

ENGLAND AND WALES / JUDGMENT

SA v BN

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court. Case No: MA11P00014 Neutral Citation Number: [2013] EWHC 4417 (Fam) IN THE HIGH COURT OF JUSTICE FAMILY DIVISION SITTING AT THE BIRMINGHAM DISTRICT REGISTRY Birmingham Civil Justice Centre 33 Bull Street, Birmingham, B4 6DW Date: 13/12/13 Before : MRS. JUSTICE ELEANOR KING DBE

- ----- Between : SA
- and - BN
- and – JN 2nd Respondent Applicant 1 st Respondent (By the Children’s Guardian
- and – CY Intervener
- and – X CC 3rd Respondent
- -----
- ----- The Applicant appeared in person Miss Suzanne HODGKISS (instructed by Michael Alexander & Co) for the 1st Respondent Mr. Paul LOPEZ (instructed by JK) for the 2nd Respondent The Intervener appeared in person The 3rd Respondent did not appear Hearing dates: 9th, 10th, 11th, 12th, 13th December 2013
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Judgment

Mrs. Justice Eleanor King DBE : 1. 2. 3. 4. 5. These are private law proceedings in relation to JN who was born on 11 July 2010 (3 yrs 7mths) and who is represented by her children's guardian, JK The applicant, Mr. SA, is J’s father, "the father". He was born on 20th of June 1992, (21 years). Miss BN is J’s mother "the mother". She was born on 3 March 1992 and she too is twenty-one. In addition, before the court is J’s maternal grandfather, “the grandfather” Mr. CN, now called Mr. CY, he is an Intervener in the proceedings by way of an order made on 11 July 2012. The father made an application dated 11 January 2011 for parental responsibility and for a contact order in respect of J. In order to determine that conventional application it has been necessary for the

court to conduct this highly unusual hearing in order to decide whether, notwithstanding the mother's assertions to the contrary, J is still alive or whether as alleged by her and the grandfather she died in tragic circumstances in a car crash in the Congo on 3 March 2012. The standard of proof against which I shall determine that issue is the balance of probabilities, the mother having asserted that J is dead, the burden of proof is upon her to establish that that is indeed the case.

Procedural history.

6. 7. 8. In order to understand the context in which J was removed from this country it is necessary to consider in brief the procedural history. The father having applied for contact and parental responsibility, early directions hearings were held at which the mother failed to attend, the matter referred to CAFCASS for safeguarding and other checks to be carried out. On 9 December 2011, District Judge Dowding (as she then was) ordered a DNA test to establish J's paternity as the mother suggested J was not the father's child. At this hearing the court received a letter from CAFCASS containing details about previous care proceedings in relation to the mother and DJ Dowding therefore ordered X CC to prepare a section 37 report in relation to J and her circumstances. On 10 February 2012 the section 37 report, was filed, it recorded the mother's failure to cooperate with the preparation of the report and concluded: "At this stage it is not clear if J is at risk of significant harm; due to Miss N's lack of engagement, J has not been seen and historical information that has come to light has not been discussed with Miss N". It went on "The local authority will be considering initiating child protection proceedings in respect of J. The local authority will also be making a referral to the First Response Team so that an assessment can be carried out in respect of J and GN to assess the risk in the light of information received from Children's Services." 9. 10. 11. 12. 13. 14. 15. 16. When the matter came on again before District Judge Dowding on 15 February 2012, the mother did not attend but she was represented. District Judge Dowding extended the period for the DNA testing to 9 March 2012 and required the mother to attend with J in order to provide mouth swabs a penal notice was attached to her order. On 27 February 2012 the mother and the grandfather took J for the DNA testing. On 1 March 2012 the mother, without any prior notice took J to Kinshasa in the Democratic Republic of Congo (DRC), allegedly for the funeral of her mother, the paternal grandmother. The matter, once again, came in front of District Judge Dowding on 23 March 2012. Once again, the mother was represented. No one knew that the mother had left the country. The DNA test had established that the applicant father was J's biological father. In the light of this failure to co-operate with the preparation of the earlier report District Judge Dowding again ordered X City Council to prepare a report; the mother was ordered to attend appointments and to make J available for the necessary inquiries. The matter was listed for further directions on 8 June 2012, the mother was ordered to attend, and once again the orders were reinforced by the making of penal notices. On 5 April 2012 when seen by RC a social worker the grandfather said the mother was in the Congo and had died following a road traffic accident On 10 April 2012 the maternal grandfather sent a text and

two photographs to RC a social worker, saying that J had died in a road traffic accident in the Congo on Saturday, 3 of March 2012. The two unidentified photographs show a coffin with people sitting around it and a second photograph of a body of an old woman in a coffin. Four days later on 16 of April 2012 the maternal grandfather sent three further photographs. Subsequently, the maternal grandfather e-mailed what purported to be J's Congolese death certificate. It was in this context that RC duly prepared the section 37 report, (dated 4 March 2012) attaching to it the photographs and the purported death certificate. The planned directions hearing took place on 8 June 2012 when the father received the devastating news that it was being said that his daughter was dead. Once again, the mother did not attend. On this occasion she was not represented. In the light of these highly unusual circumstances and the troubling history to date, District Judge Dowding transferred the matter to the High Court and the case came before Her Honour Judge Hindley (sitting as a section 9 Judge) that same day. Judge Hindley made a raft of orders, which included an invitation for the maternal grandfather (who it was clear had a central role in the mother's life), to intervene. A port alert was made, J was made a ward of court as was an order granting the father parental responsibility. The Guardian was appointed shortly thereafter to represent J. 17. 18. 19. 20. 21. The next directions hearing took place in front of His Honour Judge Cardinal (also sitting as a section 9 Judge). On that occasion X CC were joined as parties. A declaration was made that J was habitually resident in England and Wales; prohibited steps orders were made to prevent J's removal from the jurisdiction, should she be within it, and the mother was prohibited from applying or renewing her travel documents. At this hearing the maternal grandfather gave evidence and was cross-examined as to the mother's whereabouts. HHJ Hindley's instinct that the grandfather was at the heart of the case was proved right as it came out in evidence from the grandfather that the mother had in fact returned from the Congo on 25 June and since that time had been living with the grandfather at his home. At Judge Cardinal's request the maternal grandfather agreed to ensure that the mother would be present at that house that afternoon and would allow the Guardian entry. The Guardian visited the house and found no obvious signs of a child living at the property. The matter came on before Mrs. Justice Theis on 24 July 2012 she orders were made aimed at obtaining as much information as possible surrounding the circumstances of the alleged accident and subsequent death of J. It is against this procedural history that the case is heard, some of which will be referred to again in this judgment, against the background of events which were occurring outside court. Background and Early History. 22. 23. 24. 25. In order to understand the events which led to J's removal from the UK to the Congo on 1 March 2012 it is necessary to sketch, in brief, events which took place in the North West of England and which culminated in July 2009 in care proceedings in relation to the mother. The mother is the fourth of the grandfather's seven children. One of her half-brothers is DN, who was born on 8 February 1990. The mother's birth mother is SM, who has, at all times, lived in the Congo. The father first came to England in July 1994, together with an older son, leaving the mother and grandmother behind in the Congo. It would seem that soon after his departure for the UK the mother was sent to live with her aunt, the grandmother's sister and did not live with her

mother again. Information is sparse, but it seems likely that the mother was only a toddler when she was separated from her birth mother. She told the social worker in the care proceedings in 2009 that she did not recall ever having seen her birth mother and did not know where she was. She had been upset, she said, when her father left to go to England and she had gone to live with the aunt. 26. The father remarried a woman called B, who is mother of two children, J and G, these children were subsequently the subject of the same care proceedings 27. 28. 29. 30. 31. 32. as the mother. When the mother was 14 the grandfather decided that he wanted her and DN, to come and live with him in the UK, and so it was that the mother came to live in England on 2 November 2006 Shortly after coming to this country the mother, still only 14 was raped by DN and became pregnant. The police were not informed. The mother's pregnancy was terminated and DN was sent back to the Congo. The grandfather accepted in evidence before me that he did not report the rape or pregnancy to the police. It would, he said, have caused shame to him if the police had been told. He therefore sent DN to the Congo, as, if the police had been told DN would have been arrested and this, the rape, was a "family affair." Throughout the evidence of the grandfather it was striking that regardless the topic, his point of reference was the effect that various events had had upon him personally as opposed to upon the individuals (often children) more directly concerned. His attitude towards the rape of his daughter was one such example; he showed an unconcern for the effect this must have had on his daughter that bordered on the callous. The grandfather said in evidence that he knew that if it came out that the mother had been raped by her step brother social services would become involved and he said that he thought it would "destroy me, so I thought I would keep it in the family." Not a word was said of the effect on the mother or of any reproach directed towards himself for having failed to protect her from such abuse. The grandfather travelled to the Congo with DN and upon his return to England, he embarked upon an affair with a woman called C. C had a daughter called S, who was about 17 years old. C also had a son from an earlier relationship called I whom the grandfather said was about 25 years old. By now the mother was about 15. At this distance of time it is impossible without a full set of the papers from the care proceedings, and without hearing oral evidence, to draw any conclusions as to what exactly was going on between the two families and it would be wrong of the court to do so What can be said is that in addition to the grandfather's affair with C, there was, undoubtedly, sexual impropriety and a serious blurring of sexual boundaries. It is accepted that the mother was repeatedly raped by I. Matters came to a head when S made a complaint to the police that the grandfather had not only raped her, but also, that he had been having a sexual relationship with the mother. 33. On 23 August 2008 the grandfather was arrested on suspicion of the rape of C. He was released on bail with a condition that he did not go into the family home. The mother, J and G therefore remained at the family home in the care of the stepmother. 34. On 10 November 2008 the police attended the family home following information from an anonymous source alleging that the mother was about to 35. 36. 37. 38. 39. 40. 41. be removed from the United Kingdom by the grandfather and returned to the Congo. When the police arrived at the house in response to the "tip off" they found the mother packed and ready to go. The

mother told the police that her father was intending to return her to the Congo. In her oral evidence in these proceedings, the mother confirmed that had the police not arrived she would have returned to the Congo. In his evidence the grandfather said that the mother had misunderstood the situation, no set plans had been made he said, only consideration was being given to the possibility of the mother going to the Congo for Christmas. Having seen and heard both the mother and grandfather give evidence and read the contemporaneous documents, I do not accept the grandfather's account, which is implausible at best. I find that had the police not arrived at the family home at that time, when they were investigating allegations of serious sexual misconduct on the part of the grandfather, in relation to both the mother and S, the mother would, at the behest of the grandfather, left the country and returned to the Congo. Following police intervention, the mother was removed to a residential unit and thereafter to a foster home where she was living when she met the father in 2010. At the end of November 2008 a decision was made by the police that no further action should be taken against the grandfather as there was insufficient evidence to provide a realistic prospect of obtaining a conviction in relation to the sexual offences for which he had been arrested. During the course of his evidence the grandfather spoke of what happened next. Once again, it was remarkable that at no point did he express any empathy or sympathy for the quite appalling time the mother, his daughter, had had. His sole point of reference was in relation to the effect that the events had had upon him, although I accept the consequences for him were inevitably serious. The grandfather had lost his job and moved to another area. He found he could no longer get employment, as the work he was seeking required an enhanced CRB check which would have disclosed the allegation of rape. He therefore, he told the court that he decided to move again and to change his name so as to avoid an adverse CRB check. It was in this way that he came to be living under a new name within the area covered by the X city council. It was against this unpromising background and these early life experiences that the mother and father embarked upon their relationship when they met in late 2009. The father has had his legal aid withdrawn notwithstanding that this is his application for contact he is married with two young children and employed on a modest wage with KFC). He has therefore appeared unrepresented in these unusual and complex High Court proceedings. He acquitted himself admirably. His evidence, whilst somewhat loquacious, was clear and, I am satisfied, honest.

42. Where there is a conflict as between the evidence of the father and, in particular, that of the grandfather, I prefer without reservation the evidence of the father. The father was well prepared and, courteous; he asked insightful, relevant questions without a hint of aggression in what cannot have been other than a very uncomfortable situation. I am entirely satisfied that the father's sole motivation for pursuing these proceedings is his desire to find out if his daughter is alive and, if so, where she is and so to have an opportunity to play a part in her life. 43. These proceedings, due to the initial failure of the mother to cooperate and the subsequent removal of J from this country, have dragged on since 2011. Through no fault of his own the father has never met his child. It would have

been all too easy for him to have walked away and concentrated on his own young family; it is to his credit that he has not done so. The Mother and Father's relationship 44. 45. 46. 47. Shortly after the mother and father met, the mother became pregnant. The father went to meet with the grandfather and his brother (a man called PN) to discuss the situation. The father was told by these important male relatives that when a girl becomes pregnant then their religion demanded that she would have to live with him. The father agreed. The father agreed also to take part in some form of ceremony which he was told resulted in an informal marriage or liaison which also involved him having to find a certain amount of money and pay it to the grandfather. By December 2009 the young couple were living together. The father describes the grandfather as being a dominant feature in the life of his daughter. He described how when they attended hospital for an antenatal check, a form which required identification evidence had to be completed and required the mother's passport and national insurance number. The mother not only did not have access to her national insurance number or to her passport but she did not even have her own bank account. The grandfather had to be asked to provide all this basic information. The grandfather denies that this was the case, but I accept the father's account and also that this was, and is, indicative of the control the grandfather has over the mother. In the course of his evidence the grandfather asked the court to "consider his feelings at this time", saying that he, the grandfather, had "only got her (the mother) back after the care proceedings before losing her again" when she went to live with the father. The "loss" was short-lived as in January 2010 the father went to visit his immigration lawyer in London and, on returning in the evening, discovered that the grandfather had been to their home, collected the mother and all her possessions. The mother did not return and that was, to all intents and purposes, the end of their relationship. The mother had been out of the grandfather's house and living with the father only a couple of months before returning to live under the grandfather's roof where she then remained until her precipitate departure for the Congo. 48. 49. 50. 51. 52. 53. 54. 55. 56. The grandfather and the mother say that far from the grandfather removing her back to his house in G, she, the mother, had asked him to come and collect her because the father routinely "beat her up". The father denies any violence in the relationship. The vague allegations of violence made by the mother are general, lack any detail or specificity and have not been analysed during the course of the trial. It would be wholly wrong for any court to treat them as other than unsubstantiated allegations. Although no longer cohabiting, I am satisfied that in the period of time between the separation and the birth of J on 11 July 2010 the mother and father were in regular contact by telephone. I am also satisfied that the mother did not wish her father (the grandfather) to know about this continuing communication. I do not accept the mother's evidence that she informed the father of J's birth. I accept the father's evidence that he was driven to telephoning PN (the uncle) in desperation when he had heard no news well after the baby was expected and only then was told that the baby had been born some weeks previously. I further accept the father's evidence that he immediately said that he wished to see his baby and that, by prior arrangement with the grandfather, he travelled to X by coach and then on instruction from the grandfather on to London to see J only to be disappointed on each occasion. I accept the

evidence that the father was told by the grandfather that there was no car seat to facilitate a visit and that he (the father) would have to transfer money into the mother's account before contact could take place. He did so but he was still not allowed to see his baby. In my judgment I am satisfied that whilst it has not been possible fully to follow the sequence of events at this time in my judgment the father did all he reasonably could to meet his child and to comply with the conditions set by the grandfather but he was manipulated and thwarted by the grandfather at every turn. The father, having himself been in care, confided in his social worker at each stage in this upsetting period. After the failed visit to B, where I am satisfied that the father hung around at the coach station for many hours in the hope and expectation of seeing his child, the father followed the advice of his social worker and sought legal advice. Even after this abortive trip, the father had some further telephone calls with the mother. In his statement the father says that the mother told him that she (the mother) "could do what she wanted with the child and that she did not want him to see the baby." She said "that she would take J to Africa and that she had an absolute right to do so and to leave the child with her mother." The father in oral evidence said that the mother had gone on to say that "she could say that the child was dead and that there was nothing he could do about it". 57. 58. 59. 60. 61. 62. 63. 64. 65. I accept the father's evidence that the mother threatened to take J to the Congo. I do not accept, however, that she went on to threaten to say that J was dead and believe that to be a gloss on the father's part in the light of what has subsequently happened. No-one could have foretold the consequences of the father's next step which was to issue a straightforward application for contact on 11 January 2011. I am satisfied that the catalyst for the events of March 2012 lay not in the actual application, but in the resurfacing of the events which had taken place in the North West three-years previously. As was outlined in the introduction, the early part of the proceedings was beset by difficulties consequent upon the refusal of the mother to engage with the proceedings. Between 5 August 2011 and 24 July 2012 the mother failed to attend about nine hearings, this was notwithstanding that she was represented by experienced family solicitors. The mother and grandfather began to come under pressure from the effects of the proceeding towards the end of 2011 and the beginning of 2012. On 1 December 2011 CAFCASS alerted the court to the existence of the previous care proceedings. On 9 December 2011 District Judge Dowding ordered the DNA tests and the preparation of the section 37 report. It was clear by this stage that it was suspected that the grandfather rather than the father may be the biological father of the unborn child. In her oral evidence this week the mother, for the first time, said that at the time of conception she had two boyfriends, the father and an unknown man called B. I do not accept the mother's evidence and I am satisfied that at the time the DNA tests were ordered the suspicion held, but subsequently proved to be unfounded, was that the unborn child may be the result of an incestuous relationship between the grandfather and the mother. Further as already recorded the s37 report of 10 February had said in terms that child protection proceedings were being considered. I do not accept evidence from the mother that she was unaware of the content of that report. The grandfather's expressed reaction when giving evidence was that he knew DNA testing had been ordered and he wanted the mother to subject herself to

it as people were saying that he might be the father. The mother did not comply with the first order for DNA testing and on 15 February 2012 (when both parents were represented), the period of time for the DNA testing was extended and the local authority were ordered to file, but not serve a further report. Behind the scenes, that very day, 15 February 2012, the mother applied for a visa to take J to the Congo. The grandfather knew the results would be back within a few weeks and he knew that X CC were investigating the family background. The grandfather told the court that he knew that what had happened in the North West had been "found out." He went on to say regretfully that "he had left the North West and he did not want all this. He said he had "started his life again and then all this starts again." 66. On 27 February the grandfather took the mother for the DNA testing. The mother and grandfather say that on the same day, 27 February, they also received a telephone call from the mother's uncle in the Congo telling saying that her mother (the grandmother, SM), had died. The mother says that she decided that she wished to go to the Congo immediately in order to attend her mother's funeral. 67. There are a number of inherent implausibility's about this account: i) ii) iii) iv) The mother asserts, (although there is no evidence to confirm this), that she saw the grandmother in December 2010 when she and the grandfather went to the Congo for Christmas. This meant that notwithstanding the fact that the grandmother had abandoned her as an infant and the mother had had no other contact with the grandmother since babyhood, she still wished to attend the funeral. The mother is categorical in asserting that she paid for the air tickets for herself and J. This would mean that as a single mother, living on state benefits, she had saved, had available and to hand the sum of £640 and that she was prepared to use the entirety of this nest egg to go to the Congo for the funeral of a woman she scarcely knew and for whom she had no debt of loyalty. The mother denies that the money was provided by the grandfather. Initially the mother told the court that she had obtained an emergency visa after having heard the news of her mother's death, this emergency visa took only three days to come. The lie to this was revealed when her attention was drawn to a document in the bundle indicating that the application for the visa had in fact been made twelve days earlier on 15 February, 2012 long before the grandmother had, allegedly, died. The mother and grandfather each sought to retrieve the situation by saying there had in fact been an earlier telephone call which gave them reason to believe that the grandmother maybe ill and they were therefore making preparations to go if the need arose. The mother said she had called the GP surgery to see if any vaccination, such as yellow fever, were required prior to the trip and she had been told that they were not. The surgery is clear that had such a phone call been made (and it had not), the mother would have been told that it was important that J should have the appropriate vaccinations which definitely included a yellow fever vaccination. 68. 69. On 1st of March 2012 the mother took J to the Congo. On 27 th of March 2012 Judge Dowding had another hearing, wholly unaware that the mother was out of the country. By now it must have been apparent to the grandfather that the time was coming when it would be discovered that the mother and J had left the country. MC, the social worker had, unsurprisingly, been unable to contact the mother, she therefore contacted the grandfather on 5th of April 2012, asking for information as to the mother and J's whereabouts. The grandfather asked for the outcome of the DNA test

and it was explained to him that it was not possible to tell him as this was information private to the mother. The grandfather told MC that on the day of the DNA test, they had heard that the grandmother had died and that the mother had returned to the Congo for the funeral. He went on to say that the mother had not yet returned because they had been involved in a road accident and that J had been in hospital before dying of her injuries. When asked by MC for written confirmation that this was the case the grandfather said he would provide e-mail evidence of the grandmother's death. On 10 April, MC received an e-mail from the grandfather with the two photographs already referred to attached. The first of a coffin with several people sitting around it and the second of the body of an old lady in the coffin. I have seen these photographs and both of them have a border upon them as part of the photographs depicting Christmas scenes of bells, stars and holly. In addition, on 10 April 2012 the grandfather sent a text which read: "Hi, R. Please check your e-mail, photo of BN, mum dead on 27 Feb. 2012. B had accident on Sat. 3 March at Kinshasha DR Congo 16.27 and J died at 22.02 in hospital at M with head injured. CN." On 16 April, RC received a further e-mail from the grandfather with three further photographs attached. The first is of a group of people under a gazebo; the second of a woman on her own and third of a couple standing by a wooden cross with an inscription giving the details of J's alleged death. The mother returned alone to England in June 2012. Having heard the evidence in the case one wonders whether, had it not been for the grandfather's control over his daughter, she would ever have returned to England. The evidence is that the mother was living during this period at the home of an uncle in the Congo and I am satisfied, notwithstanding her rather weak unconvincing denial, that she wished to remain there, but once again the grandfather wanted her to come home to be with him, and that to this end he travelled to the Congo and brought her back. I asked the mother whether the truth of the matter was that she had been reluctant to leave the Congo and return to the UK because J was in fact alive and well and living with her and that she, did not wish to leave her. The mother's answer was to look straight ahead and say flatly: "J is dead." On 24 July 2012 Mrs. Justice Theis made a raft of orders in an effort to ascertain the truth or otherwise of the mother and grandfather's allegation that J was dead. The account the mother gave of the events leading up to J's alleged death can be stated briefly. On 3 March the mother attended the funeral of the grandmother S. On the way back she was sitting in the front seat of the car with J on her lap. They were involved in a road traffic accident which resulted 70. 71. 72. 73. 74. 75. 76. in J being thrown either through the windscreen or out of the car, she sustained fatal head injuries. J was taken, initially, to one hospital and then onwards to a second hospital where she died. The mother says she was separated from J as she herself had been injured and was subsequently informed of her death and saw her body. (It should be noted that elsewhere in the papers, in a statement made by the mother only a few months after J's alleged death, the mother says that in fact she was sitting in the back seat and not the front seat of the car.) The mother duly disclosed a number of documents purporting to support her account, the authenticity of which was immediately doubted and investigations were set in train to see if the mother was telling the truth. Children and Families Across Borders (CFAB) is the UK Branch of International Social Services (ISS). Through their international network CFAB can

request and coordinate social services in other countries. CATSR is an NGO in the Democratic Republic of Congo whose mandate is to protect and defend children's rights as well as to promote street social work. This NGO is the Congo correspondent for the international social services network and have, accordingly, undertaken rigorous vetting. CATSR was asked to assist in the authentication process and to this end liaised initially with a Miss RD of CFAB and, latterly, with Miss AW. Miss AW who has provided a comprehensive and extremely helpful report detailing the work done and findings made in relation to seven documents produced by the mother and grandfather which purport to prove the death of J. AW's report has subsequently been expanded, with the assistance of CATSR, by the obtaining of signed statements directly from a number of people who, it was said had created or signed the various documents. The documents in question are: 77. 78. 79. 80. 81. i) ii) iii) iv) v) vi) the death certificate of JN, 700/N008080; medical report of cause of death, 603 2012; burial permit, number 012/2012; pro-justice official police report, 0403 2013; expert request form, 007/201204032012; death certificate of SM; vii) hospital transfer ticket for JN. 82. The investigation into the authenticity of the documents produced by the mother was conducted by EM, who visited the various institutions and authors in question. Contemporaneous notes were made of these meetings and subsequently formal statement were obtained when possible.

- (i) Death certificate. 83. On about 5 February 2013 EM spoke to a Dr. N from the relevant medical facility about J's case. A transcript of that telephone call was forwarded to the UK. Dr. N was asked about the death certificate of J and said as follows: "I am familiar with this case and I have seen your colleague here. The girl you are talking about did not die here. The number on the documents bears the name of another person. Thank you for raising this problem because we have now discovered that there is a Mafia network in trafficking in documents. We have just had a second case in death certificate from our department but it is a fraudulent document. Briefly, J did not die here, not a trace has been found and I don't know what to tell you. What we can do is ask you to help us. If the woman in London could give us the contact details of the person who presented her with these documents, after that we could retrace the networks this document is trafficking. I have no further comment." 84. Subsequently, on 26 July 2013, Dr. N signed a witness statement in which he dealt with the authenticity of the "cause of death report", but not the death certificate. It follows therefore that there is no official written record emanating from the Congo confirming that the death certificate, (as opposed to the cause of death report), is a fake. Taken, however, with the information in relation to the report in relation to the "cause of death" form set out below in this judgment, I find on the balance of probabilities that the death certificate filed herein is a fake. (ii) Medical Report of Cause of Death. 85. Both Dr. N of the medical facility, and the medical director of the medical facility in Africa, have signed witness statements saying that the "cause of death" report is a fake. Initially, CATSR were unable to verify the authenticity of the report as the signatory, a Dr. EKM had been on long-term sick leave. Subsequently, CATSR sent an e-mail to CFAB that Dr. K had been seen on 15 January 2013 and did not wish to discuss the matter. That was not the end of the matter as in a further e-mail AW was

informed that Dr. N and Dr. T had told CATSR that Dr. K had been dismissed from the medical facility. 86. The short statement prepared by Dr. N says as follows: "I believe that this document is a forgery as this document does not relate to the death of JN, but to another person. The document is a false document. The child, JN, did not die in this hospital. Accordingly, I have no hesitation in concluding that this document was a fake." (iii) Burial Permit. 87. On 14 August 2012 Mr. M was interviewed. Mr. M is the manager of a Cemetery where the mother says that J is buried and which it is said is shown in one of the photographs produced by the grandfather showing the mother and a young man standing next to a wooden cross upon which is written J's name. Mr. M says (and he thereafter confirms in his statement) that until July 2012 he alone was the person authorised to produce a burial permit for the cemetery. Since July 2012 the system has changed and officials in the town hall now produce the permits. This burial certificate is however dated March 2012 and therefore he would have been responsible for issuing a permit.

88. Mr. M said that the document is a fake for the following reasons: a) b) c) Mr. M does not recognise the stamp, (which is not that of the cemetery), or of the signature of the person purporting to sign it. The date of birth is not written in the usual way and the age of the child is simply written as one and a half, which Mr. M says, makes no sense. The telephone number on the document is incorrect as there are ten digits in Congolese phone numbers and there are only eight written on the document. 89. It was confirmed, for completeness sake, that the burial permits now used and issued by the Civic Hall are in a wholly different format from that of the burial permit carrying J's name. 90. I accordingly find that the burial permit is a fake. (iv) The Official Police Report.
91. Mr. MM (Commandant in the DRC police force in Kinshasa), was seen and confirmed that the report carrying his signature is accurate and that an accident indeed took place. There are, however, two matters of significant concern in relation to this document which would otherwise be the only document confirmed by its author to be genuine. The document which is entitled Official Police Report, gives the wrong date for the accident, referring to it as happening at 9 a.m. on 4 March, instead of the date universally referred to elsewhere and which the mother maintains, namely 3 March and not 9 am rather 16.27 was a date referred to in some of the documents. 92. Added to this, it is accepted by Mr. MM that an official register of all accidents is maintained by the police in the city. When Mr. MM was asked for that register and provide confirmation of his report, he said that "they" had just moved offices and the register had been lost. 93. Taken with the totality of my findings in relation to the other documents produced, I find on the balance of probabilities that the official police report is a fake and the officer in question was lying when he said the report was genuine.
- (v) Expert Request Form, dated 4 March 2012. The same observations apply to this document as the official police report, the provenance being the same. (vi) Death Certificate of SM. 94. A Dr. ZM, who certified this document, has filed a statement in these proceedings saying that this death certificate purporting to relate to the death of the grandmother is a fake. Dr. ZM was seen and said that the certificate was from his hospital, and the name on the document

was his, but the writing and the signature were not his. Furthermore, and significantly, the number on the death certificate (700/NO06050) was produced on 7 October 2011 for an entirely different woman called D L and not for the grandmother. 95. The death certificate for the grandmother is a fake. (vii) Hospital Transfer Ticket. 96. The mother gave evidence that J was initially admitted to one hospital and was then transferred to the hospital where she died. Officials from the original hospital, a Mr. CK and a Mr. KN, were seen at the hospital. They said that the document bore the name of their hospital but that it had not been produced by the hospital. When asked to clarify, they gave the following reasons for saying the document was a fake: a) b) c) d) e) f) The transfer tickets produced at their hospital are booklets, whereas this was a full format A4 piece of paper. They do not accept serious accident cases at the hospital. They place the stamp at the bottom and not at the top of their documents and their stamp is small and not the same size as the stamp that appeared on the document. On the transfer ticket in the place marked they always write: "CH" this had not been done. For clinical information they always refer to the general condition of the person and write a comment such as "traumatisation" or "lesion" or "wound", in the transfer ticket produced there is no reference at all to the general condition of the person. For the destination, if it was a transfer ticket originating from their hospital they would have spelt the destination hospital differently g) h) i) j) For the dates they always write .../.../20.. and the rest is written in by hand. On this transfer ticket the 2012 had been made by machine. There was no-one in the hospital with the signature that appeared on the purported transfer document. Generally, when a transfer document is produced it mentions the name of the person who authorised the transfer and his signature is at the end, but this document did not bear the name of the person responsible for the transfer. The document produced showed someone else had taken a page from a folder and scanned it in to increase the font for the typeface. In their tickets that the records are keyed in, but they do not much use either type face or the font on the purported transfer document. Finally, the document does not even have a reference in hospital records which are kept at the so-called originating hospital. 97. On 13 August 2013 Mr. M of CATSR returned to the hospital in order to obtain statements confirming all this information. He met with Mr. C again and on this occasion a Nursing Sister RK. They felt unable to produce a confirmatory statement or comment on the authenticity of the document without the original alleged hospital transfer ticket, which has not been produced by the family.

98. Whilst a signed witness statement to confirm the contemporaneous note of the conversation Mr. C had with CATSR would be preferable, I conclude, on a balance of probability, that the hospital transfer ticket is a fake for the reasons listed by Mr. C and that it bears no resemblance to a genuine transfer document. 99. Finally, in considering the evidence purporting to support the mother and grandfather's case that: i) the grandmother, SM, died on or around 27th of February 2012 and was buried on 3rd of March, and ii) that J was killed in a road traffic accident on 3rd March 2012, I consider also the photographs produced by the grandfather in April. 100. In relation to the photographs of the woman in the coffin, there is absolutely no evidence that the woman in that photograph is the grandmother.

Further doubt, if necessary, is cast on them by the fact that notwithstanding she was said to have died in February and the photograph was produced in April, the photographs have a Christmas border on them. I do not accept the grandfather's evidence that it is traditional to put a border on such a photograph and to decorate them in such a way; neither do I accept that this 101. 102. 103. border was other than specifically Christmas related. One glance at the photographs showed these are definitely Christmas decorations. In relation to the photograph purporting to be the mother standing by her child's grave, I have no doubt that this was staged for the benefit of these proceedings. It shows a wooden cross, easily made, with hand rather machine printing on it. The agreed evidence in this case, endorsed by the doctor's evidence, is that the level of corruption in the Congo is such that there would be little difficulty in obtaining fake documents of the type produced in this case. In my judgment the documents are fake; there is no credible evidence that the grandmother died around 27 February 2012 or that J died on 3rd of March, whereas there is very considerable evidence that the family have set out to produce false documentation in order to try and deceive this court and, more importantly J's father, into believing that she is dead.

104. On 11 July 2012 the mother was ordered to hand her passport over to the guardian for safekeeping until further order. According to the mother, her father (the grandfather) wanted the mother to go to France to friends for Christmas. The grandfather contacted the mother's solicitor to ask whether or not agreement could be reached for her to have her passport to enable her to obtain a visa and thereafter go to France. By consent, an order was made on 13 November 2012 granting leave for the passport to be released, on the basis that the passport would be returned to the guardian within three days of the mother's return to England. 105. 106. 107. The mother's case is that she was unable to get the necessary visa and so the planned trip to France did not take place. She says in her statement that she forgot to return the passport and kept it in a handbag where she used it to enrol at college for the new term. In addition, she needed it, she said, in order to make arrangements in relation to her bank account. The mother's case is that on 2 February 2013 she got the bus to college and on arrival her passport was missing. The mother denies having travelled outside the area and insists that the passport was genuinely lost. The court ordered the mother to produce evidence from both the college and the bank that she had used the passport for the purposes stated. She has failed to produce any such evidence. There must be a very strong suspicion that the mother travelled to the Congo or France to see J over Christmas 2012 and that far from losing her passport, she was unable to give it back to the guardian showing, as it would, that she had travelled to that country.
108. Whilst the court may have strong suspicions that the mother's account in relation to the passport is untrue, I do not feel able on the necessary standard of proof to find as a fact that the mother travelled to the Congo. Findings and Conclusions 109. I am satisfied on the balance of probabilities that: i) ii) iii) iv) v) vi) The mother left the United Kingdom on 1 March 2012 as a result of the section 37 report and in the knowledge that social services intended to launch child protection proceedings in relation not only to J, but significantly as far as the grandfather was concerned, to J and G, the children of his most recent marriage. I

am unable to say to the requisite standard of proof whether concern about the outcome of the DNA test played any part on the decision. That the application made by the mother for a visa allowing her to travel to the Congo made on 15 February was made as a direct response to that report. There was no telephone call to the effect that the maternal grandmother had died. I have no idea whether she is dead or alive. It maybe that the photographs produced by the grandfather are indeed photographs of the funeral of the grandmother. If so, that funeral took place, I am satisfied, near to Christmastime, some time before, and not in March

2012. The death certificate was a fake. The mother travelled to the Congo with J on 1 March. Thereafter the mother and J lived with the extended family and probably her uncle until such time as the grandfather obliged the mother to return to the UK in June of 2013. In my judgment it is a moot point as to whether or not she would have in fact returned to this country had not the grandfather travelled to the Congo and obliged her to return. I find as a fact that J did not die whether in a road traffic accident or in any other way and the documentation produced is fake. It follows that I find that J is alive and that the mother and grandfather each know of her whereabouts whether it be the Congo, France or UK. I am satisfied that the grandfather's relationship with his daughter is enmeshed and unhealthy at best and that the grandfather has shown on more than one occasion that he will not allow his daughter to move away from him and establish her own life. I am satisfied that he brought the mother's relationship with the father to an end, wishing her to return to live him. vii) Similarly, I am satisfied that he would not allow her to stay away in the Congo and that his relationship with her was more important to him than the fact that by bringing her back to England he was separating mother and child.
110. On the evidence available to me I cannot (and it is not necessary) to make any findings as to whether or not there was, or is, a sexual relationship as between the mother and the grandfather. I can and do, however, find that the mother was controlled by the grandfather and that it is a relationship which is unhealthy on every level. 111. 112. 113. 114. 115. 116. 117. 118. The question then arises as to who masterminded this elaborate façade. In her assessment, prepared in the care proceedings and dated 29 July 2009, the social worker (J Cl) spoke to the mother on a number of occasions. She referred to the mother as appearing: "Distracted and disinterested in most of the questions and did not speak freely. Although she provided an answer to all of my questions, she provided short answers. I found it extremely difficult to draw her into free conversation. B was unable to maintain eye contact in the course of any of my sessions with her." Those observations chimed with my own assessment of the mother during the course of her evidence. She was virtually monosyllabic. She was courteous and replied to the questions she was asked, but she was throughout completely flat, showing no emotion whatsoever, even when speaking of what, on her case, were the simply appalling events of 3 March 2012. In assessing this mother I bear in mind that whatever the truth of J's death, she is a young woman who was abused and has been traumatised by her life experiences since she came to this foreign country at fourteen-years of age. In those circumstances it would not be right for me to use her demeanour as

evidence against her assertion that J died as opposed to evidence of a deeply troubled young woman. I do, however, feel able to say with certainty that this mother would have been quite unable to have planned and put into effect the removal of J to the Congo and to have thereafter arranged the production of the documentation. It follows that I am satisfied that the grandfather has organised and manipulated events every step of the way. It should come as no surprise to the court that J was spirited away to the Congo. DN was sent back to the Congo to avoid the consequences of his having raped and impregnated his half-sister and I have no doubt that the mother would have been sent back to the Congo had the police not acted on the tip-off after the grandfather's arrest for rape. Throughout the papers one can see the grandfather's manipulative hand. He is there at each appointment, making arrangements, organising things and was, and I am satisfied remains, in complete control of every aspect of his daughter's life. The grandfather made it clear that the uncle in the Congo is the member of the family who controls matters at that end that is where the mother lived I have no doubt that the grandfather and the uncle between them organised and obtained the various documents. The mother has recently remarried and is expecting another child. It remains to be seen whether she will now be allowed to make a life of her own. The grandfather as unrepresented Intervener has played a full part in the proceedings. He has been courteous and polite throughout. On one level he gave plausible evidence, although his self-centred approach was apparent at every turn. He was considerably more animated than the mother, particularly towards the end of his submissions when he was bordering on tears but tears of self-pity in relation to the effect the proceedings had had upon him. This was in contrast to the way in which he spoke of the death of J, in positively callous manner, saying that the hearing of her death had "spoilt my day, spoilt my shift at work" and saying, quite brutally, that once J was dead he had destroyed everything about her, including any photographs he may have had. 119. I am satisfied that the grandfather knows of the whereabouts of J and that he could organise, if he so chose, to ensure her return to the UK, her country of habitual residence immediately. Accordingly, I find that J is alive and will make a raft of orders designed to ensure her return to this country as soon as practicable.

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