Case No: FD22P00629

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 July 2025

Before :

MR JUSTICE PEEL

- -

Between :

HK	**Applicant**
- and -	
NK	**Respondent**

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- -

The Applicant and the Respondent appeared in person

Hearing date: 25 July 2025

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Approved Judgment

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MR JUSTICE PEEL

This judgment was handed down remotely at 10.30am on 30 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mr Justice Peel :

1. I shall refer to the parties as the Mother and the Father. Their children are aged 12 and 10.

2. This hearing is listed pursuant an enforcement application dated 24 April 2025 made by the Mother in respect of a child arrangements order made by me on 22 October 2024.

3. That order was in fact pursuant to a judgment handed down by MacDonald J on 2 August 2024 and reported as **HK v NK [2024] EWHC 1987 (Fam)**. By that judgment MacDonald J ordered the return of the children to the UAE, as sought by the Father but opposed by the Mother. The order reflecting the judgment was not agreed by the parties. MacDonald J was unable to accommodate a hearing to finalise the order, and it was listed before me for that purpose on 22 October 2024. I heard submissions and made a concluded, final order.

4. For the background to this case, reference should be made to the judgment of MacDonald J and (if a transcript is available) my oral judgment given on 22 October 2024.

5. In summary, my order sought to give effect to MacDonald J's judgment by providing for:

    i) The children to return to the UAE on a date after 28 December 2024.

    ii) If the Mother elected to live in the UAE, the children to divide their time equally between the parents.

    iii) If not, the children are to spend their holidays with the Mother (apart from two weeks in the summer holidays to be spent with the Father), plus additional half term contact in the UAE.

    iv) The Father to pay the flight costs of the Mother and children, and an accommodation allowance if the Mother travels to the UAE for contact.

    v) A settlement agreement to be drafted and lodged with the relevant court in the UAE so as to "give effect in that jurisdiction to the provisions of this order". An instructed expert had reported to MacDonald J that a settlement agreement would be enforceable in the UAE.

6. The children returned to the UAE 30 December 2024 and live there with the Father.

7. The Mother continues to live in UK. She has not (thus far) relocated to the UAE. Contact did not take place in March, contrary to the order. Fortunately, the summer

holiday contact is now taking place with the Mother in England; the children are with her from 12 July 2025 to 19 August 2025.

8. After a considerable amount of toing and froing, the settlement agreement has not in fact yet been agreed. There are a number of disputed areas.

9. The application came before Theis J on 5 June 2025 who listed this hearing before me to determine three issues:

    i) Whether this court has jurisdiction to deal with the enforcement application.

    ii) The draft settlement agreement.

    iii) The enforcement application.

10. Both parties are in person. Until recently, the Mother was represented but her solicitors have come off the record. They have told me that an application for public funding has been made, but not yet determined. Accordingly, on 21 July 2025 the Mother applied for an adjournment. I decided neither to grant nor refuse the adjournment application before the hearing today (i.e 24 July 2025). I considered that I needed to better understand the issues and, if possible, make progress in the case.

11. I heard from both parties. I regret to say that each wasted no opportunity to criticise the other. Rather than answering a specific question from me, they each embarked on vituperative complaints about the other. Each blames the other for alleged breaches of the order. The high degree of acrimony was dispiriting to observe, and is likely to rub off on the children to their detriment.

12. The first issue is jurisdiction. The Father submits that the court has no jurisdiction to make enforcement orders because the children are habitually resident in the UAE. It seems likely to me that they are indeed habitually resident there, and accordingly it may be (I emphasise "may be") that the court does not have the power to entertain an application for fresh Children Act orders in respect of the children. But what the Mother seeks is (i) finalisation of the settlement agreement and (ii) enforcement. She does not seek a suite of new orders.

13. It seems to me that the court retains the inherent power to implement and give effect to its own order. It was an integral part of the order (and an integral part of MacDonald J's judgment) that there should be a settlement agreement in place, so as to enable what is colloquially termed a mirror order to be made in the UAE. If there is a dispute about the settlement agreement, this court, which made the order for the settlement agreement, should resolve it. Once the settlement agreement is finalised, it must then be lodged with the UAE court and, according to the expert evidence, thereafter becomes enforceable in the UAE. Similarly, the English court in my judgment has an inherent power to make enforcement orders which give effect to the substantive order. Whether it is appropriate to do so is a different point. For example, if a settlement agreement is finalised, and a mirror order made, it may be more logical to apply to enforce in the UAE.

14. Although I have not had detailed argument on this point, it seems to me that, quite apart from the court's inherent power to control its own process, the relevant legislative provisions support this conclusion. The first port of call is the 1996 Hague Convention which provides at Article 5(1) that jurisdiction lies with the state of the child's habitual residence: per Baroness Hale at para 20 of **A v A and another (Children: Habitual Residence) (Reunite International Centre Child Abduction Centre and others intervening [2013] UKSC 60**.

15. However, if the Father is correct that the children are not habitually resident in England and Wales, it does not follow that the UAE has jurisdiction under the Hague Convention to the exclusion of England and Wales. On the contrary, as the UAE is not a signatory, it does not. The next step is therefore to consider the domestic law: per Moylan LJ in **A (A Child) (Habitual Residence : 1996 Hague Child Protection Convention) (Rev1) [2023] EWCA Civ 659**.

16. The definition of a s8 order under s8(1) and (2) of the Children Act 1989 includes a child arrangements order, a prohibited steps order and a specific issue order, and any order "varying or discharging such an order".

17. Under the Family Law Act 1986, a "section 1(1(a) order" is "a section 8 order made by a court in England and Wales under the Children Act 1989, other than an order varying or discharging such an order".

18. By s2(1) of the Family Law Act 1986 a court in England and Wales shall not make a section 1(1)(a) order with respect to a child unless:

    a. It has jurisdiction under the Hague Convention, or

    b. The Hague Convention does not apply but

        i) [not relevant]

        ii) the condition in section 3 of the Act is satisfied.

19. The condition at section 3 is, for these purposes, that on the relevant date (which by s7 is the date of the application) the child "is habitually resident in England and Wales".

20. The effect of the combination of these provisions is that, insofar as relevant to the present case, the court may not make a substantive new s8 order if habitual residence in England and Wales at the date of the application is not established. It can, however, make an order varying or discharging a previously made s8 order. Notably, implementation and enforcement are not included within the definition of a s8 order. It follows that they are not governed by the jurisdictional requirement of habitual residence under the Family Law Act 1986. Had Parliament intended them to be so caught, it would have said so. To my mind, this is entirely logical. It is obvious, and indeed necessary, that a court should have the power to enforce or implement its own substantive s8 orders made properly and on a secure jurisdictional foundation. Should the law be otherwise would lead to glaring anomalies. It would be odd if the court could vary and discharge an order, even if the child is not habitually resident in England and Wales, but not implement or

enforce the said order. Or take the case of a s8 order made in this country in favour of one parent. The other parent abducts the child abroad for several years before they are located, at which point application is made to the English courts for enforcement orders to secure the return of the child. The child would almost certainly be habitually resident in the second country. It would be extraordinary if the English court could not make orders to give effect to the original s8 order. I am confident that this is not what is intended by Parliament and not what the law provides. Whether and how the court should exercise its implementation/enforcement powers will vary from case to case, but such powers are an integral part of the court's ability to control its own processes. In some cases the courts of England and Wales may decide to defer to the overseas jurisdiction for enforcement purposes for practical and convenience purposes. But in my judgment the jurisdiction exists to determine the settlement agreement and to enforce the order.

21. I turn to the settlement agreement. It is a detailed document, arguably more detailed than is necessary to reflect the order of 22 October 2024. Helpfully, it sets out the competing versions on tracked changes. I have considered carefully the parties' different wording. The parties agreed that I should finalise it. I have amended the agreement in order to adhere as closely as possible to the order. I have deleted disputed financial matters, save insofar as expressly provided for in the order of 22 October 2024, as they are to be left to a different tribunal on a different day. In general, I am not minded to include some of the more detailed provisions sought, as they seem to me to risk micro managing the upbringing of the children.

22. Dealing with four additional comments raised by the mother at the end of the document:

    i) Point 1 is dealt with by the "further or other contact" at para 3d of the order of 22 October 2024.

    ii) Point 2 does not seem to me to be necessary, and can be agreed by the parties as and when.

    iii) Point 3 is valid, and I include wording to that effect at para 9(g).

    iv) Point 4. I include a clause at para 9(k) that the parties will consider dispute resolution mechanisms.

23. The settlement agreement shall be signed by the parties forthwith. The father shall lodge it with the UAE court.

24. I will list for further hearing on 22 October 2025.