

IN THE SENIOR COURTS OF BELIZE

**IN THE HIGH COURT OF JUSTICE
(APPELLATE JURISDICTION)**

APPEAL FROM THE INFERIOR COURT – BELIZE Magistrate Court

and

**IN THE MATTER OF SECTIONS 112 of the Supreme Court Judicature Act Revised
Edition 2011**

and

IN THE MATTER OF Rule 3 Ord. LXXIII of the Inferior Courts (Appeals) Rules

INFERIOR APPEAL No. 5 OF 2022

BETWEEN:

JASMINE HARTIN

Appellant/Respondent

and

ANDREW ASHCROFT

Respondent/Applicant

Appearances:

Mr. Arthur Saldivar for the Appellant/Respondent

Mr. Hector Guerra and Mr. Edgar Lord for the Respondent/Applicant

2025: November 5;
2026: October 21.

JUDGMENT

Introduction

[1] **NABIE, J.:** Before the Court is a summons filed by Respondent/Applicant, Andrew Ashcroft (“the father”), seeking to strike out the inferior appeal brought by the Appellant/Respondent, Jasmine Hartin (“the mother”). The appeal challenges the order of the Belize Family Court made on 25th May 2022 granting the father legal custody of the parties’ twin children.

[2] The Belize Family Court Order was as follows:

“LEGAL CUSTODY

Custody of the children xxx and xxx born January 5th, 2017, is hereby granted to the Complainant Andrew Ashcroft with effect from May 25th, 2022. Pursuant to Section 85(1) & (3)(b,c,d) of Families and Children Act Chapter 173 of the Belize Laws R.E. 2011”

[3] This appeal was reassigned to this court from another judge. At that time the application before me was a Stay of proceeding relative and the appeal of an application by the father regarding service. However, the hearing was delayed due to the non-preparation of the record of proceedings in the court below and the unreadiness of the parties for divers reasons. At a hearing in December 2024, counsel for the father indicated that they were now seeking to strike out the appeal. It seems that there was never an appeal of the ruling on service.

[4] The summons before me is dated 12th November 2024 and was filed on 13th November 2024. It seeks an order that the Notice of Appeal dated 25th May 2022 be struck out on the premise that, this Court lacks jurisdiction to hear the appeal or to alter the Family Court’s order made on 25th May 2022. The grounds are that the children have lived in the Turks and Caicos Islands (“TCI”) since June 2022; that the Appellant has submitted to the jurisdiction of TCI for the determination of access and custody; and that, following a fully contested hearing, the Magistrate’s Court in the TCI court made a final custody and access order on 27th August 2024 granting custody to the father and access to the mother.

- [5] The summons raises three issues for determination. First, does the children's relocation, or the later exercise of jurisdiction by the TCI court, deprive this Court of the appellate jurisdiction which was invoked in May 2022? Second, even if jurisdiction remains, has the appeal ceased to present a live controversy capable of producing effective relief? Third, what weight should be given, at this interlocutory stage, to the mother's allegations concerning the fairness of the original Belize proceedings and to the welfare of the children?
- [6] For the reasons set out below, I am of the view that this Court should decline jurisdiction. Given the relocation of the children and the mother, this Court should no longer invoke jurisdiction regarding custody of the children. I note that the TCI court is not subordinate to this Court, however, and this Court has no appellate authority over the orders made by the TCI court. The Notice of Appeal filed herein seeks to have the decision of the Belize Family Court quashed and set aside. If this Court were to proceed and hear the appeal, the only sensible recourse would be to send the matter for rehearing back to the district court/ Family Court. Any decision made by this court or any court in Belize, will not alter the operative custody and access regime governing the children now habitually resident in TCI. Additionally, as aforesaid as the children now appear to be habitually resident in the TCI, and the Order of the TCI Magistrate's Court has not been appealed. The TCI decision was made following a fully contested hearing where the parties were represented by counsel. This appeal has therefore become academic and it is struck out.

Background and procedural history

- [7] The parties were never married. Before May 2022 the children lived in Belize. The father's application for legal custody was heard in the Belize Family Court over a period extending from July 2021 to May 2022. The mother was represented during the proceedings, although it appears that she changed counsel on several occasions. On 25th May 2022 Magistrate Dale Cayetano granted legal custody of the children to the father with immediate effect.

- [8] On the same day, the mother filed a Notice of Appeal and an urgent application for a stay. The appeal alleges, among other matters, that the Magistrate ought to have recused himself. The mother says that before the custody proceedings she had spoken with the Magistrate about obtaining a “single mother’s letter”; that he (the Magistrate) indicated that their conversation might require his recusal if a custody dispute came before him; and that a further appearance of bias arose from allegations, publicised shortly before the conclusion of the custody hearing, concerning an alleged threat against the Magistrate. The father disputes the material allegations and their legal effect. Those issues belong to the merits of the appeal and are not to be determined on this summons.
- [9] The father left Belize with the children between 25th and 28th May 2022 and relocated with them to TCI. The mother contends that she did not know of, or consent to, their removal and had sought a stay to preserve the status quo. The father’s position is that the Belize order gave him sole custody and that he was entitled to determine where the children would reside. There is some evidence that the father’s intentions to relocate to the TCI had been previously communicated to the mother. Again, the lawfulness or otherwise of the removal is not an issue that can properly be finally resolved on the present summons.
- [10] For the sake of providing a complete background, there were earlier interlocutory rulings in this appeal. In a written decision on 23rd June 2022 Chabot J denied the mother’s request for an interim stay of the decision of Magistrate Dale Cayetano. On 2nd December 2022, Chabot J., dismissed an application by the father to strike out the appeal for defective service, holding that he had been properly served. Those rulings are important in one limited respect: they confirm that an appeal from the Belize Family Court order was filed and was properly before the Court. The present application is founded on later and/or other events and not on any remaining issue related to in the commencement of the appeal.

- [11] By May 2023 the children had lived in TCI for approximately one year. On 18th May 2023 the mother applied in the Providenciales Magistrate's Court for access to the children. On 25th May 2023 the father filed his own application for custody. The father submits that the evidence establishes that the mother's access application was first in time and was independent of the father's application for custody. The mother says she acted on necessity, so that she could maintain a relationship with the children while the Belize appeal remained unresolved. The father says her positive invocation of the TCI court's jurisdiction, followed by full participation in the proceedings, amounted to submission and acquiescence.
- [12] The TCI proceedings extended over some fifteen months. Interim orders were made on 30th May, 23rd June, 31st August, 17th October and 8th November 2023, and on 19th March 2024. Save for an initial ex parte order applied for by the father, the parties were heard and represented. The interim arrangement placed the children in the father's custody, provided the mother with access, and restrained their removal from TCI. In the TCI proceedings, a social worker prepared a welfare report and gave evidence. Both parties gave evidence as well as other witness. There was cross examination of witnesses and of both parties who were represented at the final hearing.
- [13] On 27th August 2024 Resident Magistrate Oreika Selver-Gardiner delivered her decision. The formal order, issued on 5th December 2024, granted the father legal custody and granted the mother access. While both parents remain primarily resident in TCI, access is one week on and one week off during school terms; holidays are shared; and the mother's international travel with the children is regulated. The order remains in force until the children reach the age of eighteen or it is varied on a proper application. There is no evidence that either parent appealed that order.

[14] The father thereafter filed the present summons. The summons is supported by the affidavit of David James Cadman KC, of the law firm of Griffith & Partners, TCI sworn on 11th October 2024 and a reply affidavit of 23rd January 2025. His evidence concerns the TCI Proceedings in the Providenciales Magistrate's court. He deposed that:

- (i) The mother was first in time filed for access on 18th May 2023. The father filed his application on 25th May 2023 for custody. There was no custody application by the mother though she opposed the father's custody application and pursued her own application for access.
- (ii) The hearings in TCI began on 30th May 2023 and concluded on 27th August 2023 with a decision by the Magistrate. Both parties attended most of the hearings with the exception of the mother at an ex parte hearing on 30th May 2023, she appeared virtually on one occasion and was ill on one other date.
- (iii) The TCI court had prior to its final decision on 27th August 2024, granted interim custody to the father and access to the mother. The hearings included testimony and cross-examination of witnesses and submissions. Both parties were represented by counsel. The judgment recorded that the mother had obtained a work permit and employment in the Turks and Caicos Islands.
- (iv) During the hearing the mother did not ask the social worker or the father, in cross-examination, about the children returning to live in Belize and did not advance that proposal in her own oral evidence. Her written submissions of 7th March 2024 in the TCI proceedings instead proposed that the children continue at their school in TCI, that she maintains her three-bedroom accommodation there, and that care be shared between the parents. The mother also indicated that she was prepared to advance monetary contribution to the children's upkeep.

- [15] The mother filed an affidavit in response on 3rd January 2025. She deposed that she had immediately filed for a stay of execution to prevent the father from taking the children out of Belize. She says that the children were taken to the TCI without her consent. The mother references her affidavits filed in the TCI courts to indicate that her evidence is that Belize is the jurisdiction of record for the custody of the children. The mother's evidence is that she obtained a work permit, employment and accommodation in TCI because proximity to the children required it, and not because she intended to abandon Belize as the proper forum for the outstanding appeal. She states that although she has a work permit and has no permanent status as she uprooted herself from Belize to move to the TCI. She then says that she never surrendered to the jurisdiction of the TCI to the exclusion of Belize.
- [16] For the purpose of the summons before me, it is not necessary to delve into the merits or evidence of in the matters before the Magistrate in TCI.
- [17] The progress of this matter was also thwarted by change of attorney on both sides. The mother had about three changes starting with Ms. D. Vernon, Mr. A. Saldivar, Mr. P. Taylor and then Mr. A. Saldivar again. The father had initially retained Mrs. R. Magnus-Usher SC, but due to her untimely demise in 2025, there was further delay in the allocation of the files to the father's new attorney Mr. Guerra.
- [18] Skeleton Arguments, were filed by previous attorneys Mr. Taylor and the late Mrs. Usher SC. The court also had the benefit of oral submissions from Mr. Arthur Saldivar and Mr. Hector Guerra.

The parties' submissions

- [19] For the father it was submitted that the jurisdiction to determine custody now lies in TCI because the children have long been habitually resident there, both parents live and work there, and both voluntarily invoked and participated in that court's process. **Section 85(1) of the Families and Children Act, Cap. 173 of Belize**, permits an application to the court sitting in the district where the child normally resides. It was argued that the Belize High Court in this inferior appeal cannot displace the

TCI order and cannot yield an enforceable custody regime. It was argued that a continuation of the Belize custody appeal would expose the children to instability and the parties to unnecessary costs.

[20] The father therefore asserts that the TCI courts have jurisdiction. The undisputed evidence is that the mother was first to engage the TCI courts for access to the children about one year after they had relocated to the TCI. Following this the father applied for custody. The TCI granted custody to the father and access to the mother. The father in submissions highlighted that the mother proposed in her submissions to the TCI court that the children remain in the International School and in after school activities and further that she would be willing to give financial contribution. Mr. Guerra pointed out that there has been no appeal of the TCI decision and that the mother never objected to the jurisdiction and further, that the continuation of the Belize proceedings is academic if not an abuse.

[21] This court was invited to decline jurisdiction by the father for the following:

- (a) The children are now resident in the TCI over 4 years.
- (b) The children are habitually resident in the TCI.
- (c) The court should consider that the welfare of the children depends on stability and that a relocation to Belize would not be in their best interests.
- (d) The courts in the TCI are better placed to consider the necessary evidence regarding custody, including the social enquiry report and such evidence that the nanny from Belize has relocated there. A Belizean court is not in a position to review the evidence regarding the welfare of the children.

[22] On behalf of the mother, it was submitted that her appeal predates the relocation and the TCI proceedings; that she never consented to Belize losing jurisdiction; and that she sought relief in TCI only because the children had been taken there and she needed an effective means of obtaining access. She contends that the father should not be permitted to rely upon a change of residence brought about after the disputed Belize order. The appeal, she says, concerns serious allegations of actual

or apparent bias and denial of a fair hearing on the part of the Family Court Magistrate. The submissions primarily addressed the recusal and bias regarding Magistrate Dale Cayetano. It was further submitted that the High Court of Belize had a superior jurisdiction to any hearing convened by the inferior Magistrate Court of the TCI which was improper and an abuse of process.

[23] The mother asserted that at the time of the filing of the custody application by the father in the TCI, there was no evidence to suggest that the TCI was the habitual residence of the father and/or the children. She argues that the TCI Magistrate's court ought to have firstly enquired as to whether there was some or other forum in which custody was being heard as the father was not a habitual resident of the TCI.

[24] In her written submissions, the mother also refers to the Hague Convention on the Civil Aspects of International Child Abduction, incorporated by the **International Child Abduction Act, Cap. 177** as the children were removed from Belize without her knowledge and consent. However, there are no Hague Convention proceedings, before this Court on this summons. It would therefore not be proper to consider within this application, whether the children's removal was wrongful under the Convention.

Legal framework

[25] The appeal was commenced under the **Supreme Court of Judicature Act, Cap. 91 and the Supreme Court of Judicature (Inferior Courts Appeals) Rules, 2021**. Section 108(1) provided that every appeal from a decision of an inferior court "*shall be heard and determined by the Court*" in accordance with the statute and the rules. Section 111 prescribed the permitted grounds of appeal. They included excess of jurisdiction, personal interest of the magistrate, the taking into account of extraneous matters, unreasonableness, error of law, reliance on a wrong principle, and a specific illegality substantially affecting the merits.

- [26] Section 120 conferred broad remedial powers upon the appellate court. It could affirm, modify, amend or reverse the inferior court's decision; render the decision the inferior court ought to have made; remit the cause; originate and enforce its own decision; or make any other order for disposal of the cause which justice required. The commencement of the **Senior Courts Act, 2022** did not extinguish pending inferior appeals. Section 131 preserved appeals pending at commencement.
- [27] There is therefore no doubt that the Court continued to have jurisdiction after the passing of the **Senior Courts' Act**. The order under challenge is an order of a Belize inferior court. The notice was timely filed and, following the earlier ruling by Chabot J, validly served. Nothing in the legislation provides that a later change in a child's residence, or a later order made by a foreign court, retrospectively nullifies the appellate jurisdiction already invoked over the Belize decision.
- [28] That conclusion does not mean that this Court may disregard the limits of its territorial and appellate authority. The High Court of Belize is not a superior appellate court in relation to the Providenciales Magistrate's Court. The TCI order is not under appeal here. This Court cannot affirm, vary or set it aside. Any questions concerning its variation, enforcement or appeal belong to the competent TCI court. International comity requires this Court to recognise that institutional boundary.
- [29] The father's jurisdiction argument also confuses original welfare jurisdiction with appellate jurisdiction. **Section 85(1) of the Families and Children Act** addresses where an original application by the father of a child born to a single woman may be made. It sensibly connects such an application to the district where the child normally resides. This proceeding is not a fresh section 85 application. It is an appeal testing whether a Belize court lawfully reached a decision when the children were resident in Belize. The children's present habitual residence is highly relevant to the utility and form of any relief, but it does not erase the High Court's authority to examine the Belize Family Court order.

- [30] The more precise doctrine is that courts ordinarily decide live controversies and do not expend judicial authority on abstract or academic questions. In ***Sun Life Assurance Co of Canada v Jervis*** [1944] AC 111 at 113-114, Viscount Simon LC explained that an appeal should not be heard where no issue remains between the parties, and the court would merely answer a legal conundrum. In ***Ainsbury v Millington*** [1987] 1 WLR 379 at 381, Lord Bridge restated that courts decide disputes between the parties before them and do not pronounce on abstract questions where no dispute remains to be resolved.
- [31] The principle has direct Belizean authority. In ***Belize Bank Ltd v Central Bank of Belize, Civil Appeal No. 25 of 2008***, BZ 2010 CA 3, the Court of Appeal held that an appeal which could have no practical effect was academic and should not be entertained.
- [32] In ***R v Secretary of State for the Home Department, ex parte Salem*** [1999] 1 AC 450 at 456-457, the House of Lords recognised a cautious discretion to hear an otherwise academic appeal where a sufficient public interest remains, particularly in a public law case raising a discrete point likely to recur and not dependent upon detailed facts. That is an exception, not the rule. A fact-sensitive private dispute about custody does not become a suitable test case merely because an allegation of procedural unfairness is serious.
- [33] The Court must also keep the welfare principle in view. **Section 30 of the Families and Children Act** provides that where custody or upbringing is in question, a child's welfare is the first and paramount consideration. On this summons the Court is not determining custody, but welfare remains relevant to case management and to whether an otherwise ineffectual appeal should continue. Delay, competing orders and uncertainty are not neutral conditions in the lives of children.
- [34] Strike-out is a summary and serious remedy. The Court must therefore identify with precision why continuation is unjustified. It must not use a strike-out hearing to determine contested evidence on apparent bias, consent to relocation or the merits of the 2022 custody decision. Conversely, the Court is not obliged to conduct a full

appeal if subsequent, objectively established events mean that no effective order can be made within its lawful authority.

Analysis

A. Jurisdiction

- [35] The father asks the Court to hold that it “lacks jurisdiction to hear the Appeal, and/or to alter” the Belize order. The appeal is from the order of the Belize Family Court. Sections 108, 111 and 120 of the former Act gave this Court jurisdiction to hear it and broad power to deal with that order. The earlier service ruling confirmed that the appeal was properly constituted. The argument is that the parties have relocated to the TCI and submitted to the jurisdiction of the TCI courts. And therefore, this Court no longer has jurisdiction.
- [36] The mother is therefore correct that the mere existence of parallel or subsequent proceedings abroad does not retrospectively invalidate her appeal. Her continued assertion that she did not surrender Belize jurisdiction “to the exclusion of Belize” is to be considered. A party may seek urgent practical relief where children are physically present while preserving a challenge to an earlier domestic order. The voluntariness and consequences of doing so may be disputed, but they are not the source of this Court’s subject-matter jurisdiction.
- [37] The issue of jurisdiction in my view is twofold, firstly, this Court remains able to review the orders made by inferior courts but secondly, in issues of custody, as in this case, the actions of the parties show that the children’s residence is now in the TCI. In that regard I have considered custody the subject of this appeal is dependent on residence. I note the written submission of the father which is set out:

*“(24) the habitual residence of the children has been Turks and Caicos for the past three (3) years. The jurisdiction in which custody matters are determined is largely dependent on the country in which the children and parties habitually reside. Our statutes are silent on this matter except for Hague Convention cases which provides by **Article 4** that “the Convention shall apply to any child who was habitually resident in contracting state...” Accordingly by virtue of **Section 25 of the Senior Courts Act [tab2]** and also as previously provided by **Rule XXVIII of the Supreme Court of Judicature Act** (which was the applicable law in May,*

2022), we are obligated to apply the provisions and procedure of English law in determining Habitual Residence. The applicable provisions in English Law is based on the general rule that jurisdiction lies with the Courts of the member state in which **"the child is habitually resident at the time the Court is seised"**. See **para. 2.38 Rayden & Jackson on Divorce and Family Matters and para. 2.39 thereof** **"... where a child moves lawfully from one-member state to another and acquires a new habitual residence, the Courts of the former habitual residence retains Jurisdiction over modification of access orders for three months providing the holder of the rights of access is still habitually resident there. However, the holder of the access rights can voluntarily accept the jurisdiction of the Court of the child's new habitual residence"**. This makes it clear that if indeed the Appellant had access rights in May 2023, she chose to institute proceedings there in TCI and not in Belize, where if she believed Belize had jurisdiction, she could have instituted proceedings for contempt or enforcement."

- [38] The question is whether there remains a useful, live issue for determination and an effective remedy that this Court can properly grant.

B. The custody arrangement and the TCI order

- [39] The children have lived in TCI since May/June 2022. By the time the TCI applications were filed in May 2023 they had been resident there for about a year. The mother herself applied for access. She later opposed the father's custody application, was represented, cross-examined witnesses, gave evidence and advanced a proposed care arrangement premised upon the children continuing their school and activities in TCI. The TCI court considered a social welfare report, heard both parents and delivered a final determination.
- [40] I accept the mother's evidence that her principal reason for relocating and engaging the TCI process was to remain close to her children. That explanation is both plausible and consistent with ordinary parental concern. It does not, however, alter the legal and practical fact that the TCI court exercised jurisdiction after hearing both parties and made a final order governing present custody and access. Her participation was not confined to a formal protest. She sought and obtained substantive access relief, and the final order grants an extensive shared-care arrangement.

- [41] The formal TCI order is not expressed to be temporary pending this appeal. It remains effective until the children reach eighteen or until varied upon a change of circumstances or other proper application. As far as the court is aware neither party has appealed it. The Belize appeal cannot set that order aside. Even if this Court overturned the 2022 decision by the Belize Family Court, the father's present legal custody in TCI would continue under the independent order of 27th August 2024 by the TCI Court.
- [42] The option to remit the matter to the Belize Family Court would also lead to another custody determination. However, the children do not normally reside in any Belize district. The principal welfare evidence, their schooling, home circumstances, health providers, social environment and day-to-day care is now located in TCI. A theoretical new Belize order could not, by itself, regulate the children's present care in TCI.

C. The appeal is academic notwithstanding the allegations of bias

- [43] The mother submits that an appeal alleging apparent bias must be heard because the integrity of the original process is itself a live matter. I do not minimise that submission. The test in **Porter v Magill** [2002] 2 AC 357 is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. The duty to preserve impartiality is balanced by the judicial officer's duty to sit where no proper ground of disqualification exists, see **Muir v Commissioner of Inland Revenue** [2007] 3 NZLR 495 and **Panday v Virgil, Civil Appeal No. 75 of 2006** (Trinidad and Tobago). An allegation meeting that threshold ordinarily requires careful appellate scrutiny.
- [44] However, the seriousness of such an appellate ground does not alone preserve a practical difficulty. The Court must ask what order could now affect the parties' rights. The answer is that reversal of the Belize order would not vary present custody, expand the mother's current access, compel return of the children, or displace the TCI order. The mother already obtained a later hearing before a different judicial officer, with representation, evidence, cross-examination and a

welfare assessment. That process culminated in an un-appealed order. The alleged wrongful order in 2022 has therefore ceased to be determinative of the children's operative custody arrangement.

[45] This is not a case in which the foreign proceeding was simply enforced or mechanically reproduced the Belize Family Court order. The evidence of Mr. Cadman, supported by the decision and formal order, is that the TCI court considered custody afresh. It is undisputed that the TCI court was aware of the Belize proceedings and the pending appeal but heard current evidence directed to the children's circumstances in TCI. The fact that it ultimately reached the same custody result does not make its order derivative of the Belize order.

[46] The exception in **Salem** does not justify continuing the appeal. The dispute is private and intensely fact sensitive. The alleged conversations with the Magistrate, the circumstances surrounding the recusal request, the parties' conduct, and the evidential course of the custody hearing would all require detailed inquiry. The case does not present a short, discrete question of statutory construction affecting numerous pending cases. There is no sufficient public-interest reason for deciding an academic dispute.

[47] **Belize Bank** is binding and apposite. As there, a decision on the complaint could no longer yield practical relief because the operative circumstances have irreversibly advanced. There is a distinction between saying that the appeal is outside the Court's jurisdiction and saying that the Court should decline to entertain it. The first is incorrect; the second follows from the absence of any effective relief and from the final intervening adjudication.

D. Welfare, comity and abuse of process

[48] The children are now about nine years old and have lived in TCI for more than four years. The TCI court has put in place a detailed arrangement under which they have regular and substantial contact with both parents. There is no evidence on this application that the arrangement is presently failing or that the children require

emergency protection from this Court. If circumstances change, the TCI order expressly permits an application to vary. In any event this court is not appellate to the TCI Magistrates' court.

[49] Permitting the Belize appeal to proceed would create a real risk of inconsistent declaratory outcomes without providing an enforceable solution. It would require renewed litigation about historic facts while the forum with territorial connection to the children continues to regulate their current welfare. Comity does not compel automatic deference to every foreign proceeding, particularly where wrongful removal is properly established. Here, however, there are no Hague proceedings before the Court, and a fully contested welfare hearing has already occurred in the children's established place of residence.

[50] I do not find that the mother's original appeal is abusive. It was promptly filed and raised recognised grounds of appeal. Nor do I find that her TCI application was an abuse; it was a practical means of securing access. The abuse would lie in continuing duplicative litigation after the later, fully contested and un-appealed order has made the relief in this appeal ineffectual. The Court's process should not be used to obtain an abstract condemnation or vindication concerning the 2022 hearing where no operative and effective order can follow.

E. The allegations of wrongful removal and the Hague Convention

[51] Both parties invited the Court, to some extent, to address whether the father was entitled to remove the children from Belize. The mother relies upon the absence of her consent and the Hague Convention. The father relies upon the sole-custody order. The legal content of custody, guardianship and the right to determine a child's place of residence may be central in a properly constituted return proceeding. Article 4 of the Convention also directs attention to habitual residence immediately before the alleged breach.

[52] Those issues are not suitable for final determination on this application. The summons asks whether this inferior appeal should continue; it is not an originating application under the **International Child Abduction Act**. I therefore make no finding that the removal was lawful or wrongful. This ruling should not be treated as deciding that question.

Disposition

[53] The father has established that this Court's jurisdiction on custody no longer exists due to the relocation of the children, in fact the decision in the TCI expounds on the mother's relocation and settlement in the TCI. The summons succeeds because the Court is entitled, and in these circumstances bound, to decline to entertain an appeal that has become academic. The decisive facts are the children's settled residence in TCI, both parents' substantive participation in the TCI proceedings, the fresh and fully contested welfare hearing, the final order of 27th August 2024, the absence of an appeal from that order, and this Court's inability to vary or displace it.

[54] This conclusion is not determinative of the Magistrate's decision in 2022. It does not determine whether the father's removal of the children was wrongful. This decision does not declare that the mother voluntarily abandoned her Belize appeal when she sought access in TCI. I find that after the intervening adjudication; no effective relief remains available in this inferior appeal and there is no sufficient public-interest reason to decide the historic issues in the abstract.

[55] Costs in family proceedings require particular care. Although the father succeeds in obtaining a dismissal, the mother was entitled to resist the jurisdiction issue and submit that her participation in TCI was substantially motivated by maintaining contact with the children. In those circumstances, the just order is that each party bear his or her own costs of the summons.

Order

[56] The Court therefore orders as follows:

- (1) the Respondent/Applicant's summons filed on 13 November 2024 is granted to the extent that Inferior Appeal No. 5 of 2022 is dismissed as academic;
- (2) each party shall bear his or her own costs of the summons and of the appeal.

Mme. Justice Nadine Nabie
High Court Judge