Neutral Citation Number: [2024] EWHC 2702 (Fam)

Case No: FD22P00373

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/2024

Before :

MR JUSTICE PEEL

- -

Between :

Samira Addou	**Applicant**
- and -	
Sidali Bennabi	**Respondent**

- -
- -

Mani Singh Basi (instructed by **Dawson Cornwell LLP**) for the **Applicant**
Maria Scotland (instructed by **TV Edwards LLP**) for the **Respondent**

Hearing date: 16 October 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 25 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE PEEL

Mr Justice Peel :

1. I shall refer to the child who is the subject of this bitter litigation as Z, and to his parents as M (his mother) and F (his father).

2. On 2 December 2022, Francis J made what is described at para 3 of his order as a "suspended order for committal" for a period of 18 months, having found F in breach of various orders requiring him to procure the return of Z from Algeria to England.

3. M applies to me today for activation of the order so that F shall be committed to prison forthwith to serve the said term.

4. At previous hearings before me (on 24 September 2024 and 3 October 2024), I expressed concern about whether the wording of the order of Francis J is sufficiently clear to enable me to activate it.

5. M has accordingly made a further committal application arising out of alleged breaches of other orders made by judges of the Division since 2 December 2022 requiring F to return Z to this jurisdiction.

6. Thus, the issues before me today are:

   i) Whether to activate the order of Francis J and/or;

   ii) Whether to make further committal orders.

7. Both parties were represented. I am particularly grateful to solicitors and counsel for F who acted pro bono pending determination of a public funding application.

The background

8. Z, who was born in this country in 2020, is 4 years old. His parents are both of Algerian origin. F came to England in 1996. He and M met in 2017 and married in Algeria in 2018. M joined F in this country on a spousal visa in 2019. On 30 November 2021, F left Z and M stranded (the word used by Moor J in a written judgment after a contested hearing in July 2022) in Algeria at the end of a visit there while he returned to England. He retained the passports of Z and M. He issued divorce proceedings in Algeria. M, with the assistance of the British Embassy in Algeria, returned to this country on 1 February 2022, but was unable to bring Z with her. It appears that ever since, Z has been looked after in Algeria by F's family.

9. On 9 May 2022, Z was made a ward of this court by Sir Jonathan Cohen. On 6 July 2022, after a contested two day hearing which F attended, and at which he was represented, Moor J made an order for F to return Z to this jurisdiction by 15 July 2022. That order was not appealed. F did not comply. Further return orders were made by judges of the Division on 15 July 2022 (Moor J), 28 July 2022 (Ms R Henke QC as she then was), 12 August 2022 (Theis J) and 13 October 2022 (Hayden J). F did not comply with any of them.

10. In circumstances which are unclear, and despite various Tipstaff Orders being in place, F was able clandestinely to leave this jurisdiction on 16 September 2022 to Algeria, where he remained until September 2024. Francis J concluded at the

committal hearing on 2 December 2022 that F had probably obtained alternative travel documents under a different name.

11. In due course, M applied for the committal of F. The application was heard by Francis J in the absence of F on 2 December 2022. The judge was satisfied that F had been properly served with the application and was aware of the hearing date. He decided not to adjourn to give F a further opportunity to participate (the application having already been adjourned on one previous occasion).

12. Counsel for F before me at this hearing submits that Francis J was wrong to find that F had notice of the committal hearing but it seems to me that (i) the judge made express findings to that effect in his judgment, as incorporated in his order and it is not for me to act as an appellate court, (ii) F was indeed notified of the hearing as an email thread between 24 November 2022 and 1 December 2022 shown to me at court demonstrates, (iii) F was served with the committal order, and (iv) F did not appeal or apply to set aside the committal order of 2 December 2022.

13. Counsel for F further submits that Francis J did not consider whether F had the power to compel the return of Z to this country given that he was living in Algeria with his paternal grandparents. As far as I am aware, at no time in the proceedings which started as long ago as May 2022, has F suggested he could not (as opposed to would not) effect a return until it was raised before me today. Moor J, after a two day final hearing in May 2022, must have concluded that F could do so, because he went on to make a return order against which F did not pursue an appeal. There is nothing in his judgment to suggest that F argued he could not return Z, for whatever reason. Likewise, Francis J made a committal order and must have been amply satisfied that F had wantonly disobeyed orders which he was able to comply with. In any event, F did not appeal the committal order. I do not accept F's submission on this point.

14. Francis J was satisfied that F had breached the return orders identified above (five in total). He said at para 26 of his judgment that F "has little, if any, regard for the judicial and legal process in this jurisdiction" and described the impact on both Z and M of F's actions.

15. It is important to set out certain paragraphs of the order which incorporate his findings of breach, and conclusions as to sentencing.

Recitals

i) Para 3:

> "This is a suspended order for committal to prison".

ii) Para 7:

> "The court held that the respondent guilty [sic] in failing to comply with the return orders as pleaded in the grounds for committal and further set out in the ex temporary [sic] judgment (which shall also be set out in the written judgment upon the transcript being obtained).

iii) Para 8:

> "But the court in the exercise of its discretion decided that the order for committal should be suspended on the condition specified below".

Orders

iv) Para 9:

> "Subject to the following paragraphs, the respondent **SIDALI BENNABI [also known as Sid Ali Benabi]** shall be committed to H.M. Prison Pentonville for a period of 18 months, **suspended for a period of 24 months,** commencing on 02nd December 2022."

v) Para 10:

> "This order will not be put into force if the respondent returns [Z] to the jurisdiction of England and Wales by 23.59pm on 16 December 2022."

vi) Para 11:

> "Any application by the applicant for activation of **paragraph 5** above, alleging non compliance with **paragraph 6** above, must be made on notice to the respondent".

vii) Para 12:

> **"SIDALI BENNABI [also known as Sid Ali Benabi]** has permission to apply to the court, on notice to the applicant mother's solicitor, to clear his contempt and to seek an order for discharge of the above order for committal".

16. The order made by Francis J on 2 December 2022 was served on F by email, as provided for in the order. A later order of Mr Alex Verdan KC, sitting as a s9 judge on 20 January 2023, records at para 3 that "The mother's solicitors confirmed that the father has accessed the documents for the purposes of this hearing as well as the orders from the committal hearing but has not contacted them or filed any further evidence". I have been provided with a service bundle which demonstrates to my satisfaction that on 16 December 2022 F accessed an email from M's solicitors and downloaded the attached documents which included the committal order of 2 December 2022. Further, they sent to F by email a copy of the judge's judgment on 9 February 2023 which was accessed that day and the document downloaded, and to his solicitors (who were at the time on the record) on 10 January 2024. Moreover, although F was represented at a subsequent hearing before Francis J on 8 March 2024, his legal team did not dispute service of the committal order. I am satisfied that F was served with, and aware of, the committal order.

17. It was with breathtaking insouciance that F, without notice to M, on 22 November 2023 persuaded a Master in the King's Bench Division to register, purportedly pursuant to the 2005 Hague Convention on Choice of Court Agreements, an order of the Algerian court granting him custody of Z. It is apparent that F, despite being legally represented, did not provide the Master with the relevant history, including (i) the fact that Z was a ward of court, (ii) the existence of the various return orders and (iii) the committal order. Nor was the Master informed that Algeria was not a signatory to the 2005 Hague Convention and that the said Convention does not apply

to family law matters. M was not made aware of these events until 5 January 2024. In the circumstances it is unsurprising that the Master's order was set aside by Francis J on 8 March 2024 at a hearing at which F was legally represented. Francis J described F's behaviour as "astonishing".

18. Various welfare orders, and further return orders, were made in respect of Z after the committal order of 2 December 2022; on 20 January 2023 (Mr A Verdan QC), 28 February 2023 (Judd J), 11 May 2023 (Sir Jonathan Cohen), 8 March 2024 (Francis J) and 9 May 2024 (Moor J) . In addition, a sequestration order was made against him on 11 May 2023 (Sir Jonathan Cohen).

19. All orders throughout the proceedings have been sent to by email to a designated email address used by F.

20. F did not engage with hearings or comply with any orders, save in respect of the Registration of Order proceedings before the Master and Francis J at which he was represented (but did not personally attend).

21. Throughout this period, the relevant Tipstaff orders remained in place. On Saturday 21 September 2024, F was arrested as he re-entered this country, apparently to carry out some employment here. He was remanded in custody and brought before Poole J on Monday 23 September 2024. Poole J adjourned the case to the following day in front of me to give F an opportunity to secure legal representation. He made a further order for F to return Z to this jurisdiction by 23.59pm on 30 September 2024. He remanded F in custody.

22. The matter came before me on Tuesday 24 September. F had not obtained legal representation. I adjourned for a further 9 days, to 3 October 2024, to give him another opportunity to obtain representation. I remanded him in custody. I recorded on the face of the order that F informed the court "he will not return Z to the jurisdiction of England and Wales despite various orders requiring him to do so".

23. On 3 October 2024, F had still not secured representation. I caused enquiries to be made of the CALA Duty Advocate Scheme while F was at court. Counsel and solicitors for M were commendably proactive in contacting solicitors available to assist. The case was called on at about 3pm by which time solicitors and counsel were acting on F's behalf, although they had not reviewed the papers and only had limited instructions. It would not have been fair to proceed, so the matter was adjourned again, this time to 16 October 2024. Counsel for F indicated that if, for whatever reason, public funding were to be unavailable, they would continue to act for him on a pro bono basis. I take this opportunity to express my gratitude to the CALA Duty Advocate Scheme which is of invaluable assistance to the court, and to those who participate in it in the best traditions of family solicitors and barristers.

24. At the hearing on 3 October 2024, Counsel for M indicated that M would issue an additional committal application for alleged breaches of orders made in 2023 and 2024 requiring F to return Z to this country. I directed that any such application would be listed at the same time as the application to activate the sentence imposed on 2 December 2022.

25. At the 3 October 2024 hearing, I remanded F in custody until this hearing. I took the view that (i) in effect this was a part heard committal application where prima facie he had been found in breach and made subject to a sentence of imprisonment; and (ii) he is a clear flight risk, who in the past has managed to leave the country despite protective measures in place. I did consider tagging in accordance with the Practice Guidance issued by the President in April 2015 "Tagging or Electronic Monitoring in Family Cases" as a lesser, but proportionate way of ensuring that F remains in this country, but my communications with the relevant agency (relayed to counsel) indicated that due to a backlog no tag could be fitted for at least two weeks.

The application to activate the order of 2 December 2022

26. As was made clear in **Villiers v Villiers [1994] 1 FLR 647 CA** at 651D, activation of a suspended sentence is a discretionary judicial function, and not automatic:

> "…the court is not bound to activate a suspended sentence upon mere proof of breach of the suspensory condition. The judge has a discretion, taking into account both the past and the current situation, either to activate the original sentence or to impose a reduced sentence or a fine or not to punish at all. In other words there is nothing automatic about the activation of a suspended sentence, and it involves an exercise of judicial judgment on the occasion when the issue of activation arises".

27. It seems to me that before I consider whether, in the exercise of my discretion, the sentence is to be activated, I should first consider whether the committal order is sufficiently clear to enable me to do so.

28. As Wall LJ said in **Re S-C (Contempt) [2010] EWCA Civ 21** at para 17:

> 'if … the order … was to have penal consequences, it seems to us that it needed to be clear on its face as to precisely what it meant, and precisely what it forbade both the appellant and the respondent from doing. Contempt will not be established where the breach is of an order which is ambiguous, or which does not require or forbid the performance of a particular act within a specified timeframe. The person or persons affected must know with complete precision what it is that they are required to do or abstain from doing – see (inter alia) Federal Bank of the Middle East Limited v Hadkinson and Others [2000] 1 WLR 1695; D v D (Access: Contempt: Committal) [1991] 2 FLR 34 and Harris v Harris, A-G v Harris [2001] 2 FLR 895 at para [288].'

29. Although these words were said in the context of an order which was the subject of a committal application, in my judgment the same principle applies to a suspended committal order. Such an order must be clear about the findings of breaches, the sentence and any conditions. The contemnor must know what the consequences are if he does, or does not, comply with the conditions.

30. That said, by **FPR 2010 PD37A 2(2):**

> "The court may waive any procedural defect in the commencement or conduct of a contempt application if satisfied that no injustice has been caused to the defendant by the defect".

In my judgment the breadth of this wording encompasses the entire course of contempt proceedings including, as here, an application to activate the terms of a sentence of imprisonment.

31. In **Nicholls v Nicholls [1997] 1 FLR 649, CA**, Lord Woolf MR said at 655D:

> "While the …requirements of [the rules] are there to be observed, in the absence of authority to the contrary, even though the liberty of the subject is involved, we would not expect the requirements to be mandatory, in the sense that any non compliance with the rule means that a committal for contempt is irredeemably invalid"
>
> And at 661E:
>
> 'The guidance which can be provided for future cases is as follows.
>
> (1) As committal orders involve the liberty of the subject it is particularly important that the relevant rules are duly complied with. It remains the responsibility of the judge when signing the committal order to ensure that it is properly drawn and that it adequately particularises the breaches which have been proved and for which the sentence has been imposed.
>
> (2) As long as the contemnor had a fair trial and the order has been made on valid grounds the existence of a defect either in the application to commit or in the committal order served will not result in the order being set aside except in so far as the interests of justice require this to be done.
>
> (3) Interests of justice will not require an order to be set aside where there is no prejudice caused as a result of errors in the application to commit or in the order to commit. When necessary the order can be amended.
>
> (4) When considering whether to set aside the order, the court should have regard to the interests of any other party and the need to uphold the reputation of the justice system.
>
> (5) If there has been a procedural irregularity or some other defect in the conduct of the proceedings which has occasioned injustice, the court will consider exercising its power to order a new trial unless there are circumstances which indicate that it would not be just to do so.'

32. There are, in my judgment, a number of defects in the committal order of the judge dated 2 December 2022 and, ultimately, counsel for M did not strongly resist that suggestion made by me during dialogue with counsel.

33. First, the numbering of certain paragraphs of the order is clearly wrong. The reference in para 11 (which makes provision for an application to activate) is to paras 5 and 6. That is obviously a mistake and must be intended to refer instead to paras 9 and 10.

34. Second, the order at para 7 does not explain how the sentence was calibrated by reference to the breaches. Para 7 refers to "failing to comply with the return orders" which explicitly must be taken to mean more than one order. The judgment of 2

December 2022 at para 41 refers to the judge's finding that "The father has broken the orders of the court to which I have referred above". Those orders had been identified by the judge at paras 30 to 34 of his judgment. There are five in all. It follows that the judge decided there had been five breaches. However, the order does not then go on to say what term of sentence was imposed for each of the breaches. Were five terms imposed? If so, were they to be served concurrently or consecutively? Or was only one term imposed and, if so, in respect of which breach. I have to do the best I can, but I am not at all clear precisely how the committal sentence was reached by reference to the five breaches.

35. Third, paras 9 and 10 (set out above) are, in my view confusing.

36. It is, I consider, reasonably clear that by reason of para 10, if F were to return Z by 23.59 on 16 December 2022, the order for imprisonment at para 9 would not be put in force.

37. But what is the consequence if, as actually happened, F were not to return Z by the due date? On the face of it the order at para 9 then comes into effect, namely that F is to be committed to prison for a period of 18 months "**suspended for a period of 24 months**". I am unclear as to what this means. A literal reading is that if Z is not returned, the sentence is suspended for 24 months. It will not take effect at all in those 24 months, and there is nothing to say whether it takes effect at the end of 24 months or stands discharged. Either way, on that literal reading, non-compliance with the order to return the child by 23.59 on 16 December 2022 does not lead to immediate imprisonment. Nor does the order say what the terms of suspension are during those 24 months. The reference at para 12 to F having permission to apply to purge his contempt does not seem to me to clarify matters; if anything, it adds to the confusion. Similarly, the judge's judgment at para 47 says that if F returns the child "it is possible that I might decide not to trigger the sentence" which suggests the judge intended to retain a discretion whether to activate the sentence or not, whereas the order itself at para 11 is couched in mandatory terms, namely that it "…will not be put into force…" if F returns the child.

38. I bear in mind that F did not appeal the committal order made on 2 December 2022. Nevertheless, I consider that I have an independent duty to be satisfied that the necessary procedural safeguards have been followed, not least because it falls now to me (not the judge who made the original order) to decide whether the order should be activated.

39. I have grappled with whether these defects cumulatively have caused F an injustice. I do not consider that the first one (incorrect reference to paras 5 and 6 in the order of 2 December 2022) has. But the second and third which I have identified in this judgment are too important to be waived. In the end, the order is insufficiently clear to enable me to activate the sentence. F could not be sure of the consequences of failure to return the child by 23.59 on 16 December. Nor could he be sure precisely which breaches had led to the sentence, or what the sentence actually meant. There is identifiable prejudice to F.

40. I fully appreciate that these are procedural matters, and do not go the merit (or lack of merit) of F's conduct. But as Vos LJ said in **Re L (a Child) [2016] EWCA Civ 173** at para 75:

> "The process of committal for contempt is a highly technical one as this case shows. But it is highly technical for a very good reason, namely the importance of protecting the rights of those charged with contempt".

41. In my judgment, to activate the sentence passed on 2 December 2022 would be to cross the line between redeemable procedural defect and irredeemable procedural defect. I do not consider that I can amend the committal order, as the defects are too fundamental. In my judgment, in the interests of justice, the application to activate the order cannot stand.

Alternative breaches

42. On 7 October 2024, M issued and served a further contempt application in Form FC600 in which she pleads the following breaches of orders by F:

    i) Breach of para 3 of the order of Sir Jonathan Cohen dated 11 May 2023 which required F to "by 23.59pm on 07 June 2023 cause the return of the child [Z] to the jurisdiction of England and Wales".

    ii) Breach of para 12 of the order of Francis J dated 8 March 2024 which required F to "by 23.59pm on 29 March 2024 return or cause the return to England and Wales of the child and ward of the High Court [Z]".

    iii) Breach of para 6 of the order of Poole J dated 23 September 2024 which required F "by 23.59pm on 30th September 2024 to return or cause the return to England and Wales of the child and ward of the High Court [Z]".

43. Additional alleged pleaded breaches, in my judgment, cannot be proceeded with because they do not impose a date by which the return of Z is to be effected by F. Para 13 of the order of Francis J dated 8 March 2024 provides that if the child is not returned under para 12 (i.e by 29 March 2024), then F remains under a continued obligation to return him to England and Wales. Para 11 of the order of Moor J dated 9 May 2024 provides that the return order of Francis J dated 8 March 2024 shall remain in force. Para 7 of the order of Poole J dated 23 September 2024 provides that if F does not return the child as stipulated under para 6 (i.e by 30 September 2024), he remains under a continued obligation to do so.

44. Although I understand the anxiety of M to put all matters before the court, I am of the view that it was unnecessary to include alleged breaches of these various "continued obligations". There are three identified alleged breaches with specific deadlines which are properly brought. I am not convinced that the additional "continued obligations" breaches add much, if anything, and it seems to me that they lack the clarity and certainty required to warrant a committal. Essentially, the continued obligations do not state a date by when the child must be returned which in my view is an essential ingredient for a contempt application of this nature. I am fortified in this conclusion by the dicta of Sir James Munby P who said at para 21 of **The Solicitor General v. JMJ (Contempt) [2013] EWHC 2579 (Fam)**:

> "A mandatory order is not enforceable by committal unless it specifies the time for compliance: **Temporal v Temporal [1990] 2 FLR 98**. If it is desired to make such an order enforceable in respect of some omission after the specified

> time, the order must go on to specify another, later, time by which compliance is required. Hence the form of 'four-day order' hallowed by long usage in the Chancery Division, requiring the act to be done 'by [a specified date] or thereafter within four days after service of the order'. This is an application of the wider principle that in relation to committal 'it is impossible to read implied terms into an order of the court."

45. Those words, in my judgment, apply as much to a suspended committal order, which incorporates conditions of activation, as to the original order upon which a contempt application is brought.

46. I shall therefore proceed on the basis of the three alleged specific, deadline breaches identified above, and dismiss the further alleged breaches relied upon.

47. The first two relevant orders (11 May 2023 and 8 March 2024) contained provision for F to be served with the orders by email at his email address, which was deemed to constitute personal service (perhaps more accurately, personal service was thereby dispensed with). The service bundle placed before me demonstrates to my satisfaction that the orders were sent by email as provided for. It is of relevance that F replied directly from his email address to M's solicitors on 21 March 2024 in response to an email sent by them that day. I have no reason to think that F did not receive all emails to that email address.

48. In addition to service by email, the second order (8 March 2024) was made with F's lawyers present. I am told that they were on the record in connection with the Registration of Order proceedings, but the hearing on that occasion encompassed all matters, including the return order, and it seems to me to be highly unlikely that they would not have drawn F's attention to the order.

49. The third order (23 September 2024) was made with F present in person at court.

50. Accordingly, the orders were, I am satisfied, brought to F's attention as follows:

    i) The order of 11 May 2023 was served by email on 24 May 2023 in accordance with the court order. Although F told me through counsel that he did not receive this email, I am satisfied that he both received and accessed it, as he did other emails sent to this address. In this regard, the fact that F responded directly to an email on 21 March 2024 (see below) is strongly indicative that F received all emails to this address.

    ii) The order of 8 March 2024 was served by email on 21 March 2024 in accordance with the court order, to which F replied on the same day (from the email address used by him throughout) saying that "the child will not go back to England". Further, the order had been made on 8 March 2024 in the presence of F's lawyers who were in attendance on his behalf at court, even if they were formally on the record only for the Registration of Order proceedings. F's counsel realistically accepted that service of this order was effected.

    iii) The third order was made by Poole J on 23 September 2024 in the presence of F who was at court. Counsel for F accepted that he was aware of the order

made.

51. I am satisfied that in respect of the three alleged breaches of the relevant orders identified above, the application is complaint with rule 37.4 of the FPR 2010 which incorporates the essential safeguards identified by Theis J in **L (A Child) [2016] EWCA Civ 173**. The orders were served (and F did not appeal). A warning notice was displayed prominently on the front of each order. The terms were clear.

52. I refer to my judgment of **Bailey v Bailey [2022] EWFC 5** in which I attempted to distil the relevant law as follows: ,

> "25. In terms of legal principles, committal proceedings are essentially criminal in nature, even if not classified in our national law as such (see **Benham v United Kingdom (1996) 22 EHRR 293 at [56], Ravnsborg v. Sweden (1994), Series A no. 283-B).**
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> 26. The burden of proof lies at all times on the applicant. The presumption of innocence applies (Article 6(2) of the ECHR). There is no burden on the defendant.
>
> 27. Contempt of court must be proved to the criminal standard: that is to say, so that the judge is sure (see **Cambra v Jones [2014] EWHC 2264 per Munby P***).*
>
> 28. Contempt of court involves a contumelious that is to say a deliberate, disobedience to the order. The accused must (i) have known of the terms of the order i.e precisely what s/he is required to do and (ii) have acted (or failed to act) in a manner which involved a breach of the order and (iii) have known of the facts which made his/her conduct a breach (see **Masri v Consolidated Contractors Ltd [2011] EWHC 1024 (Comm).**
>
> 29. If it be the case that applicant cannot prove that the defendant was able to comply with the order, then s/he is not in contempt of court. It is not enough to suspect recalcitrance. It is for the applicant to establish that it was within the power of the defendant to do what the order required. It is not for the defendant to establish that it was not within his/her power to do it. That burden remains on the applicant throughout, but it does not require the applicant to adduce evidence of a particular means of compliance which was available to the defendant provided the applicant can satisfy the judge so that s/he is sure that compliance was possible. The judge must determine whether s/he is sure that the defendant has not done what s/he was required to do and, if s/he has not, whether it was within his/her power to do it. Could s/he do it? Was s/he able to do it? These are questions of fact. That said, breach may occur where compliance is difficult or inconvenient but not impossible; see **Perkier Foods Ltd. v Halo Foods Ltd. [2019] EWHC 3462 (QB).**
>
> 30. If committed, the contemnor can apply to purge his/her contempt."

53. I am satisfied that M has discharged the burden on her of establishing to the criminal standard of proof that F has deliberately refused to comply with the three orders of this court.

54. M has satisfied me that each order was made requiring return of Z to the jurisdiction by specified dates and was sufficiently clear in its terms for F to understand his obligations.

55. M has satisfied me that F was fully aware of the orders.

56. M has satisfied me that F deliberately did not comply with the orders, and did not return Z. I reject the suggestion that F could not facilitate the orders, particularly as on his own case he has a custody order in Algeria which enables him to take necessary parental steps. It is abundantly clear that he has no intention to return Z, as opposed to no ability to do so. He has never made any effort to do so. The judges who made the return orders must have been satisfied that F could comply. Insofar as it was suggested by counsel that F does not, and did not at the relevant times, have the financial wherewithal to comply, I note that he paid for lawyers privately in 2024 to represent him in the Registration of Order proceedings and was able to pay for his own flight to this country on 21 September 2024. Further, F has not suggested at any time before today that he cannot procure Z's return. He has not put in (as is his right) any evidence setting out his case as to inability to comply (whether for financial or other reasons), and I do not consider that submissions made by counsel on his behalf constitute evidence which assists him.

57. I therefore conclude that F is in contempt of court on three counts:

    i) He breached para 3 of the order of Sir Jonathan Cohen dated 11 May 2023 which required him to "by 23.59pm on 07 June 2023 cause the return of the child [Z] to the jurisdiction of England and Wales".

    ii) He breached para 12 of the order of Francis J dated 29 March 2024 which required him to "by 23.59pm on 29 March 2024 return or cause the return to England and Wales of the child and ward of the High Court [Z]".

    iii) He breached of para 6 of the order of Poole J dated 23 September 2024 which required him "by 23.59pm on 30th September 2024 to return or cause the return to England and Wales of the child and ward of the High Court [Z]".

58. I offer a final comment. The use of "continuing obligation" return orders, which is commonplace, is unlikely to be susceptible to a successful committal application because of the absence of a deadline for return. There may be other reasons for making a "continued obligation" return order, but applicants should consider carefully whether such an order is of utility.