

IN THE HIGH COURT OF BELIZE, A.D. 2022

Action No. 44 of 2022

**IN THE MATTER of an Application by STEFAN MUSA pursuant to
Section 18 of the Supreme Court of Judicature Act, Chapter 91 of the
Laws of Belize**

AND

**IN THE MATTER of Sections 85(1) and (3) (c, d, e) of the Families and
Children Act, Chapter 173 of the Laws of Belize**

BETWEEN

STEFAN MUSA

APPLICANT

AND

JANINE D’SILVA

RESPONDENT

Before the Honourable Madam Justice Geneviève Chabot

Date of Hearing: December 8th, 2022

Appearances

Robertha Magnus Usher, S.C., for the Applicant

Darlene M. Vernon, for the Respondent

**RULING ON TRANSFER OF PROCEEDINGS AND
STATUS QUO**

Introduction

1. By Urgent Originating Summons filed on September 20th, 2022, the Applicant asks this Court to transfer proceedings presently before the Belize Family Court¹ on the grounds that:
 - i. The proceedings involve complex issues of law and fact regarding an Undertaking given by the Respondent and a Deed agreeing to Joint Custody of the child; and
 - ii. This is an urgent application which involves the best interest and welfare of the child and the Family Court has manifested difficulty assigning early dates.
2. The Applicant is also requesting this Court to declare that the status quo that existed when the action was instituted in the Family Court on February 24th, 2022, be preserved pending the determination of this action.²
3. The Respondent filed on November 24th, 2022 an Urgent Summons asking this Court to strike out or dismiss the September 20th, 2022 Originating Summons.
4. At a hearing held on November 21st, 2022, this Court requested the parties to provide legal submissions in support of their position on the issue of the transfer of the proceedings and on the issue of the status quo only. The Court stated that it would only deal with the issue of status quo if it found that the transfer of the proceedings was warranted. The issues were scheduled to be heard on November 25th, 2022. However, Respondent's counsel failed to serve her submissions on the Applicant in a timely manner. The hearing was therefore adjourned to December 8th, 2022, with costs to the Applicant.

Legal Framework

5. The laws of Belize do not explicitly provide a method by which this Court can order the transfer of proceedings from the Family Court to the High Court. Rule 26.1(2)(a) of the *Supreme Court (Civil Procedure) Rules, 2005*, authorises the High Court to “transfer proceedings to the Family Court or the District Court”, but the Rules do not specifically provide that the High Court can order the transfer of proceedings from the Family Court.

¹ Cases No. FBZF 22000337 and FBZF22001488.

² The Applicant is also seeking other reliefs in the Originating Summons in relation to the custody of the child. These reliefs will be addressed by the Court at a later stage only if the Court finds that the transfer of the proceedings is warranted.

6. Such a transfer is possible, however, because section 95(1) of the *Supreme Court of Judicature Act*³ gives the Chief Justice discretion to make rules of court or issue practice directions to that effect:

95.-(1) Notwithstanding anything contained in the Summary Jurisdiction (Procedure) Act, the Inferior Courts Act, the District Courts (Procedure) Act, the Family Courts Act or any other law, save and except the Court of Appeal Act and the Caribbean Court of Justice Act, the Chief Justice may, by himself or with the concurrence of the other judges, from time to time make rules of court and issue practice directions under this Act for the following purposes–

[...]

(b) regulating and prescribing the procedure on appeals from any inferior court or person to the Court or the Chief Justice and the procedure in connection with the transfer of proceedings from any inferior court to the Court [emphasis added]

7. This Court is not aware of any such rules of court or practice directions having been issued by the Chief Justice. As a result, the Court must look elsewhere to ascertain the proper procedure applicable in this matter.
8. Both counsel invoke section 18 of the *Supreme Court of Judicature Act*,⁴ which vests in this Court all of the jurisdictions, powers, and authorities vested in the High Court of Justice in England, “including the jurisdictions, powers and authorities in relation to matrimonial causes”:

18.-(1) There shall be vested in the Court, and it shall have and exercise within Belize, all the jurisdictions, powers and authorities whatever possessed powers and vested in the High Court of Justice in England, including the jurisdictions, powers and authorities in relation to matrimonial causes and matters and in respect of suits to establish legitimacy and validity of marriages and the right to be deemed natural-born Belizean citizens as are, by the Supreme Court of Judicature (Consolidation) Act, vested in the High Court of Justice in England,

Provided that a decree declaring a person to be a natural-born Belizean citizen shall have effect only within Belize.

³ Chapter 91, Rev. Ed. 2020. The Court notes that this section has been replaced by section 101(1)(b) of the *Senior Courts Act*, 2022, which has recently been enacted. Both sections are identical and this change is therefore immaterial to this decision.

⁴ Now section 25 of the *Senior Courts Act*, 2022. Both sections are identical.

(2) Subject to rules of court, the jurisdictions, powers and authorities hereby vested in the Court shall be exercised as nearly as possible in accordance with the law, practice and procedure for the time being in force in the High Court of Justice in England.

(3) Where any jurisdiction, power or authority is by this Act vested in the Court, the grounds upon which the same may be exercised and other provisions relevant to the subject-matter in respect of which the jurisdiction, power or authority is so vested may be prescribed.

9. Pursuant to subsection 18(2) of the *Supreme Court of Judicature Act*, the Court refers to the United Kingdom's *Matrimonial and Family Proceedings Act*⁵ for guidance. Section 31I of the *Matrimonial and Family Proceedings Act* provides that the High Court may transfer proceedings from the Family Court to the High Court "if the High Court [...] thinks it desirable":

31I Powers of the High Court in respect of family court proceedings

(1) If the High Court, at any stage in proceedings in the family court, thinks it desirable that the proceedings, or any part of them, should be transferred to the High Court, it may order the transfer to the High Court of the proceedings or part.

(2) The power given by subsection (1) is without prejudice to section 29 of the Senior Courts Act 1981, and is to be exercised—

(a) in accordance with any directions given as to the distribution or transfer of proceedings, and

(b) subject to any provision made under section 1 of the Courts and Legal Services Act 1990 or made by or under any other enactment.

10. The wide power conferred on the High Court to transfer proceedings from the Family Court to the High Court is however limited by rules 29.17(3) and (4) of the UK's *Family Procedure Rules*, 2010. These rules provide as follows:

⁵ 1984, c. 42.

(3) A case may not be transferred from the family court to the High Court unless –

(a) the decision to transfer was made by a judge sitting in the family court who is a person to whom paragraph (4) applies; or

(b) one or more of the circumstances specified in Practice Direction 29C applies.

(4) This paragraph applies to a person who is –

(a) the President of the Family Division;

(b) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court);

(c) a puisne judge of the High Court.

11. Practice Direction 29C is irrelevant to these proceedings as it only applies to the transfer of proceedings for the purpose of requiring a Government Department or agency to disclose an address to the court.
12. It appears, therefore, that in the United Kingdom, proceedings may be transferred from the Family Court to the High Court in very limited circumstances. These circumstances are that the decision to transfer was made by a “judge sitting in the family court”, or where there are issues of disclosure involved. Of course, these provisions do not apply *mutatis mutandi* to the matter at hand as the English Family Court’s structure differs from Belize’s and appears to allow Court of Appeal and High Court judges to sit in the Family Court. However, these provisions are helpful as they show that it is the Family Court judge who decides whether to transfer proceedings to the High Court, save where an issue of disclosure arises.
13. The Applicant refers to the English rules pertaining to the transfer of matters between the County Court and the High Court. The County Court’s jurisdiction over family matters is limited to issues relating to inheritances. The County Court is a court of general civil jurisdiction which appears to have been established for the purpose of dealing with matters of low value. To the extent that it is considered a court of inferior jurisdiction, however, it is relevant to look at the rules pertaining to the transfer of matters from that court to the High Court.

14. Under section 41 of the *County Courts Act*,⁶ a matter can be transferred from the County Court to the High Court if “the High Court thinks it desirable that the proceedings, or any part of them, should be heard and determined in the High Court”.
15. Section 41 of the *County Courts Act* must be interpreted alongside section 30.3 of the English *CPR Rules and Directions*, which provide further considerations related to the transfer of matters from the County Court to the High Court. Section 30.3 provides, in relevant parts, as follows:

30.3 (1) Paragraph (2) sets out the matters to which the court must have regard when considering whether to make an order under –

(a) section 40(2), 41(1) or 42(2) of the County Courts Act 1984 (transfer between the High Court and a county court); [...]

(2) The matters to which the court must have regard include –

(a) the financial value of the claim and the amount in dispute, if different;

(b) whether it would be more convenient or fair for hearings (including the trial) to be held in some other court;

(c) the availability of a judge specialising in the type of claim in question and in particular the availability of a specialist judge sitting in an appropriate regional specialist court;

(d) whether the facts, legal issues, remedies or procedures involved are simple or complex;

(e) the importance of the outcome of the claim to the public in general; [...]

16. In this Court’s view, the power of the High Court to transfer proceedings from the Family Court to the High Court is more restricted than its power to transfer proceedings from the County Court to the High Court because the Family Court is a specialised court with expertise in family matters. Deference is given to the Family Court to determine whether a matter warrants being transferred. On the other hand, the County Court is a court of general civil jurisdiction with considerable overlap with the jurisdiction of the High Court. Section 41 of the *County Courts Act* accordingly grants more discretion to the High Court to

⁶ 1984 c. 28.

determine, having regard to the factors in section 30.3 of the English CPR *Rules and Directions*, whether a transfer is appropriate.

17. It is noteworthy that transfers from the Family Court to the High Court (or the Supreme Court, as it was known until recently) do not appear to be frequent in Belize. The Applicant relies on only one Order made by Justice Arana, as she then was, in Action No. 53 of 2011. No reasons are provided for the Order. It is therefore of limited utility.
18. Having regard to the English rules, this Court finds that the following factors are relevant in considering whether this family matter should be transferred to the High Court:
 - i. Whether the Family Court has ordered the transfer of the proceedings;
 - ii. If the Family Court has not ordered the transfer of the proceedings, whether this Court should exercise its discretion to order the transfer of the proceedings having regard to:
 1. Whether it would be more convenient or fair for hearings to be held in the High Court;
 2. Whether the matter calls for any specialised knowledge;
 3. Whether the facts, legal issues, remedies or procedures involved are simple or complex;
 4. The importance of the outcome of the matter to the public in general.
19. As in any matter involving children, these factors must be considered having regard to the overarching principle of the best interest of this child.

Analysis

Transfer by the Family Court

20. Normally, an application to transfer proceedings from the Family Court to the High Court should be made to the Family Court. As explained by Master Davison in *Bass v Ministry of Defence* (in the context of an application to transfer proceedings from the County Court to the High Court):

The factors to be considered under CPR r 30.3(2) include the convenience of the court for the parties, the value of the claim, the complexity of the issues and the availability of judges with appropriate expertise. All these (and particularly the latter) are matters

that the court actually seized of the case will usually be able to assess better than the High Court.⁷

21. This reasoning applies in the family context. A Judge of the High Court does not possess the same knowledge and understanding as a Magistrate of the Family Court of the usual business of that Court, and of the peculiarities of a given matter. As this very matter illustrates, counsel with experience practicing in the Family Court may have different views as to what is simple and usual, as opposed to unusual and complex, for the Family Court. The Magistrate seized of a particular matter is in a better position to make that assessment.
22. I find that this matter has not been transferred by the Family Court to the High Court. The Applicant's Originating Summons seeking, among other things, that this matter be transferred to the High Court was filed on September 20th, 2022. On September 22nd, 2022, counsel for both parties were before the Family Court. Counsel for the Applicant informed the Family Court that the Applicant had applied to the High Court for the matter to be transferred. According to Counsel for the Respondent, the Respondent had not yet been served with the Originating Summons.
23. There is no evidence that the Magistrate was seized of any application, either oral or written, to transfer the matter to the High Court. There is also no evidence that the Magistrate sought or heard any submissions as to whether she should order the transfer of the matter. The Applicant entered into evidence a letter dated October 20th, 2022 signed by Mrs. Garland Garcia Felix, Clerk of the Belize Family Court, in which Mrs. Felix writes that "the application for Legal Custody, Case Number 1488/22 had been transferred to the Supreme Court on request of the Applicants Attorney". This letter does not constitute a decision of the Magistrate.
24. Given the absence of rules or practice directions guiding the transfer of proceedings from the Family Court to the High Court, the Magistrate may have been under the impression that the matter had been transferred upon application by the Applicant to the High Court. That is not quite so. Until this Court makes a ruling on an application to transfer the proceedings, the proceedings remain in the Family Court, but are stayed pending the outcome of the application before the High Court.
25. Since the Family Court has not ordered the transfer of these proceedings to the High Court, this Court must therefore determine whether it should exercise its discretion to order the transfer.

⁷ *Bass v Ministry of Defence* [2018] EWHC 1297 at para. 14.

Discretionary Factors

Whether it would be more convenient or fair for hearings to be held in the High Court

26. The Applicant argues that these proceedings should be transferred to the High Court because they involve the best interest and welfare of the child and the Family Court has manifested difficulty assigning early dates.
27. The matter before the Family Court was instituted by Summons dated February 24th, 2022. The Summons is for custody of the child on the ground that the Respondent is unfit. Between February and August, 2022, the parties were in negotiations, which required little involvement from the Family Court, apart from a hearing held on June 6th, 2022 at which time the Applicant was granted permission to travel outside of the country with the child. The matter was then adjourned to August 10th, 2022.
28. The matter was back before the Family Court on August 10th, 2022. At that time, the issue of a possible breach of an Undertaking signed by the Respondent to return the child after a summer visit was raised, but was not entertained by the Family Court because the Undertaking had not yet been breached.
29. The parties were again before the Family Court on August 19th, 2022, only 9 days after the previous appearance. The matter had by then been transferred to a new Magistrate. At that hearing, the Magistrate queried whether she should hear the matter given that the previous Magistrate had made orders. Also at that hearing, Counsel for the Applicant requested that an order be made regarding the status quo that should prevail pending the hearing of the matter. The Magistrate stated that she was not prepared to deal with the issue at that time and adjourned the matter to September 22nd, 2022.
30. On September 22nd, 2022, the parties reconvened before the Family Court. The Magistrate stated that she was ready to proceed with the trial. Counsel for the Applicant asked the Magistrate whether she would hear the issue of status quo. The Magistrate stated that she was not prepared to deal with the issue of status quo, but was ready to proceed with trial. It is at that point that Counsel for the Applicant informed the Magistrate that an application for the transfer of the proceedings had been filed with the High Court. The Magistrate then declared herself *functus officio* and declined to make further orders.
31. This Court has not been persuaded that the Family Court has “manifested difficulty assigning early dates”. The parties were before the Family Court 3 times within a 1½ month period (between August 10th, 2022 and September 22nd, 2022). The Family Court was ready to proceed with trial on September 22nd, 2022, but at that time the Originating Summons had already been filed with the High Court.

32. It is obvious that the Applicant is dissatisfied with how the issues raised at the Family Court were managed by the Magistrate. However, the Magistrate did not refuse to deal with the matter; to the contrary, she was prepared to proceed with the trial. The best interest of the child requires that custody matters be dealt with as expeditiously as possible, and the Magistrate was prepared to do so. Instead, the Applicant chose to proceed with its application to the High Court. In this Court's view, without more, it would not be proper to order the transfer of the proceedings on the basis that one party disagrees with the Magistrate's management of the proceedings.

Whether the matter calls for any specialised knowledge

33. Under Belize law, issues related to the custody of children are heard in different fora depending on the nature of the relationship between the parents. Pursuant to section 153 of the *Supreme Court of Judicature Act*,⁸ the High Court has the jurisdiction to deal with the custody, maintenance, and education of a child in the context of proceedings for divorce, nullity of marriage, or judicial separation. By contrast, custody of a child born from a single mother is dealt with by the Family Court, pursuant to section 6 of the *Family Courts Act*.⁹
34. Section 16 of the *Families and Children Act*¹⁰ confers on this Court "all of the powers conferred upon it by this Act with respect to a child born within wedlock" in matters involving children born of single mothers. This Court's jurisdiction to deal with custody issues related to children born within wedlock is derived not from the *Families and Children Act*, but from the *Supreme Court of Judicature Act* (now *Senior Courts Act*). It is therefore not plain that section 16 of the *Families and Children Act* grants this Court the jurisdiction to deal with the custody of children born out of wedlock. This Court, however, does not have to answer this question for the purpose of these proceedings. Having first proceeded in the Family Court, the only issue before this Court at this time is whether a transfer of these proceedings is warranted.
35. While this Court has the power to order the transfer of these proceedings to the High Court, the Court is mindful of the Family Court's expertise in dealing with the issues raised in these proceedings. In his Originating Summons, the Applicant relies on sections 85(1) and (3)(c), (d), and (e) of the *Families and Children Act* pertaining to a father's right to seek custody of his child born of a single mother. Issues such as this constitute the bread and butter of the Family Court, which offers a speedier and less formal environment to deal efficiently with these matters. By contrast, these issues are rarely dealt with by the High Court, whose formal process is better suited for complex matters such as the custody of children in the context of a divorce. That is because divorce proceedings are heavily

⁸ Now section 162 of the *Senior Courts Act*.

⁹ Chapter 93, Rev. Ed. 2020.

¹⁰ Chapter 173, Rev. Ed. 2020.

regulated, and custody of the children of the marriage must be considered in light of the broader context of the dissolution of the family. As a result, this Court is of the view that it does not possess any specialised knowledge that the Family Court does not have to deal with this matter.

Whether the facts, legal issues, remedies or procedures involved are simple or complex

36. The Applicant's main argument in favour of the transfer of these proceedings to the High Court is that they raise complex issues of facts and law. According to the Applicant, the Family Court is not equipped to interpret legal instruments such as the Deed entered into by the parties on July 20th, 2020 to govern the custody of the child, and an Undertaking given by the Respondent on August 4th, 2022 to return the child to the Applicant, which Undertaking was subsequently breached by the Respondent.
37. This Court agrees with the Respondent that, while vigorously contested, the proceedings before the Family Court are not overly complex. The Applicant seeks custody of his child pursuant to sections 85(1) and (3)(c), (d), and (e) of the *Families and Children Act* on the basis that the Respondent does not exercise proper care and control of the child. Applications such as these are routinely heard before the Family Court.
38. The Applicant is improperly seeking to expand the cause of action before this Court. While the application before the Family Court is one for custody, the Originating Summons before this Court seeks first and foremost to recognize, vary, and enforce the Deed between the parties:
 - (1) That the proceedings presently before the Family Court in respect of Stefan Musa v Janine D'Silva, Suits Nos. FBZF 2200337 and FBZF22001488, be transferred to the Supreme Court of Belize on the grounds:
 - i. That the proceedings involve complex issues of law and fact regarding an Undertaking given by the Respondent and a Deed agreeing to Joint Custody of the child, which issues would be more conveniently tried in the Supreme Court
 - ii. That this is an urgent application which involves the best interest and welfare of the child and the Family Court has manifested difficulty in assigning early dates or quickly resolving the issue involved.
 - (2) AND FURTHER; a declaration that the terms of the Deed dated July 6th, 2020, signed between the parties hereto recognizes the existence of a Joint Custody between the parties in respect of the child Stefan Nabil Musa.

- (3) The variation of the Joint Custody Agreement as evidenced by Deed dated July 6th, 2020, to that of Sole Custody in favour of the Applicant or in the alternative to Joint Custody, with care and control to the Applicant.
- (4) A declaration that the Respondent Janine D'Silva breached the Undertaking given by her on the 4th of August, 2022.
- (5) That the Status Quo as existed when the action was instituted in the Belize Family Court on the 24th of February, 2022, be preserved pending the determination of this action.
- (6) IN THE ALTERNATIVE, that Sole Custody of the child Stefan Nabil Musa be granted to the Applicant pursuant to Sections 85(1) and 3(c, d, e) of the Families and Children Act, Chapter 173 of the Laws of Belize.
- (7) Costs.

39. The Deed is a private agreement entered into by the parties to settle a 2020 application by the Applicant for the custody of the child. The Deed cannot be interpreted and enforced in the Family Court. The proper avenue for the Applicant to seek the recognition, variation, and enforcement of the Deed entered into by the parties is by bringing a claim before the High Court.
40. Although the Deed cannot be interpreted and enforced in the Family Court, it has evidentiary value. In fact, from the Applicant's own admission, the Deed "was submitted to the Court on the 8th day of July, 2020, as evidence of the joint custody agreement between the parties and the matters were by Order dated the 10th of July, 2020, thereby settled and resolved".¹¹ This Court therefore disagrees with the suggestion that the Family Court cannot consider the Deed in the context of the custody proceedings before it. The Family Court is entitled to rely on the Deed as evidence of the parties' intentions at a certain point in time. The same is true of the Undertaking.
41. This Court agrees with the Respondent's submissions that the purpose of the transfer of these proceedings should not be to allow the Applicant to enforce the Deed when he would be unable to do so before the Family Court. While the Applicant submits that it would be more economical to deal with the issues related to the custody and status quo in the same forum as the issues related to the Deed and the Undertaking, this Court is mindful of the statutory regime in place to deal specifically with issues related to the custody of children born of single mothers. Allowing the Applicant to bypass this statutory regime by relying on a private agreement between the parties to invoke this Court's jurisdiction would

¹¹ Affidavit of Stefan Musa dated September 20th, 2022 at para. 12.

encourage forum shopping and jeopardize the legislator's intent to have these matters heard quickly and informally in the forum specifically designed for that purpose.

The importance of the outcome of the matter to the public in general

42. This matter is a private dispute pertaining to the custody of a child. It does not raise matters of public importance.
43. The Applicant submits that Undertakings are rare in family matters, and that it would be of public importance for this Court to opine on the nature and enforceability of this legal instrument. As previously noted, the proper avenue to seek this Court's opinion on the nature and enforceability of the Undertaking is to file a claim for that purpose before the High Court.

Counsel's Appearance

44. The Applicant notes that Respondent's counsel entered an unconditional appearance before the High Court, thus fully submitting to the jurisdiction of this Court. The Respondent argues that she had to enter an unconditional appearance to have the required standing to challenge the application to transfer the proceedings.
45. This Court agrees that by entering an unconditional appearance, the Respondent did not lose her right to oppose the application to transfer these proceedings. Section 16 of the old *Matrimonial Causes Rules* is not particularly specific as to when a conditional appearance should be entered, and does not provide that the entry of an unconditional appearance amounts to an acquiescence to the jurisdiction of the Court. In any event, the issue of transfer is a procedural issue that is separate and apart from the issue of jurisdiction. In addition, even if Respondent's counsel was mistaken and should have entered a conditional appearance, given the important issues raised in the matter, this Court would not consider such a formality as being dispositive of these issues.

Conclusion

46. Having regard to the English rules pertaining to the transfer of proceedings from the Family Court and the County Court to the High Court, as well as the Belize legislator's clear intent to have matters dealing with the custody of children born of single mothers dealt with quickly and informally before a specialised forum, this Court is of the view that the transfer should be denied.
47. Pursuant to the Court's previous directions to the parties, and in light of the outcome of this application, this Court will not address the issue of status quo.

IT IS HEREBY ORDERED

- (1) The transfer of cases No. FBZF 22000337 and No. FBZF22001488 from the Family Court to the High Court is denied.
- (2) Costs are awarded to the Respondent on an agreed-upon basis.

Dated December 16th, 2022

Geneviève Chabot
Justice of the High Court