

HONG KONG / JUDGMENT

CLFM v. DWR

COURT

Family Court

DECIDED

14 June 2006

CASE / FILE NUMBER

FCMC10658/1997

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FCDJ 10658 of 1997

IN THE DISTRICT COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

MATRIMONIAL CAUSES

NUMBER 10658 OF 1997

BETWEEN

CLFM Petitioner

DWR Respondent

Coram : Deputy District Judge H F Woo in Chambers (Not open to public)

Date of Hearing : 8th, 9th and 11th day of May 2006

Date of Handing Down of Judgment : 14th June 2006

J U D G M E N T

A. Background of the Applications

The Petitioner (the Mother), aged 43 is a local Chinese. She has been working in the fashion field after she completed her secondary education and joined the work force. The Respondent (the Father), also aged 43 was born in Canada and brought up in Scotland. He ceased his education after the 1st year in a university. Later he came to Hong Kong in 1987 and settled down. After 5 years of cohabitation, the parties were married in 1992. Their eldest daughter

was born in November 1992. The youngest daughter,

was born in July 1994. The Petitioner commenced the divorce proceedings in October 1997 on the ground of unreasonable behaviour.

The Respondent then moved out from the matrimonial home upon the Petitioner

s request. In her Petition, the Petitioner sought, inter alia, custody of her 2 daughters and prayed for periodical payments for the children.

Decree Nisi of divorce was granted on 24th February 1998. It was ordered by consent on 23rd April 1998 that the Petitioner and the Respondent be granted joint custody of the children with care and control to the Petitioner and generous access to the Respondent. The Respondent has to pay HK\$4,000 per month as maintenance for each child. The Decree Nisi was made absolute on 6th July 1998. The Respondent subsequently at his own free will increased the maintenance to HK\$18,500 per month.

The Petitioner met

Mr. E

in July 2004, and very soon they started courtship. Mr. E, aged 47, has become a commercial relationship manager with a renowned bank in Dubai since December 2004. In March 2005 they planned to get married. As Mr. E is living in Dubai, the Petitioner wanted to move there to live with him. Mr. E fully supports the Petitioner. They married in August 2005.

On 1st June 2005 the Petitioner issued a summons for an application to remove the two children permanently from the jurisdiction of Hong Kong to Dubai, the United Arab Emirates for the purpose of migration. The Respondent however did not wish the children to be removed. He opposed the application strenuously. On 16th June 2005 the Respondent issued a summons to vary the custody order of 23rd April 1998 for an Order, inter alia, that care and control of the children be vested with the Respondent and generous access to the Petitioner in Hong Kong.

Each party filed 3 Affirmations in support of their respective case. Social Welfare Reports were called for. Ms H, the Social Welfare Officer prepared her first report on 30th September 2005 upon the Court

s direction and provided the information and reflected the parties

view to the children

s removal in question.

This case was eventually set down to be heard on the issue as to whether or not the children should remain in Hong Kong under the Respondent

s care and control or they should be under the care and control of the Petitioner leaving Hong Kong to Dubai.

Ms H on 28th April 2006 prepared another report with updated information on the same issues. The 2 reports were presented and Ms. H was called to give evidence at the hearing for the Court s consideration. Ms H

s credibility and reliability were not in issue and the contents of her reports and the facts of the case so stated therein were not challenged, nor disputed by the parties.

B. The Petitioner

s case

The Petitioner was born and brought up in Hong Kong. Her parents already retired and her 5 siblings were all married. The Petitioner has satisfactory relationship with her family.

After completing her secondary education, the Petitioner worked in the fashion field. She had always been a working mother except for about 7 months during the SARS period. Prior to her recent resignation in March 2005 to prepare for her wedding and migration, the Petitioner was the regional retail manager in a famous shoes shop earning a monthly income of HK\$41,500.

Condition of the Petitioner before January 2006

Since the marital separation and divorce and up until mid-January, the Petitioner had been living with S and T in Hong Kong. The family of three, together with their live-in maid, used to live in a unit of about 1,200 sq. ft. in Pokfulam at the monthly rental of HK\$21,500. The living environment was very satisfactory and each member had her own room.

The Petitioner and Mr. E met in July 2004. Mr. E also had a broken marriage with 2 daughters. The Petitioner finds him caring, considerate and generous to show his love. They have similar life experiences, values and thinking. Mr. E has been assigned to station in Dubai by his employer to work as a commercial relationship manager since December 2004.

As Mr. E started to live in Dubai the Petitioner wanted to move to Dubai to live with him. The Petitioner resigned in March 2005. The children supported the Petitioner

s plan of remarriage and migration. Since February 2005, the children have been in regular internet and phone contact with Mr. E.

The children have been living with the Petitioner since their birth and their relationship has been intimate. While having no intention to change the current status of joint custody, the Petitioner is very keen to bring the children to Dubai and continue to be granted with their care and control.

To see whether the children like and can adapt to the living environment of Dubai, the Petitioner and Mr. E travelled to Hong Kong on 26th March 2005 to meet the children, for the first time. He on this occasion also visited the Petitioner

s parents and joined the family gathering with the children and the Respondent, then took the children to Dubai.

The children enjoyed their time in Dubai. They responded positively to the removal plan after this trip. The children expressed to the Petitioner their readiness to move to Dubai with her. In August 2005, the children went to Dubai again on vacation. The children went along well with Mr. E. They lived together as a family. The Petitioner felt sure that Mr. E would treat the children as his own.

School in Dubai

As the Petitioner intended to bring the children to Dubai and live as a family with Mr. E, she made arrangement for the children to receive education at

which was set up in 2005 and highly recommended by friends. It is a private school which is located in the same residential area of Mr. E

home.

The Petitioner had discussion with the school headmaster. The children were also taken to visit the school. All of them were impressed by its curriculum, system and standard. The children indicated their eagerness to study in Dubai. A place each in Grade 8 and Grade 7 has been reserved for S and T respectively in the next school year.

The curriculums in most International schools in Dubai are prepared for GCSC academic qualification. DIA is however the only International school which offers the full International Baccalaureate Organization

s (IBO) programmes. Such programmes aim at all round development and academic excellence. Students involved in these programme are provided with quality international education and common learning experiences which enable them to move to schools with ease world-wide. The International Baccalaureate Diploma is widely recognised and very popular for admission to competitive universities.

Although DIA is a new school with no track record, it is still the Petitioner

s first choice. She has carried out research and conducted enquiries. The Petitioner has the record of taking good care of the children and her experience of choosing appropriate school for them since they were young. Besides, there are many other International schools in Dubai where children can receive proper education.

Dubai, the United Arab Emirates

The Petitioner opined that the living environment and the standard of education in Dubai are comparable to Hong Kong. The children will enjoy a more comfortable and spacious living environment whilst receiving proper education there. 80% of the population in Dubai comprises expatriates from USA, Europe and Asia. English is widely used and mainly spoken. It is a society of multi culture. The International environment benefits the children more, in that, they can learn different cultures from different people and be open to more exposure.

Present Condition of the Petitioner

In August 2005, the Petitioner married Mr. E. In October 2005 and February 2006, she left Hong Kong for Dubai and stayed there for 2 and 4 weeks respectively to meet her husband and settled there in preparation for the future move. On the other hand, Mr. E visited Hong Kong in August and December 2005.

In order to provide a spacious living environment, Mr. E in November 2005 purchased a 2 storey villa with an area of 4 200 2 ft with a garden of 2 300 2 ft. There are 4 bedrooms and a maid

s room. The children will each have their own room decorated according to their liking. The residential estate where the villa is located has high security control with modern leisure facilities so that the children will enjoy a safe and good quality of living environment.

International schools of very good reputation including DIA are closely situate around this new villa.

Back in Hong Kong in mid-January 2006, the Petitioner and the children moved to live in Wanchai. The unit of about 800 square feet was rented at a monthly rental of HK\$6,800 on a temporary basis pending the move to Dubai. The Petitioner and the children are now sharing the master bedroom and sleeping together on a large mattress while the live-in maid occupies the other bedroom. The unit is not as spacious as before but it is bright, clean and tidily kept and the children find the living environment satisfactory.

Access Plan

If the Petitioner

s application is approved, the Petitioner will encourage the Respondent to keep frequent and constant contact with the children through various means like E mails, telephone calls, internet, SMS, MSN, work-cam and etc.

She plans to bring the children back to Hong Kong during school holidays 2 to 3 times a year to visit the Respondent. She undertakes to and will provide the Respondent one round trip air ticket to Dubai once a year to visit the children until they are 18. If her application fails, she expects the same access right as that she offered to the Respondent without requiring the Respondent to provide her with the air ticket to visit the children.

Financial support

Mr. E will continue to support the Petitioner and the children. The Petitioner will continue to give time and concern to the children so as to help them to adjust to the new home, school family member, and the country.

When the children are settled down in Dubai, the Petitioner will find a less demanding or a part-time job so that she can spare more quality time with the family. She will hire a live-in helper to assist her in household work and to take care of the family. Even with the view to waiving the children

s maintenance from the Respondent, the Petitioner foresees no financial difficulty in meeting expenses in Dubai.

Since the former marriage, most household expenses were met by the Petitioner. At present, the Respondent makes unstable income from his Internet based business. If the children are to remain in Hong Kong, the Petitioner has serious doubt on the Respondent

s ability to maintain the current living standards and meet the basic living expenses of the children.

Generosity

The Petitioner feels that it was totally out of her generosity and love for the children that the Respondent had been enjoying generous access. She had invited the Respondent to have dinner with the children in her apartment twice a week for the past seven years. The Petitioner had agreed to go out together as a family during Sunday afternoon as she had wanted the children to continue to feel they are loved by both parents. The access arrangement had all along been smooth throughout the years, until June 2005.

In about June 2005 there were some changes in the access arrangement as on several occasions, the Respondent (allegedly deliberately) started some heated arguments with the Petitioner in front of the children. To avoid such scene, the Petitioner requested the Respondent to take the children out for access instead of inside her apartment. Despite the changes, the Respondent was not deprived of the generous access.

Wishes of the children

The Petitioner acknowledged that the ability of understanding their own choices and the wishes of the children are very important in so far as custody and upbringing of the children are concerned. She thinks that her children should have their rights to express their preference.

The Petitioner worked to ascertain the children

s wishes in this relocation matter. The children have in their own way given the Petitioner their vote of confidence. They confirmed to the Petitioner clearly that they would like to move to stay with her and Mr. E in Dubai. They cannot live without the Petitioner as the bond between them is too strong to be severed.

The children also clearly indicated their wishes to the Respondent several times that they could not live without their Mother. Nevertheless the Respondent did not accede to their wishes. The Petitioner believes that by forcing the children to stay in Hong Kong against their wishes and to live with the Respondent whom they hardly lived with will only ruin the father and daughter relationship.

Trial Period

The Petitioner proposed as early as in November 2005 for the children to live with the Respondent in Hong Kong for 6 months and thereafter let them decide whether to stay or leave Hong Kong. The children also suggested the proposal of a trial period up to June 2006 so that court proceedings can be avoided and they can then decide at the end of the period. The children hope that the Respondent would respect their choices on this issue.

The Respondent in the presence of the children indicated that he would not allow them to join the new family. He also asserted that the children should not be put in a position to make their choices, therefore this proposal did not proceed further.

The Petitioner believes that the Respondent can still continue to enjoy a good relationship with the children if the Respondent respects the children

s wishes and makes the effort to keep close contact with the children.

A few weeks before the last hearing the Respondent proposed to seek professional mediation on the removal issue rather than going to court. The Petitioner declined it as she did not want to further delay the matter or drag on the issue.

Main Carer

The generous access given to the Respondent was to enable him to have dinner with the children twice a week and enjoy Sunday outings. Access of this nature however takes only a small part in care and control of the children. Since the children were born, the Petitioner was the one to care for their physical, emotional, developmental, educational and social needs on a daily basis. For the past 7 years after divorce, the Petitioner spent all her time on taking care of them apart from working. She rarely went out to enjoy herself. She worked to support the children herself as the maintenance paid by the Respondent could not sufficiently cover their living expenses.

Her job required her to travel, but not as often as the Respondent claimed. For the past 6 years the Petitioner travelled 4 to 6 times a year for 3 to 10 days each time. During her absence, she made arrangement for the children

s daily needs through the maid and her family members. She phoned the children daily to make sure that they were alright and requested the Respondent to phone them every day. The Respondent did not come to her apartment each evening but started to do so only after April 2005 and during her visits of Mr. E in Dubai.

Throughout these years, the Petitioner has provided the children with a happy environment and a peaceful atmosphere under which they can grow happily and healthily both spiritually and physically. They are taught to be a positive thinker, responsible, confident and considerate person. The Petitioner is confident that she can provide them with comparable and even better living environment in Dubai. She trusted that the children will continue to have the same or better achievements and good upbringing in Dubai under her guidance, care and control.

Changes

The children are now educated in an International environment in Hong Kong and are English speaking, there will not be any adaptation problem for them. Moreover they will benefit from such multicultural environment, in that, they can learn from different people and diverse cultures.

The Petitioner remarks that it is very common and popular for people to move from one country / city to another for various purposes like studying, working or family reunion. The Petitioner believes that her children should not be limited to stay and live in Hong Kong just because they were born and brought up there. She views that

as long as the children are continuously well looked after and live happily with their mother, they are home

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C. Evidence of Mr. E

Mr. E was brought up in South Africa. He had his first marriage in his early twenties with 2 daughters who are now 18 and 21 respectively. The marriage was ended by consent about 3 years ago. He met the Petitioner in Singapore and started courtship in September 2004. Having similar life experiences and values, they fell deeply in love with each other and they planned to live for the rest of their lives together. In mid-August 2005, with S and T witnessing the ceremony, Mr. E and the Petitioner registered their marriage in South Africa.

Mr. E is a degree holder in commerce. He mainly worked in the banking, property and finance field throughout the years. In December 2004, he was offered an employment contract by a renowned bank to station in Dubai, as a commercial relationship manager. Such opportunity in Dubai means a lot to him. He finds the prospect promising and Dubai a very good place to live in. He and the Petitioner then planned to settle down there with the children. Financially, Mr. E earns a monthly income of about HK\$55,000 which is tax free. He is ready willing and able to fully support the Petitioner, S and T. His eldest daughter by the former marriage is residing with him in Dubai and she works in the same bank with him.

Regarding the removal issue, Mr. E fully supports the Petitioner

s application and readily supports the bringing up of the children. He knows that the Petitioner is a very responsible mother who loves the children very much. He also loves her children dearly. During his time with S and T in the past months, he went along very well with them. In appreciating that he himself may not be able to replace the children

s natural father, Mr. E treats S and T as his own daughters and at the same time encourages them to maintain frequent contacts with the Respondent.

D. The Respondent

s case

The Respondent was born in Canada and brought up in Scotland. His father passed away in mid-August 2005 leaving his mother living in Scotland. The Respondent now has one younger brother in Canada and one younger sister in Scotland. The family relationship is good and the Respondent did bring S and T to visit his family in Scotland every 1 or 2 years.

After studying a year in University, the Respondent left and started to work in England. In 1987, he came to Hong Kong and settled down since. In his first few years in Hong Kong, the Respondent mainly worked as a model. In the later 5 to 6 years, the Respondent mainly worked as the general manager for companies that developed softwares for gaming and horseracing, earning a basic salary of HK\$25,000 a month plus rental allowance and profit shares of various amounts. Around July 2002 the business withdrew from Hong Kong, the Respondent became unemployed for a year. In summer 2003, he decided to start his own business by selling self-designed T-shirts on the Internet.

Condition of the Respondent before April 2006

Since moving out from the matrimonial home in 1997, the Respondent has all along been living alone. He used to live in a rented unit of about 500 sq ft in HV at the monthly rental of HK\$8,500.

At present, he is the sole proprietor and general manager of his own fashion company, the GMTEE.com selling self-designed T shirts on the Internet. He works in his home-based office with flexible working hours. The business is going up and the Respondent is optimistic about the prospect. He will continue to run this business. He currently has no new relationship or remarriage plan.

Present Condition of the Respondent

In April 2006, in order to better prepare for claiming the care and control of the children, the Respondent rented a larger unit in mid-levels with bedrooms for each child, so as to provide a good living environment for them. The newly rented unit is of about 960 square feet at the monthly rental of HK\$18,000. The unit comprises three bedrooms. The children found the living environment satisfactory. If care and control are granted to the Respondent, he will employ a live-in-maid, to help taking care of the household and the children.

On their return to Hong Kong in mid-April 2005, the children informed the Respondent that the Petitioner was engaged to marry Mr. E and she intended to take the children with her to Dubai. The Respondent however found the Petitioner

s present application totally unacceptable and selfish, putting her own interest above the children

- s. She left him no choice but to claim for the sole care and control of S and T, while the joint custody remained unchanged.

Access Arrangement (Past and Present)

Despite the divorce in 1998, the Respondent always maintained constant and close contacts with the children and enjoyed generous access throughout the years. He usually visited the children 3 times a week and had dinner with them on Tuesday and Thursday at the Petitioner

s home and stayed there until bedtime. On Sunday, the Respondent would go out with the children and the Petitioner as a family.

When the Petitioner was away on business trip the Respondent would pay more and frequent visits to the children.

In about June 2005, the parents had different views regarding the removal of the children from Hong Kong, their relationship became tense. The Petitioner attempted to curtail his access to the children. She asked the Respondent to bring the children out for access instead of letting him enter her apartment. The Respondent felt dissatisfied with this arrangement and considered that it adversely affected his quality time with his children.

Since June 2005 the Respondent continued to have access to the children 3 times a week. He usually brought the children out from 7 to 9 p.m. on Tuesdays and Thursdays and from 2 to 9 p.m. on Sundays. They would spend time on movies or strolling around. After the children move to the unit in Wanchai, they spent more access time at the Respondent

s home as it was quite near. When the Petitioner was out of Hong Kong, the Respondent paid daily visits to the daughters. The daughters had staying access at the Respondent

s home for about 3 times over the weekends during the month when the Mother was in Dubai. As the Respondent had recently rented a new unit in mid-levels, he spent much time on bringing the children shopping for furniture and discussing about how to decorate the new unit.

Arrangement for Future Access

The Respondent expressed that to see the children once a year is unbearable and completely unacceptable. It is also against the children

s interest that the very generous access he is now enjoying will be reduced. Moreover he will not be able to go to Dubai to see the children as he will be busily engaged with his business.

On the contrary, if the children remain in Hong Kong with the Respondent, the Petitioner can have free and frequent access whenever she returns to Hong Kong and will share the children s school holidays with the Respondent. There being low mutual trust, the Respondent feels unsecured to let the children visit the Petitioner in Dubai.

The children will have less loss by staying in Hong Kong, as it will be more feasible for the Petitioner to come back to visit them frequently and hence close contact with both parents can still be maintained. If the children move to Dubai, it will be difficult for him to set aside his business to visit the daughters in Dubai and hence the daughters will lose their father. The Respondent also feels that whatever access arrangement there may be, it will not be sufficient for him to maintain a meaningful relationship with the daughters as before. If it turns out not the case, the Respondent hopes that S and T will stay with him in long school holidays including Easter, Summer and Christmas.

Schools for the children

Both parents decided that the children were better placed in an English Schools Foundation school in the past and consequently the Respondent increased maintenance payment to cover the higher fees. The children are now attending South Island School which is one of the best schools in Hong Kong. The Respondent is now discontented to know that the Petitioner has chosen DIA without consulting him. It was not only that DIA has no track record, its system of grading and curriculum are different from the English system that the children are used to.

Other changes

If the children move to Dubai, they will learn a completely different set of family and moral values. The Respondent are sceptical about the children

s ability to integrate into the unfamiliar community and adapt to the environment, because they were born and brought up in Hong Kong.

The Respondent also worries for the children as they will face great changes in their life. They will have to adjust to a new country, a new school, a new education system, new peer relations and also living with Mr. E, a man whom they hardly know about.

There will be little change to the children

s life if the children remain in Hong Kong under his care. They will continue their studies at the same school, and maintain their peer relationship in Hong Kong.

In addition, the removal will greatly affect his access right to the children. The Respondent will no longer be able to have frequent face to face contacts with them and give them necessary support or protection. With different legal system, the Respondent fears that his parental and legal rights can not be exercised outside the jurisdiction of Hong Kong in Dubai. The Court order will become meaningless as its enforcement cannot be effectively implemented. He therefore strongly feel that letting his children move to Dubai will mean losing them.

With all these uncertainties and changes, the Respondent considers the removal not in the children

s interests.

Job / \$

The Respondent started his business about 3 years ago. He set up a small company called GMTee.com selling T-shirts over the Internet with the assistance of a design partner and the Petitioner. He is confident that the business will do well.

Recently he inherited about HK\$500,000 from his father

s estate. He planned to apply for maintenance for the children from the Petitioner if he is granted the care and control of the children.

Wishes of the children

At first the Respondent revealed that he did not seek to ascertain the children

s view as he thought that to let the children decide whether to stay in Hong Kong after the trial period will mean forcing them to decide to which parent they should be loyal thereby putting undue pressure on the children. He accused the Petitioner of manipulating the children into an impossible situation where they cannot fully comprehend and deal with. In such circumstances they could not have properly made their choice.

The Respondent questioned the children

s wishes to stay in Dubai with Mr. E, a man they barely know.

The Respondent later agreed that the children

s voice and view are to be listened and taken into account but they should not be the one who decides. It is said that the Petitioner

s approach has shifted the burden of decision onto the children.

Trial Period

As early as in late 2005, the children indicated to the Respondent during a discussion that they thought that a trial period of living with the Respondent in Hong Kong was a good idea and were happy at the prospect of this arrangement. But the Respondent rejected this idea as he thought that the children should not be entitled to make a choice at the end of the trial period. However a few weeks towards the trial, this idea became acceptable to the Respondent who agreed to leave the children to cast the final vote at the end of the trial period.

The Respondent also urged the Court to consider S

s recent change of attitude by expressing that she will be equally happy to stay in Hong Kong with him.

E. Evidence of the Social Investigation Officer

To prepare the two detailed reports with updated information, Ms H, the Social Welfare Officer has conducted individual interviews and investigation on all parties concerned, made enquiries from the school teachers and the maid, and observed the interactions between the parties concerned.

The reports reflect the following facts which were not disputed and the Court would take them for consideration.

Mdm LBF, the Maid of the Petitioner and the 2 children

Mdm L, aged 35, is a Filipino maid employed by the Petitioner since about 3 years ago. She was not called as a witness. However her comment on the family was passed to Ms H, who then recorded it in her reports. Mdm L is a live-in maid and is responsible for managing the household chores, assisting in the care of the children when the Petitioner is at work. She commented that both the Petitioner and the Respondent are nice persons who love their children very much. The children well-behave and are of pleasant character. She enjoyed working for the family. Mdm L also met Mr. E during his stay in Hong Kong. She found him to be a nice person and have good relationship with S and T.

Both parents approached her to invite her to work for them and the children, however she planned to go back to the Philippines and marry her financ

in the coming year. She will not return to Hong Kong. She will work until the Petitioner leaves Hong Kong.

Child Care History of S and T

S and T were born and brought up in Hong Kong. Since birth, they were mainly taken care of by live-in maids. After the parents

divorce in 1998, S and T started living with their Mother (the Petitioner) and were cared by a domestic helper while their Mother was at work in the daytime. Their Father (the Respondent) was granted generous access and visited them three days a week in general.

In the past 8 years, the parents had joint custody of the children and major decisions for S and T, such as selection of schools, were usually jointly made or made by the Mother with consultation in the Father. Both parents participated in the children

s school activities whenever they were available. Financially, the Mother supported the living expenses of the children with the monthly maintenance contributed from the Father. Currently, the Father is paying a monthly maintenance of HK\$18,500 for the children.

Present Condition of S and T

In mid-January 2006, they moved with the Mother to a smaller rented unit in Wanchai. They shared the master bedroom with the Mother and slept together. Though the living environment was not as spacious as before, S and T found the present condition satisfactory and expressed to have no difficulty in adjustment. They also enjoyed the intimacy sleeping together so that they could have private talk at bedtime.

Both S and T are now studying in Year 9 and Year 7 respectively at the SIS. During usual school days, they are escorted to and from the school-bus stop by the Mother or the maid. They usually reach home at around 4:30 pm after school. On the days when they have extra-curricular activity they will then be picked up by the Mother or the maid from school. After school, they spend time on their homework, having dinner, watching TV or chatting with each other and then go to bed at

about 10:00 pm. In the past when the Mother had to work, the girls were mainly cared by the maid during the daytime. At present, as the Mother has quit her job, she has more time to spend with S and T at home and to take care of them herself.

As reflected from the school reports, S all along has satisfactory academic performance and good conduct. She enjoys the school life and good peer relationship. In leisure time, she likes reading and writing. According to her teacher, S was a well-behaved and intelligent girl. Though she was a bit quiet, she had a sense of humor and related well with others. In recent months, although S felt more pressure as having much homework to do, she was able to carry a positive attitude in coping with the requirement. The teacher found her well cared for by parents and emotionally stable.

T used to study at BS. She has satisfactory academic performance and conduct all along. She relates well with her schoolmates and likes various kinds of sports. Starting from September 2005, T began to study Year 7 at SIS. Though it is a new environment, T adjusted to it quite well. The teachers found T a well-behaved and a happy girl. Same as S, the teachers found T under proper parental care and emotionally stable.

Views of S and T towards custody and access

While they have been living with the Mother, they maintain frequent contacts with the Father. Both of them expressed that they love their parents. They were happy with their life all along and had little hard feelings upon the parents

divorce, as the parents had been in friendly terms with each other and never failed to give them love, support and concern.

S and T admitted that they had quite a difficult time in the past few months thinking about the removal issue. They felt sad as the parents had different views on the future plan and they did not want either one of the parents to be unhappy or disappointed. Both S and T expressed that they had no resistance to be repeatedly interviewed by the investigating officer on the access issue and they were ready to share their views and feelings.

For S, though she remarked that both parents had not given her any pressure, on the removal issue, she found the recent period quite a difficult time as her parents

relationship became tense. Moreover, no matter what the final decision may be, she will not be able to see one of her parents as frequently as before.

She remarked that both parents played an important role in her life. She could turn to either of them whenever she needed help or advice. However, as she had all along been living with the Mother and had not lived with the Father in the past 8 years, she felt uncertain if she was to stay in Hong Kong without her by her side. Even during the days when the Mother was out of Hong Kong, she would maintain daily phone contact with them and the maid to make sure that everything was alright. While having spelt out her preference to move with the Mother, S was aware of the changes she is going to face, including change of living environment, school, peer

relations and contacts with the Father. She prepared herself to adjust to these changes and she thought that she might need several months for adjustment. She did not worry much of adjustment difficulty as she felt sure that if she really could not adjust to the life in Dubai, her Mother would bring her back to Hong Kong.

For S, after months of thinking, she stated that she did not mind whether the final decision would be to let her move to Dubai or stay in Hong Kong. She felt that she could cope with either situation as she considered herself able to take life changes positively. While saying that she would never get used to live without the Mother should she live with the Father in Hong Kong, she would also miss the Father, friends and school life in Hong Kong if she was to move to Dubai.

S felt very sad about and difficult to accept the court or the investigating officer to make decision for her future. She eagerly hoped that the issue could be settled within her family and the parents would reach consensus at last.

She is ready to have a trial period say 6 months to live with each of the parents with minimum disturbance to her study. While S felt sure that her Mother would let her return to Hong Kong if she disliked living in Dubai after the trial period, she was worried and suspected that if she preferred to go to Dubai after the trial period of living with the father, the Father would not agree to it.

For T, she expressed that she felt happy for the Mother

s remarriage but a bit sad at the same time when she thought about the fewer face to face contacts with the Father in future. The recent death of her parental grandfather in Scotland was a great loss to her Father. However, T had very close tie with the Mother that she could not imagine to live without her. The main reason for her decision to move there was to be with the Mother. While she was going to miss the Father, T felt sure that she would miss her Mother more as she used to be living with her under her major care.

T knew that she would have to adjust to quite a lot of changes if she was to leave Hong Kong. Commenting herself as a positive thinker, she felt confident that she would be able to adjust well to the new environment, make new friends and lead a happy life. Should she face adjustment difficulty in future, she would make effort to overcome it rather than to retreat. She would also maintain frequent contacts with the Father through various means and she felt sure that the Father would continue to provide her his concern and support despite the physical distance.

T shared that she had jumping thoughts on the removal issue in the past few months but she stressed that after serious consideration and thinking about all the pros and cons, she still wanted to move with the Mother to Dubai. T treasured the very close tie with the Mother and she could talk with her about everything and anything. She remarked that living with the Mother was the most powerful factor for her in the decision-making and it outweighed the total power of all the other factors like fewer contacts with Father, change of country, school, peers and etc.

Observation of Interactions by Social Welfare Officer

S and T impressed to be very friendly, well-behaved and healthy children with pleasant character. Comparatively, S was more gentle and a bit quiet while T was sporty, more cheerful and expressive. They had close and intimate sibling relationship with each other. Both girls were observed to have very close relationship with both parents. They had natural, spontaneous communication and good eye-contact with them during their interaction. They were also observed to be relaxed and comfortable when interacting with Mr. E.

During the past few months, both parents were making preparation for the future care of S and T according to their plans. The investigating officer found the Petitioner and the Respondent responsible and loving parents who were able to provide satisfactory living environment, education, basic care and control of S and T.

In the past few months though there were some changes in the girls

views toward removal as S eagerly wished for mutual agreement between parents, no matter what the agreement might be, her view of removal tended to remain neutral. The social investigation officer confirmed S and T

s consistent preference to live with the Mother and S

s confidence on the Mother

s readiness to respect her views when mentioning about the trial period issue.

Reasons behind the Children

s decision

Having considered the children

s age and maturity, the investigating officer opined that their views, and most important the reasons behind their views, should be heard and respected. The major reason for the children

s preference to move with their Mother to Dubai, while being aware of the changes they are going to face is their strong tie with the Mother.

The children reckoned that the Father who they loved very much had also played an important role in their life. S and T considered the Mother their major carer taking good care of them all along. They built up strong emotional tie with her and felt secured living with her, trusting that she would make the best arrangement for them and respect their views.

Regarding the Father

s worries about the girls

adjustment and his legal and parental rights, S and T showed trust on themselves as well as on their Mother.

Other considerable factors

Ms H opined that as compared with the physical environment or living condition, the consistency of major carer, strong emotional tie and trusting parent-child relationship were considered more important factors for the children

s interest and healthy development.

Puberty

From the developmental perspective, S and T now aged 13 and 11 respectively, are entering their puberty. Ms H considered the Mother to be more appropriate and capable of attending to the daughters

development needs.

Conclusion (Social worker report)

Taking into consideration of all the relevant factors, the Social Welfare Officer supports the Petitioner

s application for leave to remove the children of the family to Dubai, while the joint custody remains unchanged. It is also recommended that reasonable access be granted to the Respondent, and the Petitioner should bring the children back to Hong Kong annually so that they can spend their vacation and have quality time with the Father. In addition, the Petitioner should provide round-trip air-ticket to the Respondent once a year to visit the girls in Dubai, and the Petitioner so undertakes to Court at the hearing.

F. Applicable Law and Principles

The General principles laid down in s. 3 of the Guardianship of Minors Ordinance Cap. 13 sets out the current statutory provision for leave to remove children from the jurisdiction that :

the Court shall regard the welfare of the children as the first and paramount consideration and in having such regard shall give due consideration to the wishes of the children if having regard to the age and understanding of them and to the circumstances of the case, it is practicable to do so; and any material information including any report of the Director of Social Welfare available to the Court at the hearing

.

The list of factors to be considered by the court is by no means exhaustive. Wishes of the parents, the needs and emotional attachment of the children and other relevant factors which arise in this case need also to be looked into. But the overriding and paramount factor determining how the court should decide is the best interests of the children.

The principles laid down in the Court of Appeal in *Payne v Payne* (2001) 1 FLR 1052 have also provided useful guidance. It is said by Thorpe LJ (para 26)

In summary, a review of the decisions of this court over the course of the last 30 years demonstrates that relocation cases have been consistently decided upon the application of the following two propositions :

- (a) the welfare of the child is the paramount consideration; and
- (b) refusing the primary carer

s reasonable proposals for the relocation of her family life is likely to impact detrimentally on the welfare of her dependent children, therefore her application to relocate will be granted unless the court concludes that it is incompatible with the welfare of the children

.

Thorpe LJ went on to say the following (paragraph 40) :

To guard against the risk of too perfunctory an investigation resulting from too ready an assumption that the mother

s proposals are necessarily compatible with the child

s welfare, I would suggest the following discipline as a prelude to conclusion :

- (a) Pose the question : is the mother

s application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child

s life ? Then ask is the mother

s application realistic, by which I mean founded on practical proposals, both well-researched and investigated ? If the application fails either of these tests, refusal will inevitably follow.

- (b) If, however, the application passes these tests, then there must be a careful appraisal of the father

s opposition : is it motivated by genuine concern for the future of the child

s welfare or is it driven by some ulterior motive ? What would be the extent of the detriment to him and his future relationship with the child were the application granted ? To what extent would that be offset by extension of the child

s relationships with the maternal family and homeland ?

- (c) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal ?

(d) The outcome of the second and third appraisals must then be brought into an overriding review of the child

s welfare as the paramount consideration, directed by the statutory checklist in so far as appropriate

.

Thorpe LJ continued :

In suggesting such a discipline, I would not wish to be thought to have diminished the importance that this court has consistently attached to the emotional and psychological well being of the primary carer. In any evaluation of the welfare of the child as the paramount consideration, great weight must be given to this factor

.

G. The Court

s observation and findings

Trial Period

While the children were reluctant to accept an outsider to make decision for their future, it was the Petitioner

s initial intention to settle this issue within the family. She sought the children

s support to the idea of

trial period

.

In November 2005, the Mother proposed to the Father for arranging a trial period of 6 months for the children to be under the Father

s care and then to make decision on the removal issue base on the children

s views. The Father rejected the proposal as he thought that the final decision should not be made by the children. A few weeks before this trial, the Father proposed to the Mother to seek for professional mediation on the removal issue rather than going to court. As the Mother did not want to further postpone the decision making or to drag on the issue for longer period, she declined his proposal.

The initial and main purpose of the trial period is practically to allow the children to experience living under the care of their Father and also to see if they are able to live without their Mother. If the children

s view is not be heard and respected at the end of the trial period, the proposal would become meaningless. In fact the children were quite prepared to express their preference, which they had once done even before this proposal was raised. They have never equated the right to express their preference with disloyalty to one parent. However six months later and only a few weeks before the trial, the Respondent suggested that the parties should go for mediation and then proposed to have a trial period by having the children to live with him in Hong Kong for a school year. Obviously, if such proposal had been accepted earlier, parties should have been able to reach decisions on the relocation issue by now. It is unfair and undesirable especially to the children for the issue to be left in abeyance for another school year. In situation like this, the Petitioner is left with very little choice. The discordant views of the parents on this proposal have caused anxiety and unhappiness to their children for months. It is only right and in the interest of the children to have this issue decided as soon as possible.

Credibility of Mr. E

Mr. E was interviewed by the Social Welfare Officer but he was never intended to be a witness in this case. Request to cross-examine him was made on the day of the trial. Mr. E has kindly acceded to this request.

In spite of the very short notice to turn him a witness, he has given good and consistent view on this issue of removal. His demeanour in court was duly observed. The Court has no doubt about his credibility and sincerity in this matter. It is natural for the Respondent to be sceptical about the children

s wish to stay with Mr. E whom they met and spent their vacations only on several occasions. However, it was observed by Ms. H and the maid that the children are getting along well with Mr. E. Their interaction were seen to be relaxed and comfortable. The Court is confident that the Mother will be able to protect the children and to provide them with a safe and secured place to live in.

Primary Carer

The Petitioner has quit her job in March 2005 and prepared for her marriage and migration. She has always been a working mother and sometimes she had to travel out of Hong Kong.

During her absence, she made good and proper arrangement for the children

s daily needs through the maid, her family members and the Respondent. She kept daily contact with the children to ensure they were in good condition. Even since the couple

s separation in 1997, both children have been living with the Petitioner, with care and control vested in her. At present, as the Petitioner has quit her job, she has more time to spend with the children at home and to take care of them herself.

In all these years the Respondent had frequent contacts with the children and enjoyed generous access of 3 times a week. He will also visit the children to ensure everything to be fine during the Petitioner

s absence. The Respondent certainly played an important role in the children

s life. The evidence however showed that the Petitioner was the main person who took care of the children

s physical, emotional, developmental and educational needs on a daily basis. Both children considered their Mother to be their major carer, having closer attachment with them and taking quality care of them all along. The Court accepts that the Petitioner has always been the primary carer of the children.

Motive of the Petitioner

The question is then asked : whether the Petitioner

s application is genuine in the sense that it is not motivated by some selfish desire to exclude the Respondent from the children

s life ?

The Petitioner has remarried. She has married someone who is working and settled well in Dubai. It is reasonable and natural that the Mother who considered herself a main carer of the children and has strong tie with the children, will want to bring them with her to Dubai. Understandably, the Father who loves the children very much and enjoys generous access to the children, will face great loss if the children are to move to Dubai. It is also natural for him to object to the removal plan. Both parents were making preparation for the future care of the children.

No matter what the outcome of the decision is, the children will inevitably stay away from one parent and face changes to their life. The children are fully aware and have accepted these situations. Physical contact will definitely not be as frequent as it was in the past but it is believed that either parent will continue to provide the children with support and concern despite the physical distance. Unquestionably the children will maintain frequent contacts through various means e.g. E-mail, SMS, phone calls, Internet and etc. It is highly unlikely that someone will forbid the children from contacting their Father and there is no way that the children will lose their Father. The children never felt that the removal of them will cause them losing their Father; or that the Petitioner has put them in situation where they will suffer as a losing party.

There is no evidence to suggest that the Petitioner intends to separate the children from their father. In fact not only she encourages the children to keep constant and close contact with their Father, she is willing to pay for the children

s trip to Hong Kong two to three times a year and the Respondent

s return trip to Dubai once a year.

Extensive cross-examination was conducted for the Respondent on issue as to why he was not informed that the trip to Dubai in March 2005. The Petitioner admitted that about end of February 2005 she was considering her future plan for remarriage and migration to Dubai. She bought the children to Dubai for them to see the city themselves in March 2005 before they express their wish of which parent they would prefer to live with. She explained that she did not want to cause the Respondent

s concern unnecessarily of the removal issue as the children may want to stay in Hong Kong.

The Court sees nothing wrong for the Petitioner to break the news in April 2005 of her intended marriage and her plan to bring the children with her to Dubai, only after the children had expressed their preference to stay with her in Dubai. The manner she handled this matter has in a way showed that she is a prudent and thoughtful person.

The Court accepts that the motivation for the removal arises out of the Petitioner

s remarriage. She has every reason to live and settled in Dubai. It is only natural for her as a main caregiver for the children to take them with her to Dubai and to live with her husband. Moreover the Petitioner has offered generous access to the Respondent in the past. It is kind of her to offer a round-trip air-ticket to Dubai to the Respondent to visit the children. She surely understands the importance of the children to maintain their tie with their Father.

Having also considered other evidence in this case, it leaves the Court no doubt that the Petitioner

s desire to live in Dubai is not motivated by selfish desire.

Motive of the Respondent

The next question to ask is whether the Respondent

s opposition is motivated by genuine concern for the future of the children. The Respondent has taken the view that

- (i) Mr. E shall move to and work in Hong Kong;
- (ii) it is more feasible for the Petitioner to visit the children in Hong Kong than for him to go to Dubai; and
- (iii) he is unable to afford the time and leave his business to go to Dubai to visit his children.

Much emphasis were placed by the Respondent on the importance for and interest of the children to see the parent whom they are not living with on a regular basis. However, it seems that the Respondent has not contemplated himself in making the effort and finding time to visit the children in Dubai, should his cross application fail. It is of course a matter of choice of how much sacrifices a parent is willing and prepared to make. In this aspect, the Respondent sacrifices none, even at the Petitioner

s offer of a free round trip air ticket to Dubai.

The Court does not share the Respondent

s view. First of all, it is not only impracticable and unrealistic, but unfair to Mr. E, the step father, who volunteers to financially support the children, to have to forgo his good career prospect and work opportunity in Dubai and try to settle down in Hong Kong.

Secondly, the Court is in no position to accept that the Respondent is unable to leave his business behind even for a few days in a year. The Respondent is running his own business on the Internet of selling T-shirts. He uses computer to do his business. It is believed that it is not compulsory for him to stay in Hong Kong all the time for his business. Even if his business will be affected by his absence from Hong Kong, it seems more flexible for him in the capacity of a self-employed person to freely plan his overseas visit than an employed person, as the Petitioner will be.

Thirdly, the Court frowns upon the Respondent

s cross-examination of the Petitioner by suggesting to her that she should consider forgoing her plan of having a full time career, so that it will be more feasible and easier for her to visit the children in Hong Kong than for the Respondent who is building up his business to visit the children in Dubai.

Such attitude of the Respondent has nevertheless and to a certain extent reflected his anxiety and worry for the children

s future, which are undoubtedly genuine. The removal will mean changes and uncertainties to the children. It is accepted that the Respondent

s concern and feelings of insecurity that his legal and parental rights cannot be exercised outside the jurisdiction of Hong Kong are real.

Observation made of the children

The children were aware of the parents

divorce but have little hard feelings on that, as the parents had been in friendly terms and had never failed giving them love, support and concern. The Court agrees fully with Ms. H

s remark recorded in her report that recognition should be given to both parents for their joint effort in the past years which made the adverse effect of the parental divorce on the children minimal. With the proper care and concern by the Mother, the love and support from the Father, and the generous access they enjoyed, S and T had not been deprived of family life and were able to have happy childhood. They grew up healthily with pleasant character and good performance both academically and behaviourally.

But in the past few months they had quite a difficult time thinking about the removal issue. They felt sad as the parents had different views on the future plan. They eagerly hoped that the issue could be settled within their family and the parties would reach consensus at last. It was perceived by Ms H that S

s earlier preference to live with the Mother in Dubai changed to her being neutral recently as to the place where she will eventually be living and it revealed her eager wish for the parties to reach mutual agreement, no matter what the agreement will be.

In fact, S explained that

she could well adjust and cope with either situation. She considered herself a positive thinker. She knew she would miss the Father, friends and school life in Hong Kong, if she was to move to Dubai. But on the contrary she would never get used to live without her Mother if she was to remain in Hong Kong under his Father

s care

. Her message is plain and clear, i.e. she prefers to live with her Mother. S has shown a stronger emotional tie, physical attachment and psychological preference with her mother.

Sleep walking

The incident where the Respondent found himself locked out of his apartment nakedly and a similar past incident caused the Petitioner

s concern for the Respondent

s safety and the well being of the children if they are to live with the Respondent. The Petitioner may not have seen the Respondent sleep walking previously or during their marriage, the excuse the Respondent related to her of his behaviour in the incident when she came to his rescue, may have misled her in believing that the Respondent was having a sleep walking problem.

The Court is not of the view that the Petitioner has deliberately converted this incident into a chronic health problem so as to undermine the Respondent

s suitability of his claim as asserted by the Respondent.

Reluctant Mother

The Respondent for the first time asserted that the Petitioner had been a reluctant Mother who once had an intention to abort T during her pregnancy and was resented being a mother in the early years. As this statement was never made in the past, the Petitioner is obviously deprived of the chance to refute.

Besides, it is common ground that in all these years of nature, the Petitioner has proved to be a loving, caring and responsible mother whom the children have strong ties with. Her love for the children and generosity have enabled the Respondent to enjoy generous access to the children, no weight is hence placed on this statement of the Respondent.

Well adjusted and steady children

Both children have shown their ability to overcome difficulties and adapt well to changes which had taken place quite recently. T was seen to have adjusted well in the new school, when she began to study Year 7 at SIS last year. A few months later she moved to a smaller flat in Wanchai with S and the Petitioner. The living environment was not as spacious as before but the children expressed to have no difficulty in adjustment. In recent months, S had felt more pressure as having much home work to do. She was able to carry a positive attitude in coping with the requirement. Notwithstanding these changes and the parents

recent disagreement, they are emotionally stable. No abnormalities or special problem were detected by their teachers so far. They are resilient to change.

Intelligent and mature student

S is quiet but humorous, T is sporty, more expressive and cheerful. Both girls had satisfactory academic performance and good conduct. They are well behaved intelligent and happy girls. They related well with others and enjoyed school life and good peer relationship.

Both children understand no matter what the final decision may be there will be changes to their life inevitably and they will not be able to see one of their parents as frequently as before. While having spelt out their individual preference to move with the Mother, the children are aware of the changes they are going to face, including change of living environment, school, peer relation and contacts with the Father.

They considered themselves to be positive thinker and they felt confident that they would adjust well to the new environment, make new friends and lead a happy life. They are not worried about having to face adjustment difficulty and would make effort to overcome it rather than to retreat. S felt sure that if she really could not adjust to the life in Dubai, her mother will bring her back to Hong Kong. They did not show any sign of resisting changes.

S stressed that although she could cope with either situation as she is able to take life changes positively, she would never get used to live without her Mother, if she is to live with the Father in Hong Kong. T said she could not imagine living without her Mother and the main reason for her

to move to Dubai was to be with the Mother. She would miss the Mother more as she used to be living with her under her major care. She treasured the very close tie with the Mother and she could talk with her almost anything. To live with the Mother was the most powerful factor for her in decision making, and it outweighed the total power of all the other factors e.g. fewer contacts with Father, change of country, school, peers and etc.

The children are positive, mature and intelligent. They have all along been living with the Mother and have not lived with the Father in the past 8 years. Even during the days when the Petitioner was out of Hong Kong, she would maintain daily phone contact with them and the maid to make sure that everything was alright. It is obviously that the children have built up stronger emotional tie with the Mother and felt more secured living with her. They showed trust on themselves as well as on their Mother. They have never felt that their Mother has put them in situation where they were suffered as a losing party. They trusted that the Mother would make best arrangement for them while respecting their views. They have closer affectionate attachment with their Mother.

They have also considered maintaining frequent contacts with their Father whom they will surely miss very much through various means. They believed that the Father will continue to provide them his concern and support despite the physical distance.

After having considered seriously about the pros and cons of the removal while being aware of the changes they are going to encounter, they then expressed their preference and readiness to move with their mother to Dubai.

The children are 11 and 13 respectively. They have given thoughtful, sensible reasons of their preference which was expressed without any pressure or undue influence from the parties. They presented themselves to be well brought up, steady and brave. Both parents are truly proud of them. The Court is satisfied that the children

s decision were made with full understanding and awareness of their situation and changes.

Adaptation Problem

The Respondent worried about the children having difficulties to cope with different education system in a city where the children may not have heard of a year ago. Dubai is actually a cosmopolitan city with one of the best infrastructure facilities in the world. English is commonly used. Whereas DIA is a new school carefully chosen after research and enquiries made.

The multicultural environment at this city and DIA will enable the children to appreciate and respect other cultures. Students learn new subjects each day and will encounter harder curriculum each new academic year. It is doubtful that the IBO system will cause much learning difficulties to the children. Even if this school is found to be unsuitable, the Petitioner will certainly be able to find an appropriate school for the children.

Nevertheless, children are resilient to changes and are adaptable particularly at their young age. It is accepted that the children are mature, intelligent, happy, positive and well adjusted girls, it is quite certain that they will very soon adapt to this new living environment and integrate into this society.

Alternative arrangements

The Petitioner prudently contemplates situation where e.g. her application is unsuccessful; or the children face adjustment problem in Dubai. She has then planned for the alternatives and has provided solutions to tackle these adverse possibilities should they arise. Perhaps being a working mother and a primary carer of the children in all these years have helped her to cultivate the abilities to handle these matters with forethought and foresight.

Puberty

Both S and T are in their early teens and have reached the age of puberty. Though the Father may be able to provide basic care and control of the children, their Mother is as the Court so finds, the most appropriate person to attend to their development needs, both physically and biologically.

Conclusion

The Court accepts Ms. H

s view that

concerning the children

s interest and healthy development, the factors of the consistency of major carer, strong emotional tie and trusting parent-child relationship are more important than physical environment or living condition.

Having considered all the circumstances of the case including evidence of all parties, wishes of the children, contents of the social investigation reports, and bearing in mind the welfare of the children is the paramount consideration, the Court concludes that it is in the best interests of the children that the Petitioner

s application be granted, while the joint custody remains unchanged.

Costs

The Court generally does not order costs in children cases. The reasons of the general approach not to order costs are convincingly enunciated in *London Borough of Sutton v Davies (Costs)* (No.2) [1994] 2 FLR 569

where the debate surrounds the future of a child, the proceedings are partly inquisitorial and the aspiration is that in their outcome the child is the winner and indeed the only winner. The Court does not wish the spectre of an order for costs to discourage those with a proper interest in the

child from participating in the debate. Nor does it wish to reduce the chance of their co-operation around the future life of the child by casting one as the successful party entitled to his costs and another as the unsuccessful party obliged to pay them. The proposition applies in its fullest form to proceedings between parents and other relations; but it also applies to proceedings to which a local authority is a party

But the proposition is not applied where, for example, the conduct of a party has been reprehensible or the party

s stance has been beyond the band of what is reasonable.

Moreover, the Petitioner has not asked for costs in this hearing. The Court applies the general principle in relation to costs. It is ordered that there be no order as to costs.

(H F Woo)

Deputy District Judge

Mr E CHAN of Messrs CHAN, WONG & LAM, for the Petitioner

Mr R EGERTON, instructed by Messrs STEVENSON WONG & CO., for the Respondent

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