IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU

(Civil Jurisdiction)

Civil Case

Case No. 25/2711 SC/CIVL

BETWEEN: OLIVER WEHBE
Applicant

AND: KAY JOHNSON
Respondent

Date of Decision:	17 September 2025
Before:	Justice M A MacKenzie
Counsel:	Applicant – Mrs C Hamer
	Respondent – Self-represented

DECISION

Introduction

1. G (aged 14 years) and N (aged 11 years)[1] are British citizens, and habitually resident in the United Kingdom. Their lives have been marred by significant parental conflict and ongoing litigation.[2] The children are currently visiting their father, Mr Wehbe, in Vanuatu. He contends that the children wish to remain in Vanuatu. Their depth of feeling is such that the children cut up their Australian passports, and so have not returned to the United Kingdom, in breach of a Court order made on 15 May 2025. Mr Wehbe has applied for new passports through the Australian High Commission. The children's British passports have expired.

2. Unsurprisingly, the children's mother applied to the High Court of Justice (Family Division) ("the High Court") seeking a return order. Without notice orders were made on 4 September 2025, including an order for the children's return to England. The High Court also made provisional declarations that:

[1] The children's names are anonymised to protect their privacy
[2] See the judgments of the High Court (Family Division) dated 4 and 11 September 2025

- The children were habitually resident in the jurisdiction of England and Wales as at 4 September 2025.
- The children were wrongfully retained outside the jurisdiction of England on 23 August 2025.
- The Courts of England and Wales have primary jurisdiction in matters of parental responsibility over the children.

3. Importantly, as the judgment of 4 September 2025 details, the children are Wards of the High Court of England and Wales until the age of 18 years. Therefore, the High Court recorded that the Court is empowered and required to exercise its custodial jurisdiction over the children to ascertain their best interests.

4. There was a further listing on 11 September 2025. Both parents took part. Mr Wehbe asked for the return order to be discharged. The Court however refused to discharge the return order, for the reasons set out in the judgment.[3] The Court said it was in the children's welfare to be returned home to their habitual residence. Further, that any application Mr Wehbe wished to make for permission to bring an application to change the children's living arrangements should be made in the Courts of the children's habitual residence where the merits of the application can be properly assessed.

5. On 11 September 2025, the High Court made orders that:

   - The children are and remain Wards of the Court.
   - The return order was confirmed but time extended until 23.59 BST 19 September 2025 for Mr Wehbe to return the children to England and Wales.
   - The matter be listed on 17 September 2025 to make further directions.

6. It is against that background, that I consider the without notice applications made to the Supreme Court of Vanuatu by Mr Wehbe.

The applications

7. Late on 15 September 2025, Mr Wehbe filed urgent ex parte applications seeking the following orders:

[3] At paragraph 6

a. Abridgement of time.

b. That Mr Wehbe be appointed as litigation guardian for both children.

c. That the children's mother be restrained from forcing Mr Wehbe to return the children to the United Kingdom against their will, pending determination of proceedings in Vanuatu.

d. That the children's mother be restrained from arresting, detaining or extraditing Mr Wehbe and/or the children, pending determination of proceedings in Vanuatu.

8. It is not clear why an abridgment of time is sought, as Mr Wehbe made the applications on a without notice basis. Therefore, the Court intends to determine the applications on that basis. This matter is urgent, because of the return order and the listing in the High Court on 17 September 2025.

Application for appointment as litigation guardian

9. Rule 3.8 of the Civil Procedure Rules ("CPR") provide for the appointment of litigation guardians. It says:

> ***3.8 Persons under a legal incapacity***
>
> *(1) A person is under a legal incapacity if the person:*
> *(a) is a child; or*
> *(b) is a person with impaired capacity.*
>
> *(2) The court may appoint a person to be the litigation guardian of a person under a legal incapacity.*
>
> *(3) A person under a legal incapacity may start or defend a proceeding only by acting through the person's litigation guardian.*
>
> *(4) In all civil proceedings, anything required to be done by a person under a legal incapacity may be done only by the person's litigation guardian.*

10. A child is defined as a person under 18 years of age.[4] While I accept that a litigation guardian can be appointed for children, this application is misconceived. The

[4] See Part 20 - Definitions

purpose of a litigation guardian is to start or defend proceedings filed by a person under a legal incapacity, which the children are by virtue of rule 3.8(1)(a) of the CPR.

11. However, children are not parties to parental disputes relating to care, or in this case, whether to make restraining orders as sought. It is the parents who are the parties to any proceeding seeking orders relating to the welfare and best interests of children. The children's voices are heard in a different way, by appointment of lawyer for the child, or in the case of the United Kingdom, a CAFCASS officer. It is then for the Court to determine the weight to be given to the children's views. As detailed in the two High Court judgments, there has been recent litigation in the United Kingdom, culminating in orders dated 15 May 2025. Mr Wehbe was painted in an unflattering light in those proceedings, as a CAFCASS report of 1 May 2025 raised significant concerns that the children had been subjected to emotional pressure, manipulation and coercive and controlling behaviours by Mr Wehbe, so that their wishes and feelings could not be relied on as authentically their own. Mr Wehbe takes issue with this. His position is that the children do not wish to return to the United Kingdom due to the unremitting pressure exerted upon them by their mother and the dysfunctionality of their relationship with her. But any concern held that the children's voices will not be heard, or that the United Nations Convention of the Rights of the Child will be ignored are to be addressed through proceedings between the parents, rather than the children becoming parties to a dispute between their parents.

12. The application is redundant, as the dispute is between G and N's parents in terms of their differing views as to how the children's welfare and best interests can be met. It would be highly inappropriate for the children to become parties to a care and guardianship dispute between their parents. It is also highly irregular and inappropriate that G and N have filed sworn statements in support of Mr Wehbe's urgent without notice applications. That simply enmeshes them further in the ongoing conflict between Mr Wehbe and Mrs Johnson. That is not how children or young people are heard in parental disputes.

13. Finally, I consider that appointing Mr Wehbe as a litigation guardian would be in direct conflict with the order making G and N Wards of the High Court of England and Wales. That order was made by a Court of competent jurisdiction in the country where the children are habitually resident.

14. Accordingly, for the reasons set out above, I decline to appoint Mr Wehbe as litigation guardian for G and N.

Restraining Orders

15. Mr Wehbe seeks restraining orders to restrain Mrs Johnson from forcing the children to return to the United Kingdom, or arrest, detain or extradite Mr Wehbe and/or the children. He contends that the children do not want to return to the United Kingdom due to the pressure exerted by their mother, that it would not be in G and N's best interests to return to the United Kingdom without being heard, that the children are currently in a high state of stress, and there is a real danger they may self harm if orders are not made.

16. There are a number of difficulties with the restraining order applications. They are also misconceived. I make the following points.

17. Firstly, the return and ancillary orders were made by the High Court in the United Kingdom. Mr Wehbe's recourse is to ask the High Court to discharge the orders, which he did. But the High Court refused to do so. Only the Court who made the orders can affirm, vary or discharge the return order. It is not for a Court in another jurisdiction to make orders which render the High Court's orders redundant and ineffective.

18. Secondly, to make such orders would cut across the Wardship order currently in force. The High Court of England and Wales is empowered and required to exercise its custodial jurisdiction in relation to G and N and determine their best interests. A consequence of the Wardship order is that custody of the children is vested in the High Court. Mr Wehbe cannot change the children's habitual residence. It is a matter for the High Court: *Re B-M (Wardship: Jurisdiction)* [1993] 1 FLR 979.

19. Wardship is protective in nature and its purpose is to ensure the children's welfare and best interests are met. A Wardship order has been considered necessary by the High Court in this case to protect the children. It is therefore contrary to the interests of justice for a Court in another jurisdiction to make any orders which have the effect of undermining the Wardship order made by the High Court of England and Wales.

20. Thirdly, the issue of forum is directly engaged here. I am satisfied that Vanuatu is not the proper forum to determine any parental dispute about the children. The proper forum to hear and determine issues relating to the children to meet the ends of justice is the United Kingdom. This is for the following reasons:

    a. The children are British citizens and are ordinarily domiciled in the United Kingdom. The Consent order endorsed by the Supreme Court of Vanuatu dated 25 July 2023 acknowledged that the children are habitually resident in the United Kingdom.

b. The High Court has made a provisional declaration that the children are habitually resident in the United Kingdom, and that the children have been wrongfully retained in Vanuatu.

c. The children are Wards of the High Court of England and Wales. Relevantly, the High Court has considered it necessary to invoke the Wardship jurisdiction in this case. As I have said, the High Court is empowered and required to exercise its custodial jurisdiction in relation to G and N and determine their best interests. It is for the High Court and not the parents to decide the care arrangements and habitual residence.

d. In the judgment of 11 September 2025, the High Court said that the Courts of England and Wales have primary jurisdiction in matters of parental responsibility over the children. The High Court noted the longstanding history of conflict and litigation between G and N's parents, which has caused significant harm to them. As explained in the judgment, there is considerable information available to the Court in the United Kingdom as to the history of conflict, litigation and the authenticity of the children's views. The Supreme Court of Vanuatu has none of that information in order to be able to properly assess the merits, and a lack of access to specialist services such as CAFCASS in order to assess the children's views, and welfare and best interests.

e. Notably, the High Court said that any application Mr Wehbe wished to make for permission to bring a further application to change the children's living arrangements should be made in the Courts of the children's habitual residence so the merits can be properly assessed. I concur, given the matters set out at d. above.

f. There are already proceedings before the High Court in the United Kingdom relating to the retention and return of the children. There is another listing on 17 September 2025. The High Court is currently seized of the issue of return of the children to their habitual residence and has made clear orders, including an order refusing to discharge the return order. Concerns regarding the psychological wellbeing of the children are best ventilated through the existing proceedings.

g. A Court in another jurisdiction cannot make orders which render orders made by a Court of competent jurisdiction ineffective and redundant. It will not meet the ends of justice for the Supreme Court of Vanuatu to enable non-compliance with the return order made by the High Court, particularly in circumstances where the High Court has said that the children have been wrongfully retained in Vanuatu. This Court will not legitimise a wrongful retention.

21. Accordingly, for the reasons set out above, the restraining order applications are declined.

Result

22. I decline to make any of the orders sought.

23. As I have said, it is for the parents to bring applications in relation to parenting issues, and not the children. Further, the children are Wards of the High Court of England and Wales. The High Court is currently seized of the issues for the children, and concerns about the children's psychological safety are best addressed by the High Court. As explained, the Supreme Court of Vanuatu is not the proper forum to determine any issues for the children and will not legitimise the wrongful retention of the children.

Other directions

24. A copy of this decision is to be urgently provided to Ms Justice Harris of the High Court (Family Division). It is vitally important that Her Ladyship be appraised of the fact that applications have made to the Supreme Court of Vanuatu and not the High Court.

25. Given the issues relating to the children's travel documents, this decision is also to be provided to both the British and Australian High Commissions in Vanuatu. The children need passports.

DATED at Port Vila this 17th day of September 2025
BY THE COURT

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Hon. Justice M A MacKenzie