JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 51/2007

BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MRS. JUSTICE HARRIS, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)

BETWEEN SUZEANNA SYLVIA WILLIAMSON APPELLANT

AND GREGORY WINSTON WILLAMSON RESPONDENT

Ms. Hilary Phillips, Q.C., Mrs. Denise Kitson and Ms. Lauren Sadler instructed by Grant, Stewart, Phillips and Company for the Appellant.

Mr. Bert Samuels, Mr. Franklin Haliburton and Ms. Jacqueline Wilcott instructed by Knight, Junor and Samuels for the Respondent.

November 14, 15, 23, 2007 and July 18 , 2008

PANTON, P.

I agree with the reasoning of Harris, J.A. and have nothing to add.

HARRIS, J.A.

In this appeal the appellant challenges an order of Jones, J. in which he refused to decline jurisdiction with respect to the custody of two infant children.

On November 23, 2007 we allowed the appeal and made the following order:

1. The relevant children are to be summarily returned to Florida, U.S.A. where the said children are domiciled and ordinarily resident and which is the jurisdiction in which the question of their custody and maintenance may be properly determined.

2. The appellant is to have physical custody of the said relevant children, pending the determination of such by a competent court within the jurisdiction aforesaid.

3. Costs to the appellant to be agreed or taxed.

4. The appellant is permitted to make the necessary application to obtain such travel documents or passports from the United States Embassy as may be required for the children to facilitate their return to the United States of America.

5. The appellant's Attorneys-at-law are released from their undertakings given to the court in relation to keeping the travel documents of the appellant and those relative to the children and the same may immediately be returned to the appellant.

6. That all orders made in the Supreme Court in relation to the respondent's access to the children, are vacated.

We promised to put our reasons in writing. We now fulfil that promise.

The parties are husband and wife. For convenience, reference hereinafter will be made to them as "husband" and "wife". They were married at Kissimmee, Florida, in the United States of America on May 23, 1998. Their union produced 2 children, one born on June 15, 1999 and the other on February 28, 2001 in Broward County, Florida in the United States of America.

The parties reside in Florida and had entered into a contract for the sale of their home at Plantation, Florida following a decision to move to North Carolina. The husband assumed the responsibility for the household expenses.

He is a pilot in the employ of the United Airways, based in Chicago. The wife is presently enrolled in a nursing school in Florida, pursuing a nursing degree.

The children were enrolled in the American Heritage School at West Broward, Florida which they attended up to December, 2006. The enrolment fees were paid by the husband for 1 year, from August, 2006 to May, 2007.

On December 27, 2006 the parties and the children arrived in Jamaica and were scheduled to return to the United States in early January, 2007. The wife asserted that the object of the visit was for a vacation. The husband declared that it was their intention to reside in Jamaica. The husband, on January 5, 2007, removed the children from a home in Saint Ann where they were all staying.

On January 5, 2007 the husband filed a Petition for Dissolution of the Marriage, which was served on the wife. She filed an Answer and Cross Petition on January 8, 2007, denying several allegations raised in the Petition and Affidavit in support of the Petition. Proceedings are currently pending in the Broward County Circuit Court in relation to the marriage, the children and the matrimonial home.

On January 15, 2007, the husband obtained an Ex-parte Order, granted on his application for custody, giving him custody, care, and control of the

children and restraining the removal of the children from the jurisdiction pending the hearing of the application.

On January 25, 2007, by an application for Court Orders, the wife sought to set aside or vary the Ex-parte Order of January 15. This application came on for hearing on January 31, 2007 but was adjourned to February 2, 2007 when the question of access to the children was heard and the interim order of January 15 was varied by the grant of access to the children, to the wife.

On February 12, 2007 the wife filed an Amended Application for Court Orders for the following orders:

> "1. That the ORDER made ex-parte herein on the 15th day of January, 2007 granting custody, care and control of the relevant children Kamilah Breanna Williamson born on the 15th June 1999 and Kyle Gregory Williamson born on the 28th day of February to the Petitioner/Respondent until the matter is tried and that the relevant children are not to be removed from the jurisdiction until the matter is heard at trial, be set aside on the basis of misrepresentation and non-disclosure, inter alia.
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> 2. That this Honourable Court decline to exercise its jurisdiction and order that it is in the best interest of the relevant children's welfare that they be summarily returned to Florida in the United States of America where the said children are domiciled, ordinarily resident and which is the jurisdiction with which the and maintenance may be determined by the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida in Case No. 07000891

in the Family Division, issued on the 23rd day of January, 2007.

3. That the said relevant children be immediately and summarily returned by the Petitioner/Respondent to the physical custody of the Applicant/Respondent who is permitted to remove the children from the jurisdiction and return with them to the United States of America where the parties have resided permanently since marriage, where the said children were born, have resided and attended school since birth."

On February 15, 2007, on the application of the wife, by consent, an interim order specifying dates and times of access to the children was made. On February 23, 2007 the order of February 15, 2007 was varied granting, among other things, custody of the children to the wife until several pending court orders were determined. On March 30, 2007 the husband filed an amended notice of application, seeking, among other things, custody of the relevant children.

The amended application of February 12, 2007 came on for hearing on March 2 and April 4, 2007 when certain directions were made and orders given. On May 4, 2007 the following order was made by the learned judge:

"1. Paragraph 2 of the Amended Notice of Application is refused;

2. Leave to appeal granted;

3. Application for adjournment of proceedings refused;

> 4. Petitioner's amended Notice of Application dated March 30, 2007, to be proceeded with."

No reasons were given by the learned judge for his decision. This notwithstanding, it is permissible for this court to engage in a re-hearing of the matter, as it is so empowered by Rule 1.1 (b) of the Court of Appeal Rules 2002.

There is no dispute that the Supreme Court is seized of jurisdiction to determine questions relevant to the care and upbringing of a child. The Children (Guardianship and Custody) Act Section 2, confers on that court jurisdiction to hear and determine the question of custody of a child. Accordingly, the court will be reluctant to decline jurisdiction in circumstances where the parties and the child are within its jurisdiction. Further, the exercise of its powers as a Court of Chancery, as *parens patriae* to the children, demands that the Supreme Court exercises its jurisdiction whenever the circumstances so require. The court is loathe to decline jurisdiction but may exercise such powers if the circumstances so dictate.

Section 18 of the Act outlines the principles upon which a court may determine the question of custody or upbringing of a child. The Section states:

> "Where in any proceeding before any Court the custody or upbringing of a child or the administration of any property belonging to or held on trust for a child, or the application of the income thereof, is in question, the Court in deciding that question, shall regard the welfare of the child as the first and paramount consideration, and shall not take into consideration whether from any other point of view

> the claim of the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father."

The welfare of the child is the primary and paramount consideration. It supersedes all other considerations.

The making of a summary return order is not automatic. In determining whether a child should be summarily returned to a jurisdiction other than that in which he is found, a court must pay due regard to the best interest of the child. The summary return of a child may be ordered if it is in the best interest of the child so to do. In **Re J (a child) (FC)** [2005] UK HL 40 at paragraph 28 Baroness Hale said:

> "28. It is plain, therefore that there is always a choice to be made. Summary return should not be the automatic reaction to any and every unauthorized taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child."

At paragraph 29 she went on to state:

> "29. How then is the trial judge to set about making that choice? His focus has to be on the individual child in the particular circumstances of the case."

The manner in which the court should approach the question of assumption of jurisdiction was outlined by Lord Donaldson in **re F (A Minor)**

(Abduction: Custody Rights) [1991] Fam. LR 25 at page 31, in the following terms:

> "The welfare of the child is indeed the paramount consideration, but it has to be considered in two different contexts. The first is the context of which court shall decide what the child's best interests require. The second context, which only arises if it has first been decided that the welfare of the child requires that the English rather a foreign court shall decide what are the requirements of the child, is what orders as to custody, care and control and so on should be made."

It follows therefore, that the court must first consider which court shall determine the child's best interest. Thereafter, if it is established that the local court in preference to the foreign court should make a decision as to the welfare of the child, then, the local court may proceed to make the orders sought.

The doctrine of forum non conveniens be may a relevant consideration in the choice of a venue. The learned authors of Conflict of Laws in Australia, 4th Edition, Butterworths, 1984 outline the doctrine in the following context:

> "In the United Kingdom and Scotland, the courts have evolved a general doctrine of forum non conveniens to allow them to decline jurisdiction where the forum chosen by the plaintiff is clearly inappropriate. As Lord Sumner explained the Scots rule in Society du Gaz de Paris v Amateurs Francais (1926) SC (HL) 13 at 22: 'the object.... is to find that forum which is more suitable for the ends of justice , and is preferable because pursuit of litigation in that forum is more likely to secure those ends."

In deciding which court best suits the interest of the child, the doctrine of forum conveniens may be relied upon. The doctrine permits the court of the

country in which the child is found to entertain jurisdiction, if the welfare of the child demands that that court is best suited to meet the ends of justice. In Thompson v Thompson [1993] 30 J.L.R 414, this court , in applying the doctrine, held that where a party is entitled to bring custody proceedings in this country, a stay will not be granted unless it is shown to the satisfaction of the court that some other forum is more suitable for the conduct of such proceedings. It was also held that the welfare of the child being paramount, the local court in preference to the foreign court was the proper forum.

There are, however, cases in which the supreme interest of a child dictates that he or she should be speedily returned to the country from which he or she was taken and that the court of that country determine the question of his or her custody and upbringing and the doctrine of forum non conveniens is rendered inapplicable. In **Z.P v. P.S [**1994] 181 CLR at pages 669 – 670, the majority Court, Dean and Gaudron JJ, treating with the doctrine contextually, declared:

> "In cases such as the present, the issue is not forum non conveniens. Rather, as Mason C.J, Toohey and McHugh JJ. point out, the issue is whether the welfare of the child requires speedy repatriation to the country from which he or she was taken, with the courts of that country determining custody and other matters relating to the child's upbringing. We would add, however, that in determining what is in the interests of the welfare of the particular child, a court is entitled to take account of considerations of public policy reflecting and protecting the interests of all children. Among those considerations of public policy is the prima facie importance, in the interests of all

> children, of discouraging the taking of a child from his or her homeland and familial environment, in breach of the law of that homeland, for the purpose of obtaining standing or some forensic advantage in a dispute about custody, access or financial support in the courts of some other place. Such abduction of children across national boundaries, if encouraged by being treated as an accepted means of attracting the jurisdiction of, or obtaining some procedural advantage in, the desired forum, pose a threat to the security of any child subject to competing national claims or loyalties."

Although the doctrine of forum non conveniens may be generally inapplicable to summary return cases, in the application of the welfare test, the circumstances of a case may warrant that the principle be invoked as a relevant factor. The case under review is one of such cases in which the doctrine ought to be imported as one of the determinant criteria in deciding whether a summary return order should be made.

In considering whether a child should be summarily returned, a court must carefully assess which forum best suits the welfare of the child. Scrupulous care must be given in assessing the application of the welfare test. In making a proper determination, the court, in conducting such an exercise, must pay due regard to all the circumstances surrounding the child. The best interest of the child predominates all other considerations. This requires an assessment of his or her happiness, his or her moral and religious upbringing, the social and educational influences, his or her psychological and physical well-being and his or her material surroundings. Re **J (a child)** (supra) The court therefore, in its

quest to arrive at a decision as to whether an order for summary return should be made, must embark on a balancing exercise by weighing the competing issues. The court is bound to take into account all relevant factors in deciding whether to make a summary return order or whether to assume jurisdiction.

In the case under review, the competing jurisdictions are represented by the United States and Jamaica. The legal systems of both countries closely correspond. This fact creates some difficulty in determining which of the competing jurisdictions is best suited for deciding the question of the custody of the children. How then should this difficulty be resolved? Judicial authorities have shown that the country in which the child is ordinarily resident is a critical criterion in the determination as to which of two jurisdictions is more appropriate. See **J (a child) (FC)** (supra) and **Panton v Panton** S.C.C.A. 21/06 delivered on November 29, 2006.

How should a court construe the term "ordinary residence"? Assistance in this regard is given by Lord Denning M.R. in **Re P (G.E) (an infant)** [1964] 3 All ER 977 when at page 982 he said:

> "But then we are faced with the question, what is the ordinary residence of a child of tender years who cannot decide for himself where to live, let us say under the age of sixteen? So long as the father and mother are living together in the matrimonial home, the child's ordinary residence is the home – and it is still his ordinary residence, even whilst he is away at boarding school. It is his base, from whence he goes out and to which he returns. When father and mother are at variance and living *separate and apart*

> – and by arrangement the child makes his home with one of them – then that home is his ordinary residence, even though the other parent has access and the child goes to see him from time to time. I do not see that a child's ordinary residence, so found, can be changed by kidnapping him and taking him from his home; even if one of his parents is the kidnapper. Quite generally, I do not think that a child's ordinary residence can be changed by one parent without the consent of the other. It will not be changed until the parent who is left at home, childless, acquiesces in the change, or delays so long in bringing proceedings that he or she must be taken to acquiesce."

In **Panton v. Panton** (supra) Harrison, P. in treating with the question of "ordinary residence" within the context of the making of a summary return order, had this to say:

> "A court which is asked to consider whether it will make an order for the summary return of a child, ever mindful of the welfare of the child must consider which of two jurisdictions is better suited to determine that issue. Inevitably, the doctrine of forum non conveniens arises and closely aligned thereto is the question of the ordinary residence of the child. This is equally described as the country to which the child enjoys a closer connection, which may be a factor in the determination of the issue of summary return."

In the Canadian case of **Neilsen v Neilsen** [1971] 1 O.R. 541 at pp. 544 – 5, 16 D.L.R (3) at pp 36-7, 5 R.F.L. 313, Galligan, J. speaking to the question of the habitual place of residence of a child, said:

> "It is my opinion that in common sense, and indeed in law, the Courts of the place of ordinary residence of the children have jurisdiction to determine the welfare of those children, i.e., to determine their

> custody, even though the Courts of the place where they are physically present also have such jurisdiction. If this were not so, an unscrupulous person could move children from jurisdiction to jurisdiction, preventing the effective adjudication upon their welfare by due process of law."

It is clear that the place of residence of a child is the last place in which the child resided with its parents. The court may order the summary return of a child if it is satisfied that the child is ordinarily resident within the jurisdiction of the foreign court, or the place with which he or she has a real and substantial connection. The court, however, will not relinquish its jurisdiction in favour of a foreign court unless it is satisfied that the jurisdiction to which the child will be subjected employs principles which protect the welfare of the child.

In **Re JA (FC)** [1998] 1 F.L.R. 231 at 241 Lord Ward, J. said:

> "... the court cannot be satisfied that it is in the best interest of the child to return it to the court of habitual residence in order that that court may resolve the disputed question unless this court is satisfied that the welfare test will apply in that foreign court,"

The following grounds of appeal were filed:

> "(a) The learned judge erred in law and wrongly exercised his discretion in refusing to grant an Order that this Honourable Court decline to exercise its jurisdiction and order that it was in the best interest of the relevant children's welfare that they be immediately and summarily returned to Florida, in the United States of America where the said children are domiciled, ordinarily resident and which is the jurisdiction within which the custody and

maintenance may be determined by the Circuit Court of the 17th Judicial District in and for Broward County, Florida in Case No. 07000891 in the Family Division issued on the 23rd day of January 2007.

(b) The learned judge erred in refusing to adjourn the proceedings pending pursuing an appeal of his decision; and

(c) The Appellant has a realistic prospect of succeeding on the Appeal."

The issues arising are:

1. Whether discretion resides with the court to decline jurisdiction and return the children to the foreign jurisdiction.

2. Which of the two jurisdictions would best serve the interest of the children in the determination of their custody.

3. Whether the Appellate Court can intervene.

The thrust of Miss Phillips' submission is that the learned judge ought to have declined jurisdiction for the reason that all undisputed facts arising in the case clearly show that the Floridian Court is the more convenient forum for the question of the custody of the children to be determined.

Mr. Samuels argued that the Jamaican court should retain jurisdiction. He submitted that the divorce and custody proceedings were commenced by the husband in Jamaica prior to the initiation of proceedings in Florida by the wife. The wife's filing of an Answer and Cross Petition to the Divorce Petition, the making of several applications to the court by her in the matter, and the award

to her of interim custody of the children demonstrated that she submitted herself to the Supreme Court's jurisdiction, he argued. In support of his submissions he cited Rule 9.2 (1) of the Civil Procedure Rule 2002.

The rule reads:

> "A defendant who wishes –
>
> (a) to dispute the claim; or
>
> (b) to dispute the court's jurisdiction,
> must file at the registry at which the claim form was issued an acknowledgment of service in form 3 or 4 containing a notice of intention to defend and send a copy of the acknowledgment of service to the claimant or the claimant's attorney-at-law."

The fact that the wife filed an Answer and Cross Petition and secured certain interim orders pertaining to the custody of the children does not in any way establish submission by her to the jurisdiction of the court. In obedience to sub-rule 9.2 (1) (b), she filed an acknowledgment of service which was duly served on the husband. This obviously demonstrates her intention to dispute the court's jurisdiction. The filing of an Answer and Cross Petition and the award of interim custody of the children upon her applications would in no way preclude her from contesting the court's jurisdiction.

The fundamental question which the court should determine is whether, in the circumstances of this case, a summary return order ought to be made. At common law, the court, in keeping with the welfare principle, is empowered to

make summary return orders and is at liberty so to do without determining the matter on its merits. In support of this proposition, Baroness Hale, in **Re J (a child) (FC)** (supra) at paragraph 26, stated:

> "... the court does have power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits. In a series of cases during the 1960s, these came to be known as 'kidnapping' cases. The principles were summed up by Lord Justice Buckley in **Re L (Minors) (Wardship: Jurisdiction)** [1974] 1 WLR 250, at p 264, rightly described by Lord Justice Ward in **Re P and Re JA** as the locus classicus:
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> "To take a child from his native land, to remove him to another country where, maybe, his native tongue is not spoken, to divorce him from the social customs and contacts to which he had been accustomed, to interrupt his education in his native land and subject him to a foreign system of education, are all acts (offered here as examples and of course not as a complete catalogue of possible relevant factors) which are likely to be psychologically disturbing to the child, particularly at a time when his family life is also disrupted. If such a case is promptly brought to the attention of a court in this country, the judge may feel that it is in the best interests of the infant that these disturbing factors should be eliminated from his life as speedily as possible. A full investigation of the merits of the case in an English court may be incompatible with achieving this. The judge may well be persuaded that it would be better for the child that those merits should be investigated in a court in his native country." "

The court may order the summary return of a child even in a case which, strictly speaking, would not ordinarily be treated as a "kidnapping" case. In Re Firestone and Firestone 90 D.L.R (3d) 742, a husband and wife who were

Canadian nationals moved to Australia in 1973. They were married that year. A son was born to them in 1975. The parties separated in 1977. The husband increasingly assumed custody of the child by mutual agreement of the parties. The husband subsequently returned to Canada with the child but failed to communicate this to the wife. In Canada, he brought an application for custody. Jurisdiction was declined by the trial judge and the child was returned to the Australian Court's jurisdiction. It was held that the trial judge was correct in his application of the test used in" kidnapping" cases in ordering the return of the child.

In dealing with the court's authority to order the summary return of a child to a foreign jurisdiction, Harrison, P., in **Panton v. Panton** (supra)., at page 20 said:

> "The court in Jamaica has the power, in certain circumstances to decline jurisdiction and return a child summarily to a foreign jurisdiction, without a hearing on its merits. In such circumstances a judge is not obliged to allow cross-examination of the witnesses who have given evidence on affidavit, seeing that, the judge is not at that time required to make primary findings of fact, nor pronounce on the credibility of the witnesses."

He went on to say at page 21:

> "A court which is asked to consider whether it will make an order for the summary return of a child, ever mindful of the welfare of the child must consider which of two jurisdictions is better suited to determine that issue. Inevitably, the doctrine of forum non conveniens arises and closely aligned thereto is the question of the ordinary residence of

> the child. This is equally described as the country to which the child enjoys a closer connection, which may be a factor in the determination of the issue of summary return.
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> ...
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> The term "ordinary residence" or "closer connection" not being terms of art, as they relate to the child will assist a court in deciding which environment is likely to possess and provide the factors recognized as most likely to promote the concept of the best interests of the child."

We adopt these observations of the learned President.

It is now necessary for us to examine the circumstances of the case and determine which court of the two jurisdictions ought to hear matters concerning the children. Such jurisdiction must be the one in which they could be said to be ordinarily resident or with which they enjoy a closer connection. Both children are United States nationals, having been born in Florida. They have resided there from birth with their parents. There is nothing to show that the parties had ever resided in Jamaica as man and wife, nor that the children resided in Jamaica for any extended period. The parties and the children arrived in Jamaica on December 27, 2006. They were destined to return to Florida on January 12, 2007. The husband elected to remain in Jamaica with the children and in one instance concealed their whereabouts from the wife.

The wife is currently in nursing school in Florida. The husband is a pilot with the United Airways Airline in Chicago. The parties own a house in Florida.

The children were enrolled in school in Florida from August 2006 to May 2007. Their school fees were paid by the husband. The husband had decided to sell the Florida house with a view to the parties and children moving to North Carolina. The children had been taken to North Carolina where the husband had them tested for admission to school.

The children's maternal grandparents live in Florida. Their paternal grandparents own a home in Florida. They interact with their maternal and paternal grandparents. The latter grandparents visit them often.

On January 15, 2007, the date on which interim custody was granted to the husband, Jamaica was not the habitual place of residence of the children. His application for custody was made approximately 3 weeks after their arrival here. The husband placed them in school in Jamaica. There is no doubt that this would interrupt their educational progress. The Jamaican educational system and culture are somewhat dissimilar to that to which they have been exposed in the United States of America. It appears to us that they will best fare in the United States of America. All matters affecting their welfare would be more effectively aired in the court in Florida. The pending proceedings in the Florida Court in relation to the marriage and the children, were filed subsequent to the proceedings in the Jamaican Court. This would be insufficient to displace the rule that the country of the habitual residence of the children should assume

jurisdiction in matters affecting them. Consequently, those proceedings would not operate as a bar to the making of an order for their summary return.

There is evidence that the law of Florida, which governs the questions of custody and maintenance of a child, makes provision for the courts of Florida to take into account the welfare of a child, the paramount consideration being the best interest of the child. Mr. Charles Craig Stella, an expert witness on the laws of Florida, in paragraph 4 of an affidavit sworn on May 3, 2007, states:

> "That the law in Florida relating to domestic relations is contained in Florida Statute Chapter 61. In matters relating to children, the statute provides that the welfare and the best interests of the child are of paramount importance. The relevant section of the Florida statute which addresses the welfare of the child can be found at Chapter 61.13, section (2) (b) 1, 2a and b and section (3). I exhibit hereto marked "CCS 1" the relevant section of the Florida Statute Chapter 61.13."

The law and procedure of the Floridian courts demonstrate that the welfare test is applied in those courts. There is no reason to believe that the courts in Florida would not pay due regard to the principles underpinning the conduct of a fair hearing, in keeping with international comity. This court is satisfied that the Floridian court will resolve all disputed questions regarding the children by its application of the principle as to what is their best interest.

All considerations not only point to, but undoubtedly support the fact that the United States is the country in which the question of the custody,

maintenance and upbringing of the children should be determined. It is the country in which they are ordinarily resident. It is evident they maintain a closer and substantial connection with that country than Jamaica. A plethora of affidavits were filed in the matter, the contents of which disclosed charges and counter charges against the parties. There are also allegations by the husband of inappropriate conduct by the wife. All allegations raised are best aired in the court in Florida. In all the circumstances, justice will be best served if the question of the custody, care and upbringing of the children is pursued in the 17th Judicial Circuit in and for Broward County, Florida where the application in the matter has been filed.

The principles governing the approach of an appellate court to the review of the decision of a trial judge are well known. The function of the appellate court is one of review only. Accordingly, an appellate court is not at liberty to embark on an exercise of its own independent discretion and make a decision for the simple reason that it would have exercised its discretion differently from the judge. It may only set aside a judge's decision on the ground that it was plainly wrong. If it is shown that he had misconstrued the law or had misdirected himself on the facts then the court's intervention would be warranted. See **Watt v. Thomas** [1947] 1 All E.R. 582; [1947] A.C. 484, **Eldemire v. Eldemire** [1970] 27 J.L.R. 316, **Industrial Chemicals Co. Jamaica Ltd. v. Ellis** [1986] 35 W.I.R. 303. The court may also intervene where the judge failed to advance reasons for his judgment.

The learned judge, fell into error in not declining jurisdiction. He failed to have properly exercised his discretion. In the circumstances, the children should be returned to the United States of America so that the pending proceedings relating to their custody and upbringing may be heard and determined by the court in Florida.

DUKHARAN, J.A. (Ag.)

I agree.