

Egeneonu v Egeneonu

[2017] EWHC 43 (Fam)

18/01/2017

Barristers

Christopher Hames KC
Alistair G Perkins

Court

Family Division

Practice Areas

International Children Law

This application arose from a case which began when the father of three children removed them to Nigeria. The children's mother began proceedings in the High Court, and the father himself then fled to Nigeria, where he and the children remain. The children's mother sought the father's extradition from Nigeria, arguing that the contempts of court of which the father was guilty were criminal contempts rather than merely civil contempts.

Newton J, who had conducted earlier hearings in the case, had reframed the issue to be dealt with at the final hearing. It was not for the Family Court to determine whether or not the contempts in question were extradition offences; the function of this Court was, at most, to determine whether or not the contempts in question were criminal.

As a preliminary matter, Sir James Munby P asks whether he has jurisdiction to grant the relief sought, and, secondly, whether he should exercise that jurisdiction. He rejects the submission on behalf of the father that he did not have jurisdiction on the basis that the issue is the inherent declaratory jurisdiction and not the inherent jurisdiction in respect of children which is in play. He also finds that the jurisdiction ought to be exercised because there is an advantage in the court that has determined the question of contempt also deciding whether the contempt is civil or criminal.

Turning therefore to this question, the President summarises the submissions made on behalf of the mother that the contempts found by Newton J to have been proven amounted to criminal contempt of court. It was argued on her behalf that there was a longstanding principle that all contempts relating to a child who is a ward of court are criminal contempts. The mother relied on both academic texts and on some longstanding case law. In relation to the case law, however, the President finds that none of the many authorities referred to relating to criminal contempt in the context of wardship establish a general principle that "something which in a wardship case is a contempt only because it involves the breach of the court's order is, or ever can be, merely because it is a wardship case, anything other than a civil contempt" (para. 53).

He summarises the correct principles in relation to wardship and contempt as follows (at para. 72):

i) “The ambit of this branch of the law of contempt is delimited not by the “status” of being a ward but by the “incidents” of that status – the “important” or “major” step in the life of the ward of a kind that cannot lawfully be taken without the prior consent of the court.

ii) A criminal contempt is a contempt committed by someone who (a) without the consent of the court undertakes or facilitates some “important” or “major” step in the life of the ward of a kind that cannot lawfully be taken without the prior consent of the court and (b) knows that the child in question is a ward of court.

iii) Something involving a ward of court which is a contempt of court even though there is no order of the court does not lose its criminal character because it also involves breach of the court’s order.

Other contempts relating to or involving a ward of court are not and do not become criminal contempts merely because the ward is a ward.”

The second limb of the mother’s case was that the breaches amounted to a criminal contempt because they involved the deliberate interference by the father with the administration of justice.

Having considered the history of the matter, the President agrees with the submissions made on behalf of the father that the committal proceedings had only ever been based on breach of the various orders. At no point had there been any submissions, discussion or debate about the consequences of those breaches or any suggestion that the consequences could amount to a criminal contempt of court. The father had had no warning that it might and, therefore, he could not make a finding, on the criminal standard of proof, that the father was guilty of a criminal contempt.

The President therefore dismissed the mother’s application. He ends his judgment by making some obiter remarks about whether a criminal contempt is, ipso facto, a criminal offence, although he declines to reach a definite conclusion.

Permission

 **Family Law Week**