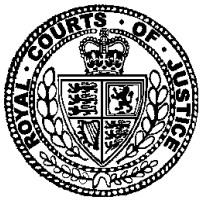

Neutral Citation Number: [2023] EWHC 712 (Fam)

Case No: FD22F00022/FD22P00214

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/03/2023

**Before**:

**THE HONOURABLE MR JUSTICE MACDONALD**

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**Between:**

| | |
|---|---|
| **KN and BN** | **Applicants** |
| **- and -** | |
| **RN and TN** | **Respondents** |
| **-and-** | |
| **Secretary of State for the Home Department** | **Intervenor** |

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**Mr Edward Bennett** (instructed by **Bindmans**) for the **Applicants**
**Mr Jamie Niven-Phillips** (instructed by **Cafcass Legal**) for the **Respondents**
**Ms Fiona Paterson (**instructed by **Government Legal Department)** for the **Intervenor**

Hearing dates: 7 February 2023

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# Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

**Mr Justice MacDonald:**

INTRODUCTION

1. In this matter I am concerned with applications by BN and KN for an order recognising at common law adoption orders made by the Family Court in Imo State, Nigeria on 4 September 2019 in respect of the subject children, RN and TN. I am further concerned with an application by RN and TN for a declaration pursuant to s. 57 of the Family Law Act 1986 that they are, for the purposes of s. 67 of the Adoption and Children Act 2002, the adopted children of KN and BN. The applications were issued on 21 March 2022.

2. During the course of the proceedings the applicants have been acting in person. However, at the final hearing, and in the best traditions of the Bar and the solicitors profession, the applicants have the benefit of representation *pro bono* by Mr Edward Bennett of counsel and Bindmans. The children are represented through their Children's Guardian and, at this hearing, Mr Jamie Niven-Phillips of Cafcass Legal has appeared on their behalf. The Secretary of State for the Home Department accepted an invitation to intervene in these proceedings. The Secretary of State is represented by Ms Fiona Paterson of counsel. The Department of Education declined an invitation to intervene in these proceedings.

3. In circumstances where the factual and legal issues raised in this case are complex I reserved judgment. I now set out my reasons for the decision I have made in this case.

BACKGROUND

4. BN was born in Nigeria as one of eight siblings and moved to the United Kingdom in 1991. She has since become a British citizen. Her extended family remain in Nigeria. BN is employed as a children's social worker and is a senior practitioner. She was unable to conceive children despite attempts at IVF in the context of two difficult previous marriages. KN and BN married in 2016. KN was also born in Nigeria as one of nine siblings. KN has an outstanding application for an extension to his leave to remain in the United Kingdom as BN's spouse. Whilst during the latter stages of these proceedings, KN has claimed that he is at risk of persecution should he return to Nigeria by reason of his activities in support of the Ibo people, he has not made a protection claim.

5. BN contends that, notwithstanding that she has lived in the United Kingdom since 1991, she continues to be domiciled in Nigeria, which is her domicile of origin. In her first statement, dated 3 May 2022, BN states that:

> "Even though I relocated to the United Kingdom and have acquired British Citizenship, my entire family members remained in Nigeria. I continued to maintain the bond we had shared from our childhood… I made regular trips to see my surviving siblings and their family as my parents and two of my siblings are no more. I am involved in raising my nephews and nieces by providing advice and guidance…"

And:

> "As a children social worker employed as a senior practitioner, safeguarding and supporting vulnerable children and their families is what I have done for over ten years in the UK. I am also motivated to support children in Nigeria and I wanted to do everything possible to create opportunities for the vulnerable and less privilege children amongst them. I often send items to the less privilege children and also got involved in charity work. I often send used, new clothes and money through my family members to different orphanages within the Eastern part of Nigeria including Imo State. I have retained and continued to maintain my close family ties, social and lasting attachments in Nigeria and have not abandoned my domicile of origin."

And:

> "Before we commenced the process of registering our interest to adopt children, my husband and I planned to set up an orphanage which we intended to supervise. My husband and I decided to make use of his family home in [Address A] in Imo State, Nigeria where he was raised. This family home has always been our place of abode and the only place we return to and reside in whilst in Nigeria."

6. I pause to note in the foregoing context that in his second statement, dated 10 January 2023, when addressing the viability of caring for the children in Nigeria were this court not to recognise their adoptions in Nigeria, KN appears to contradict the assertion that his family home is the only place the couple return to, instead contending that "When [BN] and I were in Nigeria with our children in May 2019, we stayed at my sister's house". In her second statement, dated 10 January 2023, again when addressing the viability of caring for the children in Nigeria were this court not to recognise their adoptions in Nigeria and again in contradistinction to what is said about KN's family home in her first statement, BN contends that the couple do not have a home in Nigeria.

7. KN has lived in this jurisdiction for a much shorter period and, as I have noted, does not have indefinite leave to remain in the United Kingdom, albeit he is seeking that status from the Home Office. In the circumstances, KN is not permitted to work in this jurisdiction. In his first statement, dated 3 May 2022, KN states as follows with respect to his home:

> "My family home in [Address A] Imo State in Nigeria which my siblings and I inherited from our father remains my home."

8. As I have noted, in his second statement KN appeared to contradict this assertion, stating that he does not know where the family would live in Nigeria. In oral evidence, KN told the court in examination in chief that, at the time KN and BN issued their applications for declarations under s.57 of the Family Law Act 1986 on 21 March 2022, his intention was to reside permanently in Nigeria. When the court sought to check this evidence, KN then changed his answer and stated that he intended to live permanently in England as at 21 March 2022.

9. BN contends that, having initially intended to set up an orphanage in Nigeria, she and KN thereafter instead decided to seek to adopt children. In this context, they notified the Ministry of Gender Affairs and Vulnerable Groups in Imo State of their intention to adopt by a letter dated 9 March 2018 and registered with a local orphanage, the Love

Care Child Centre. In her second statement, BN states that the service provided by the Love Care Child Centre included legal advice from in house lawyers. Within this context, whilst BN knew that under Nigerian law a child's mother must give her consent to adoption, she contends that all of the legal work with respect to the proposed adoption was done by the Love Care Child Centre, which completed the relevant paperwork and submitted it to the court, and her own lawyer, who considered those papers. BN states she was not shown any of that paperwork. In her second statement, BN confirmed that she and KN had legal representation throughout the adoption process in Nigeria.

10. Following their notification of intent to adopt, BN's statement describes a subsequent assessment of her and KN as prospective adopters in Nigeria, which took place prior to RN and TN's births. In their initial statements BN describes this process as one of "undergoing rigorous assessments, visitations and relevant agency checks" and KN describes it as comprising "rigorous assessments, security and background checks on us".

11. It is said that RN and TN (which were not the children's names at birth) were each born on 25 March 2019 to different mothers living in different areas of Imo State. One day after the date given for their birth, on 26 March 2019, it is said that both RN and TN were brought by their respective birth mothers to the Love Care Child Centre, a registered orphanage in Imo State, and relinquished for adoption. The circumstances by which the children each came to be relinquished for adoption require to be drawn from a number of sources, some pre-dating the adoption of the children by KN and BN in Nigeria and some post-dating the adoptions.

12. In an affidavit dated 26 March 2019 and sworn before the Magistrate Court Registry in Owerri, the women identified as RN's mother, X, deposed that she was 22 years of age and a student and gave birth to a baby boy on 25 March 2019. She further deposes that the man who got her pregnant denied responsibility for the pregnancy and relocated to an unknown destination immediately upon being informed of that pregnancy. In her affidavit the birth mother claims that no birth certificate is available for the baby from the location where the baby was delivered. The mother further deposed that she had no means of livelihood and no one to assist her, thus she wished to give the baby up for adoption. Finally, in the affidavit the women identified as RN's mother deposes that she gives her consent to adoption.

13. The court also has before it a copy of an affidavit purporting to be from TN's birth mother, Y. That affidavit is in almost identical terms to the one provided by the women identified as RN's mother. The affidavit deposes that TN too was born on 25 March 2019. It too deposes, in the same terms as the affidavit in respect of RN, that the man who got her pregnant denied responsibility for the pregnancy and relocated to an unknown destination immediately upon being informed of the pregnancy. It likewise deposes that no birth certificate is available for the baby from the location where the baby was delivered. The reasons given for relinquishing TN are in identical terms to the reasons given by the women identified as RN's mother in her affidavit for relinquishing RN. The affidavit purporting to be from TN's birth mother also states that she gives her consent to adoption. The affidavit, also sworn before the Magistrate Court Registry in Owerri, is however dated 18 March 2019, some 7 days *prior* to TN's given birth date. In her second statement, BN contends that she did not become aware of this discrepancy until the expert report of Mr Badejo was received in these proceedings on 12 June 2022. She further asserts that her legal representative in Nigeria

thereafter said he would ensure the court rectified the error but that thereafter no action was taken by her lawyer in this regard. All subsequent telephone enquiries to that lawyer on this point have gone unanswered.

14. The circumstances of the children being relinquished for adoption are also set out in documents that post date the adoption orders ultimately made on 4 September 2019. The intake reports in respect of each child, which are dated 1 October 2019, also describe the circumstances under which the children were relinquished for adoption in almost identical terms. In the intake report concerning RN, his birth mother is again identified as X, who is described as a student aged 22 years of age. The intake report relates that RN was brought to the Love Care Child Centre a day after delivery in good condition. The report further states that exchanges with the mother revealed that the man who got her pregnant abandoned her after conception and refused to see her or help her during the pregnancy, that efforts to locate the father had proved fruitless and the birth mother could not care for the child as she was unemployed. It further states that there was no birth certificate for the baby as the mother stated the hospital did not give her a birth certificate (it will be recalled that in the affidavits, the absence of original birth certificates was stated to be because no birth certificate was available from the location where the baby was delivered). The intake report dated 1 October 2019 concerning TN once again identifies her mother was as Y, described as a trader aged 22. That report goes on to describe the circumstances of TN's removal in *exactly* the same terms as the intake report concerning RN.

15. Letters from the Child Department of the Ministry of Gender & Vulnerable Groups Affairs dated 22 October 2019 also deal with the circumstances of the children being relinquished for adoption. The letter with respect to RN repeats the circumstances under which he was relinquished for adoption and records the consent of his mother to adoption given on 26 March 2019. In these circumstances the letter, which is signed by a person identified as the "Director Child Development", states that RN was properly adopted in accordance with the provisions of the Childs Right Law Imo State 2004. Again, the letters concerning TN are in *identical* terms. In those circumstances, the letter concerning TN appears on its face to address the alleged error in the affidavit signed by TN's birth mother and dated 18 March 2019, some seven days prior to TN's given date of birth, the letter from the Child Department of the Ministry of Gender & Vulnerable Groups Affairs intimating that the birth mother of TN gave her consent to adoption on 26 March 2019.

16. Two additional letters from the Child Department of the Ministry of Gender & Vulnerable Groups Affairs dated 22 October 2019 also touch on the circumstances of the children being relinquished for adoption. In those letters, which explain why new birth certificates have been issued by the National Population Commission in the adoptive names of the children, a further and different reason is given for the absence of original birth certificates for the children. Namely, that the children do not have original birth certificates because children placed for adoption do not have their births registered with the National Population Commission, registration being said to risk stigmatising birth mothers and prejudicing their future.

17. The intake reports for the children dated 1 October 2019 each refer to the children being 'lifted' by KN and BN from the Love Care Child Centre on 15 May 2019. However, by their own evidence KN and BN did not arrive in Nigeria until 19 May 2019. On the following day, 20 May 2019, the Family Court of Imo State granted what are termed a

"foster orders" to KN and BN in respect of RN and TN. Those orders, copies of which are before this court, indicate that within the Nigerian proceedings KN and BN were the applicants and the Love Care Child Centre and the Ministry of Gender Affairs and Social Development were the respondents. In her first statement, BN asserts that there followed a period of fostering ahead of the making of a final adoption order. It is however, apparent from their own evidence that only some 14 days after the granting of the foster order, KN and BN return to UK on 3 June 2019, leaving RN and TN in care of family members, where they have resided since that time.

18. On the date on which the Nigerian court made the foster orders, it also directed the preparation of welfare investigation reports in respect of each child. There are documents in the bundle entitled 'Social Welfare Investigation Report for Adoption' for both children. The reports are undated. The reports also deal with the circumstances by which the children were relinquished for adoption. In the case of RN, the author of the Social Welfare Investigation Report, a Ms P Nsofor who is described as the 'Head of Department, Child Development Department, Ministry of Gender Affairs and Social Development', relates that she was spoken to by the owner of the Love Child Care Centre who confirmed that RN's mother consented to his adoption. The Social Welfare Investigation Report with respect to TN was written by the same person, although her title is given as 'Director, Child Development Department, MGSAD'. The report in respect of TN records (in terms that are *not* identical to those used in the report on RN) as follows regarding the question of the consent of TN's birth mother:

> "The president of the home, Chief (Mrs) Lauretta A. Mada informed us that the child was born on 25 March 2019 and the biological mother willingly gave her consent that the child be given out for adoption. Chief (Mrs) Mada who is the first respondent to this application and who has been in the custody of the child until lifted by the couple also consented to this adoption. Consequently, all consents needed for this adoption were accessed."

19. Within the forgoing context, in the report in respect of TN (but not in the report in respect of RN) the Director of the Child Development Department at the Ministry of Gender and Affairs and Social Development further confirms that:

> "All consents needed for this adoption were accessed and verified by this office. This is in accordance with section 107A and 129A of Imo State Child Rights Law."

20. In answer to an additional enquiry posed by the expert on Nigerian law instructed in this matter regarding whether the author of the social welfare investigation was aware that KN and BN intended for the children to live in the United Kingdom following the adoption, KN and BN replied "Yes, they were all made aware that we intend that RN and TN would reside with us in the United Kingdom." However, neither Social Welfare Investigation Report refers to the existence of the other child and neither report refers to the fact that KN and BN would be adopting two children rather than one. Likewise, neither report refers to the fact that KN and BN were not living in Nigeria nor that they intended for the children to live with them in the United Kingdom as opposed to caring for them in Nigeria. In the report concerning RN the author of the Social Welfare Investigation Report recorded as follows:

> "The applicants live in a flat situated at two plots of land of 3 rooms, 1 kitchen and 3 toilets. It is situated at [Address B]. The compound is gated and is supplied water through a borehole. Electricity is supplied through [E] Company. The child sought to be adopted will be placed in a special room. This shows preparedness. From social enquiry we made about their personality in this place of abode, we garnered they are peaceful loving people."

21. Within the foregoing context, the report concerning TN gives the address of KN and BN as [Address A]. It will be recalled that in her first statement, BN states that this address is KN's family home and has always been the couple's place of abode, and the only place they return to and reside in whilst in Nigeria. The address at [Address B] is said by BN to be that of her sister in law, where the children resided until 31 March 2020. A Pre-Departure Tuberculosis Detection Programme Medical Certificates in respect of RN and TN dated 2 September 2021 gives a different address again, namely [Address C]. BN states that this is the address of her brother, where the children resided from 31 March 2020.

22. KN and BN submitted an application to the Home Office for entry clearance for the TN and RN on 12 August 2021, seeking settlement visas for both children on the basis they were the adopted children of KN and BN. Those applications were rejected by the Entry Clearance Office in December 2021 and March 2022 respectively in circumstances I will come to.

23. Both the Social Welfare Report in respect of RN and the report in respect of TN recommend that KN and BN be granted adoption orders. On 4 September 2019 the Family Court of Imo State granted adoption orders to KN and BN in respect of RN and TN. The court has a copy of those orders. The orders make clear that the court considered the Social Welfare Reports prepared by the Ministry. They make no mention, however, of any witnesses being present at the hearing or that the court heard oral evidence on any issue.

24. KN and BN were not present in Nigeria on the date the adoption orders were made. BN contends that she was advised by her Nigerian lawyer that she did not need to attend. When their lawyer phoned them to congratulate them on the making of the adoption order, BN says he did not give details of the hearing and did not say that TN's birth mother had been at the hearing. In her second statement, BN states that the first time she became aware that TN's mother had been at the hearing was when she received from her lawyer an affidavit of 24 June 2022 purporting to be from TN's mother, which I shall come to in detail below. On 23 September 2019, birth certificates issued for RN and TN and the explanatory letters referred to above relating to birth certificates from the Director of the Child Development Department of the Ministry were issued on 22 October 2019.

25. In her second statement, KN states that following the adoption order being made, her sister in law collected documents from the Love Care Child Centre, comprising the intake report in respect of each child dated 1 October 2019, the children's adoptive birth certificates with the accompanying letters, two letters from Imo State, and the original affidavits of the children's mothers evidencing consent. BN states that she does not know why these documents were in the possession of the Love Care Orphanage rather than being sent to her and KN, surmising that their barrister passed the documents to

the orphanage. The adoptive birth certificates of the children are dated 23 September 2019. They bear the adoptive names of the children. As I have noted, the letters from the Child Department of the Ministry of Gender & Vulnerable Groups Affairs dated 22 October 2019 confirm that these birth certificates were issued by the National Population Commission in the name of BN and KN after the adoption order was made.

26. On 15 December 2021 the Secretary of State for the Home Department refused the application in respect of TN for a settlement visa. One of the reasons given for the refusal of that application was that Nigerian adoptions are not recognised under the Adoption (Recognition of Overseas Adoptions) Order 2013. RN's application for a settlement visa was subsequently refused on 23 March 2022. This court has a copy of the decisions in respect of TN and RN. It is clear from the first statement of KN, and from the Entry Clearance decisions themselves, that the discrepancies in the documentation summarised above gave the ECO pause when considering the application by the children for entry clearance. The ECO considered it was not credible that both TN and RN had *exactly* the same circumstances given they were born to different mothers in different parts of Imo State, leading the ECO to doubt the circumstances by which the children's adoptions came about. The parents have lodged an appeal that is due to be heard at an adjourned hearing on 22 March 2023.

27. Considerable efforts have been made to seek clarity from the Nigerian courts concerning the discrepancies summarised above, and in particular the discrepancy in the original affidavit evidencing the consent of the women identified as TN's birth mother dated 18 March 2019. In the context of that effort, BN and KN have now produced a further affidavit that purports to be from TN's birth mother, Y. That affidavit is dated 24 June 2022 and bears a signature that appears to confirm it was sworn before a commissioner for oaths and what appears to be a court seal. There is a receipt with Y's name on it from the Imo State Government High Court Fees and Fines section.

28. In that affidavit, the author explains that a decision had been made by her to relinquish TN for adoption prior to her birth. With respect to the original affidavit, the author states that that affidavit was read out to her and, satisfied that it contained her instructions regarding her new born child, she signed it in the presence of a court official. The author further deposes that she did not pay close attention to the dates in the affidavit but is "certain" that she deposed and signed the original affidavit on 26 March 2019, which was "the day she put to bed" (if this is a reference to giving birth to TN, on the evidence before the court that event in fact occurred the day before). Finally, the author of the affidavit deposes that the date of 18 March 2019 is an error as she had not given birth by that date and she claims to have clarified the issue of the erroneous date by attending the adoption hearing on 4 September 2019.

29. As I have already noted, the court record for that date does not record the attendance of TN's birth mother or that she gave evidence concerning the discrepancy in the affidavit. In the absence of a judgment, transcript or affidavits from BN and KN's barrister or the author of the welfare reports from the Ministry, both of whom have failed to respond to telephone calls seeking confirmation of the attendance at court of the women identified as TN's birth mother, there is currently no documentary evidence to corroborate the account provided in Y's second affidavit, other than a letter from the Court Registrar dated 29 June 2022.

30. The letter from the Principle Registrar of the Family Magistrate Court in Owerri dated 29 June 2022 states as follows in respect of the application for an adoption order for TN:

> "We have been made aware of certain discrepancies in the date inserted on the Affidavit of Facts, which formed part of the documentary evidence presented to the Court in the adoption proceedings. We can confirm from notes of proceedings that issues relating to the date on the affidavit came up before the Court at the Adoption Hearing.
>
> The Court having listened to the evidence from the relevant parties which include representatives of Love Care Child Centre, the biological mother of the child and more importantly the comprehensive report and evidence of Ms P Nsofor of the Ministry of Gender Affairs and Social Development was satisfied that the Adoption Order was appropriate."

31. The expert in Nigerian law having pointed out the conflict between the further affidavit from the woman identified as TN's mother and the letter from the Principle Registrar of the Family Magistrate Court in Owerri, both of which state the birth mother attended court and gave evidence as to her consent, and the adoption order of 4 September 2019, which is silent in that regard, on 4 July 2022 this court made a respectful request to the Nigerian court for any transcript that the court is at liberty to provide of the hearing on 4 September 2019 in circumstances where the letter from the Principle Registrar stated that there was a "note of proceedings". However, the documents kindly sent by the Chief Registrar's Office for Imo State comprised copies of documents this court already had. In particular, the "notes of proceedings" referred to in the letter from the Principle Registrar of the Family Magistrate Court in Owerri dated 29 June 2022 were not forthcoming.

32. The children have resided with members of the BN's extended family in Nigeria since June 2019. The Children's Guardian notes that whilst these arrangements have been in place since March 2020, both KN and BN and the extended family carers report that the situation is very difficult to sustain. During the course of her oral evidence, whilst BN tried to be loyal to her family, it was clear that the current situation has given rise to tensions between herself and her extended family. The children do not have their own bedroom in Nigeria and are required to sleep in the lounge on mattresses.

33. BN and KN were required to cancel an intended visit to the children in March 2020 following the onset of the Covid 19 pandemic. BN did travel to Nigeria in 2021 for two weeks and visited the children in person but has not been since. BN's contends that she and her husband have been unable to travel to Nigeria as much as they would otherwise due issues of cost and KN's immigration status in this jurisdiction. KN and BN however have had daily contact with the children using social media. BN contends that she and her husband coordinate and direct all aspects of the children's care and hold sole financial responsibility for the children. They consider that the development of an attachment by the children to them is being compromised by their continued separation from the children.

34. This court has the benefit of a report prepared by the Children's Guardian. In preparing that report the Children's Guardian has spoken to KN and BN and the children's current carer in Nigeria, has observed the children spending time with KN and BN online and

has spent time with the children online. KN and BN have no PNC record and are not know to social services.

35. The Children's Guardian notes that the children know KN and BN as 'mummy' and 'daddy' and speak to them several times a day online. Whilst not possible to establish directly the children's wishes and feelings given their respective ages, the Children's Guardian considers that it is likely that they would wish to remain together with each other and to become full and permanent members of a stable, supportive and nurturing family. Within this context, the Children's Guardian considers that the following matters inform the question of whether family life exists between KN and BN for the purposes of Art 8 of the ECHR:

    i) KN and BN and the children have enjoyed a relationship since the children were eight weeks old. Whilst face to face contact lasted only two weeks after the making of foster orders and for two weeks in August 2021, KN and BN share daily online contact with the children.

    ii) KN and BN have identified themselves as 'mummy' and 'daddy' to the children from the outset and the children know KN and BN as 'mummy' and 'daddy'. Given the children's ages, they will have no conscious memory of their respective birth families. The children have begun to ask questions as to why they do not live with 'mummy' and 'daddy'. KN and BN report that the children regularly express a wish to live with them.

    iii) In circumstances where the children spend time with KN and BN online up to three times a day, the interactions between the children and KN and BN observed by the Children's Guardian are enjoyed by the children and form part of their daily routine.

    iv) The children are in the care of BN's extended family. KN and BN are involved in directing the children's care and provide financial assistance to the extended family in that regard. KN and BN are therefore very familiar with the children's caregivers, environment and culture.

    v) KN and BN practise the Christian faith and the promote the practice of this religion in respect of the children, who attend church every Sunday with members of the maternal extended family.

    vi) The Children's Guardian observed that KN and BN are able to describe the different personalities of the children, their strengths and the areas for development. The children are able to share with KN and BN aspects of the daily lives.

36. Within the foregoing context, the Children's Guardian concludes as follows with respect to the nature of the relationship between KN and BN and the children:

> "Taking the factors descried above into consideration, I consider it likely that the children would identify KN and BN as important figures within their family life, despite their geographical separation. Indeed, the family life that the children currently enjoy has been largely constructed by the applicants in

> that they provide a monthly stipend for Mr O to care for them within the maternal uncle's home."

37. The Children's Guardian does however, express some reservations regarding the extent to which the current circumstances are hindering the development of a family life between the children and KN and BN. In particular, the lack of a strong physical relationship with KN and BN. Limited physical contact will, in the view of the Children's Guardian, serve to restrict the depth of the emotional connection between the children and KN and BN. The Children's Guardian points out that at a young age family life includes a large measure of tactile interaction, including physical touch and comfort, and the repetition of daily tasks such as bathing, dressing and feeding. KN and BN have also not been able to witness any of the milestones for the children, which are unlikely to unfold during a planned video call. As the Children's Guardian puts it eloquently:

> "Sadly, there will be countless lost moments of the minutiae of family life which can only be appreciated by those present in the moment and which all contribute to the sense of identity and belonging within their family."

Within this context, the Children's Guardian considers that the children's current *primary* attachment lies with the maternal family member caring for the children in Nigeria.

38. The Children's Guardian expresses further concern in her report regarding the failure of KN and BN to confirm that arrangements could be put place to enable the children to join them in the United Kingdom *before* assuming their care. The Children's Guardian concludes that the unplanned approach to overseas adoption pursued by KN and BN has not served the children well in this case. In this context, the Children's Guardian further notes that in her conversations with KN and BN they state that they considered that it was their *right* to start a family and that they hoped the United Kingdom government would recognise that right because they are good, upstanding members of their community.

39. Within this context, the Children's Guardian concludes as follows on the question of the ultimate outcome in this case:

> "[43] Whilst children of RN and TN's age are often considered quite adaptable in that they can be supported to process change, it is important to acknowledge that these particular children have already experienced significant emotional upheaval by virtue of their circumstances since birth. Applying the resilience and vulnerability matrix, it is clear that RN and TN have identifiable vulnerabilities which could affect their childhood including separation from their birth parents, a period of institutional care followed by multiple changes of primary carer and their uncertain legal status.
>
> [44] An outcome where the children would be able to live as a family of four with KN and BN in the UK is likely to be consistent with their welfare interests in so far as it would provide them with stability and security, access to education and statutory services, and permanent placement with carers of Nigerian heritage who are able to promote their identity needs as adopted children. However, it is difficult to fully endorse this recommendation before

> KN and BN have successfully undertaken an adoption assessment within the UK, which I understand is not practical or appropriate at this stage and in the context of their present application."

40. Should the children be unable to come to the United Kingdom, BN states in her second statement that her and husband will be forced to take the most difficult option of giving up everything and relocating to Nigeria to care for the children. By contrast, when speaking to the Children's Guardian, KN and BN were resolute that it would not be an option to care for the children in Nigeria in circumstances where they could not cope in that jurisdiction financially. In her oral evidence, BN stated that (notwithstanding what had previously been said about KN's family home in Nigeria) they have no home or employment in Nigeria and would not be in a position to pay for education and healthcare for the children.

41. Within the foregoing context, and through Mr Bennett, KN and BN submit that they were each domiciled in Nigeria as at 4 September 2019, that RN was legally adopted in accordance with the requirements of Nigerian law, that TN was also legally adopted in accordance with the requirements of Nigerian law, that the adoptions of TN and RN in substance have the same essential characteristics as an English adoption and that there are no public policy reasons for refusing the recognition of each adoption. In the alternative, if any one of the criteria in *In re Valentine's Settlement* are not met, KN and BN submit that a refusal of recognition would amount to a disproportionate interference of their and of RN and TN's Art 8 rights such that recognition should be granted in any event. Mr Bennett further submits that, if the court recognises the adoption orders made in Nigeria, it has jurisdiction to grant orders under s.57 of the Family Law Act 1986 by virtue of the fact that, KN having been domiciled in this jurisdiction on the date those applications were issued, the children were domiciled in this jurisdiction on 21 March 2022.

42. The Children's Guardian submits that, on the evidence before the court, it is open to the court in the particular circumstances of this case to recognise the Nigerian adoption orders in respect of both children even if it cannot be satisfied that the *In re Valentine's Settlement* criteria are met in full in respect of TN. The Children's Guardian does not address the question of whether, if the court were to recognise the Nigerian adoption orders, the court has in this case jurisdiction to granted declarations under s.57 of the Family Law Act 1986.

43. The Secretary of State for the Home Department has taken, and continues to take a neutral position on the applications before the court. However, the Secretary of State reminds the court that, by reason of restrictions imposed by the Secretary of State for Education, Nigeria is not included in the list of countries in respect of whom adoptions constitute 'overseas adoptions' for the purposes of English law under the Adoption (Designation of Overseas Adoptions) Order 2013 for the reasons summarised above.

44. Within this context, with respect to the affidavits from the Nigerian proceedings, and the further affidavit purporting to be from TN's birth mother, in her Position Statement on behalf of the Secretary of State Ms Paterson refers to an email to the court from the Government Legal Department confirming the view of the Secretary of State that, generally, the affidavits have very limited value as they are produced at the request of the deponent and the document is simply a record of what they state, there is no assurance mechanism in place to support the verification of those statements. Within

this context, Ms Paterson submits that the lawfulness of TN's adoption must be in doubt, even if the Court is satisfied that KN and BN have acted in good faith throughout the proceedings in Nigeria.

45. The Secretary of State has confirmed that the decision of this court will be considered as part of the appeals process dealing with the refusal to grant RN and TN entry clearance that is pending before the First Tier Tribunal. However, Ms Paterson rightly reminds the court that the Secretary of State cannot provide a guarantee to either the parties or the Court as to the outcome of the children's appeals, or the pending application of KN, even if the children's Nigerian adoptions are recognised at common law and declarations granted, the appeals falling to be determined on the basis of all the information before the Tribunal.

46. Following the hearing, Ms Paterson further updated the court and the parties with respect to implications for the children's immigration status if the Court were to grant the application for recognition of the Nigerian adoption orders and a declarations under s57 of the Family Law Act 1986 that RN and TN, are KN and BN's adopted children. In such circumstances, RN and TN would not automatically acquire British citizenship in circumstances where Nigeria is not a British Overseas Territory, nor is it a signatory to the 1993 Hague Adoption Convention. As such, a further application would need to be made on their behalf for their registration as a British citizen, at the Home Secretary's discretion, under s. 3(1) British Nationality Act 1981.

EXPERT EVIDENCE

47. The court has the benefit of an expert report on Nigerian law from Mr Abimbola Badejo, a barrister called the Bar in England and Wales and admitted as a Barrister and Solicitor of the Supreme Court in Nigeria. He practices in both English and Nigerian family law. Mr Badejo was jointly instructed in these proceedings to assist the court with consideration of the following questions:

    i) Were the children legally adopted by the mother and the father in accordance with Nigerian Law?

    ii) What are the essential characteristics of a Nigerian adoption?

    iii) Are the essential characteristics of a Nigerian adoption the same as the essential characteristics of an English Adoption?

48. The expert evidence of Mr Badejo was not challenged. With respect to the question of whether the children were legally adopted by KN and BN in accordance with Nigerian law (or, more accurately, in accordance with the law of Imo State, matters relating to welfare of children being matters within the legislative competence of the respective State Houses of Assembly in the context of Nigeria's federal system of government) the expert notes the following requirements of the Child Rights Law Imo State 2004 that were complied with in this case:

    i) Section 127 of the Child Rights Law Imo State 2004 provides that an application for an adoption order shall be made to the court in the prescribed form. Whilst the applications forms are not available, having regard to the contents of the

social welfare reports the expert considers that the applications to adopt RN and TN were made in the prescribed manner.

ii) Section 127(2) of the Child Rights Law Imo State 2004 requires that upon receipt of the application the court shall order an investigation by a child development officer, a supervision officer and such other persons as the court may determine for the purpose of enabling the court to assess the suitability of an applicant as an adopter and the suitability of the child to be adopted. Within this context, albeit undated, social welfare reports were produced pursuant to directions given upon the making of fostering orders on 20 May 2019. Those reports are mentioned in recitals to the adoption orders that the court took into account the report of the investigation made by the Child Development Officer Ministry of Gender Affairs and Social Development.

iii) Section 127(3) of the Child Rights Law Imo State 2004 requires the court, in reaching a decision relating to the adoption of a child, to have regard to all the circumstances first consideration being given to the need to safeguard the welfare and best interest of the child throughout his or her childhood and ascertaining so far as practicable the wishes and feelings of the child regarding the decision and giving due consideration to those wishes and feelings having regard to the age and understanding of the child. Mr Badejo notes that the adoption orders in respect of both children state that the court was satisfied with respect to the best interests and welfare of the children.

iv) Section 130(d) of the Child Rights Law Imo State 2004 provides that the adopter or adopters shall be persons found suitable to adopt the child in question by the appropriate investigating officers. Mr Badejo considers that the issue of the suitability of KN and BN as adopters is addressed in the welfare reports which were before the court and that therefore this requirement under the law of Imo State was satisfied on the evidence.

v) With respect to the age and residency requirements in s. 132(1) of the Child Rights Law Imo State 2004, Mr Badejo considers that KN and BN each met the age requirements.

vi) With respect to the requirement to residence in Imo State, Mr Badejo opines that the fact that the parents in this case were residing in England at the time when the adoption order was made will not preclude them from being regarded under the law of Imo State as resident in the husband's ancestral family home in Imo State for a period of five years, the same state as the children's residence at the material time. In this regard, Mr Badejo cites the English case of *Re X (Recognition of Foreign Adoption)* [2021] EWHC 355 (Fam) as being persuasive authority in Nigeria in the absence of Nigerian authority on the point.

vii) With respect to the requirement for the children to have been in the physical care of KN and BN for a period of 3 months prior to the adoption order being made, whilst the children were in the care of the parents for only 14 days between 20 May 2019 and 3 June 2019, Mr Badejo considers that the English case of *Re V (A Child)(Recognition of Foreign Adoption)* [2017] EWHC 1733 (Fam) is persuasive authority in Nigeria in the absence of Nigerian authority on the point. In this context, Mr Badejo opines that the evidence that the parents had sole

responsibility for decisions on the children's upbringing and welfare needs is sufficient to meet the care requirement under the Imo State legislation.

viii) The welfare reports each state that the parents had made their intent to adopt known by an application on 8 March 2018, satisfying the requirement of s. 131(1)(f) of the Child Rights Law Imo State 2004.

49. In these circumstances, in respect to the question of compliance with the law of Imo State the key concern highlighted by Mr Badejo in his expert report is the question of the discrepancy in the affidavit purporting to evidence the consent of TN's mother to her adoption. Mr Badejo states that s. 129 of the Child Rights Law Imo State 2004 provides that the court shall not make an adoption order unless the parent or guardian of the child has consented or the child is abandoned, neglected or persistently abused or ill-treated and there are compelling reasons in the interest of the child why he should be adopted. With respect to RN, Mr Badejo considers in this context that the affidavit of 26 March 2019 and a letter from the Ministry dated 22 October 2019, on the face of the documents the parental consent given by RN's birth mother was in accordance with the requirements of the law of Imo State. Mr Badejo however, considers that the position in respect of TN is different.

50. Mr Badejo points up the fact that affidavit purporting to evidence the consent of TN's birth mother affidavit was sworn on 18th March 2019, the oath fee taken on the same date and the affidavit dated by the assistant chief registrar as 18th March 2019. Thus, as also set out above, the affidavit appears to have been dated seven days before TN was born. Mr Badejo notes that there is also a letter from the Ministry of Justice dated 22 October 2019 which records that the birth mother of TN, Y, gave her consent for the adoption of a baby girl on 26 March 2019, the child being said to have been born on 25 March 2019. This reflects the position in respect of RN as described in the affidavit of RN's birth mother and the letter from the Ministry dated 22 October 2019 in respect of RN. However, Mr Badejo points out that the letter from the Ministry dated 22 October 2019 could not have been considered by the court at the adoption hearing on 4 September 2019. In the foregoing context, Mr Badejo concludes:

> "This raises in my mind considerable doubt as to the authenticity of the document and the integrity of the process as far as TN's adoption is concerned. I cannot see on what basis the court found that TN's mother consented on the basis of an affidavit that was sworn 7 days before the child was born."

51. Mr Badejo points out that the document purporting to evidence the consent of TN's birth mother was not one generated by KN and BN and, therefore, they cannot be held responsible for the error. However, stating in his initial report that further clarification is required, he further opines that:

> "The affidavit of consent is however a crucial document given the clear requirement of the Law that the court shall not make an adoption order unless parental consent has been obtained. It is therefore vital that any discrepancies in respect of the affidavit purporting to give consent are resolved to the satisfaction of the court."

52. Within the foregoing context, Mr Badejo concludes in his initial report that there is no question in his view that RN was adopted by KN and BN under the law of Imo State. Mr Badejo was not however able to reach that conclusion in respect of TN in light of the concerns regarding the affidavit dealing with the consent of her birth mother. In this latter context, following the receipt the further affidavit from TN's mother and a letter from the Registrar of the Nigerian court dated 29 June 2022 stating that the issue of the discrepancy with the date of the earlier affidavit was addressed when the mother gave her evidence at the hearing, Mr Badejo was asked to provide an addendum report.

53. Acknowledging that the court may take the view that he is being unduly cautious and that if the letter from the Registrar was accepted TN's adoption could be said to have been in accordance with the law of Imo State, Mr Badejo responded as follows:

> "There is no recital on the face of the adoption order to the effect that the biological mother gave evidence at the adoption hearing, let alone that she addressed such an important issue. Consent of a parent to an adoption is such a fundamental requirement in the adoption process such that one would expect to a see a recital that the court heard evidence from the mother on the serious issue of an affidavit deposing to facts occurring after the affidavit was said to have been sworn…I am of the view that local counsel should be instructed in Owerri, Imo State to obtain a certified true copy of the record of the proceedings."

54. As I have noted above, the request for record of the proceedings, as referred to in the letter from the Principle Registrar of the Family Magistrate Court in Owerri dated 29 June 2022, made to the Nigerian court produced only the documents this court already had.

55. Finally, with respect to the essential characteristics of adoption in the jurisdiction of Nigeria, Mr Badejo opines that the following characteristics are central and the same as an adoption in England and Wales in all material respects:

    i) Upon the making of an adoption order, under s. 142 of the Child Rights Law Imo State 2004, all rights, duties, obligations and liabilities, including any other order under the personal law applicable to the parents of the child or any other person, in relation to future custody, maintenance, supervision and education of the child are extinguished.

    ii) Upon the making of an adoption order, under s. 142 of the Child Rights Law Imo State 2004 there are vested in the adopter, and exercisable by and enforceable by the adopter, all rights, duties obligations and liabilities in respect of the future custody, maintenance, supervision and education of the child.

    iii) Upon the making of an adoption order, under s. 142 of the Child Rights Law Imo State 2004 the child will stand to the adopter in the relationship of a child born to the adopter.

    iv) Upon the making of an adoption order, under s. 142 of the Child Rights Law Imo State 2004, for the purposes of devolution of property on intestacy of the adopter, the child shall be treated as a child born to the adopter.

v) Within this context, the effect of s. 142 of the Child Rights Law Imo State 2004 is that the adoption order transferred all rights in respect of parenthood of the children to the parents to the exclusion of the birth parents or anyone else, the parental responsibility of birth parents being extinguished on the making of an adoption order.

THE LAW

56. I am concerned with an application an application for an order recognising adoption orders made by the Family Court in Imo State on 4 September 2019 and an application for a declaration in relation to the Nigerian adoption orders pursuant to s. 57 of the Family Law Act 1986. The applications before the court reflect that, before considering whether to make a declaration that the children are the adopted children of KN and BN for the purposes of the Adoption and Children Act 2002, the court must first consider whether it is in a position to recognise the adoptions in Nigeria in accordance with the applicable legal principles in this jurisdiction. If it recognises those adoptions, the court must then go on to consider whether it is appropriate to make a declaration under the Family Law Act 1986 s 57 that the children are to be treated as the adopted children of KN and BN under the relevant provisions of the Adoption and Children Act 2002.

57. As already noted, adoption orders concluded in Nigeria are not capable of recognition under the Adoption (Recognition of Overseas Adoption) Order 2013. Pursuant to the Children and Adoption Act 2006 s.9(6), the Secretary of State for Education has power to declare that special restrictions are to apply for the time being in relation to the bringing in of children to the United Kingdom for the purpose of adoption from a particular country. Within this context, special restrictions were imposed by the Secretary of State for Education in relation to adoptions from Nigeria by the Special Restrictions on Adoptions from Abroad (Nigeria) Order 2021, which came into effect on 12 March 2021. The government guidance from the Department of Education entitled *Adoptions: Restricted List* details the following reasons for that restriction being placed on recognising adoptions from the State of Nigeria:

> "The Order has been made in response to significant child safeguarding concerns due to issues affecting the Nigerian intercountry adoption system. This is based on evidence received through international partners including Central Adoption Authorities and diplomatic missions. The specific areas of concern included:
>
> • difficulties confirming the background and adoptability of children;
>
> • unreliable documentation;
>
> • concerns about corruption in the Nigerian adoption system; and
>
> • evidence of organised child trafficking within Nigeria.
>
> Such practices are contrary to the principles of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption ('the Hague Convention') and the United Nations Convention on the Rights of the Child. There is therefore a lack of confidence that adoptions

> from Nigeria meet the requirements expected in regards to the adoption process and to ensure adoption is the best outcome for the children.
>
> As a result of this evidence the Parliamentary Under Secretary of State, in the name of the Secretary of State, is of the view that it would be contrary to public policy to further the bringing of children into the United Kingdom from Nigeria as specified in section 9 (2) of the Children and Adoption Act 2006."

58. I pause to note that under the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008 a request can be made to treat an individual case as an exception to a special restriction imposed under the Adoption and Children Act 2006. In deciding whether or not a case is exceptional, the Minister will consider all the information provided which is relevant to the individual facts and circumstances of the case. The 2008 Regulations list a number of matters which must be taken into account when exceptional cases are being considered. Specifically, r.6 of the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008 provides that the following matters will be taken into account:

    i) The circumstances leading to the child becoming available for adoption, including whether any competent authority in the State of origin has made a decision in relation to the adoption or availability for adoption of the child.

    ii) The relationship that the child has with the prospective adopters, including how and when that relationship was formed.

    iii) The child's particular needs and the capacity of the prospective adopters to meet those needs.

    iv) The reasons why the State of origin was placed on the restricted list.

59. Within this context, the only route through which an adoption order made in Nigeria can be recognised in this jurisdiction is under common law. The common law test for recognition of a foreign adoption was considered by Sir James Munby in *Re N (A Child)* [2016] EWHC 3085 (Fam), in which the President undertook a detailed review of relevant judgments starting from the decision of the Court of Appeal in *In re Valentine's Settlement, Valentine and others v Valentine and others* [1965] Ch 831 and concluding with the decision of this court in *QS v RS and T (No 3)* [2016] EWHC 2470 (Fam). Within this context, the President confirmed the following four criteria for recognition:

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

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

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

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

60. It is important to note that in *Re N (A Child)* Sir James Munby removed a number of the accretions that had been added to the factors in *In re Valentine's Settlement* by virtue of later first instance decisions. In particular, Sir James Munby rejected the proposition that the child's best interests are a factor that falls to be considered when deciding whether to recognise an adoption at common law by reference to the factors set out in *In re Valentine's Settlement*.

61. With respect to the question of domicile, as observed by Theis J in *ELO v CLO (Recognition of a Nigerian Adoption Order)* [2017] EWHC 3574 (Fam), citing the decision of the House of Lords in *Mark v Mark* [2006] 1 AC 98, the object of determining a domicile is to connect the person with a particular system or rule of law determining personal or family status or property rights. Within this context, and noting that the cases make it clear the court is concerned with the ties that bind a person to a chosen domicile and the strength and durability of those ties, Theis J provided a helpful summary of the relevant principles as follows:

> "[53] In *Barlow Clowes International Ltd (In Liquidation) & Ors v Henwood* [2008] EWCA Civ 577 Arden LJ summarised a number of uncontentious principles relevant to this case:
>
> (i) A person is, in general, domiciled in the country in which he is considered by English law to have his permanent home. A person may sometimes be domiciled in a country although he does not have his permanent home in it.
>
> (ii) No person can be without a domicile.
>
> (iii) No person can at the same time for the same purpose have more than one domicile.
>
> (iv) An existing domicile is presumed to continue until it is proved that a new domicile has been acquired.
>
> (v) Every person receives at birth a domicile of origin.
>
> (vi) Every independent person can acquire a domicile of choice by the combination of residence and an intention of permanent or indefinite residence, but not otherwise.
>
> (vii) Any circumstance that is evidence of a person's residence, or of his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice. In order to acquire a domicile of choice the intention of residence must be fixed and for the indefinite future."

62. With respect to the question of public policy, it is important recognise, as pointed out by Sir James Munby, P in *Re N (A Child)* that the principle of public policy in this context has a *strictly* limited function and is properly confined to particularly egregious cases. In reaching that conclusion, the President relied on the passage from Dicey, Morris and Collins, *Conflict of Laws*, ed 15, 2012, para 20-133 which observed as follows in the context of foreign adoptions:

> "If the foreign adoption was designed to promote some immoral or mercenary object, like prostitution or financial gain to the adopter, it is improbable that it would be recognised in England. But, apart from exceptional cases like these, it is submitted that the court should be slow to refuse recognition to a foreign adoption on the grounds of public policy merely because the requirements for adoption in the foreign law differ from those of the English law. Here again the distinction between recognizing the status and giving effect to its results is of vital importance. Public policy may sometimes require that a particular result of a foreign adoption should not be given effect to in England; but public policy should only on the rarest occasions be invoked in order to deny recognition to the status itself."

63. Finally, in *Re N (A Child)* Sir James Munby also endorsed the view of this court set out in *QS v RS and T (No 3)* that in a case where one or more of the criteria set out in *In re Valentine's Settlement* are not satisfied, the court may nonetheless recognise an adoption if not to do so, as a result of the strict application of the rules in *Re Valentine's Settlement*, would result in an unnecessary and disproportionate interference in the Art 8 rights of the parents and child. I further note the obiter observation of the President in *Re N (A Child)* at [150] that:

> "I should add that, if I am wrong about [the case meeting the criteria in *In re Valentine's Settlement*], it is doubtful whether the applicant would be able to make good her claim by reliance on Article 8. The difficulty is presented by the point made by MacDonald J in *QS v RS*, para 102(vii), quoted in paragraph 137 above. If the applicant were to be denied the declaratory relief she seeks, she would not be denied a remedy, assuming that she is able to adopt N under the 2002 Act. An English adoption order, it might be thought, would sufficiently ensure that there could be no breach of either her or N's rights under Article 8."

64. In that latter context, and having regard to the particular circumstances of this case, I note that the requirements entitling a couple to apply for an English adoption order include, *inter alia*, that the one of the couple must be domiciled part of the British Islands pursuant to s.49 of the Adoption and Children Act 2002.

65. The existence of family life for the purposes of Art 8 is a matter of fact dependent on the existence of close personal ties between the child and others (*K v United Kingdom* (1986) 50 DR 199). In *EM (Lebanon) v Secretary of State for the Home Department ALF intervening* [2009] 1 All ER 539 at [37] Lord Bingham observed as follows regarding the models of family life that may come within the ambit of Art 8:

> "Families differ widely, in their composition and in the mutual relations which exist between the members, and marked changes are likely to occur over time within the same family. Thus there is no pre-determined model of family or family life to which art 8 must be applied. The article requires respect to be shown for the right to such family life as is or may be enjoyed by the particular Applicant or Applicants before the court, always bearing in mind (since any family must have at least two members, and may have many more) the participation of other members who share in the life of that family. In this context, as in most Convention contexts, the facts of the particular case are crucial."

66. In *Kurochkin v Ukraine* (2010) Application No. 42276/08 at [37] the ECtHR held that an adoptive parent and an adopted child are as a rule of the same nature as the family relations protected by Art 8 of the Convention and such a relationship, arising from a lawful and genuine adoption, may be deemed sufficient to attract such respect as may be due for family life under Art 8 of the Convention.

67. Within this context, co-habitation is not a necessary pre-condition to the existence of family life between parents and children (see *Berrehab v Netherlands* (1988) 11 HERR 322 and *Boughanemi v France* (1996) 22 EHRR 227). Even periods of considerable separation between parent and child may not be sufficient to prevent a conclusion that family life exists for the purpose of Art 8 (*Moustaquim v Belgium* (1991) 13 EHRR 802). Thus, in *Pini and Others v Romania* [2005] 2 FLR 596 the court held that a relationship between the adopter and the adopted child amounted to family life even in the absence of any concrete direct contact between the adults and the child, on the basis that periods of considerable separation between a parent and child may not be sufficient to prevent a conclusion that family life exists.

68. Finally with respect to the question of the existence of family life for the purposes of Art 8, in respect of siblings, the existence of family life between a child and his or her siblings is consonant with the use of the word 'everyone' in Art 8 of the ECHR, including family life as between half siblings (see *Marckx v Belgium* (1979) 2 EHRR 330).

69. If the court is satisfied that it is appropriate to recognise the foreign adoption at common law the court may, if the requisite conditions are met, make a declaration pursuant to the Family Law Act 1986 s 57, which section provides as follows:

> "**57 Declarations as to adoptions effected overseas.**
>
> (1) Any person whose status as an adopted child of any person depends on whether he has been adopted by that person by either—
>
> (a) a Convention adoption, or an overseas adoption within the meaning of the Adoption and Children Act 2002, or
>
> (b) an adoption recognised by the law of England and Wales and effected under the law of any country outside the British Islands,
>
> may apply to the High Court or a county court for one (or for one or, in the alternative, the other) of the declarations mentioned in subsection (2) below.
>
> (2) The said declarations are—
>
> (a) a declaration that the applicant is for the purposes of section 39 of the Adoption Act 1976 or section 67 of the Adoption and Children Act 2002 the adopted child of that person;
>
> (b) a declaration that the applicant is not for the purposes of that section the adopted child of that person.
>
> (3) A court shall have jurisdiction to entertain an application under subsection (1) above if, and only if, the applicant—

> (a) is domiciled in England and Wales on the date of the application, or (b) has been habitually resident in England and Wales throughout the period of one year ending with that date."

70. The court therefore has jurisdiction to entertain the application for declaratory relief only if the requirements of s.57(3) of the Family Law Act 1986 are met in this case, namely that the subject children were domiciled in England & Wales as at 21 March 2022 (there being no possibility of them having been habitually resident in England and Wales for one year ending with that date).

71. Pursuant to the terms of s.3 of the Matrimonial Proceedings Act 1973, the children cannot acquire in this jurisdiction an independent domicile until they reach the age of 16. Section 3 of the 1973 Act providing as follows:

> "**3.— Age at which independent domicile can be acquired.**
>
> (1) The time at which a person first becomes capable of having an independent domicile shall be when he attains the age of sixteen or marries under that age; and in the case of a person who immediately before 1st January 1974 was incapable of having an independent domicile, but had then attained the age of sixteen or been married, it shall be that date.
>
> (2) This section extends to England and Wales and Northern Ireland (but not to Scotland)."

72. Within this context, the domicile of a dependent child follows the domicile of his or her father where both the mother and father are alive and living together. In *Henderson v Henderson* [1967] P 77, Sir Jocelyn Simon P held as follows in this regard:

> "Domicile is that legal relationship between a person (called the propositus) and a territory subject to a distinctive legal system which invokes the system as the personal law of the propositus and involves the courts of that territorial area in having primary jurisdiction to dissolve his marriage. (I use the male gender for convenience, though every person of either sex has a domicile.) The relationship arises either, on the one hand, from the propositus being or having been resident in such territorial area with the intention of making it his permanent home or, on the other, from there being or having been such a relationship on the part of some other person on whom the propositus is for this purpose legally dependent. Thus a wife is for this purpose legally dependent on her husband, and a legitimate child on his father. This type of domicile of the child and the wife is termed a domicile of dependence. The domicile that the child derives from the father is also known as his domicile of origin. Every person capable of acquiring an independent domicile will on independence retain his domicile of dependence, though it may be abandoned at any time thereafter."

73. In *FX and MJX v CAFCASS Legal* [2020] 2 FLR 1041, a case in which the court declined to make declarations by reason of the children not being domiciled in this jurisdiction at the time of the application notwithstanding the court was satisfied that the foreign adoptions should be recognised at common law, Judd J observed as follows regarding the position of an adopted child with respect to domicile:

> "[12] At birth every person receives a domicile of origin. That domicile of origin can be displaced by a domicile of choice which comes about by a combination of residence with an intention of permanence in another country for an indefinite length of time. If the domicile of choice is later abandoned, then the domicile of origin will revive, unless displaced by a subsequent domicile of choice.
>
> [13] A legitimate child born during the lifetime of his or her father has a domicile of origin in the country at which his father was domiciled at the time of his birth. As an adoption order means that a child is treated in law as if he or she was born to the adopters, that child may acquire a new domicile of origin at the time of the adoption."

DISCUSSION

74. Whilst I am satisfied for the reasons I set out below that the court is able to recognise the Nigerian adoptions of RN and TN at common law, I am *not* satisfied in this case that the court has jurisdiction to grant declarations under s.57 of the Family Law Act 1986. My reasons for so deciding are as follows.

*Application for Recognition at Common Law*

75. With respect to the applications for recognition of the Nigerian adoptions, the key questions of fact for determination centre on the issue of KN and BN's domicile as at 4 September 2019 and the issue of whether valid consent was given to the adoption of TN in accordance with the requirements of Nigerian law. With respect to the applications for declarations under s.57 of the Family Law Act 1986, the key question of fact centres on the domicile of the children as at 21 March 2022, which question itself rests on the question of KN's domicile as at that date.

76. Having regard to the evidence before the court, I am satisfied that both KN and BN remained domiciled in the jurisdiction of Nigeria on the date the Nigerian adoption orders were granted on 4 September 2019.

77. Both KN and BN were born in Nigeria and are Nigerian nationals. Within this context, I am satisfied that the starting point is that both KN and BN have Nigeria as their domicile of origin. With respect to BN, whilst having spent extensive periods of time in this jurisdiction, and maintaining employment here, BN expressly asserts in her evidence before the court that she has not abandoned her domicile of origin in Nigeria. I accept BN's evidence that she has retained and continues to maintain her close family ties, social and lasting attachments in Nigeria and has made regular trips to which she describes as "my family home". This evidence is further supportive of BN's assertion that she had not abandoned her domicile of origin as at 4 September 2019 for a domicile of choice in the United Kingdom.

78. With respect to KN, as I have noted, on 3 May 2022 KN made clear in his statement that his family home in [Address A], which he and his siblings inherited from his father, remained his home and I am satisfied that this was his view as at 4 September 2019. As at that date, KN had no permanent immigration status in this jurisdiction, nor at that point had he applied for it. This evidence is further supportive of KN's assertion that

he has not abandoned her domicile of origin in Nigeria as at 4 September 2019 in favour of a domicile of choice in the United Kingdom.

79. The foregoing conclusions are in my judgment reinforced by additional factors common to both KN and BN. Prior to deciding to seek to adopt, both KN and BN are clear that it was their intention to set up an orphanage in KN's ancestral home. The evidence of KN and BN (albeit contradicted in other parts of their evidence) is that the only place both parents reside in together whilst in Nigeria is KN's ancestral home. Unlike KN and BN, both or their extended families remain living in Nigeria rather than in this jurisdiction. Both KN and BN applied to permanently adopt children in Nigeria rather than in England. In order to make adoption orders, the Nigerian court had to be satisfied that the applicants were 'resident' in the jurisdiction of Nigeria and were so satisfied. Finally, KN and BN each benefit from the burden of proof (see *Z and another v C and another* [2011] EWHC 3181 (Fam) at [15]). No party seeks to demonstrate that KN and BN's domicile of origin in Nigeria had been displaced as at 4 September 2019.

80. In the circumstances, and having regard to the matters set out above, I am satisfied that, as a matter of fact, both KN and BN were domiciled in Nigeria at the time of Nigerian adoption of RN and TN on 4 September 2019.

81. Having regard to the evidence before the court, including the expert evidence of Mr Badejo, there is now no dispute between the parties in this case that RN was legally adopted in accordance with the requirements of Nigerian law and, although some of the concerns I shall come to regarding the documentation concerning TN apply also to the documentation concerning RN, on balance I am satisfied that he was. The position in respect of TN is however, more complex given the difficulties with the affidavit that purports to evidence the consent to adoption of the women identified as TN's birth mother.

82. I accept the expert evidence of Mr Badejo that the affidavit in respect of TN before the Nigerian court on 4 September 2019 was, on its face and by contrast to the affidavit in respect of RN, insufficient to evidence properly the consent of the woman identified as TN's mother, dated as it was some seven days prior to TN being born (if her given birth date is accurate, there being no original birth certificate). In the circumstances, *prima facie*, TN's adoption did not, as confirmed by the expert evidence of Mr Badejo, comply with the requirements of Nigerian law. I acknowledge that the letter from the Ministry of Gender and Vulnerable Groups Affairs dated 22 October 2022 appears, on one reading, to address the discrepancy. However, that letter could not have been before the court on 4 September 2019. Further, in circumstances where it is in identical terms to letter of the same date in respect of RN, it is not possible to determine whether it was intended to, and does, comprise a correction to the original affidavit in respect of TN or is simply an incidence of the information concerning RN being transposed without more into a letter concerning TN.

83. I further acknowledge that there are now documents before the court that purport to address *ex post facto* the discrepancy in the affidavit relied on by the Nigerian court as evidence of consent. Within this context, I have considered carefully the contents of the second affidavit of the women identified as TN's mother in which she deposes both that she consented to the adoption and that she attended the hearing on 4 September 2019 to deal with the discrepancy in her original affidavit. However, this evidence was obtained only after the significant discrepancy, and its potential import, was pointed out

to KN and BN by the report of the expert. Further, the assertion in the second affidavit that the woman identified as TN's mother attended the hearing to address that issue is not reflected on the order of 4 September 2019, which does record in other respects the matters the court took into account in determining that an order should be made. In this context, I recall the evidence of Mr Badejo that the consent of a parent to an adoption is such a fundamental requirement in the adoption process he would expect to a see a recital on the face of the adoption order that the court heard evidence from the mother on the issue. BN concedes she was not told by her lawyer after the hearing that the birth mother had attended and only became aware of that fact when she saw the second affidavit of 24 June 2022.

84. With respect to the additional documents received following the expert pointing up the discrepancy in the original affidavit of the women identified as the birth mother of TN, the letter from the Principle Registrar of the Family Magistrate Court in Owerri dated 29 June 2022 asserts that the "notes of proceedings" of the court confirm that the mother attended to give evidence as to consent on 4 September 2019. However, once again this document was provided only after the discrepancy was raised and does not accord with what is recorded on the adoption orders of 4 September 2019. Further, and in line with the recommendation of the expert, a request was made to the Nigerian court for the court record, as stated to exist in the letter of 29 June 2022. However, that request did not produce any further documents save for further copies of documents already in the possession of this court. In particular, the request did not produce the "notes of proceedings" referred to in the letter from the Principle Registrar of the Family Magistrate Court in Owerri dated 29 June 2022. In this context, the reasonable telephone enquiries on the issue of consent to both the lawyer acting for KN and BN in Nigeria and to the head of the Love Care Child Centre, each of whom would be able to assist the court on that issue, have also gone repeatedly unanswered.

85. The foregoing issues with regard to the evidence concerning the consent of the woman identified as TN's birth mother must in my judgment be considered in the context of wider concerns raised by the documentation in this case. Intake reports for the children dated 1 October 2019 each refer to the children being 'lifted' by BN and KN from the Love Care Child Centre on 15 May 2019. However, by their own evidence KN and BN did not arrive in Nigeria until 19 May 2019. With respect to the documentation itself, it is of concern that the documents regarding RN and TN comprising the original affidavits, the intake reports dated 19 October 2019 and the letters from the Child Department of the Ministry of Gender & Vulnerable Groups Affairs dated 22 October 2019 are virtually *identical* in their terms, down to the birth dates of the children, the circumstances of their conception, the attitudes of the putative fathers and the circumstances of their relinquishment notwithstanding they were born to two separate women living in different parts of Imo State. To these concerns must be added the peculiar situation whereby the Child Welfare Investigation Reports on the two children are each silent about the other child and the fact that, whilst KN and BN contend they made clear to the Nigerian authorities that they intended to care for the children in England, there is no mention of that fact anywhere in the welfare reports.

86. The foregoing issues must further be placed in the still wider context of the Secretary of State for Education having placed special restrictions on the bringing in of children to the United Kingdom for the purpose of adoption from Nigeria pursuant to the Special Restrictions on Adoptions from Abroad (Nigeria) Order 2021, which came into effect

on 12 March 2021. These restrictions have been imposed on Nigeria due to difficulties confirming the background and adoptability of children, unreliable documentation, concerns about corruption in the Nigerian adoption system and evidence of organised child trafficking within Nigeria. In this context, in this case the Secretary of State contends that the affidavit evidence in respect of TN is of very limited value in circumstances where the affidavits are produced at the request of the deponent and the document is simply a record of what they state, there is no assurance mechanism in place to support the verification of those statements and that attempts to successfully verify documents that are produced at a local level in Nigeria due to the internal record keeping within the country are of no real value.

87. Informed consent is one of the foundation stones of lawful adoption. It is the requirement of informed consent properly evidenced that constitutes one of the strongest bulwarks against the exploitation of birth mother's and children in the context of international adoption, particularly where the risk of exploitation through, for example, child trafficking is high. In the circumstances, in cases of this nature the courts must be rigorous in ensuring the legal requirements in respect of consent under the foreign law in question have been strictly adhered to. In this context, I agree with Mr Badejo that the affidavit of consent is a *crucial* document given the clear requirement of the law that the court shall not make an adoption order unless parental consent has been obtained. It is therefore vital that any discrepancies in respect of the affidavit purporting to give consent are resolved to the satisfaction of the court. Having regard to the evidence I have set out, it is not possible to conclude that they have been. As Mr Badejo points out, KN and BN were not responsible for generating the document in which the inconsistency appears. However, by reason of the matters set out above, the court is left with significant doubts regarding the evidence with respect to the consent of the woman identified as TN's birth mother. Those doubts are sufficient in this case to lead me to the conclusion that I cannot be satisfied that TN's adoption was concluded in accordance with the requirements of Nigerian law.

88. Having regard to the expert evidence before the court, which again was not challenged by any party, I am satisfied that the Nigerian adoptions have in substance the same essential characteristics as an English adoption and substantially conforms with the English concept of adoption. Mr Badejo's report provides ample evidence in support of that conclusion.

89. Finally in respect of the criteria set out in *In re Valentine's Settlement*, I am satisfied that there do not in this case exist public policy grounds for refusing to recognise the Nigerian adoptions. As set out above, in addition to the difficulties with question of consent in relation to the adoption of TN, there are clearly a number of concerning features with respect to the adoption of both children, centred primarily in the documentation relating to those adoptions and certain inconsistencies in the evidence of KN and BN. However, as Munby J made clear in in *Re N (A Child)* public policy in this context has a *strictly* limited function and is properly confined to *particularly* egregious cases, the examples of such cases given in Dicey being examples of immoral or mercenary conduct such as prostitution or the procurement of financial gain to the adopter. Having considered the evidence filed by BN and KN and observed contact between them and the children the Guardian does not identify any reason to consider that the adoption was designed to promote an immoral or mercenary objective or

similar. I am satisfied that there is no evidence of such immoral or mercenary conduct in this case.

90. In the foregoing circumstances I am satisfied, on balance, that the adoption of RN in Nigeria complies with the criteria set out in *In re Valentine's Settlement* and that, accordingly, it is open to the court to recognise that adoption at common law and I do so. By contrast, and for the reasons given, I am not satisfied that the adoption of TN meets the criteria set out in *In re Valentine's Settlement* in circumstances where I cannot be satisfied that it was concluded in accordance with the requirements of Nigerian law. Accordingly, I must go on to consider whether the strict application of the common law rule in *In re Valentine's Settlement* to TN, with a concomitant refusal to recognise the adoption constituted in Nigeria in a form that substantially conforms with the English concept of adoption, would constitute an interference in the Art 8 right to respect for family life of KN and BN and TN and of TN and RN that cannot be said to be either necessary or proportionate.

91. Having regard to the evidence before the court, and in particular the evidence of the Children's Guardian, I am satisfied that there exists in this case *de facto* family life between TN and KN and BN for the purposes of Art 8 of the ECHR.

92. KN and BN and the children have enjoyed a relationship since the children were eight weeks old. KN and BN have the benefit of adoption orders in respect of the children in Nigeria and have treated them as their adoptive children since 2019. KN and BN have identified themselves as 'mummy' and 'daddy' to the children from the outset and, as noted, the children know KN and BN as 'mummy' and 'daddy'. KN and BN speak to the children several times a day online. The interactions between the children and KN and BN observed by the Children's Guardian are enjoyed by the children and form part of their daily routine. The Children's Guardian observed that KN and BN are able to describe the different personalities of the children. Within this context, the children have begun to ask questions as to why they do not live with 'mummy' and 'daddy'. I accept the evidence of BN that she and her husband coordinate and direct all aspects of the children's care and hold sole financial responsibility for the children, although it is plain this results in considerable tension with the extended maternal family. In this respect, the Children's Guardian concludes that KN and BN are involved in directing the children's care and provide financial assistance to the extended family in that regard. In the foregoing context, I accept the evidence of the Children's Guardian that is likely that the children identify KN and BN as important figures within their family life, despite their geographical separation. In these circumstances, and noting the matters the Children's Guardian contends detract from the formation of family life, on balance I am satisfied that family life exists between the children and KN and BN for the purposes of Art 8.

93. I am also satisfied on the evidence that there exists *de facto* family life as between TN and RN. TN and RN have lived as adoptive siblings in the same home since 20 May 2019, a period of nearly four years. They have during that time been treated as siblings by both KN and BN and BN's extended family. They have benefited from each others' physical and emotional company for an extended period and have shared the routines of daily family life, including online contact with KN and BN, for almost the entirety of there lives. Within this context, in circumstances where the existence of family life for the purposes of Art 8 is a question of fact predicated on the existence of close personal ties, and the existence of family life between a child and his or her siblings is

consonant with the use of the word 'everyone' in Art 8, I am satisfied that TN and RN share a *de facto* family life for the purposes of Art 8. In circumstances where the existence of family life between a child and his or her siblings is, again, consonant with the use of the word 'everyone' in Art 8, I do not consider that the fact that the children are adoptive siblings alters my conclusion.

94. In the foregoing circumstances, consider that the strict application of the common law rule in *In re Valentine's Settlement* in this case to TN, with a concomitant refusal to recognise the adoption constituted in Nigeria in terms which substantially conform with the English concept of adoption, would constitute an interference in TN's Art 8 right to respect for family life. such interference in the Art 8 rights of the parties would be in accordance with the law, the rule in *In re Valentine's Settlement* being well established and of long standing. I am further satisfied that, with respect to the question of whether the interference could be said to be necessary in a democratic society and proportionate, that the strict application of the rule in *In re Valentine's Settlement* in this case does not constitute a sufficient reason for the purposes of Art 8(2) to justify that interference for the following reasons:

i) In circumstances where family life exists between KN and BN and TN and between TN and RN for the purposes of Art 8, the court cannot reasonably refuse to recognise the actual situation of TN viz-a viz KN and BN and RN and must engage with an examination of that actual situation. As noted above, that actual situation is that KN and BN and the children have enjoyed a relationship since the children were eight weeks old. KN and BN have the benefit of adoption orders in respect of the children in Nigeria and have treated them as their adoptive children since 2019. KN and BN have identified themselves as 'mummy' and 'daddy' to the children from the outset and, as noted, the children know KN and BN as 'mummy' and 'daddy'. The children identify KN and BN as important figures within their family life, despite their geographical separation. Further, TN and RN have lived as adoptive siblings in the same home since 20 May 2019. They have during that time been treated as siblings by both KN and BN and BN's extended family. They have benefited from each others physical and emotional company for an extended period and have shared the routines of daily family life, including online contact with KN and BN, for almost the entirety of there lives.

ii) In the foregoing context, a decision to refuse to recognise the adoption of TN in Nigeria would fail to take account of the social reality of the situation, which reality is that TN could not be fully integrated into her adopted family by means of the creation of a permanent legal relationship in this jurisdiction. TN would be left being the daughter of KN and BN in the jurisdiction of Nigeria but not in the jurisdiction of England and Wales, in which country her adoptive mother is a citizen. This would leave TN in the position of the so called "limping infant" (see *Re B(S)(An Infant)* [1968] Ch 204) As pointed out in *Re B(S)(An Infant)* the court cannot shut its eyes to the possibility of creating a limping adoption, one of the consequences of which would be that TN would have no legal right of succession in this jurisdiction in relation to the property of their mother notwithstanding she is their mother under Nigerian law.

iii) Further, and in similar context, TN would be left with the same legal relationship with her adoptive parents as RN in the jurisdiction of Nigeria, but with a

different legal relationship to her parents to RN in the jurisdiction of England and Wales. This would mean, for example, that RN would have preferential rights in this jurisdiction to those of his adoptive sister in relation to succession and inheritance in relation to the property of their parents.

iv) The immigration consequences of any decision this court makes as to recognition is a matter *entirely* for the Secretary of State for the Home Department and/or the First Tier Tribunal. However, depending on the manner in which a decision by this court to recognise RN's Nigerian adoption but to refuse to recognise the Nigerian adoption of TN, on the grounds that the former satisfies the common law criteria for recognition but the latter does not, could result in the physical separation of the siblings between two jurisdictions were that decision to operate to permit the entry of RN into the United Kingdom but bar the entry of TN.

v) Within the foregoing context, I am satisfied that according different legal statuses to RN and TN would also be likely to have an emotionally detrimental impact on TN were they to treated differently, as a result of a differential recognition of their status, in terms of their rights as children of KN and BN, and were they to be physically separated, as a result of their differing legal status in different jurisdictions.

vi) It is not possible in this case for KN and BN to adopt the children in this jurisdiction under the Adoption and Children Act 2002 as, for the reasons set out above and examined in further detail below in respect of KN, neither BN or KN are domiciled in a part of the British Islands for the purposes of s.49 of the Adoption and Children Act 2002.

95. In the foregoing circumstances, I am satisfied that refusing to recognise TN's adoption at common law would constitute a disproportionate interference in her Art 8 right to respect for family life with KN and BN and with RN and result in the court determining the application for recognition at common law in a manner that is incompatible with the Convention right, a course rendered unlawful by the Human Rights Act 1998 s 6(1). In the circumstances, I am satisfied that it is also open to the court to recognise TN's Nigerian adoption at common law and I do so.

96. I recognise that, in affording recognition to TN's Nigerian adoption in circumstances where not to do so would amount to a unnecessary and disproportionate breach of her Art 8 right to respect for family life with RN and KN and BN, I am recognising an adoption that has taken place in the concerning circumstances I have set out above, without adhering to all of the requirements of Nigerian law and in circumstances where Nigeria is the subject of special restrictions under the Special Restrictions on Adoptions from Abroad (Nigeria) Order 2021. However, I remind myself that under the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008 restrictions do not constitute a blanket prohibition. A request can be made to treat a case as an exception to a special restriction imposed under the Adoption and Children Act 2006 and in deciding whether or not a case is exceptional the Minister will consider all the information provided which is relevant to the individual facts and circumstances of the case.

*Declarations under s.57 of the Family Law Act 1986*

97. Whilst satisfied both adoptions fall to be recognised at common law for the reason set out above, I am *not* however satisfied that the court has jurisdiction to grant declarations in this case pursuant to s.57 of the Family Law Act 1986 as I am not satisfied that the children were domiciled in the jurisdiction of England and Wales as at 21 March 2022, the date on which the applications for declarations under s.57 of the 1986 Act were issued. In this regard, the court finds itself in a similar situation faced to that faced by Judd J in *FX and MJX v CAFCASS Legal*. That case demonstrates that it is possible for the court to conclude on the facts of a case that the adoptions in issue should be recognised at common law but that the court may nonetheless not be in a position to make declarations pursuant to s.57 of the Family Law Act 1986. I am satisfied that that is the position in this case.

98. As set out above, in order for the court to have jurisdiction to make the declarations sought under s.57 of the Family Law Act 1986, RN and TN must have been domiciled in this jurisdiction as at 21 March 2022. In circumstances where, by virtue of s.3 of the Matrimonial Proceedings Act 1973, the children cannot acquire in this jurisdiction an independent domicile until they reach the age of 16, they can only be said to have been domiciled in this jurisdiction as at 21 March 2022 if they had achieved a domicile of dependence here through KN in accordance with the rule set out in *Henderson v Henderson*. In the circumstances, the question of whether the children were domiciled in this jurisdiction as at 21 March 2002 for the purposes of s.57(3)(a) of the Family Law Act 1986 depends on KN's status on that date. As at 21 March 2022, I am satisfied that KN's domicile remained his domicile of origin in Nigeria.

99. In his first statement, filed some weeks after 21 March 2022 on 3 May 2022, KN made clear in his statement that his family home in [Address A], which he and his siblings inherited from his father remained his home. In examination in chief KN stated clearly that at the time KN and BN made their applications for declarations under s.57 of the Family Law Act 1986 on 21 March 2022 his intention was to reside permanently in Nigeria. Whilst when the court sought to check this evidence, KN changed his answer and stated that he intended to live permanently in England as at 18 March 2022, his first answer was far more consistent with the position set out in his first and later statement dated 3 May 2022 that Nigeria remained his home than his second attempt at answering the question.

100. A person can acquire a domicile of choice by the combination of residence and an intention of permanent or indefinite residence, but not otherwise. In considering the question of KN's domicile as at 21 March 2022, the court is concerned with the ties that bind him to a chosen domicile and the strength and durability of those ties. Within this context, a finding that KN was domiciled in this jurisdiction at the time he and BN applied for declarations under s.57 of the 1986 Act, and hence that the children were also domiciled in this jurisdiction at that time, would require the court to accept the contention that KN was domiciled in Nigeria as at 4 September 2019 but that by 21 March 2022 he was domiciled in the United Kingdom, even though a month and a half *after* that date he was still contending his home was in Nigeria, a statement consistent with his first answer in examination in chief as to the position in March 2022 that he intended to reside permanently in Nigeria. I am satisfied that this situation cannot support the contention that as at 21 March 2022 KN was domiciled in this jurisdiction.

101. In the foregoing circumstances, I am not satisfied that the children were domiciled in the United Kingdom as at 21 March 2022. It follows that this court does not have jurisdiction to grant declarations pursuant to s.57 of the Family Law Act 1986 that the children are the adopted children of KN and BN for the purposes of s.67 of the Adoption and Children Act 2002 and I accordingly decline to make those declarations.

## CONCLUSION

102. In conclusion, whilst satisfied that this court is able to recognise at common law the adoptions that took place in Nigeria for the reasons I have given, I am not able in this case to go so far as to thereafter make declarations under s.57 of the Family Law Act 1986 in circumstances where this court has no jurisdiction to take that step for the reasons set out above. Whilst I accept that this decision *may* have an impact on the immigration position for each of the children, that is not a matter for this court and not a matter in which this court can interfere.

103. In the circumstances, I grant the applications for recognition of the Nigerian adoptions at common law but dismiss the applications for declarations pursuant to s.57 of the Family Law Act 1986.

104. That is my judgment.