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IN THE CENTRAL FAMILY COURT

No. ZZ21D08046

First Avenue House  
42-49 High Holborn  
London, WC1V 6NP

Wednesday, 28 September 2022

Before:

HER HONOUR JUDGE EVANS-GORDON

**(In Public)**

B E T W E E N :

SAMINA SHUJAAT JARDANEH

Applicant

- and -

BASHIR KAMAL JARDANEH

Respondent

\_\_\_\_\_

MS HAMPTON appeared on behalf of the Applicant.

THE RESPONDENT appeared in Person.

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**J U D G M E N T**

**(Via CVP hearing)**

**A n d s e n t e n c e p a s s e d o n 2 8 J u l y 2 0 2 8**

(Transcript has been prepared without the aid of documentation)

JUDGE EVANS-GORDON:

- 1 This is the application of Samina Shujaat Jardaneh, by way of judgment summons, for the committal of Mr Bashir Kamal Jardaneh to prison for failure to make payments ordered under family law orders. The applicant is the wife in financial remedy proceedings before this court and the husband is the respondent.
- 2 The amended judgment summons was dated 31 May 2022. It was amended pursuant to the direction of Recorder Heaton on that day and the amendment merely changed the address for service of the husband from an address in Abu Dhabi to an address on the solicitors who represented him at the time. The sum claimed was £40,023, including the issue fee. That was made up of £24,000 for a legal services order made by me on 15 November 2021 and two separate costs orders made by me on the same date of £4,950 and £11,000.  
Mr Jardaneh was represented at that hearing by Legal Eagles Solicitors, an organisation based in Ilford, London. The legal services provision order was obviously made pursuant to s.22ZA of the Matrimonial Causes Act 1973 and the order provided, at para.8, that that sum was to be paid by 4.00 p.m. on 29 November 2021. The costs orders required, firstly at para.22 of my order of 15 November, that the husband pay £4,950 in relation to the wife's costs of attempting to get the husband to comply with orders for provision of his Form E and I also ordered him to pay the costs of the freezing order and the legal services order. That came under para.23 of my order and it was in the sum of £11,000. Both paragraphs required payment by 4.00 p.m. on 29 November 2021.
- 3 The application, the judgment summons, is issued pursuant to s.5 of the Debtors Act 1869 which provides that:

“Subject to the provisions herein-after mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court.

Provided -

...

(2) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.”

4 Section 11(c) of the Administration of Justice Act 1970 restricts the sanction of imprisonment to a debt in respect of a High Court or Family Court maintenance order which includes, as set out in para.2(a) of Sch.8 of that Act, an order for periodical or other payments made, or having effect as if made under Part II of the Matrimonial Causes Act 1973.

5 The principles that are applicable to judgment summonses were summarised by McFarlane LJ in *Prest v Prest (Judgment Summons Appeal)* [2016] 1 FLR 773 at [55] when McFarlane LJ said:

“... at the end of the day this is a process which may result in the respondent serving a term of imprisonment and the court must be clear as to the following requirements, namely that:

- a) The fact that the respondent has or has had, since the date of the order or judgment, the means to pay the sum due must be proved to the criminal standard of proof;

- b) The fact that the respondent has refused or neglected, or refuses or neglects, to pay the sum due must also be proved to the criminal standard;
- c) The burden of proof is at all times on the applicant; and
- d) The respondent cannot be compelled to give evidence.”

6 In terms of the compulsion to give evidence, Ms Hampton drew my attention to the case of *Morris v Morris* [2017] 1 WLR 554, in which it was said that the deprivation of a right to silence, coupled with a failure to inform the respondent that he was entitled to independent legal advice, deprived him of valuable safeguards rendering an order for committal unsafe. I explained to Mr Jardaneh at the outset of the hearing and at several points during it, that he could not be compelled to give evidence

7 Plainly, in terms of whether or not Mr Jardaneh was ordered to pay money, I am satisfied beyond reasonable doubt that he was so ordered based on my order of 15 November 2021 and the fact that he was present in court when I made that order that he was ordered to pay those sums and in the sums set out in the judgment summons. Also, he was aware of the date by which those sums had to be paid.

8 The next question that I have to answer or be satisfied of beyond reasonable doubt is whether the respondent has or has had since the date of the order or judgment the means to pay the sum due. I do not take the appropriate date as being the date of the order but the date on which payment was due, which was 29 November 2021. The evidence in relation to that derives, in effect, from two sources. Firstly, bank statements that Mr Jardaneh provided to his ex-wife for various periods including 29 November, 29 December, and 29 January which are sufficient for these purposes. He provided those bank statements voluntarily as part of an open offer to settle these proceedings prior to the issue of the judgment summons.

He has emphasised to me today that it was an open offer and I have already determined on the strength of a judgment I gave earlier that those bank statements were admissible in the judgment summons because they were not provided under compulsion and, in any event, even if they were they would be freestanding documents that are admissible on the strength of particularly the Court of Appeal in *Mahon*(?).

9 Those bank statements which are set out in the bundle in section E show that on each of the dates I have mentioned, 29 November 2021, 29 December 2021 and 29 January 2022, Mr Jardaneh had over £430,000 in his HSBC Premier account in the United Arab Emirates. It was a British sterling account that he had. Mr Jardaneh has said to me that I should not put weight on those bank statements because what they do not show are his liabilities and debts and that, at that time, he had significant liabilities and debts. There is no evidence before me in relation to those liabilities or debts. The only one that he particularly identified for me was a court case between him and his previous lawyers, who I believe he subsequently told me were Legal Eagles. They were suing him for the fees he owed them in the sum of something of the order of £40,000 and he took counteraction against them in a specialist court in the Middle East. They have made a counterclaim against him and, potentially, he has very significant liabilities.

10 None of those matters are in evidence before me and I cannot simply accept what Mr Jardaneh says about it, not least because at the time, on 29 November, there is no evidence that there was actually a dispute at the time. There was certainly at that time no case for damages in the sum of £100 or £100,000 as Mr Jardaneh submitted to me today. So I am afraid I simply cannot accept what he says in the absence of evidence. I am not criticising him. He was entitled not to adduce evidence if he did not wish to do so but I am

satisfied beyond reasonable doubt that he had the money available to him on each of the three dates I have mentioned and there is no evidence before me that those funds were not free and available to pay. The sums that he was ordered to pay were no more than ten per cent of the sums available to him. I take account of the fact that I had made a freezing order in relation to £300,000 of those funds but I accept that there was £130,000 available to Mr Jardaneh on those dates that were not subject to the freezing order. So, on the strength of that (and indeed Mr Jardaneh accepts that he had those sums available in his bank accounts on those dates), I am satisfied beyond reasonable doubt that the funds were available to him.

11 I should say I am also satisfied beyond reasonable doubt that he has refused or neglected to pay the sums due and I say that because the money was available to him. The disputes that he has disclosed to me today were not in existence, as far as I am aware, on 29 November certainly, and initially, the only dispute was about the fees that Mr Jardaneh was to pay Legal Eagles taking what he is saying at face value, and they did not prevent him in any way from complying with the court orders. So I am satisfied that he has, indeed, refused or neglected to make the ordered payments.

12 Just for the avoidance of doubt, I accept Ms Hampton's submission to the effect that LSPO orders do fall within the provisions of the Debtors Act 1869 and the Administration of Justice Act 1970 because LSPO orders are made pursuant to s.22ZA of the 1973 Act and that falls within Part II of the Matrimonial Causes Act. I take further comfort from the decision of Sir Jonathan Cohen in *Barclay v Barclay* [2022] EWHC 2026 (Fam) in which he granted orders under a judgment summons which was based on failure to pay legal services provisions order.

13 As far as the costs elements are concerned, there is slightly more doubt because there is a decision to which Ms Hampton properly drew my attention called *Migliaccio v Migliaccio* [2016] 4 WLR 90 at which Mostyn J considered whether costs orders can properly be the basis of judgment summonses. That case did not have to do with legal services provision orders. That case had to do with maintenance arrears and costs, and although he had doubts about whether the costs orders themselves were caught, he was satisfied that he could, in any event, make payment of those costs a condition of suspending any suspended prison sentence. So, on any footing, I am satisfied that I can make orders on the basis of failure to pay the £24,000 plus interest in relation to the legal services provision order.

14 I should say that I gave Mr Jardaneh several warnings right at the outset of this hearing and all the way through the hearing trying to prevent him from saying things that might have been against his interest but he insisted on making various statements. I also gave him time at his request to consider whether he should make the payments today and thus avoid these proceedings but, having considered the matter, he decided against it. So I am satisfied that all the factual elements of the judgment summons have been established beyond reasonable doubt.

15 I do have to say something about the compulsion to give evidence and the information about independent legal advice that was referred to in *Morris v Morris*. It is fair to say that District Judge Ashworth, at a hearing on 6 July 2022, gave directions and she directed the husband to provide documentary evidence of his income, his assets and liabilities, and his bank statements, and that was undoubtedly in connection with the judgment summons in this case. She should not have made those orders. They were completely contrary to the

principles set out in *Prest* and, indeed, in very many other cases. However, it is clear that Mr Jardaneh did not comply with those directions in any event, as indeed was his right. So he has not been compelled to give evidence in this matter. There is no evidence before me that he was ever advised of his right to independent legal advice. Ms Hampton says really at the highest that he was legally represented at the time but there was nothing on the face of any of the orders that indicates that he was given that advice.

16 Ms Hampton also referred to a letter that accompanied the original judgment summons, which I am told provided such information to Mr Jardaneh, but I have not seen the letter. It has not been included in the bundle before me and so I am not in a position to determine whether the warnings given or the information given were sufficient and adequate. It does seem to me that I should not make any orders and I should not sentence Mr Jardaneh today because I am not satisfied that he was given those warnings. There is just no evidence available before me and it is not good enough to say he had legal advice at the time, particularly in light of the orders that were subsequently made by District Judge Ashworth.

17 So I am going to adjourn the question of what the sentence should be to give Mr Jardaneh a further opportunity to obtain independent legal advice. I tell him now that he is entitled in this jurisdiction to free legal advice in relation to this matter because it involves a deprivation of his liberty. I must tell him that that does not necessarily mean he will be able to find such legal advice because not all lawyers offer it and those that do offer it, because it is publicly funded, are very busy and cannot always take on new cases, but he is entitled to it. I would urge him to take such legal advice and, of course, I also advise him that if he pays the monies between now and what I am going to describe as the sentencing hearing, that will resolve the matter at least as far as the judgment summons is concerned.



**NOTE**

On 28 July 2023 the court sentenced the respondent to 21 days in prison suspended on terms that he paid £36,460.46 to the applicant by 4.00pm on 30 September 2023.

Reasons: The breach of the Order was deliberate, no reasonable excuse or mitigation has been provided. The respondent has had ample opportunity to remedy his breach but has failed to do so. The respondent has had many opportunities to obtain legal advice.

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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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(Subject to Judge's approval)