



Neutral Citation Number: [2024] EWHC 2204 (Fam)

Case No: FD22P00671

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**  
**IN THE MATTER OF THE SENIOR COURTS ACT 1981**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22/08/2024

Before :

**THE HONOURABLE MR JUSTICE COBB**

Between :

**OMAY ALI ELHAG ELKNDO**

**Claimant**

- and -

**ELNOAMAN GASSAM ELSYED**

**Defendant**

(also known as

**ELNOAMAN GASSAM, ELNOAMAN GASSM  
ELSYED, ELNOUMAN ELSYED, ELNOAMAN  
GASSAMELSYED, ELNOAMAN H  
GASSAMELSAYED, ELNOAMAN MOHAMED  
ALI GASSAM ELSYED, ELNOAMAN MOHD  
ALI AL-SYED, ELNOAMAN GASSAM  
ELSAIED, ALNOAMAN GASSIM ELSYED,  
GLNOAMAN GASSAM-ELSYED)**

-----  
**Elkndo v Elsyed & others (Committal: Findings)**  
-----

**Mark Jarman KC and Mani Singh Basi** (instructed by **Dawson Cornwell LLP**) for the  
**Claimant**

The **Defendant** was neither present nor represented.

Hearing dates: 22 August 2024  
-----

## Approved Judgment

This judgment was handed down at 2.30pm on 22 August 2024 by circulation to the parties or their representatives and by release to the National Archives.

.....

THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in public. The judge has given leave for this version of the judgment to be published.

**The Honourable Mr Justice Cobb :**

### *Introduction*

1. This is an application, dated 25 March 2024, brought by the Claimant, by which she seeks the committal to prison of the Defendant.
2. The Claimant is Omay Ali Elhag Elkndo; she is the maternal aunt of six children who are the subject of wardship proceedings commenced in 2022 by the children's mother (now deceased) under the High Court's inherent jurisdiction. The children are Omer Gasmelyed (a boy aged 6), Abubakr Gasmelyed (a boy aged 8), Ali Gasmelyed (a boy aged 10, rising 11), Naysar Gasmelyed (a girl aged 13 rising 14), and Ludan Gasmelyed (a girl aged 16). The children have an older brother Mohammed, who is aged 17 who is also now the subject of the wardship proceedings. The children are Respondents to the wardship, but not parties to the committal application.
3. The Defendant, Elnoaman Gassam Elsyed, is the father of the subject children. He is neither present nor has he been represented at this hearing; he was sent a court link for the hearing via the court clerk and he did not join remotely. I am satisfied that the Claimant's solicitors have complied with the direction of the court as to service of documentation on the Defendant, including giving him notice of the date of this hearing; although there has been no formal 'Notice of Hearing' issued by the Court, the Defendant has been sent an e-mail from the Clerk of the Rules specifically confirming the hearing on today's date, and notice has further been given to the Defendant, in accordance with the court's direction, by WhatsApp.
4. To set a context, the Defendant last directly engaged with the wardship proceedings at a hearing on 15 February 2024 when he attended court; for a short time thereafter he was represented at court hearings, but has not (I believe) provided instructions to his solicitors since 19 February 2024, and has not in fact been represented at any hearing in those proceedings since 29 April 2024.
5. He has never formally engaged with, or been represented in, these committal proceedings.
6. For the purposes of determining this application, I have read the bundle of documents filed on behalf of the Claimant. Specifically, the application for committal is supported by affidavits from Sulema Jahangir (28 March 2024), Nina Hunjan (15 May 2024), and Anat

Amirthanathan (15 August 2024), all employed by Dawson Cornwell LLP. I have received the able oral and written submissions of Mr Jarman KC and Mr Basi on behalf of the Claimant.

***Procedural Requirements***

7. The procedural requirements for the fair hearing of a committal application have been comprehensively codified in the amended (2020) rule 37 of the Family Procedure Rules 2010. It is unnecessary for me to rehearse the formal requirements in this judgment; I propose to focus on compliance with the same in this case.
8. The contempt application has been supported by a very clear schedule of the alleged breaches, and has been accompanied by statements of evidence from the maternal aunt and from her solicitors. I am satisfied that the contempt application (supported by the written documentation):
  - i) Sets out fully and appropriately the nature of the alleged contempts (altogether seven grounds);
  - ii) Provides the dates, and the relevant provisions, of the several orders which it is said have been breached;
  - iii) Reflects the arrangements by which the orders have been served on the Defendant; the dates on which the orders were served, and (as appropriate) reflects the basis on which the Defendant was provided with the relevant documentation by substituted service;
  - iv) Confirms that the orders which are said to have been breached each contain a penal notice; I have seen each of the orders, and I am satisfied that each does indeed carry a penal notice boldly on its face;
  - v) Has been supported by at least two letters to the Defendant from Dawson Cornwell LLP, in which the Defendant's right to non-means non-merit tested legal aid has been made clear; Dawson Cornwell LLP has also provided the Defendant with a list of law firms which would be able to exercise devolved powers to grant itself legal aid;
  - vi) Has made clear the Defendant's right to provide written and oral evidence and his right to remain silent;
  - vii) That the Court may proceed in the Defendant's absence in the event that he does not attend;
  - viii) Confirmation that (whether he attends or not) the contempts will need to be proved to the criminal standard;
  - ix) That the Defendant risks a fine, imprisonment, confiscation of assets or other punishment under the law in the event that the Court is satisfied that he has committed a contempt or contempts.

***Proceeding in the absence of the Defendant***

9. As I have indicated above, the FPR 2010 (specifically rule 37.4(o) FPR 2010) make clear that an application for committal for contempt may proceed in the absence of a Defendant. This will always be an unusual course, for the reasons which I set out at [4] in my judgment in *Sanchez v Oboz* [2015] EWHC 235 (Fam). I do not propose to reproduce that paragraph here, but I reviewed it carefully together with counsel during the hearing, and I have it much in mind.
10. In acceding to Mr Jarman's request to proceed in the absence of the Defendant at this hearing, I have specifically considered my comments at [5] in the judgment of *Sanchez v Oboz*. In that paragraph, I referenced the terms of the 'overriding objective' (rule 1.1 FPR 2010), including the obligation on the court to deal with the case 'justly', including doing so "expeditiously and fairly" (r.1.1(2)), and taking "any ... step or make any... order for the purposes of ... furthering the overriding objective" (r.4.1(3)(o)). In this case, and with specific reference to the matters set out at [5] in *Sanchez v Oboz*, I can confirm that:
  - i) The Defendant has been served with the relevant documents, and has been notified of the date of this hearing (see §3 above). I am satisfied that the documents and orders have been served by the Claimant's solicitor in accordance with the Court's order throughout. Most recently, I am satisfied that the documents filed for the hearing on 5 July 2024, and the order generated on that date, were sent to the Defendant by WhatsApp and e-mail. It is apparent that the WhatsApp message containing the relevant documentation was delivered to the Defendant on 5 July, albeit that there is no confirmation that it was read, nor is there any way of verifying whether the Defendant read the e-mail. Since 5 July 2024, the WhatsApp messages from the Claimant's solicitors to the Defendant appear not to have been delivered, let alone read; however the Defendant has been served by e-mail in accordance with the court orders;
  - ii) The Defendant continues to be represented in the wardship proceedings; the solicitors acting for him in those proceedings do not have instructions in relation to the committal, nor do they have funding (they would need a separate public funding certificate). The Defendant's solicitors in the wardship have confirmed in the last few days that the WhatsApp number and e-mail address which the Claimant's solicitors have been using to contact the Defendant are the very same contact details which they themselves have been using to communicate with their client;
  - iii) The Defendant has had more than sufficient notice to enable him to prepare for the hearing;
  - iv) No explanation has been given for his non-attendance at court today; as I have earlier mentioned, he has not directly engaged with the wardship proceedings since 15 February 2024, and has not engaged with the committal application at all;
  - v) I am satisfied that in the circumstances the Defendant has waived his right to be present. I conclude that the Defendant knows of the consequences of the case proceeding in his absence, as he has been advised of this in a letter from Dawson Cornwell LLP dated 27 March 2024, sent at a time when he ostensibly was reading his WhatsApp messages;

- vi) Given the persistent nature of the Defendant's non-engagement with the litigation, I do not regard it likely that if I granted an adjournment the Defendant would be any more likely to attend an adjourned hearing;
- vii) I take into account that the Defendant is disadvantaged in not being able to present his account of events;
- viii) Given the current plight of the children (the subject of the wardship proceedings) abroad, probably in Sudan (see below), there are powerful reasons for not delaying further with this application;
- ix) No undue prejudice would be caused to the forensic process by proceeding in the absence of the Defendant.

### ***Background***

11. The background facts, as ascertained from the filed documents, can be summarised thus.
12. The children were the subjects of care proceedings brought under Part IV of the Children Act 1989 by Birmingham City Council in July 2021. The proceedings had been instituted arising from concerns that they had been subjected to physical abuse by their father (the Defendant). The proceedings concluded on 11 May 2022 with the making of an order under section 8 of the Children Act 1989 that the children remained living with their mother, Wigdan Ali Elhag Elkndo, ("the mother"); the court also made supervision orders. The Defendant was to have supervised contact only.
13. On 17 July 2022, the children's mother travelled with the five younger children to Sudan to visit her family. The Defendant followed her there, and allegedly forcibly removed her passport, and the passports of the children, thereby stranding them in that country. The mother managed to instruct solicitors in England (Dawson Cornwell LLP) who issued a wardship application in October 2022. Early in 2023, the children and the mother attempted to flee Sudan but they were prevented from doing so by the authorities. The Defendant allegedly discovered the mothers attempt to leave Sudan; he travelled there, allegedly punished the mother and older children, and then (it is said) took them on an arduous journey to Kenya.
14. At the end of September 2023, the Defendant returned to England bringing the child, Ludan, with him. A passport order was executed at the airport, and the Defendant's British and Sudanese passports were seized; these passports remain with the Tipstaff. The mother then, with the assistance of the FCDO, a domestic violence worker, Birmingham City Council, and this Court, secured emergency travel documents with a view to leaving Kenya on 23 December 2023.
15. However, on the day of the scheduled return to this country, the mother suffered a major heart attack from which she died. The children were taken to a place of safety where they were initially looked after by members of the maternal family. However, the Defendant, unable to travel, allegedly sent his cousin Hassan Mohamed Ali, together with the children's older brother Mohamed, from England to attend the mother's burial on 28 December 2023. The maternal family allowed the paternal cousin and brother to

visit the children; it is the maternal family's case that the children were taken that day by force, and at speed, and without their belongings, and removed back to Sudan.

16. In a series of hearings before Henke J which followed in early 2024, the maternal aunt replaced the children's mother as the applicant in the wardship proceedings; she has continued to seek the return of the children. She has also attempted, through information obtained via third party disclosure orders, to build a better picture of what has happened to the children. The Defendant attended hearings on 3 January 2024 (in person without representation), 12 and 23 January 2024 (with representation). At the hearing on 23 January 2024 it is recorded (on the face of the order) that the Defendant advised the court that:
  - i) The children are in Uganda where they await travel visas, to travel to Egypt;
  - ii) He had requested a maternal uncle and Mohammed (his eldest son) to return the children to England.
17. At the hearing on 15 February 2024 the Defendant again attended court; he gave evidence to Henke J, and promised in his sworn testimony that if he were to travel to Sudan to see the children he would return them to this jurisdiction. The court ordered that the children be returned to this jurisdiction by 21 February 2024. The children were not returned.
18. At a hearing on 22 February, the Defendant failed to attend (the Defendant's solicitors indicated that they had been without instructions since 19 February 2024) and a warrant was issued for his arrest; further hearings took place on 23 and 29 February 2024. Again the Defendant did not attend on either occasion, though he was represented by counsel.
19. At the last welfare hearing before Henke J in the wardship (on 7 March 2024), the Defendant again did not attend; it was believed that he himself was now in Sudan. The court gave him a final chance to comply with its order to return the children to the jurisdiction. The order made on that day is explicit that in the event of the Defendant's failure to return the children, the maternal aunt will apply to the court to have the Defendant committed to prison. The Defendant was legally represented at that hearing by counsel. Given the Defendant's absence from Court, and his possible flight to Sudan, Henke J ruled on 7 March 2024 that service on the Defendant by WhatsApp and/or e-mail would be deemed to be good service.
20. The children were not returned. Indeed, they remain, as far as is known, in Sudan where it is reasonable to suppose that they are in real and immediate danger.
21. On 29 April 2024, the committal application was listed before Williams J. The Defendant did not attend, and his lawyers (instructed in the wardship, and mistakenly attending the hearing believing that it was a wardship hearing) confirmed that he was now in Sudan. The hearing was in fact ineffective given the absence of transcripts of hearing of 15 February 2024 before Henke J.; Williams J adjourned the case for further hearing on 7 June 2024. The order recited the rights of the Defendant to non-means non-merit tested legal aid for representation, and explicitly reflected his Article 6 ECHR rights to a fair trial on any application to commit him. The order explicitly confirmed

that if the Defendant did not attend the hearing on 7 June 2024, “the court can and will proceed in his absence”.

22. At the hearing on 7 June 2024, the Defendant again did not attend though he was again represented by counsel (appearing under the same misapprehension as to the focus of the hearing). The transcripts were still unavailable, and the case was re-listed for a committal hearing on 5 July 2024. Williams J ordered that the transcripts of the earlier hearing (15 February 2024) be provided by 30 June 2024; this direction was finally complied with. The Defendant was directed to attend the next hearing on 5 July 2024.
23. It transpires (so the subsequent order of 5 July reveals) that the Defendant’s wardship solicitors had served the order of the 7 June 2024 on the Defendant (albeit only on 3 July). The solicitors for the Claimant had served the hearing bundle for the 5 July hearing but only on 1 July 2024. The order of 7 June 2024 had required the Defendant to attend the 5 July hearing but he did not attend and was not represented.
24. As I have mentioned above (§23) at the hearing on 5 July 2024 (before Sir Jonathan Cohen), the Defendant did not attend. The application for committal could again not proceed because there were issues over service of the documents on the Defendant in a timely way (again see §23). The hearing was adjourned to 1 August 2024. In the event, it was not possible to proceed with the committal application on that date due to lack of judicial availability. The application was relisted before me for hearing today, 22 August 2024.

### *The Grounds for Committal*

25. The following Grounds are advanced for the Defendant’s committal:
  - i) **GROUND 1: In breach of para.23 of the order of 23 January 2024 (Henke J), the Defendant has failed to ensure that he assists with the return of the children to this jurisdiction forthwith;**
  - ii) It is said that the procedural requirements have been complied with in that:
    - a) At the hearing on 23 January 2024, the Defendant was present and was represented (Ms Chaudhury);
    - b) The approved order was subsequently sent to the Defendant's solicitors on 26 January 2024;
    - c) A penal notice was attached to the order.
  - iii) **GROUND 2: In breach of para.1 of the order of 15 February 2024 (Henke J), the Defendant has failed to return the children to this jurisdiction by no later than 6am on 20 February 2024; in further breach (of para.3 of the order of the 15 February 2024), the children travelled onto their maternal grandmother’s village with their father and two uncles;**
  - iv) It is said that the procedural requirements have been complied with in that:
    - a) At the hearing on 15 February 2024 the Defendant was present in court and was represented by counsel (Ms Long);

- b) The approved order was subsequently sent to the Defendant's solicitors on 20 February 2024;
- c) A penal notice was attached to the order;
- d) The Defendant had confirmed on 15 February 2024 that the children are in Kassala, Sudan;
- v) **GROUND 3: In breach of para.8 of the order of 22 February 2024 (Henke J), the Defendant failed to attend a hearing in person fixed for the 23 February 2024;**
- vi) It is said that the procedural requirements have been complied with in that:
  - a) Although the Defendant was not present when the hearing date of 23 February was fixed he was nonetheless legally represented by counsel at the hearing on 22 February 2024 (Ms Hendrick);
  - b) The approved order was served on the Defendant's solicitors on 22 February 2024 at 14:49hs;
  - c) A penal notice was attached to the order.
- vii) **GROUND 4: In breach of para.2 of the order of 23 February 2024 (Henke J), the Defendant failed to attend a hearing in person fixed for the 29 February 2024;**
- viii) It is said that the procedural requirements have been complied with in that:
  - a) Although the Defendant was not present when the hearing date of 29 February was fixed he was nonetheless legally represented by counsel at the hearing on 23 February 2024 (Ms Shaw); it is recorded that the Tipstaff had undertaken an international movement check in respect of the Defendant which suggested that the Defendant had not left the jurisdiction of England and Wales at that point;
  - b) The Court gave permission to the solicitors for the Defendant further to attempt personal service of the order on him and were required in any event to send the order to the Defendant via WhatsApp and email, the latter being considered good service on him of this order;
  - c) The approved order was sent by WhatsApp to the Defendant by the applicant's solicitors on the 26th February 2024 and read by him at 08:53 27th February 2024;
  - d) A penal notice was attached to the order
- ix) **GROUND 5: In breach of para.12 of the order of 29 February 2024 (Henke J), the Defendant failed to attend a hearing in person fixed for the 7 March 2024;**
- x) It is said that the procedural requirements have been complied with in that:



- a) Although the Defendant was not present when the hearing date of 7 March was fixed he was nonetheless legally represented by counsel at the hearing on 29 February 2024 (Ms Nuttall);
  - b) The order specifically provided that the solicitors for the Defendant (HRS Family Law Solicitors) shall ensure that the order was sent to the Defendant via WhatsApp and email, the latter being considered good service;
  - c) The approved order was circulated to the Defendant's solicitors on the 5th March 2024 by the judge's clerk at 14:20;
  - d) A penal notice was attached to the order;
- xi) **GROUND 6: In breach of para.1 of the order of 7 March 2024 (Henke J), the Defendant has failed to return the children to this jurisdiction by no later than 17 March 2024;**
- xii) It is said that the procedural requirements have been complied with in that:
- a) Although the Defendant was not present at the hearing on 7 March 2024 he was nonetheless legally represented by counsel at the hearing on 7 March 2024 (Ms Nuttall);
  - b) The approved order was circulated to the Defendant's wardship solicitors on the 11th March 2024 by the judge's clerk at 16:44. Furthermore, by para. 3 of the order, permission was granted for the Applicant's solicitors, Dawson Cornwell LLP and the Defendant's solicitors to serve this order on the Defendant via email and WhatsApp which was to be deemed proper service. The approved order was sent by WhatsApp to the Defendant by the applicant's solicitors on the 12th March 2024 and read at 14:19 on 24th March 2024; the order was also sent to the Defendant by his solicitors – as confirmed by them (by e-mail on 26 April 2024);
  - c) A penal notice was attached to the order.
- xiii) **GROUND 7: In breach of para.11, 12 and 13 of the Passport Order of 3 May 2023 (Mr Leslie Samuels KC sitting as a Deputy High Court Judge), the Defendant has:**
- a) **Made an application for and obtained a travel document for himself, allowing him to leave England and Wales;**
  - b) **Failed to notify the Tipstaff of the address of the place where the children reside if such is known to him;**
  - c) **Knowingly caused the children to change the place at which they reside.**
- xiv) It is said that the procedural requirements have been complied with in that:

- a) The Defendant was personally served with this approved order by a PC MacDonald of the Manchester Airport unit on 28 September 2023 (see [256]).
  - b) A penal notice was attached to this order.
26. It is apparent that at the hearing on 29 April 2024 before Williams J leading counsel then acting for the Claimant (not Mr Jarman) conceded that they would “seek to prove” the Defendant’s contempt on the basis of only two of the alleged breaches: namely the alleged breach of the 3 May order (Ground 7 above) and alleged breach of the 15 February 2024 order (Ground 2 above). At the hearing before me, Mr Jarman wished to distance himself from this concession and argued that this concession is not binding on the Court, and specifically that:
- i) It is for this court to decide the scope of the hearing in relation to the alleged contempts; I can proceed to consider the wider allegations of contempt if I so choose;
- Moreover,
- ii) Four months have passed since that concession was made; in the meantime the Defendant has not engaged in the committal process at all. It is clear that he has not acted in reliance on the said concession.
27. Not without a little hesitation, I am satisfied that I can proceed to determine the application on the full set of grounds:
- i) First, the alleged contempts are of the Court’s orders; those orders have been made in the best interests of the subject children. The fact that the Claimant at one time had a view that she wished to proceed with only some of the allegations is relevant to, but not determinative of, the Court’s approach to its review of compliance with, and sanction of, its own orders;
  - ii) Secondly, the Defendant had notice of the full set of Grounds on which the Claimant initially presented her case (per her application 25 March 2024); given his lack of engagement with the committal proceedings (he has made no contact with either the Court or the Claimant’s solicitor), the Defendant will suffer no prejudice if I consider the full set of Grounds;
  - iii) The Defendant has not complied with any order of the court for some considerable time.

### ***Findings***

28. The evidence in support of the alleged breaches of the Court’s orders could hardly be clearer; indeed it is largely incontrovertible. In reaching my findings, I have done so by reference to the criminal standard of proof and my findings are reached beyond reasonable doubt.
29. In each case I find that the Defendant knew what was required of him by court order, and he has chosen to defy or ignore the requirements imposed on him. Henke J has case managed the wardship with considerable diligence and fairness; the wardship has

benefited by the judicial continuity which she has scrupulously maintained, doubtless at times by fitting in hearings to an otherwise congested list. Her orders could not have been more clear. On the evidence presented to me, I find:

- i) The Defendant was in breach of para.23 of the order of 23 January 2024 (Henke J), in that – following that order – he failed to assist with the return of the children to this jurisdiction; the Defendant did nothing to assist with the return of the children and the children have not returned;
- ii) The Defendant was in breach of para.1 of the order of 15 February 2024 (Henke J), in that he failed to return the children to this jurisdiction by no later than 6am on 20 February 2024; the children have not returned;
- iii) The Defendant was in breach of para.8 of the order of 22 February 2024 (Henke J), in that he failed to attend a hearing in person fixed for the following day: 23 February 2024;
- iv) The Defendant was in breach of para.2 of the order of 23 February 2024 (Henke J), in that he failed to attend a hearing in person fixed for the 29 February 2024;
- v) The Defendant was in breach of para.12 of the order of 29 February 2024 (Henke J), in that he failed to attend a hearing in person fixed for the 7 March 2024;
- vi) The Defendant was in breach of para.1 of the order of 7 March 2024 (Henke J), in that he has failed to return the children to this jurisdiction by no later than 17 March 2024; the children have not returned;
- vii) The Defendant was in breach of para. 12 and 13 of the Passport Order of 3 May 2023 (Mr Leslie Samuels KC sitting as a Deputy High Court Judge), the Defendant has:
  - a) Failed to notify the Tipstaff of the address of the place where the children reside if such is known to him;
  - b) Knowingly caused the children to change the place at which they reside.

30. For the avoidance of doubt,

- i) I have not in fact found it possible to make a finding in relation to the alleged breach of para.3 of the order of 15 February 2024, in that I cannot be satisfied beyond reasonable doubt that the children travelled onto their maternal grandmother's village with the Defendant and the children's two uncles;
- ii) I further make no finding that the Defendant was in breach of para.11 of the Passport Order of 3 May 2023 (Mr Leslie Samuels KC sitting as a Deputy High Court Judge), in that I cannot be satisfied beyond reasonable doubt that the Defendant made an application for and/or obtained a travel document for himself, allowing him to leave England and Wales. Although he appears to have left England and Wales, I cannot be satisfied how this was achieved, and/or whether this was achieved alone or with the assistance of others.

***Penalty for the Proven Contempts***

31. I propose to list a further hearing at which I will consider the penalty for the proven contempts in seven days' time, namely on 29 August 2024 at 9.30am at the Royal Courts of Justice. The Defendant must attend that hearing in person.
32. I take this opportunity to remind the Defendant of his right to have the benefit of a publicly funded lawyer. It is not too late for him to receive legal advice, and as appropriate, representation at the next hearing.
33. This order and judgment shall be served on the Defendant by e-mail and by WhatsApp using the currently held details. They shall also be sent to the Defendant's solicitors (instructed in the wardship) for information.

***Publicity***

34. Although this is a public judgment, Mr Jarman has invited me to permit his solicitors specifically to circulate it with the court order to a number of the paternal family members, via email, and to notify them of the sentencing hearing listed 29<sup>th</sup> August 2024. Although the wardship proceedings are private, this application has been conducted in public; indeed the names of the Claimant, Defendant and children are now in the public domain. It seems to me appropriate that the family members named in the court order should be made specifically aware of the findings of this court, and the imminent risk which the Defendant now faces of a custodial sentence in the event of his return to England.
35. That is my judgment.