



Neutral Citation Number: [2024] EWHC 2230 (Fam)

Case No: FD22P00671

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/08/2024

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
ELSAYED, ALNOAMAN GASSIM ELSYED,
GLNOAMAN GASSAM-ELSYED)**

Elkndo v Elysed (Committal: Sentence)

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

The Defendant was neither present nor represented.

Hearing date: 29 August 2024

Approved Judgment

This judgment was delivered at 09.30am on 29 August 2024 and is hereby released to the National Archives.

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THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in public.

The Honourable Mr Justice Cobb :

Introduction

1. At a hearing conducted exactly one week ago, I considered the Claimant's application for an order committing the Defendant to prison for multiple alleged contempts of court; that application was dated 25 March 2024. That judgment is reported under neutral citation [2024] EWHC 2204 (Fam).
2. It will be apparent that I found that the Defendant had been in breach of a number of Court orders made by Henke J between January and March 2024.
3. The Defendant did not attend the hearing last week, nor was he represented. I found that the Defendant had been properly served with the application and documents filed within the proceedings; he had been afforded adequate notice of the application, and he had offered no explanation for his absence. I concluded that it was fair and just to proceed in his absence.
4. I adjourned determination of the sentence, in order to give the Defendant the opportunity to read my judgment, understand that findings had been made against him, and to consider his position. I hoped that he would engage with this process, and – even at this late stage – obtain legal advice and/or representation.
5. I specifically directed that the Claimant's solicitors should send a copy of the judgment to members of the Defendant's family.
6. At this hearing, the Defendant has once again not appeared, nor is he represented. I am satisfied that he has been properly served. I am satisfied that members of the Defendant's family have been served with the earlier judgment; indeed, some members of the Defendant's family have attended this hearing today.
7. I proceed therefore to deal with the penalty for the proven contempts.

Discussion

8. Considerable emotional damage has been, and is being, done to the children who are the subject of these wardship proceedings. They are now believed to be staying in war-torn Sudan, where there is widespread violence, mass population displacement and acute food insecurity. The children are to all intents and purposes missing there. Quite apart from the trauma of their current situation, these same children are doubtless all suffering unimaginable grief at their mother's sudden and premature death from heart

failure, at the end of last year, just as they were all preparing to return to England. These children have suffered further loss – the familiarity of their home in England, where they had lived prior to 2022. In recent months, they appear to have been moved from one country to another (from Sudan, to Kenya, to Eritrea, to Uganda and then returning to the eastern region of Sudan near the border with Ethiopia), without apparent warning or preparation; their lives have become unpredictable and unstable. Their family relationships, social relationships, and their schooling have all been irredeemably disrupted.

9. I have found that the Defendant has caused or materially contributed to the children’s current appalling situation. It is notable that on 15 February 2024 (his last engagement with the Court) before Henke J he told her that he would do his “utmost best” to recover the children and bring them back to England. In this regard, he has, I find, cynically misled the Court; he has deliberately flouted the Court’s direction to achieve the repatriation of the children. In failing to attend Court hearings on three occasions subsequently, contrary to the specific direction of Henke J, he has contemptuously turned his face against the authority of this Court.
10. In failing to engage with this contempt application, I have been unable to consider any possible mitigation which he may have wished to advance.

Penalty

11. I have had regard to the provisions of part 37 of the Family Procedure Rules 2010 (‘FPR 2010’). I have considered the guidance offered by Hale LJ as she then was in *Hale v Tanner* [2000] 2 FLR 879. I have further studied the judgments of Peel J in *Bailey v Bailey (Committal)* [2022] EWFC 5; of Nicklin J in *Oliver v Shaikh* [2020] EWHC 2658 (QB) (at [14]-[21]); and of MacDonald J in *Allami v Fakher* [2023] EWFC 29.
12. I approach my task having regard to the following points:
 - i) There are two objectives in contempt of court proceedings. One is to mark the court's disapproval of the disobedience to its order. The other is to secure compliance with that order in the future. Thus, the seriousness of what has taken place is to be viewed in that light as well as for its own intrinsic gravity (*Hale v Tanner* (above) at [29]);
 - ii) The disposal of this application must be proportionate to the seriousness of the contempt;
 - iii) In imposing the penalty, I have wide powers of sanction: per rule 37.4 and rule 37.9(1) FPR 2010;
 - iv) I may impose a sentence of up to two years imprisonment (Contempt of Court Act 1981, section 14(1)), or a fine of an unlimited amount. If I impose a sentence of imprisonment, it is open to me to order that execution of the committal order can be suspended for such period or on such terms as I consider appropriate (rule 37.28 FPR 2010);
 - v) The length of any sentence of imprisonment should be decided without reference to whether or not it is to be suspended;

- vi) The length of the committal has to bear some reasonable relationship to the maximum of two years which is available;
 - vii) I have not assumed that imprisonment is the automatic punishment for breach of a family court order;
 - viii) I have not assumed that a contemnor should not be imprisoned for a 'first offence'; each case turns on its own facts;
 - ix) Where imprisonment is contemplated, the Court needs to be satisfied that the contemnor's conduct is so serious that no other penalty is appropriate; imprisonment is a measure of last resort.
13. Having regard to the matters set out above, I am satisfied that an immediate sentence of imprisonment is the appropriate penalty on the facts of this case. This Defendant has committed repeated breaches of the Court's orders over an extended period of time; he has deliberately, in my judgment, failed to comply with orders despite repeated opportunities being given to him to achieve compliance. That he misled Henke J so egregiously is a significant aggravating factor.
 14. For identification of the grounds on which I pass sentence, it is necessary to have regard to [25] and [29] of my earlier judgment, dealing with the findings, which is reported at [2024] EWHC 2204 (Fam).
 15. In relation to Grounds 1, 2 and 6 – which all concern the failure of the Defendant to return, or facilitate the return of, the children to this country – the sentence on each Ground will be one of twelve months' imprisonment. This reflects the seriousness of the Defendant's breaches, and marks the disapproval of this Court for his conduct. The terms of imprisonment will be concurrent with each other, and will therefore be 12 months in total.
 16. In relation to Grounds 3, 4, and 5 – the Defendant's failure to attend Court when ordered to do so, to explain himself and his actions – the sentence on each Ground will be three months' imprisonment; these terms of imprisonment will be concurrent with each other (i.e. 3 months in total), but consecutive to the twelve months sentence imposed above.
 17. In relation to Ground 7, and my finding that the Defendant failed to notify the Tipstaff of the address of the place where the children reside, and knowingly causing the children to change the place at which they reside, the sentence will be one of four months' imprisonment, which will be concurrent with the sentences imposed above.
 18. The overall sentence is therefore one of fifteen months' imprisonment.
 19. The Defendant, once apprehended and detained, will serve one-half of that time in custody.
 20. It will, of course, be open to the Defendant to apply to purge his contempt of court and, hence, to secure his release from custody if the children are returned to the jurisdiction of England and Wales, pursuant to the Return Orders which have been made by Henke J.

21. With the Claimant's agreement, I will authorise the release of photographs of the children who are the subject of the wardship application to the media, in order that steps can be taken to draw attention to their plight, and to the orders which have been made in this case – including the Return Orders, and today's order committing the Defendant to prison.
22. That is my judgment.