

IN THE MATTER OF THE INHERENT JURISDICTION OF THE SUPREME COURT

AND IN THE MATTER OF K

BETWEEN

THE ATTORNEY GENERAL OF ST HELENA ON BEHALF OF THE HEALTH AND SOCIAL
WELFARE

Applicant

and

K (BY HER LITIGATION FRIEND)

First Respondent

and

GL

Second Respondent

JUDGEMENT

I have prepared and pronounce this judgement of my own motion both as a result of the regrettable recent developments in the case and as an ongoing record of these proceedings.

The First Respondent in this case is K, a young woman of 19 years of age who was born on 30th March 1996. She was born with severe disabilities. The Second Respondent is her mother. Such is the nature of K's disabilities that she is not, never has been and never will be capable of independent living. K is currently diagnosed with the following:-

- 1) Leukodistrophy
- 2) Severe deformities of upper limbs
- 3) Severe spasticity
- 4) Severe Scoliosis
- 5) Useless lower limbs
- 6) Ulcers on the left knee

In addition K has profound learning difficulties. She is unable to feed herself. K has to remain supine for much of the time because the position of the lower limbs makes it almost impossible to be in an upright condition. Her communication is severely limited.

For some years prior to September 2014 K had been resident at Barn View. In September 2014 Mr Paul Bridgewater, a Senior Social Worker newly arrived on St Helena became aware of K, of her disabilities, her then current medical conditions, and the conditions under which she was living at Barn View. To state that Mr Bridgewater was concerned at what he discovered would, I am sure, be to underestimate the situation by some considerable margin. K was admitted briefly to the General Hospital, Jamestown, as she appeared to be in pain. She was subsequently discharged back to Barn View but was readmitted in October 2014 when a skin condition from which she was suffering had

deteriorated. On admission it was determined that K was malnourished and in part at least as a result had contracted a severe zoonotic ring worm infection.

Such is the severity of K's condition that it is clear that the resources on St Helena are entirely inadequate to provide K with the care that she requires. Those inadequacies are manifest both in terms of the physical resources available and the level of expertise required of those charged with her care. In so saying I level no criticism of any individual at this stage on St Helena. The resources on St Helena are a fact of life. Whether or not the severity of K's condition ought to have alerted those responsible for her care at a very much earlier stage, that K's care requirements exceeded the ability to meet them on St Helena is a matter which I may have to determine in due course.

When the severity of K's condition became apparent, events moved swiftly. GL, K's mother, has been active over the years in doing her best to provide K with such supplementary comfort as she has been capable of. She herself is getting on in years. Very real concern exists about her capacity to take the decisions that need to be taken in K's best interests. In consequence, and in November 2014 the then Acting Attorney General applied to the Supreme Court for an order that the Supreme Court assume responsibility under the inherent jurisdiction for taking all future decisions pertinent to K's care. By that stage, Mr Michael Trueman, a Solicitor in England but well familiar with St Helena, had been appointed to act on behalf of K. The Public Solicitor represents the mother, GL. The Application made by the Acting Attorney General was granted with the consent of all parties.

Since assuming responsibility for K's welfare, the Supreme Court has received the fullest co-operation of all parties and agencies on St Helena to ensure that K's day to day care needs are met as fully as resources on St Helena permit. K has remained resident at the Hospital. Experts from the United Kingdom have been instructed to assess K's needs for the future. In April 2015, Ms Maggie Sergant, a specialist in Care Case Management, Dr Christina Williams a physician and Ms Kay Coombes a speech and language therapist arrived on St Helena to advise of K's Case Management, her nutritional needs and care needs

Unsurprisingly, in a brief report prepared by them, they made it clear that the resources available to K on St Helena were hopelessly inadequate, although some minor improvements to feeding K have been introduced as a result of the input of their expertise. At the same time as Ms Sergant's team arrived, a visiting Consultant Orthopaedic Surgeon arrived on St Helena – Dr Sergio Villatoro Bran. Dr Bran examined K. He has advised that K should undergo a bilateral supra condylar amputation of both lower limbs which in his view will render K more comfortable in the future and reduce the risk of aspiration and fatal infection. It is accepted by all that this procedure could not safely be undertaken on St Helena.

To all those who have responsibility for managing K and her condition it is patently apparent that K cannot safely undergo the medical procedures that it seems she requires nor can she be satisfactorily cared for at the present time on St Helena. The resources are simply not available. The case was mentioned before me when it was agreed that K's welfare required that, as a matter of urgency, she should receive the necessary medical treatment and care overseas. Both South Africa and the UK were considered. It was agreed unanimously that K's safety and welfare for the future would best be met by arranging for K's passage to the UK.

I do not propose to rehearse all the reasons for the decision reached. Suffice to say that the UK NHS provides an umbrella under which K's condition, the necessary medical intervention and her subsequent recuperation could seamlessly be met. K is a British citizen. Under a protocol agreed between the Government of St Helena and the UK Government, the Government of St Helena is entitled to require that a certain number of St Helenians each year receive treatment from and

under the umbrella of the NHS in the UK. St Helena's quota, so far as I am aware, is not presently exhausted under this protocol. I imagine that K is precisely the type of patient that the protocol envisages should benefit from the terms of the protocol. Finally the jurisdiction of the English High Court is analogous to that of St Helena's Supreme Court so that upon arrival in England, the High Court would assume the responsibilities currently incurred by the St Helena Supreme Court.

To facilitate K's passage to the UK the present Attorney General had made arrangements for K to be accommodated and suitably accompanied on the RMS St Helena's departure for Ascension Island on 21st April 2015. Arrangements had been made for a designated medi-vac flight from Ascension to the UK. Mr Trueman was in the process of making the necessary arrangements for the High Court to assume responsibility for K under its inherent jurisdiction on her arrival in the UK. On 15th April 2015, I made an order providing for K's passage to the UK.

K was unable to leave St Helena on 21st April. Despite all the arrangements which had been made and despite the strenuous efforts made by Mr Jenkins, St Helena's Director of Health, no NHS Trust in the UK could be identified which was prepared to accept K on her arrival. Three NHS Consultants had been approached by the date of the RMS St Helena's departure. None would undertake to admit K. A response is still awaited from the last enquiries made. The risk to K of embarking her upon a passage to the UK without a hospital to receive her is unacceptable.

I cannot think that the decision to refuse to admit K to the Trusts approached is a clinical one, in the sense that the Trusts lack the necessary clinical expertise effectively to treat K. It seems to me to be likely therefore that the decision in each case is resource based. If that is indeed the case then the situation is a shameful one.

K's condition, and the urgency with which it needs to be treated does not permit me the luxury of waiting to see whether a hospital in the UK at some point may be able to receive K. In the absence of any firm indication to the effect that a hospital place in the UK is or soon will be available; and if it appears that treatment is available in South Africa then I feel I will have little alternative but to amend the Order made earlier to permit K's passage for treatment there.

I make it clear that I would regard having to make an order providing for K's treatment in South Africa as a secondary and much less preferable option in terms of K's welfare. In the absence of any commitment from the UK, however, I may be left with no alternative.

I conclude by saying this. For some time now it has been claimed that the UK's economy ranks amongst the wealthiest in the world. It is boasted that the UK's economy ranks comfortably amongst the largest ten economies in the world. Political parties of every hue claim that the UK NHS is or will be safe in their hands. The two former make it even more shameful that is apparently difficult, if not impossible, to afford treatment to a young British citizen with such catastrophic disabilities who is entitled to be treated by the NHS in the UK. The latter of the claims referred to frankly rings entirely hollow.

Dated this 23rd April 2015.

Charles Ekins

Chief Justice