland Revenue v Zorab (1926) 11 TC 289, 291; (emphasis added by Ms Cronin)

(iv) Residence in a place connotes some degree of permanence, some degree of continuity or some expectation of continuity: Fox v Stirk [1970] 2 QB 463, 477; Goodwin v Curtis (1998) 70 TC 478, 510; (emphasis added by Ms Cronin)

(v) However, short but regular periods of physical presence may amount to residence, especially if they stem from performance of a continuous obligation (such as business obligations) and the sequence of visits excludes the elements of chance and of occasion: Lysaght v Commissioners of Inland Revenue (1928) 13 TC 511, 529; (emphasis added by Ms Cronin)

(vi) Although a person can have only one domicile at a time, he may simultaneously reside in more than one place, or in more than one country: Levene v Commissioners of Inland Revenue (1928) 13 TC 486, 505; (emphasis added by Ms Cronin)

(vii) "Ordinarily resident" refers to a person's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life, whether of short or long duration: R v Barnet LBC ex p Shah [1983] 2 AC 309, 343;

(viii) Just as a person may be resident in two countries at the same time, he may be ordinarily resident in two countries at the same time: Re Norris (1888) 4 TLR 452; R v Barnet LBC ex p Shah [1983] 2 AC 309, 342;

(ix) It is wrong to conduct a search for the place where a person has his permanent base or centre adopted for general purposes; or, in other words to look for his "real home": R v Barnet LBC ex p Shah [1983] 2 AC 309, 345 and 348;

(x) There are only two respects in which a person's state of mind is relevant in determining ordinary residence. First, the residence must be voluntarily adopted; and second, there must be a degree of settled purpose: R v Barnet LBC ex p Shah [1983] 2 AC 309, 344;

(xi) Although residence must be voluntarily adopted, a residence dictated by the exigencies of business will count as voluntary residence: Lysaght v Commissioners of Inland Revenue (1928) 13 TC 511, 535;

(xii) The purpose, while settled, may be for a limited period; and the relevant purposes may include education, business or profession as well as a love of a place: R v Barnet LBC ex p Shah [1983] 2 AC 309, 344; (emphasis added)

(xiii) Where a person has had his sole residence in the United Kingdom he is unlikely to be held to have ceased to reside in the United Kingdom (or to have "left" the United Kingdom) unless there has been a definite break in his pattern of life: Re Combe (1932) 17 TC 405, 411."

This has the incidental advantage of identifying almost all the decided cases to which I need to refer. Those not already mentioned to which I will refer are Re Young (1875) 1 TC 57, Cooper v Cadwalader (1904) 5 TC 101 and Commissioners of Inland Revenue v Brown (1926) 11 TC 292.

7. Dr Brice's list at paragraph 58 of her decision in Shepherd summarises the relevant factors in much the same way. Ignoring, as being less relevant, points which relate to ordinary residence, the following three items in her list are worth quoting, despite the overlap between the two lists:

"- that no duration is prescribed by statute and it is necessary to take into account all the facts of the case; the duration of an individual's presence in the United Kingdom and the regularity and frequency of visits are facts to be taken into account; also, birth, family and business ties, the nature of visits and the connections with this country, may all be relevant (Zorab; Brown); (emphasis added) …

that the availability of living accommodation in the United Kingdom is a factor to be borne in mind in deciding if a person is resident here (Cooper) (although that is subject to s 336);

that the fact that an individual has a home elsewhere is of no consequence; a person may reside in two places but if one of those places is the United Kingdom he is chargeable to tax here (Cooper and Levene);"

8. As regards that last point, the proposition that a home elsewhere is of no consequence is not to be understood as meaning that the other home is entirely irrelevant to the necessary enquiry. That would be inconsistent with the obligation to take into account all the facts of the case. However, the existence of another home is not decisive, because of the possibility of simultaneous residence in several places."

48. Ms Cronin added the emphasis above to illustrate her submission regarding the varied approaches that have been taken in interpreting the term ‘residence’ and that this provides support for the approach taken by Ms Omovbude, supported by the understanding and application of the term by the Ministry. As Ms Cronin sets out the Nigerian court had evidence to show X’s strong cultural and family ties to the State, the presence of a family home in which her daughters lived, her strong connections to that home, her regular planned visits, the financial and practical support she provided for the children and her mother. Her periods of time in the State were not by chance but family focussed and regular with the clear intention and purpose to enable her to spend time with her children.

49. In support of her submission for the court to prefer the evidence of Ms Omovbude Ms Cronin relies on a number of factors. First, Ms Omovbude is an experienced practitioner in family law in Nigeria and has written the only text book on Nigerian adoption law. As a consequence she is the best placed and most experienced of the experts in respect of Nigerian family law and practice. What she sets out in her book,

where it refers to the broad spectrum of definitions on residence, chimes with the analysis set out in the *Grace* case relied upon by Ms Cronin. Second, Ms Omovbude's analysis does not depend on speculation, it reflects the issue in contention, the facts and is grounded in the welfare issues raised by the case. Third, to submit the decision to a searching textual analysis fails to recognise that the magistrate was exercising a discretion, deciding facts and saw and heard the relevant parties as set out in the information from both X and Mrs Oguji. In the circumstances of this case it is not possible to say the magistrate considered any irrelevant matter, left out of account any relevant matters, erred in law, or applied any wrong principle. Fourthly, the order is subsisting, as Mrs Oguji states the slip rule would be applied, if necessary.

50. Ms Cronin advances a further strand to her argument for the court to recognise Z's adoption. She relies upon the underlying principle as set out by James LJ in *In re Goodman Trusts* where he confirmed that *"…the rule which the English law adopts and applies to a non-English child…is a question of international comity and international law'* that comity as practised determines the status of a person *"by the law of the country of his origin – the law under which he was born".* James LJ stated later that it is *"almost an axiom that the family relation, once duly constituted by the law of any civilised country, should be respected and acknowledged by every other member of the great community of nations".* Ms Cronin submits this principle informs the recognition process and the approach taken by the SSHD of a fine grained analysis of the position pays insufficient regard to that principle.

51. Ms Cronin also relies upon Article 8 in the event that the court finds that the adoption order is not made in accordance with the foreign law. She submits the facts clearly establish family life as between X and Z. As a consequence, Article 8 is engaged. The obligation to respect family life may also include a positive obligation to permit family life to develop. In *S v S [2016]* EWHC 2470 (Fam) MacDonald J made an order for recognition for a Nepalese adoption which could not be recognised under the inherent jurisdiction criteria and the child could not be adopted here under the domestic law of adoption. Ms Cronin submits that the barriers to X pursuing an adoption in this jurisdiction are formidable and disproportionate, for the reasons outlined in her written submissions. For Z's application under rule 310 of the Immigration Rules X would have to be assessed and approved as a suitable adopter, involving costs (about £20,000) and delay (X's solicitor estimates about 12 months). In addition, there is the possible separation of Z and C, as C already qualifies to be able to make the application as her adoption order is automatically recognised. Ms Cronin submits in the circumstances of this case where the family relationship is established and the children have no known birth family, for the court to decline recognition of Z's adoption would amount to a disproportionate interference in X and Z's exercise of their Article 8 rights.

52. In her closing submissions Ms Cronin has drawn the court's attention to Adoptions from Abroad (Nigeria) Order 2021 ("2021 order"), which comes into force on 12 March 2021. This 2021 Order is made pursuant to section 9 (4) Children and Adoption Act 2006. By article 2 the SSHD declared that special restrictions are to apply to Nigerian adoptions. Ms Cronin submits it will not be possible for X to complete her assessment before this restriction comes into force, so after the 12 March she would be required to apply for an exemption which the DfE has confirmed will be made on a case by case basis and will take about 2 months to process.

Guidance is expected to be published by 12 March. Ms Cronin submits the effect of these further restrictions is very likely to prevent Z's adoption here.

53. On behalf of the SSHD Ms van Overdijk concentrates her submissions on whether Z was legally adopted in accordance with the requirements of the foreign law. In considering this aspect she identifies three issues; the role of this court in examining this issue, the requirements of the foreign law and, if the requirements of the foreign law were not met, what the consequences are.

54. Ms van Overdijk submits this court is required to undertake an examination of the propriety of the proceedings in the foreign court. On the facts of this case the mandatory residence requirement in section 134 (1) (b) provide an important connecting factor between the adopter and the child that is integral to the lawful functioning of the adoption system in Nigeria. By way of analogy, she relies upon the domicile or habitual residence requirements in this jurisdiction as a gateway to the adoption jurisdiction being exercised in England and Wales. In Nigeria she submits section 134 provides that this is based on nationality and residence as connecting factors which, she submits, need to be established as a matter of fact before any adjudication is made on the best interests of the child.

55. Ms van Overdijk rationalises why the court should prefer the approach of Mr Nsugbe (and Mr Badejo where he agrees with Mr Nsugbe) over Ms Omovbude due to Ms Omovbude's

(1) failure to appreciate her duties as an expert, including her failure to follow the letter of instruction and her *'combative and adversarial'* approach;

(2) failure to provide any legal authority in support of her conclusions on residence and reaches conclusions that are unsound and go against well-established principles of statutory interpretation under Nigerian law, and

(3) speculated on the reasons for making the adoption order without any evidential foundation.

56. Ms van Overdijk relies upon Mr Nsugbe's oral evidence where he relied upon the important policy reasons for the residence requirement in section 134 (1) (b) is the territorial extent of the Nigerian court's jurisdiction and the Ministry's functions and powers from a safeguarding and supervision perspective. The Ministry do not decide on residence, its function is to assess and put forward candidates. Mr Nsugbe said in oral evidence he really struggles with the fact that the judge had not pronounced herself satisfied that section 134 (1) (b) was met, and, in his view, the most likely reason why she did was on best interests. He expressed the view that the pressure in Nigeria are that *"sometimes defective orders are made"* and that, in his view, the order was made *"in excess of jurisdiction"* in that it was made *"without determining that section 134 (1) (b) was met".* In his opinion, best interests cannot remedy an irregularity or excess of jurisdiction where a mandatory requirement is not met.

57. Turning to the requirements of the foreign law Ms van Overdijk submits the opinion of Mr Nsugbe and Mr Badejo on the issue of residence is consistent with both Nigerian and English case law.

58. The starting point, she submits, is the dictionary definition of 'residence' which implies a degree of permanence, relying on a number of cases that make this point (see *Levene v Inland Revenue for Commissioners* [1928] AC 217 at 222 *Brokelman v Barr* [1971] 2 QB 602 at 611-1*; Commissioners for HMR&C v Grace* [2008] 11 WLUK 220). In support of her submissions she refers to where the Nigerian courts have taken a similar position, in particular:

United Bank for Africa Plc v Odimayo (2005) 2 NWLR (Pt. 909) 21 Muhammad JCA stated: *'In the Black's Law Dictionary, one is said to "reside" if he lives, dwells, lodge or abide at the designated place. Residence is accordingly about personal presence at some place of abode with purpose to remain for some undetermined period. One can be said to "reside" in a place without necessarily staying permanently thereat. Residence conveys the fact of abode and the intention of remaining. It means more than physical presence…".*

Also, *Omotunde v Omotunde (2001) 9 NWLR* (Pt. 718) at page 281 (C-D) Adekeye JCA also relies on Black's Law Dictionary (7th edition) to define residence as follows *"Black's Law Dictionary Seventh Edition simply defines Domicile as the place at which a person is physically present and that the person regards as home, a person's true, fixed, principal, and permanent home to which that person intends to return and remain even though currently residing elsewhere – same is also termed permanent abode. Every person has a domicile at all times, and no one has more than one domicile at once. Black's Law Dictionary Seventh Edition defines a Residence as – (1) the act of fact of living in a given place for sometime a year's residence. (2) The place where one actually lives as distinguished from a domicile. Whereas Residence usually just means bodily presence as an inhabitant in a given place, domicile usually requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. Though the term domicile and residence are used synonymously. (3) The place where a corporation or other enterprise does business or is registered to do business. (4) A house or fixed abode."*

59. As a consequence, the SSHD takes issue with the submission on behalf of X that the term residence is *'not plain and unambiguous but rather are words without a precise dictionary meaning…reflecting abstract concepts requiring analysis and explanation'.* She accepts that the application of the term residence requires its application to the facts of any given case having regard to qualitative factors and not simply the length of time, acknowledging it will differ on a case by case basis. However, in her submission the term is prima facie clear and unambiguous and the court should look at the natural and ordinary meaning of the word rather than construing it to incorporate any customary laws. This she submits accords with the opinion of Mr Nsugbe that under Nigerian law, provided it does not result in absurdity, the words used by the legislature in a statute are to be given their ordinary grammatical meaning with no addition, subtraction or extension of meaning. This is particularly so when the words used are clear and unambiguous. Also, Mr Nsugbe explained the sources and hierarchy of Nigerian law requires that Nigerian Statutes and legislation and received English law apply before customary laws.

60. Ms van Overdijk distils her position that both Nigerian and English case law, as sources superior to customary law, requires the following features to be met to be satisfied that the applicant was resident in Anambra state at the material time: first, a

degree of permanence or continuity for a considerable period of time, and, secondly, a sufficient degree of continuity to be properly described as settled. As regards the requirement for there to be a settled purpose reliance is placed on Lord Scarman in *R v Barnet LBC, ex p. Shah* [1983] 2 AC 309 at 344 where he stated that this is *'ultimately a question of fact, depending more upon the evidence of matters susceptible of objective proof than upon evidence as to state of mind'.*

61. Ms van Overdijk submits an analysis of the facts in this case do not support the conclusion X was resident in Anambra State at the relevant time, namely when the application to adopt was made and when the adoption order was made. She relies on the following matters.

62. First, the length of time X has been in this jurisdiction and her links here. X has been here since 1991, has trained and worked here, following her marriage lived here with her husband, has purchased properties here and closer analysis of the times she has returned to Nigeria for her holidays demonstrates the infrequency that took place. Finally, X plans to return to Nigeria on retirement to the property she is renovating in Enugu State.

63. Second, the limited links she has to Anambra State. X does not own a property there, she relies on the family home in Anambra State where she stays when she visits, and plans to retire to Enugu State. Ms van Overdijk submits whilst X may regard Anambra to be her ancestral home where her family live this should be distinguished from her residence at any time in that State. Whilst the SSHD does not dispute X's domicile in Nigeria, that is needs to be distinguished from residence.

64. Third, Ms van Overdijk places reliance on the information provided to the Ministry and the Nigerian court. In her application to the Ministry to adopt in 2007 she wrote stating *'I now live and work in London'* , she did not assert that she was a resident of Anambra state. In her oral evidence X confirmed she relied on the same letter for Z's adoption. In her statement X confirms the judge was told that at the hearing, that she was living in England but visited Nigeria often and summarised in her statement that *'the Judge knew my family were based in Anambra; that I had close contact with them: I grew up in Anambra and my mother was living there and I was currently living and working in England'.* Ms van Overdijk places particular emphasis on the last part.

65. Fourth, when the residence timeline is considered it is unclear when the applicant applied to adopt Z although she was placed in foster care in April 2015. Since then X travelled to Nigeria for three months between march – June 2015, one month from July – August 2015 and then for just over a month in November – December 2016 when the adoption hearing took place.

66. Ms van Overdijk submits that when the facts are properly analysed the court is driven to the conclusion X has been continuously residence in the UK since 1991, her links to Anambra State during the relevant time are due to her familial and cultural ties but not her personal residence and any time she spent in Anambra State was relatively brief and lacked the settled intention required. In particular out of the 20 months between April 2015 and December 2016 she was only present for 4, prior to that she had not visited for over 2 years and after that did not visit again until 20 months later, in October 2018. Her time was always for a temporary purpose to visit the family

before returning back to reside here. The information X gave to the Ministry and the Court demonstrated X considered herself to be living and working here, not in Anambra State. Whilst is acknowledged there are the cultural and family ties to Anambra State X's property ownership here and in Enugu State further evidence the lack of a settled intention. Consequently, Ms van Overdijk submits, that on an assessment of the foreign Law, the applicant was not resident in Anambra State when the adoption order was made and consequently did not fulfil a mandatory requirement of the Foreign law.

67. Ms van Overdijk submits the Nigerian court acted in excess of its jurisdiction when making the adoption order as from her analysis of the legal and factual position regarding X's residence at the material time *'demonstrably show that the mandatory residence requirement of s 134 (b) of the Foreign law was not met'*, that the Nigerian court was either aware of this fact and proceeded regardless or failed to examine the issue adequately and the best interest requirement cannot remedy an irregularity or excess of jurisdiction where a mandatory requirement is not met. If the court agrees with this analysis she submits the second limb of *Re Valentine's Settlement* is not made out.

68. Ms van Overdijk rejects Ms Cronin's submission that the adoption order, on its face, is evidence that Z was legally adopted in Nigeria and to question this is contrary to the principle of comity and the respect to be afforded to foreign court orders. To accept that argument would, she submits, render otiose the second limb of *Re Valentines Settlement.* Comity between this court and the Nigerian court does not override the necessity for this court to substantively examine the question of whether the child was legally adopted in accordance with the requirements of the foreign law. Ms van Overdijk submits this goes against the principles established in *Re Valentine's Settlement,* namely that an examination of the propriety of the proceedings in the foreign court.

69. Ms van Overdijk rejects any suggestion that the omission by the court to specify that section 134 (1) (b) was met was purely procedural and could have been remedied by the 'slip rule'. The fact the adoption order omits section 134 (1) (b) as having been complied with, but omits other parts of section 134, leads, according to Ms van Overdijk to the *'tenable conclusion that the court was not satisfied that it was met'.*

70. Ms van Overdijk's primary submission is the Nigerian court acted in excess of its jurisdiction and the adoption order is null and void. Even if the order is not null and void and remains effective in Nigeria until overturned (on the basis that it is irregular and voidable, rather than null and void) this does not satisfy the *Re Valentine's Settlement* requirement that it be validly created by foreign law. The fact that it may be vulnerable to challenge means it cannot be said to be final and conclusive determination of the child's personal status.

71. As regards any reliance on Article 8 Ms van Overdijk submits that whilst it is clear Article 8 issues must be approached with careful consideration on a case by case basis a key factor will be whether, in refusing recognition of a foreign adoption order, X is denied a remedy in relation to any prospective breach of the X's article 8 rights. Ms van Overdijk distinguishes the position in this case from *S v S* as in that case (i) there was no issues about the validity of the foreign adoption, the issue centred on domicile; (ii) MacDonald J placed heavy reliance on best interests which Munby P in *Re N*

stated the concept of best interest should not be used as a gloss on the *Re Valentine Settlement* criteria; (iii) the mother and father in *S v S* were British citizens, as was the child whose citizenship was a *'cardinal aspect of her identity'*; (iv) unlike in *Re N* and *Z (Recognition of Foreign Adoption: refusal)* [2020] EWHC 1829 (Fam) there were no alternative remedies to enable an adoption to take place here. In addition, the SSHD is concerned that the use of Article 8 in these circumstances risks circumventing rule 310 (vi)(a) of the Immigration Rules as that requires confirmation of the validity of the foreign adoption order. She submits Article 8 will be considered in that framework in any event.

72. Any suggestion the effect of the 2021 order prevents X from bringing Z to the UK such that it would amount to an unjustified interference with X and Z's Article 8 rights is rejected. The 2021 Order does not come into effect until 12 March 2021 which, submits Ms van Overdijk, gives X sufficient time to make an application. In any event, refusal of recognition on Article 8 ground is justified where the reasons for the 2021 order concern a lack of confidence that adoptions from Nigeria meet the safeguarding standards this jurisdiction expects in regard to intercountry adoptions processes to ensure that adoptions are genuine and are the best outcome for the children. This rationale is set out in more detail in the explanatory memorandum for the 2021 Order.

73. Ms van Overdijk submits that it remains open to X to apply for Z to have leave to enter the UK under rule 310 of the Immigration Rules (HC 395) whereby the SSHD is required to consider Article 8 in her decision making. The remedy available to X is through the domestic adoption route as set out in *Z* and as a consequence any interference in the Article 8 rights is justified and proportionate.

Discussion and decision

74. The court has had the benefit of very detailed and wide ranging written submissions from the parties.

75. Turning first to the *Re Valentine* criteria that even though not in dispute the court must be satisfied are met.

76. It is accepted that X retained her domicile of origin in Nigeria at the time of the foreign adoption. The object of this is to connect the person with a particular system or rule of law determining personal or family status or property rights. The cases on domicile set out that the court is concerned with the ties that bind a person to a chosen domicile and the strength and durability of those ties. It is clear to the court that X has not lost her Nigerian domicile, it is her permanent home and she has concrete plans to return there with her children on her retirement. X's lasting attachment with Nigeria which evidences her domicile including her early years spent in Nigeria, the obvious strength of her continuing ties and relationships with her family, including her mother, sister and her children, her daily contacts with them and their base in the family home. This is supported by her regular trips to Nigeria, the high value she places on the traditional culture and dress and her choice of Nigerian personal law for her marriage and the traditional divorce through the return of the dowry.

77. It is accepted the Nigerian adoption has the same essential characteristics as an English adoption. The effect of the order is transformative in the sense that the legal ties of the birth parents are extinguished.

78. No party has advanced that there are any public policy reasons for refusing recognition, which the court accepts.

79. Turning to the central issue of whether Z has been legally adopted in accordance with the requirements of the foreign law. The issue between the parties has narrowed down to whether or not the order complied with the mandatory requirement under section 134 (1)(b) that X was resident in the state at the time the order was made on 28 December 2016.

80. Ms Cronin submits on analysis of the relevant legal principles and facts X was resident at the relevant time. She places reliance on what Ms Omovbude sets out in her book, supported by the extended and varied caselaw on the terms 'residence' and 'resident' which demonstrate these terms are without a precise dictionary reading other than as a starting point. This is best illustrated by what is set out by Lloyd LJ in *Grace,* including such matters as the nature of the presence there and the connection, residence in a place connotes some degree of permanence, some degree of continuity or some expectation of continuity, the sequence of visits excludes the elements of chance and occasions, a person may simultaneously reside in more than one place, or more than one country and the purpose, while settled, may be for a limited period; and the relevant purpose may include education, business or profession as well as a love of a place. The duration of the presence and the regularity and frequency of visits are facts to be taken into account; also, birth, family and business ties, the nature of visits and connections with the country may all be relevant.

81. Ms Cronin submits Ms Omovbude is the best placed and most experienced of the experts in respect of family law and practice. She has practised in Nigeria for 14 years and is the author of the only text book on Nigerian adoption. It is written for practitioners and refers in it to the broad spectrum of definitions on residence which is consistent with the approach of the Ministry as outlined in Ms Oguji's letter and in the *Grace* case. Ms Omovbude's analysis is not reliant on speculation, is proportionate to the issue in contention and the case facts.

82. Ms Cronin submits when looked at in this framework the residence requirement in section 134 (1) (b) is met and consequently the requirements of the Foreign law met. In any event, she submits, even if she is wrong about that the order subsists and is very unlikely to be revoked as is accepted by Mr Nsugbe and Mr Badejo. This needs to be seen in the context that if there is any error it is a procedural one which can be corrected and does not undermine the validity of the order.

83. Ms van Overdijk relies on the opinion of Mr Nsugbe, supported by Mr Badejo, that the residence requirement simply cannot be met, the order does not seek to assert that it has been and the provision has not been waived (even if it could be). She relies on what Mr Nsugbe sets out as to the correct approach for the court in Nigeria to consider the question as to whether the residency requirement in section 134 (1) (b) is met. As a consequence the order cannot be said to meet the second of the *Re Valentine Settlement* criteria which requires this court to be satisfied Z has been adopted in accordance with the requirements of the foreign law.

84. Having considered the detailed submissions I have reached the conclusion that this court can be satisfied that Z has been legally adopted in accordance with the requirements of the foreign law. I have reached that conclusion for the following reasons:

(1) It is accepted all the relevant requirements were met for an adoption order to be made save for the residence requirement in section 134 (1) (b). Although Ms Nsugbe raises a question mark over what period the requirement of 5 years in section 134 (1) (c) covers (whether immediately prior to the application or order or over a more extended period), that issue is not pursued on behalf of the SSHD.

(2) The actual adoption order dated 28 December 2016, and signed by the presiding magistrate, Mrs Udedike, is silent on section 134. The summary note of the proceedings, whilst carrying the typescript of the presiding magistrates name does not appear to show her actual signature. It is this summary that omitted to list sub paragraphs (b) and (c) to the list of criteria satisfied in the case. There is no contemporaneous information before the court as to how that document was compiled.

(3) It has not been suggested that there is any prescribed form for adoption orders, whereby there is a requirement to set out any particular provisions or give reasons. As Ms Oguji observes in her letter dated 30 August 2018 there is no template or prescribed form for adoption orders.

(4) When dealing with the question of residence Ms Omovbude set out in her book, her report and oral evidence, that residence can be interpreted in a number of ways. In the context of section 134 (1) (b) there is no Nigerian case law and in the absence of such precedent English case law is considered. This hierarchy is accepted by Ms Omovbude and Mr Nsugbe, although Mr Nsugbe adopts a more narrow interpretation of residence than Ms Omovbude and is clear about the unacceptability of any reliance on custom. There is no reference to custom in the documents submitted by the Ministry or by X prior to the order being made.

(5) I accept the analysis provided by Ms Omovbude as she is someone more closely connected to family law practice in Nigeria through her own experience. Her expertise is supported by the text book she has written on the relevant area of the law. In addition, her more flexible nuanced approach is consistent with the cases, in particular the judgment of Lloyd LJ in *Grace.* Whilst Ms van Overdijk is right to place some reliance on the dictionary definition, that has been developed through the decided cases both in Nigeria and in this jurisdiction in the way summarised by Ms Omovbude in her book and set out in *Grace.* I agree with Ms Cronin it is of note that both Mr Nsugbe and Mr Badejo give varying definitions of residence in their written evidence. For example, Mr Badejo refers to *'a place where the person lives; involving some degree of permanence'*, whereas Mr Nsugbe prefers a place *'directed at ensuring a high degree of connection, permanence and stability within the State by the Applicant at a time which is contemporaneous to the making of the Order'.* Ms Omovbude emphasised the fact that X maintains a home in Anambra is sufficient for the Anambra court to have ascribed her as resident.

(6) I accept Ms Cronin's submissions that at the time the order was made the Nigerian court had evidence to demonstrate X's strong cultural and family ties to Anambra State, the presence there of a family home in which she had been brought up and in which her daughters lived, her regular planned trips, and her financial and practical support for her mother and the children who lived there. Her periods of time in Anambra State were not by chance, but regular, family focussed and with a clear purpose to spent time with her children. She was living in the UK but maintaining a home for her mother and the children in Anambra State. It was, in my judgment, open to the Nigerian court to conclude that the requirement in section 134 (1) (b) was met as it provided some degree of permanence, some degree of continuity or expectation of continuity. These are long standing connections. The role of this court in determining whether this requirement is met is to consider whether such a conclusion was open to the Nigerian court, which in my judgment it was. It is not for this court to say whether the Nigerian court should or should not have come to that conclusion.

(7) It is clear from the Ministry evidence that social workers visited X's family home, including for post adoption reviews. They spoke to her relatives and neighbours, had references for her and assessed her standing and attachments there. It is of note that in C's adoption the Ministry explicitly raised the need for a waiver of the 3 month care requirement, but did not raise waiver of the residence requirement. The court can infer that from this position in both adoptions the Ministry and the Court consider their interpretation of the term residence and its application to X's circumstances was established and not questioned. This interpretation and X's family practice meets the purpose of the residence requirement, namely it ensures the adopted child is not lost to the State, her home and ethnic culture. There is no suggestion that X had been other than transparent about her circumstances in this case.

(8) Even if the above analysis is incorrect, I am satisfied that the adoption order is subsisting, as is accepted by Mr Nsugbe and Mr Badejo, and is very unlikely to be set aside. In addition, Ms Cronin's submission has some force that any error is procedural and, if required, could be amended under the slip rule.

85. In the light of my conclusions about the order it is not necessary for the court to go on and consider the arguments under Article 8.