[2026] JMSC CIV 50

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

FAMILY DIVISION

CLAIM NO. SU2026FD00330

IN THE MATTER OF THE CHILDREN (GUARDIANSHIP AND CUSTODY) AMENDMENT ACT

BETWEEN	**GBL**	**CLAIMANT**
AND	**SAM**	**DEFENDANT**

IN CHAMBERS

Mrs. Judith Cooper- Batchelor instructed by Chambers Bunny and Steer for the Claimant

The Defendant appears in person

Heard: 27th day of March, 2026 and 30th day of April, 2026

Family Law - Return of Child - The Hague Convention On The Civil Aspects Of International Child Abduction 1980 - Article 3, 11, 12 - Habitual Residence – Agreement – Consent – Grave Risk- The Children (Guardianship And Custody) Act, S. 7c And 7n

A. MARTIN-SWABY, J

[1] This Claim surrounds two children GL and G-JL who were born in the United Kingdom on the 9th day of July 2020 and the 4th day of October 2023 respectively. They are therefore 5 years of age and 2 years of age at the time this matter is being heard.

[2] They have resided in the United Kingdom since their birth until the 27th day of July 2025 when they were taken to Jamaica by the Defendant mother. It is not in dispute that the Defendant mother indicated to the Claimant father that the children were being brought to Jamaica for a one-month vacation. It is also not in dispute that the Claimant did in fact give his consent.

[3] However, the children have been residing in Jamaica since their arrival in July, 2025. The Claimant father is aggrieved by their retention. Consequently, he initiated proceedings on the 02nd day of February, 2026 invoking the Hague Convention on the Civil Aspects of International Child Abduction 1980 which binds Jamaica as a contracting state and whose provisions have been incorporated into our jurisdiction through the Children (Guardianship & Custody) Amendment Act 2017. The United Kingdom is also a contracting state under the treaty.

[4] In this matter, I am to determine whether the United Kingdom is the place of the relevant children's habitual residence and if so, whether they were unlawfully removed from their place of habitual residence and or retained in this jurisdiction and whether they should be summarily returned to the United Kingdom.

Background

[5] By way of background the Claimant and Defendant met whilst the Defendant was enrolled at law school in Jamaica. The Defendant lived in Jamaica from birth until 12 years of age when she migrated to the United Kingdom where she is a citizen. They having met in Jamaica, their relationship blossomed and they were

married on the 20th day of August 2021 in Jamaica. By that time, the couple had already welcomed their first child GL. It must be noted that throughout their relationship, the Defendant lived in the United Kingdom. The Claimant joined the Defendant and their daughter in the United Kingdom in the year 2022. They resided there as a family until their separation in June 2025.

Claim Form

[6] By way of Fixed Date Claim Form filed on the 02nd day of February 2026 the Claimant seeks the following reliefs;

1. An order for the immediate return of GL born on the 9th day of July, 2020 and G-JL born on the 4th day of October, 2023.

2. The children not be removed from this jurisdiction, except as directed by this Court for their return to the United Kingdom.

3. The Defendant shall surrender the children's travel documents to the Jamaica Central Authority.

4. The cost of the return of the children, including airfare, shall be borne by the Defendant.

Affidavit Evidence

[7] I have carefully considered the Affidavits filed in this matter in their entirety. However, I wish to highlight the aspects which are most critical to the issues being determined in this matter. The Claimant's evidence is that the parties' separation was amicable. He asserts that even prior to their separation, the parties were engaged in discussions regarding a co-parenting plan.

[8] In support of these assertions. He exhibits aspects of a WhatsApp conversation dated the 9th June, 2025. This was approximately 3 weeks prior to the children being taken to Jamaica. There, the Defendant indicated that in light of their imminent separation on June 30, 2025, she was inviting him to meet with

her to discuss his access to the children. In that message, the Defendant states as follows, *"As we will be going our separate ways by June 30, 2025 and going into our own accommodation we will need to put a parent plan in place to set out agreed days and weekends when you will have our two children. We have agreed the children will live with me and we will arrange contact time for you to have shared parental responsibility, sharing time with the children (days to be agreed) I am happy to alternate weekends..."*.

[9] In a further conversation, although the precise date is unknown, the Defendant indicated that she finalized travel arrangements for her and the children to travel to Jamaica for the period 27/7/2025 to the 26/8/2025. These dates were specified.

[10] The Claimant asserts that he never consented to the children remaining in Jamaica. Exhibited to his Affidavit is a conversation wherein he states, *"Abducting my children from me, pretending to take them on a trip to Jamaica then enrolling Gianna in school and none of this I agreed to..."*. I will state that I specifically approach this aspect of his evidence carefully as the Claimant seeks to rely on a previous consistent statement which ordinarily would offend the rule against narrative. For what it is worth, in the case at bar, even if I were to exclude this WhatsApp message from my consideration, the point remains that the Defendant does not challenge the fact that the Claimant never consented to the children's relocation.

[11] I bear in mind that the Defendant does not challenge the above conversations. However, she states that when she called the Claimant and indicated that she was seriously considering staying on in Jamaica, she asked him if he had any thoughts and he responded that he had none. She states that it was after she enrolled the children in school that the Defendant started expressing disapproval. This was expressed in a message she says dated the 21st day of September, 2025.

[12] Additionally, the Defendant's evidence is that the Claimant resides in a 2-bedroom facility in the United Kingdom which he shares with his daughter who is diagnosed as being dyslexic and autistic. She expresses that due to the age of the children, she believes that they should remain with her as their primary caregiver since birth. She is also concerned that the Claimant's work schedule is such that he may not have sufficient time to care for the children.

Submissions

[13] In this matter, the Claimant father has invited the Court to consider the House of Lords decision in **Re M (FC) and another (FC)(Children)(FC)** 2007 UKHL 55, the decision of the UK Supreme Court in **Re E (children) (international abduction)** [2011] UKSC 27 as well as the matter of **JG v ST** [2022] JMSC Civ 64. The Claimants position is that the United Kingdom is the habitual residence of the relevant children. Further, that since this matter has been brought within 12 months of the children's relocation to this jurisdiction, the operation of the provisions of the Convention particularly Article 12 would result in the Court ordering that they be promptly returned to the United Kingdom. Further, that none of the factors which are outlined in Article 13, which would justify a Court refusing to order their return, are evident in this case.

[14] The Defendant mother has asked the Court to refuse to order their return on the basis that they have never been separated from her and have always been cared for by her. She invites the Court to consider the welfare of the relevant children. She has asked the Court to consider the authorities of **Kevin Forrester v Michelle Strong Forrester** SCCA No. 101/ 2007 and **Seymour George Richards v Sandra Mae Richards** 2007M00756 decision 2nd September 2008. Her argument is that the return of the children would expose them to a grave risk of harm. She has asked the Court also to consider the age of the children.

The Issues

i. Whether the United Kingdom is the place of habitual residence for the relevant children?

ii. If so, whether the relevant children were unlawfully removed from their place of habitual residence and or retained in Jamaica?

iii. Whether an order should be made for their return to the United Kingdom?

The Law

[15] The Hague Convention on the Civil Aspects of International Child Abduction 1980, hereinafter referred to as "the Convention" treats with the wrongful removal and retention of children from one contracting state under the treaty to another. Similar to other international instruments, state parties ought to incorporate the provisions of the treaty within their domestic law.

[16] On the 24th day of February 2017, Jamaica deposited its instrument of accession to the Hague Convention. Its accession came on the heels of the passage and entry in to force of the Children (Guardianship & Custody) Amendment Act 2017, hereinafter referred to as the "Amendment Act" which was passed and entered in to force on the 08th day of February 2017.

[17] The objective of the Amendment Act as stated at the beginning of the legislation is as follows;

> *An Act to Amend the Children (Guardianship and Custody) Act to give effect to the provisions of the Hague Convention on the Civil Aspects of International Child Abduction 1980 and for connected matters."*

[18] In examining the issues in the case at bar, I wish to explore the salient provisions of the Convention. Article 1 of the Convention outlines the objects of the Convention as follows;

> *"(a) to secure the prompt return of children wrongfully removed to or retained in any contracting state; and (b) to ensure that rights of custody*

and of access under the law of one contracting state are effectively respected in the other contracting state.";

[19] In considering the provisions of the Convention, it is evident that the philosophy behind the convention is to protect the interest of children through preventing and deterring the wrongful removal from their state of habitual residence as also their wrongful retention in any contracting state. This is demonstrated in the Preamble where it states that contracting states are *"firmly convinced that the interests of children are of paramount importance in matters relating to their custody*" and also further states,

> *"desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the state of their habitual residence, as well as to secure protection for rights of access."*

[20] The Convention seeks to achieve its objectives through securing the prompt return of children to their place of habitual residence where their removal or retention was done in certain specified circumstances. These circumstances are outlined in Article 3 of the Convention. Article 3 reads as follows;

> *The removal or the retention of a child is to be considered wrongful where –*
>
> *a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and*
>
> *b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.*
>
> *The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative*

decision, or by reason of an agreement having legal effect under the law of that State.

[21] In the present claim, the orders are sought under Section 7C(1) of the Amendment Act which is identical to and incorporates section 3 of the Convention. That being said, the Court understands that where a child has been removed in circumstances which fall within Article 3, Article 12 treats with the approach the Contracting State should take with respect to the relevant child. Article 12 of the Convention is replicated in section 7K of the Amendment Act. The former states as follows;

> *"Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention,* ***the authority concerned shall order the return of the child forthwith****.*
>
> *The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.*
>
> *Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child."*

[22] In examining Article 12 of the Convention (our section 7K Amendment Act), I have found the House of Lords decision in **RE M** to be very useful. The facts of **Re M** surrounded the return of two children who were born in Zimbabwe to Zimbabwean parents. After their parents separated in 2001, both girls resided in Zimbabwe with their father. In March 2005, they were brought secretly to the United Kingdom by their mother who claimed asylum. This claim was refused. However, mother and children were permitted to remain in the United Kingdom due to a moratorium on the return of failed asylum seekers to Zimbabwe. Their father did not seek to initiate proceedings under The Hague Convention until one year after they had been removed from Zimbabwe. Actual proceedings commenced under the Convention in May 2007, more than two years after the children had been removed.

By that time, the girls who were aged 13 and 10 years old, indicated that they did not wish to return.

[23] The Judge at first instance found that the girls were now settled in the United Kingdom and therefore, he was not under a duty to return them in accordance with section 12 of the Convention. He also found that they objected to their return and were of sufficient age and maturity which allowed him to take into consideration their views under Article 13. Nevertheless, he ordered their return to Zimbabwe on the basis that the case was not exceptional and therefore he declined to exercise his discretion to refuse to order the girls' immediate return. The Court of Appeal affirmed his decision on appeal by the mother of the children.

[24] However, the House of Lords reversed the decision of the Court of Appeal. In those circumstances, the House of Lords examined the interplay between Articles 3, 12 and 13 of the Convention, the discretion reposed in a tribunal to refuse to order the return of a child and the relationship between the Convention and the principle of the welfare and interest of a child. The decision offers a useful guide in terms of the legal principles applicable to this area of the law.

[25] In this brief judgment, I have sought to analyse the Judgment of Lady Hale below in my discussion of the legal principles applicable to the case at bar.

[26] Firstly, Lady Hale in commenting on Article 12 states as follows at page 1299 of her judgment;

> *"Thus one of the exceptions to the duty of return is contained within article 12 itself. If the proceedings are begun within a year of the removal, there is a duty to return "forthwith". Even if they are begun more than a year later, there is still a duty to return, but not "forthwith", unless the child is now settled in its new environment."*

[27] Lady Hale suggests that the Court has a duty to return the child where the factors contained in Article 12 are satisfied. This is very important for the consideration of the Court. The scheme of the Convention favours the swift return of children to their place of habitual residence where they have been wrongfully removed

or retained. Emphasis is placed on the nature of their removal and or retention which is explained and described in Article 3. The Court should return them if they have been unlawfully removed or retained. Such strong language has also been reproduced in the Amendment Act at section 7K where it indicates that where the child has been wrongly removed and or retained and the claim is brought within 12 months of such removal or retention, *"the court shall order the return of the child."*

[28] Nevertheless, notwithstanding the very strong language used in Article 12 with respect to the use of the words "shall order the return" where the application for the return of the child is brought within one year, Article 13 (reproduced in section 7N Amendment Act) includes prescribed grounds for refusal to return the child to the place of habitual residence in certain circumstances;

> *"Notwithstanding the provisions of the previous article, the judicial or administrative authority of the requested state is not bound to order the return of the child if the person, institution or other body which opposes its return established that - (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views."*

[29] An important matter to be considered is the nature of the discretion of a Judge to refuse to order the return of a child under the machinery of the Convention as well as the relationship between the welfare and best interest of the child considerations and the policy of the Convention. This is particularly important in respect of the case at bar. I bear in mind that the Claimants case rests on the unlawful nature of their retention whereas the Defendant mother invites a consideration of their overall welfare and best interest.

[30] This very issue was helpfully fully ventilated in the case of **Re M.** Therein, Lady Hale was careful to point out that in non- convention cases, the welfare of the child is the paramount consideration. She referred to the House of Lords decision

in **Re J (A Child) (Custody Rights: Jurisdiction)** [2006] 1 AC 80 wherein the House of Lords indicated that in non-Convention cases, the child's welfare is the paramount consideration. Lady Hale made it clear that there is a distinction between the exercise of discretion under the Hague Convention and the exercise of discretion in wrongful removal and retention cases which fall outside of the Convention (see para 40 of the judgment page 1307).

[31] In relation to Convention cases, she posits the following;

> *"In Convention cases, however, there are general policy considerations which may be weighed against the interests of the child in the individual case. These policy considerations include, not only the swift return of abducted children, but also comity between the contracting states and respect for one another's judicial processes. Furthermore, the Convention is there not only to secure the prompt return of abducted children, but also to deter abduction in the first place. The message should go out to potential abductors that there are no safe havens among the contracting states."*

[32] At paragraph 43 of the judgment in **RE M**, Lady Hale affirmed the position taken by Thorpe LJ in **Cannon v Cannon** [2004] EWCA Civ. 1330, [2005] 1 FLR 169 where he stated as follows;

> *"For the exercise of a discretion under the Hague Convention requires the Court to have due regard to the overriding objectives of the Convention whilst acknowledging the importance of the child's welfare (particularly in cases where the court has found settlement), whereas the consideration of the welfare of the child is paramount if the discretion is exercised in the context of our domestic law."*

[33] Based on the above reasoning of Lady Hale, I have sought to approach the two cases which the Defendant has sought to rely on very carefully. I bear in mind that both cases are non- Convention cases which were decided purely on the basis of the employment of the welfare principle.

[34] As it concerns the case of **Kevin Forrester v Michelle Strong – Forrester** SCCA No. 101/2007 delivered on the 02nd day of May, 2008, it must be noted that at the material time, Jamaica was not a party to the Hague Convention and section 7C had not yet been incorporated into the Children (Guardianship and Custody) Act.

[35] The facts of **Forrester** were such that the Claimant/ Appellant father resided in the United States since the 1970's. Both parties wed in June 2001. By September 2001, the Respondent/ Defendant mother migrated to the United States of America. The two children who were the subject of the proceedings were born in the year 2002 and 2005.

[36] The evidence is that the Respondent mother was unhappy in the United States. She would visit Jamaica periodically with the children and with the consent and approval of the Appellant father. The Respondent visited Jamaica with the children in January 2007 with the consent and approval of the Appellant father. Whilst there, she decided to remain here with the children until July, 2007. It was not clear whether this was an agreement made between the parties. Nevertheless, the Respondent visited Jamaica in March, 2007 where they remained for three weeks. The Respondent then travelled with the Appellant back to the United States for one week. On her return to Jamaica, she decided that the marriage was over and she would not be returning to the United States. By the end of May, 2007, the Respondent initiated proceedings for custody, care and control of the children. In July, 2007, the Appellant father filed a Notice of Application seeking orders for summary return of the children.

[37] Unfortunately, I am unable to apply the reasoning in **Forrester** to the case at bar. Mangatal J was careful to note on page 15 of her judgment in **Forrester**, the following;

> *"If Jamaica were a party to the Hague Convention the conduct of the mother in the instant case would probably amount to a wrongful retention of the children although, as we have seen, far removed from the popular picture of a kidnapping or even an abduction" – See* ***Re J (a child return to foreign jurisdiction: convention right)*** *(2005) 3 ALL ER 291 at 294j.*

[38] As it concerns the decision in **Seymour George Richards v Sandra Mae Richards** 2007M00756 decision 2nd September 2008, a similar fate befalls my ability to apply this decision.

[39] In **Richards,** the Petitioner claimed that on his return home one day, he observed that the Respondent have removed from the matrimonial home along with their children. He later learnt that she had relocated to the United States of America with the children. He subsequently went to the United States where the older of the two children was turned over to him. The younger child remained in the United States.

[40] He brought an application for an order that he be granted custody, care and control of both children pending the determination of the petition for dissolution of marriage, Brooks J (as he then was) indicated that the questions for the determination of the court were whether the court has jurisdiction to grant the order for custody of the younger child B, while she is outside of the jurisdiction and secondly, whether it is appropriate to order Mrs. Richards, who is also outside of the jurisdiction, to return the child to the jurisdiction of the court. Brooks J granted the order sought for custody in relation to the older child who was already in Jamaica and under the care of the Petitioner. However, he refused the application in respect of the younger child who was living with the Respondent in the United States of America.

[41] Unfortunately, I found neither authority to be very helpful in this matter since they were not determined under the regime of the Hague Convention. In applying the reasoning of Lady Hale in **Re M,** I am of the view that the non-convention cases are distinct from convention cases. Whereas, the welfare principle is paramount in non- convention cases, special considerations apply to convention cases.

[42] In convention cases, this principle must be assessed in the context of an international instrument which addresses the best interest of children in terms of the jurisdiction which is best placed to determine what is in their best interest. The philosophy is that children are not to be unlawfully removed from the jurisdiction of their habitual residence or unlawfully retained in the foreign jurisdiction. Matters involving. In convention cases, this principle must be assessed in the context of an international instrument which addresses the best interest of children in terms of

the jurisdiction which is best placed to determine what is in their best interest. The philosophy is that children are not to be unlawfully removed from the jurisdiction of their habitual residence or unlawfully retained in the foreign jurisdiction. Matters involving their custody, care and access should be determined in the jurisdiction where the child habitually resides.

[43] Therefore, in the case at bar, the relevant children having resided in the United Kingdom all their lives, that is the country of their habitual residence and where rights of custody, care, control and access should be determined. This claim having been brought within 12 months of their removal and retention automatically brings into operation Article 12. Therefore, I have a duty to order their return.

[44] That having been said, I must also go on to consider the exceptions created under the Convention in Article 13 to ascertain whether any of the factors mentioned in that provision serves to displace the duty created in Article 12 to return the relevant children.

Article 13/Section 7 N Amendment Act -

[45] Article 13 of the Convention outlines circumstances where there is no duty on the part of the Court to order the return of children. It reads as follows;

> *Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –*
>
> *a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or*

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

[46] In considering whether I should order the return of the relevant children on the basis of an Article 13 factor, I wish to first consider whether the Claimant can be said to have consented to the children remaining in Jamaica. The Claimant's case is that the Defendant mother has retained them in Jamaica without his consent. On the other hand, the Defendant mother has indicated that when she told the Claimant that she wished to "*stay in Jamaica longer*", she asked him if he had any thoughts and he responded that he did not.

[47] What do I make of this conversation? Does it amount to acquiescence on the part of the Claimant? In examining this conversation carefully, even if I were to say that the Claimant's failure to comment may have been interpreted that he voiced no objection, importantly the Defendant did not indicate in that conversation that she intended to remove them to Jamaica to permanently reside here. Secondly, his failure to comment is incapable of amounting to consent. The fact is that there is no evidence that he consented to any retention of the children in Jamaica.

[48] There being no consent, I must now go on to consider what I make of certain assertions made by the Defendant. In her written submissions, she has expressed concerns that should the children be returned, they may suffer

harm. This being raised, I examined the Affidavit evidence placed before the Court to ascertain the evidentiary basis of these submissions.

[49] For this reason, I careful considered paragraphs 33, 34 and 49 of the Affidavit in Response to this Claim. The evidence placed before the Court on this point can be summarized as follows;

i. The Claimant's immigration status is now tenuous as it is dependent on their remaining married. The Defendant indicates that she is intent on filing for the dissolution of their marriage which means the Claimant may not be able to remain in the United Kingdom;

ii. The Claimant resides in a 2 bedroom with his adult daughter who is diagnosed with dyslexia and autism. His accommodation is not suitable for children, and the residence would be overcrowded.

[50] In considering this evidentiary material, I have found the authority **RE E (children) (international abduction)** [2011] UKSC 27 to be most helpful. The House of Lords in discussing Article 13 of the Convention made it very clear that the burden rests on the party who objects to their return to prove that one of the factors articulated in Article 13 exists. At paragraph 32 of the judgment, there is a full explanation of the analysis to be conducted as regards these factors which ground an exception to the duty to return the particular child. it is stated as follows;

> *"[32] First it is clear that the burden of proof lies with the "person, institution or other body" which opposes the child's return. It is for them to produce evidence to substantiate one of the exceptions. There is nothing to indicate that the standard of proof is other than the ordinary balance of probabilities. But in evaluating the evidence the court will of course be mindful of the limitations involved in the summary nature of the Hague Convention process. It will rarely be appropriate to hear oral evidence of the allegations made under article 13b and so neither those allegations nor their rebuttal are usually tested in cross- examination.*

[33] Second, the risk to the child must be "grave". It is not enough, as it is in other context such as asylum, that the risk be "real". It must have reached such a level of seriousness as to be characterised as "grave". Although "grave" characterises the risk rather than the harm, there is in ordinary language a link between the two. Thus a relatively low risk of death or serious injury might properly be qualified as "grave" while a higher level of risk might be required for other less serious forms of harm.

[33] Third, the words "physical or psychological harm" are not qualified. However, they do gain colour from the alternative "or otherwise" placed "in an intolerable situation". As was said in Re D, at para 52 "Intolerable" is a strong word, but when applied to a child must mean 'a situation which this particular child in these particular circumstances should not be expected to tolerate... Every child has to put up with a certain amount of rough and tumble, discomfort and distress. It is part of growing up. But there are some things which it is not reasonable to expect a child to tolerate. Among these, of course, are physical or psychological abuse or neglect of the child herself..."

[51] The issue becomes whether the Defendant has made out at a case in respect of establishing to the requisite standard that the return of these children would result in them suffering harm or being placed in an intolerable situation.

[52] I am not convinced that the concerns raised by the Defendant meets the threshold as established in **Re E**. it is my considered view that there is nothing placed before the Court which demonstrates that the Claimant was ever considered by the Defendant to be a threat to the children. There is no allegation of physical or verbal abuse. The Defendant has raised concerns of infidelity on the part of the Claimant. However, that is incapable of being sufficient in the circumstances. There is also no material which suggests that his 18-year-old daughter poses a threat to the relevant children.

[53] In fact, this court is not being asked to make an award of custody in favour of either party. What the court is being asked to do is determine if the custody, care, control and access to the children ought to be determined in their country of habitual residence.

[54] In this matter, the Court requested that the Child Protection & Family Services Agency prepare a brief report. I was provided with such report on the 30th day of April, 2026. I have considered the report. The report indicates that GL was interviewed and expressed that she enjoys Jamaica and wishes to remain with her mother and to visit her mother during holidays. I have considered this as against Article 13 of the Convention which does allow the Court to exercise its discretion to refuse to return a child where the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take into account their views. I am not of the view that what GL has expressed rises to the threshold of being an objection to being returned. However, if I am wrong on this point, I also wish to indicate that I do not believe a five year old child is at the age and maturity at which it is appropriate to take into account their views.

[55] The court therefore makes the following orders:

1. The Jamaica Central Authority is made an interested party in this matter.

2. The United Kingdom is the place of habitual residence for the minor children GL and GJL.

3. The minor children GL and GJL are to be returned to the United Kingdom on or before the 16th day of May, 2026.

4. The Defendant is to hand over GL and GJL's travel documents to the Jamaica Central Authority by the 8th day of May, 2026,

5. The Defendant is to hand over the relevant children GL and GJL to the Claimant or his representative at the offices of the

Central Authority of Jamaica on the 14th day of May, 2026 unless the parties arrive at an agreement regarding the Defendant returning the children to the United Kingdom within the timeline outlined in order # 3.

6. The Claimant is to purchase the tickets for the return of GL and GJL to the United Kingdom.

7. The Claimant's attorney at law is to prepare, file and serve the order.

……..

Andrea Martin-Swaby (Mrs.)
Pusine Judge