Neutral Citation Number: [2020] EWHC 3322 (Fam)

Case No: FD19P00680

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/12/2020

Before :

MRS JUSTICE LIEVEN

- -

Between :

HENRY OGBEMUDIA EMONI

Applicant

and

SANDRA OJOMA NDIDI ATABO

Respondent

- -
- -

Mr Richard Wheeler appeared for the **Applicant**
The Respondent did not attend and was not represented

Hearing dates: **1 December 2020**

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MRS JUSTICE LIEVEN

Mrs Justice Lieven DBE :

1. This is an application by Henry Emoni for a finding that Sandra Atabo, the Respondent, is in contempt of court in relation to four court Orders. The Applicant and Respondent are the parents of Nizana Emoni, a girl, aged 11.

2. The first issue before me is whether I should go ahead with this application in the absence of the Respondent. Mr Emoni is represented by Mr Wheeler and I record my very great gratitude to Mr Wheeler, who is doing the case pro bono, and has been of very great assistance today. Miss Atabo is not present and not represented.

3. I consider it appropriate to conduct the hearing remotely even though it is a committal application. Miss Atabo is known to be in Nigeria and is not going to be able to attend in any event and it is appropriate the matter is heard by video link.

4. Miss Atabo has not attended today. It is clear from the notes in the Family Court Practice 2020 (the Red Book) at §1.131 that it can be appropriate to proceed with an application for committal in the absence of the alleged contemnor. The circumstances in which the court may do so were considered by Cobb J in *Sanchez v Pawell Oboz and Jolant Oboz* [2015] EWHC 235 (Fam). At paragraph 4 Mr Justice Cobb held:

> *"It will be an unusual, but by no means exceptional, course to proceed to determine a committal application in the absence of a respondent. This is so because:*
>
> *i) 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); in a criminal context, proceeding with a trial in the absence of the accused is a course which will be followed only with great caution, and with close regard to the fairness of the proceedings (see R v Jones (Anthony) [2003] 1 AC 1, approving the checklist provided in R v Jones; R v Purvis [2001] QB 862);*
>
> *ii) Findings of fact are required before any penalty can be considered in committal proceedings; the presumption of innocence applies (Article 6(2) ECHR). The tribunal of fact is generally likely to be at a disadvantage in determining the relevant facts in the absence of a party;*
>
> *iii) The penalty of imprisonment for a proven breach of an order is one of the most significant powers of a judge exercising the civil/family jurisdiction; the respondent faces the real prospect of a deprivation of liberty;*
>
> *iv) By virtue of the quasi-criminal nature of committal process, Article 6(1) and Article 6(3) ECHR are actively engaged (see Re K (Contact: Committal Order) [2002] EWCA Civ 1559, [2003] 1 FLR 277 and Begum v Anam [2004] EWCA Civ 578); Article 6(1) entitles the respondent to a "a fair and public hearing"; that hearing is to be "within a reasonable time";*

> *v) Article 6(3) specifically provides for someone in the position of an alleged contemnor "to defend himself in person or through legal assistance of his own choosing", though this is not an absolute right in the sense of "entitling someone necessarily to indefinite offers of legal assistance if they behave so unreasonably as to make it impossible for the funders to continue sensibly to provide legal assistance" (per Mance LJ (as he then was) in Re K (Contact: Committal Order) (reference above)). The respondent is also entitled to "have adequate time and the facilities for the preparation of his defence" (Article 6(3)(b)).*"

5. At paragraph 5 Mr Justice Cobb set out:

> *"As neither respondent has attended this hearing, and in view of Mr. Gration's application to proceed in their absence, I have paid careful attention to the factors identified in [4] above, and, adapting the guidance from R v Jones; R v Purvis, have considered with care the following specific issues:*
>
> *i) Whether the respondents have been served with the relevant documents, including the notice of this hearing;*
>
> *ii) Whether the respondents have had sufficient notice to enable them to prepare for the hearing;*
>
> *iii) Whether any reason has been advanced for their non-appearance;*
>
> *iv) Whether by reference to the nature and circumstances of the respondents' behaviour, they have waived their right to be present (i.e. is it reasonable to conclude that the respondents knew of, or were indifferent to, the consequences of the case proceeding in their absence);*
>
> *v) Whether an adjournment for would be likely to secure the attendance of the respondents, or at least facilitate their representation;*
>
> *vi) The extent of the disadvantage to the respondents in not being able to present their account of events;*
>
> *vii) Whether undue prejudice would be caused to the applicant by any delay;*
>
> *viii) Whether undue prejudice would be caused to the forensic process if the application was to proceed in the absence of the respondents;*
>
> *ix) 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)).*

6. I will deal with each of these issues in turn.

7. First, whether Miss Atabo has been served with documents and notice of the hearing? I have no doubt that Miss Atabo has been served with the relevant documents and notice of today's hearing. In the Order dated 2 November 2020 Miss Atabo's attendance at today's hearing was expressly required. The order provided for service by email given that personal service is extremely difficult to effect in Lagos. The relevant email address is one that has been used by her on a number of occasions and on which she has had no difficulty receiving emails. The Order of 2 November 2020 was sent to that email address by the court on 3 November 2020 and all relevant documents were sent to that email address. In light of that history I have no doubt she has been properly served with documents including the notice of today's hearing.

8. Second, whether she has had sufficient notice to enable her to prepare? Mr Emoni first applied for committal some months ago, at a stage when Miss Atabo was engaging with the proceedings. This application was adjourned from 2 November 2020. She has had sufficient time to prepare for today.

9. Third, whether any reason has been advanced for her non-appearance? No reason has been given for her not attending today or at the last hearing. Miss Atabo has, so far as I am aware, simply chosen not to engage in the more recent parts of these proceedings.

10. Fourth, whether she has waived the right to be present by her behaviour? She has not waived the right to be present in that her conduct has not amounted to a waiver. However, as I have explained, she appears to have chosen not to be present or engage.

11. Fifth, whether an adjournment is likely to secure her attendance based on the history? Miss Atabo has had ample opportunity to attend and has shown herself to be capable of doing so in the past. I can only assume her non-attendance is a matter of choice and there is no reason to believe that if I adjourned, she would attend a restored hearing.

12. Sixth, the extent of disadvantage to her in not being present? It is a major disadvantage to her not to be present as she cannot give oral evidence or cross-examine Mr Emoni. But I do have a number of witness statements from her at earlier stages in the proceedings so this is not a case where her non-attendance means I have no idea what her case is, or that I do not have material to consider the arguments she might have sought to put.

13. Seven, whether undue prejudice would be caused to the applicant by delay? This case concerns Mr Emoni's efforts to have his daughter returned to the UK where she was habitually resident prior to removal. Any further delay is prejudicial to the child and Mr Emoni. I am very conscious of the fact that the proceedings have been going on for close to, if not over, a year.

14. Eight, whether undue prejudice would be caused to the forensic process if the application was to proceed in the absence of the respondent? The forensic process is more difficult if the respondent is not present. However, I do have evidence from her and in my view both a fair and effective trial can proceed without her.

15. Finally, the overriding objective. In my view, the just course here is to proceed in the Respondent's absence given that she has chosen not to attend.

16. For those reasons I consider it is appropriate to continue to hear this application in the Respondent's absence.

Procedural Rules

17. Part 37 of the Family Procedure Rules deals with the procedure for contempt. It was recently amended by Family Procedure (Amendment No 2) Rules 2020 [SI 758/2020]. The new rules aim to simplify and clarify the process for contempt applications and to bring it closely into conformity with the new rules in the Civil Procedure Rules.

18. The relevant definitions for today are in r.37.2:

> "contempt application" means an application to the court for an order determining contempt proceedings;
>
> "order of committal" means the imposition of a sentence of imprisonment (whether immediate or suspended) for contempt of court;
>
> "penal notice" means a prominent notice on the front of an order warning that if the person against whom the order is made (and, in the case of a corporate body, a director or officer of that body) disobeys the court's order, the person (or director or officer) may be held in contempt of court and punished by a fine, imprisonment, confiscation of assets or other punishment under the law.

19. Rule 37.4(1) provides that unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation.

20. Rule 37.4(2) sets out matters which must be included in the contempt application. The FPR does not specify the form to use for contempt applications in family proceedings. However, I am satisfied the applicant has used the appropriate form N600 to make this application.

21. Unless the court directs otherwise, the application and evidence in support must be served personally [r.37.5(1)]. The court has power to authorise alternative service and/or to direct that steps already taken to bring the application form to the attention of the Respondent by an alternative method is good service, in accordance with the rules on alternative service in Part 6.

22. It is clear from case law that the court may order service out of the jurisdiction by an alternative method: *Wilmot v Maughan* [2018] 1 FLR 1306, CA.

23. FPR r.37.8(1) states all hearings of contempt proceedings shall be listed and heard in public unless the court directs otherwise. This hearing has been in public.

24. Rule 37.8(7) states the judge and advocates shall appear robed. I am robed but gave Mr Wheeler dispensation from wearing robes given that this is a remote hearing.

25. At PD 37A para 2(2) it states:

> *"(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."*

Case Law

26. I do not need to recite very large amounts of case law. In *Re L (a Child)* [2016] EWCA Civ 173, Mrs Justice Theis set out the following helpful and sensible guidance [at §78]:

> *"Before any court embarks on hearing a committal application, whether for a contempt in the face of the court or for breach of an order, it should ensure that the following matters are at the forefront of its mind:*
>
> *(1) There is complete clarity at the start of the proceedings as to precisely what the foundation of the alleged contempt is: contempt in the face of the court, or breach of an order.*
>
> *(2) Prior to the hearing the alleged contempt should be set out clearly in a document or application that complies with FPR rule 37 and which the person accused of contempt has been served with.*
>
> *(3) If the alleged contempt is founded on breach of a previous court order, the person accused had been served with that order, and that it contained a penal notice in the required form and place in the order.*
>
> *(4) Whether the person accused of contempt has been given the opportunity to secure legal representation, as they are entitled to.*
>
> *(5) Whether the judge hearing the committal application should do so, or whether it should be heard by another judge.*
>
> *(6) Whether the person accused of contempt has been advised of the right to remain silent.*
>
> *(7) If the person accused of contempt chooses to give evidence, whether they have been warned about self-incrimination.*
>
> *(8) The need to ensure that in order to find the breach proved the evidence must meet the criminal standard of proof, of being sure that the breach is established.*
>
> *(9) Any committal order made needs to set out what the findings are that establish the contempt of court, which are the foundation of the court's decision regarding any committal order.*

> *79. Counsel and solicitors are reminded of their duty to assist the court. This is particularly important when considering procedural matters where a person's liberty is at stake."*

27. In terms of clarity as to what the foundation of the alleged contempt is, I note the contempt application form N600 which sets out at section 7 and 12 the Orders relied on and the alleged breach. Furthermore, Mr Wheeler not only put in a very clear skeleton argument but also a Schedule which set out the terms of each Order relied on, the alleged breach, the evidence relied on and the position in relation to service. There is therefore one document that completely clearly sets out the position. The skeleton and Schedule were emailed to the court and to the Respondent on 29 November 2020 at 9.18am.

28. As to Miss Atabo's opportunity to secure legal representation and legal aid, I referred to this in recitals in earlier Orders. Furthermore, she is a qualified lawyer and has practised in this country and Nigeria. I have no reason to doubt she is not aware of her rights.

29. As to whether I should deal with the application or refer it to another judge, I note Miss Atabo said in earlier documents that she had made a complaint about me. I have set out in three earlier Orders (28 September 2020, 19 October 2020 and 2 November 2020) that if she wanted me not to hear the matter, she should make an application for me to recuse myself and I set out the timescale for making such application. No such application has been made and, in my view, I have no grounds to recuse myself and it is therefore appropriate that I continue to hear the application.

30. She has also been advised, as recorded in earlier Orders, that she does not have to give evidence and that she has a right not to incriminate herself, but she has not attended today to hear such advice orally.

31. In terms of the approach to the evidence, the burden of proof rests on the person making the allegation of contempt. The standard of proof is the criminal standard (*Cambra v Jones* [2014] EWHC 2264 (Fam), Munby P)).

32. In *Egeneonu v Egeneonu* [2017] EWHC 2336 (Fam), at §21(b) David Williams QC (as he then was) sitting as a Deputy Judge of the High Court, gave some helpful guidance. I am not going to read it all out but, in particular, at §21(b):

> *"To have penal consequences, an order needs to be clear on its face as to precisely what it means and precisely what it prohibits or requires to be done. 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. It is not possible to imply terms into an injunction. The first task for the judge hearing an application for committal for alleged breach of a mandatory (positive) order is to identify, by reference to the express language of the order, precisely what it is that the order required the defendant to do. That is a question of construction and, thus, a question of law."*

33. And at §21(e):

> *"Contempt of court involves a contumelious that is to say a deliberate, disobedience to the order. If it be the case that the accused cannot comply with order then 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 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 accused provided the applicant can satisfy the judge so that he is sure that compliance was possible."*

34. I note also *Savings and Investment Bank v Gasco Investments (Netherlands) BV (No 2)* [1988] Ch 422, in which it was held that hearsay evidence is admissible in contempt proceedings, but caution should be exercised when relying upon it.

Compliance with Procedural Requirements in this Case

35. FPR 37.4(1) provides that a contempt application should be supported by written evidence given in an affidavit. Mr Emoni, up until this hearing, has represented himself which poses some challenges in a contempt application. His evidence had all been given in witness statements rather than by affidavit. However, before this hearing he swore an affidavit dated 17 November 2020 which exhibited the earlier witness statements and confirmed their truth. So that earlier evidence has now been made on oath and that plainly meets the requirement of r.37.4(1). Furthermore, he gave oral evidence today on oath and confirmed the truth of the affidavit and previous statements. The requirements of r.37.4(1) have been met.

36. Mr Emoni made his application on Form N600. There is no specific form required by the rules, however, the N600 appears to me to be the appropriate form. There is a slight question as to whether the boxes have been filled in in the right way. But I am entirely satisfied having read the form and Mr Wheeler's skeleton argument that all the relevant information is in that form and that therefore the requirements of the rules have been met. If there had been any non-compliance in the form, I would have undoubtedly taken the view that the Practice Direction para. 2(2) would apply and that no error in filling out the form had caused any injustice to Miss Atabo.

37. Miss Atabo has been for significant part of the currency of these proceedings in Nigeria and, for the part of the period when she was in the UK, the Covid-19 pandemic restrictions have been in force. Therefore, all Orders have been served electronically, not personally, save for the original Child Arrangements Order of 22 June 2016. But Miss Atabo was in court when that Order was made. The Order 19 December 2019 made provision on its face for e-service. The Orders of 10 June 2020 and 21 July 2020 did not make provision on their face for e-service but the Respondent was present in court on 10 June 2020 and was represented by a solicitor on 21 July 2020. Furthermore, both the 10 June 2020 and 21 July 2020 Orders were served upon her by email. Therefore, I am satisfied she has had due notice of each of the Orders sought to be enforced by this contempt application.

38. Having dealt with those points I now turn to the factual background to this application.

Factual Background

39. The parties are divorced and by a Child Arrangements Order made at Barnet County Court on 22 June 2016, basic provisions were set out regulating arrangements in respect of their daughter including that the child was to live with the mother and to have extensive contact with the father.

40. The Order of 22 June 2016 provided under the heading 'Agreements' that:

> *"The parents agree with each other that neither will remove Nizana from the jurisdiction of the courts of England and Wales without the other parent's agreement or an order of the court."*

41. There were then provisions as to child arrangements and at the end of the Order there was written, in standard form, under the heading 'Warning' and in bold type:

> *"Warning:*
>
> *Where a Child Arrangements Order is in force and the arrangements regulated by it consist of, or include, arrangements which relate to either or both (a) with whom the child shall live and (b) when the child shall live with any person, no person may cause the child to be known by a new surname or remove the child from the United Kingdom without the written consent of every person with parental responsibility without the leave of the court.*
>
> *However, this does not prevent removal of the child, for a period of less than 1 month, by person named in the Child Arrangements Order as a person with whom the child shall life (Sections 13(1), (2) and (4) Children Act 1989).*
>
> *Where a Child Arrangements Order is in force: if you do not comply with a provision of this Child Arrangement Order-*
>
> *(a) you may be held in contempt of court and be committed to prison or fined; and/or*
>
> *(b) the Court may make an order requiring you to undertake unpaid work ("an enforcement order") and/or an order that you pay financial compensation."*

42. On 22 October 2019 the Respondent took the child to Nigeria where she still remains. There is a dispute as to the circumstances in which the child was taken to Nigeria and it is the mother's case that Mr Emoni agreed to her going and I will return to that when I come to assess the evidence.

43. Upon application by Mr Emoni, on 12 December 2019 without notice to the Respondent, Mr Justice Cobb made the child a ward and made a Female Genital Mutilation Order to 12 May 2020.

44. On 19 December 2019, at the on notice return date, HHJ Turner QC, sitting as a judge of the High Court, ordered the child to remain a ward of court and that the Respondent return the child forthwith. That is the first Order upon which I am asked to make a finding of breach.

45. In around February 2020 the Respondent returned to UK, without the child. Her passports (Nigerian and UK) were seized by police, in accordance with the Passport Order, on a date in May 2020.

46. On 13 May 2020, without notice to Respondent, Mr Justice MacDonald made an Order requesting the High Commission of Nigeria to decline to issue a passport to the Respondent, should she apply for one. The Order prohibited the Respondent from applying for a UK passport until further order.

47. On 20 May 2020, at the return date, Mrs Justice Roberts declined the Respondent's request for return of her passports so she could return to Lagos to complete her employment contract. The court ordered the Respondent to take all necessary steps to secure the child's return and listed a further hearing on 10 June 2020.

48. On 10 June 2020, the matter came before me and I ordered the Respondent to instruct her lawyers in Nigeria to hand over the child's UK and Nigerian passports to the Respondent's lawyers and to instruct the maternal grandmother in Nigeria (with whom the child was then living) to hand over the child to the father so he could bring her back to UK.

49. On 29 June 2020 the Applicant applied for an Order for committal seeking to enforce §1 of the Order 10 June 2020.

50. On 21 July 2020, the matter came before me again and I made a further Order requiring the Respondent to instruct her lawyers to hand over the child's passports, with provision for the Applicant to apply for Emergency Travel Documents for the child. I listed the committal application to be heard on 28 September 2020.

51. On 28 September 2020 the committal application was adjourned with the Applicant ordered to serve an updated statement. I informed the Applicant he had made the committal application on the wrong form and invited him to resubmit it on the correct form.

52. On 3 October 2020 the Applicant made a further contempt application on form N600 together with a statement in support. That is the application which is now before me.

The Evidence

53. Mr Emoni has made six witness statements and confirmed them in his affidavit dated 17 November 2020. I have now had Mr Emoni before me on at least four occasions and I wish to record that the evidence I have heard today and the evidence from his written statements all suggest to me he is an honest and truthful witness. Today he has

shown Mr Wheeler some WhatsApp messages from October and November 2020 and I have seen these. To some extent they are against what he says in this case and I have no reason to doubt he has been honest with the court and has produced full evidence to the court.

54. Miss Atabo has filed five witness statements and has not attended the last three hearings. I have not had the benefit today of hearing her oral evidence or the opportunity to ask her questions. There is evidence in the written documents which leads me to place considerable doubt on her credibility. In particular, I note she has given various inconsistent statements as to her intention to return with Nizana to the UK having certainly said, in terms, that she intended to return her to the UK to start school in the autumn term 2020 but has not actually done so. By an Order dated 13 May 2020, Mr Justice MacDonald forbade her from applying for a new UK passport, and the Nigerian High Commission was requested not to issue a Nigerian passport, but despite those provisions, and despite both Mr Justice MacDonald and then I, refusing to allow her to return to Nigeria, she left the UK in late July 2020 to return to Nigeria by means unknown.

55. Furthermore, she also blind copied Mr Emoni's employer into a highly derogatory email which I find was designed to cause him difficulty.

56. Further, she has declined to attend today despite a court order requiring her to do so.

57. All these points cause me to be in considerable doubt as to her credibility.

This Application for Contempt

58. The Applicant alleges four breaches – of the Child Arrangements Order dated 22 June 2016, the Order dated 19 December 2019, the Order dated 10 June 2020, and the Order dated 21 July 2020.

59. Mr Wheeler does not proceed today in relation to the first alleged breach (that is the alleged breach of the Order 22 June 2016). He does not withdraw the allegation, but he does not ask me to make any determination on it today. I need say no more about that alleged breach save to make it clear that Mr Wheeler does not proceed with it today because of the particular terms of the Order rather than because of any suggestion that Mr Emoni's evidence in relation to the alleged breach is not true.

60. Miss Atabo said in her written evidence that Mr Emoni had agreed to Nizana travelling to Nigeria in October 2020. She referred to WhatsApp messages but did not produce those messages. I have now seen the messages which I believe she was relying upon. I do not need to make any finding on this matter for the purposes of the application before me today. However, I should make clear that the WhatsApp messages do not themselves show that Mr Emoni agreed to Nizana going to Nigeria for any period of time. Further, his subsequent actions in immediately contacting the school to try to find out what was happening, and his subsequent applications to this court, all suggest that he did not consent to Nizana leaving the jurisdiction.

61. Mr Wheeler also does not proceed on an allegation that Miss Atabo has breached paragraph 7 of the Order dated 21 July 2020. In relation to the Order 21 July 2020 he proceeds today only on the allegation that she has breached paragraph 5 of that Order.

62. I turn to the alleged breach of the Order of HHJ Turner QC dated 19 December 2019 and the express provision at paragraph 18 alleged to have been breached:

> *"18. The respondent shall return the child forthwith to England and Wales."*

63. In terms of service, the Order dispensed with personal service and provided for service by email and clear proof of service is seen in an email dated 9 January 2020 at 13:57. I find, in those circumstances, that that Order was served. Self-evidently the terms of the Order are entirely clear. That the Respondent was aware of the Order is clear from her own evidence. In her witness statement dated 1 June 2020 she says, at para. 7:

> *"I delayed making this statement or applying to vary or discharge these orders due to the Christmas and New year holidays. Also my uncle died on 25 December 2019 and the family spent early part of January in mourning and arranging for his burial."*

64. At paragraph 8 of her statement dated 1 June 2020 she states she returned to the jurisdiction in February 2020.

65. For these reasons I find that she was aware of the order prior to her return to the UK in early 2020. In terms of breach – at paragraph 7 of her handwritten statement (which is undated on its face, but in her statement dated 6 July 2020 the Respondent dates as 13 May 2020), she states:

> *"I returned to UK once I became aware that the child was made a ward of this court in January 2020 to resolve this issue once and for all. I returned to UK on 24 January 2020".*

And at paragraph 10 she states:

> *"I was to return to Nigeria in March to be with my child until this matter is resolved by Covid 19 pandemic prevented me doing so. This is now the longest period I have been separated from the child and I wish to return to the child who is in good care but distressed by my long absence due to Covid 19 pandemic."*

66. In those circumstances it is beyond reasonable doubt that Miss Atabo has breached the Order of 19 December 2019 and that she has breached the Order deliberately. There is no suggestion in any evidence that she could not return to the jurisdiction with the child. Given the fact she herself returned in January or February 2020 before the pandemic had taken hold, there is not the slightest doubt that she chose to return to the UK without Nizana in breach of the Order dated 19 December 2019.

67. In those circumstances I find all the requirements to be made out: the Order is clear, it had a penal notice on the front, it was served by email, she had full notice of it, she admits knowing of it, and she admits returning without the child. Furthermore, having

gone back to Nigeria in late July / early August 2020, she has chosen not to return to the UK with Nizana nor to allow Nizana to travel on her own or with her father. I find that that the breach is made out on the requisite standard of proof.

68. The third and fourth alleged breaches are closely related. The third relates to the Order of 10 June 2020 and the fourth to the Order of 21 July 2020. In both cases the provision in issue relates to the mother's instructions to her lawyers.

69. At paragraph 1 of the Order 10 June 2020 the Court Ordered:

> *"1. Mother to instruct her lawyers in Lagos to hand over the Child (Nizana Emoni) Nigerian and UK passports to the Father's lawyers (Chisom Akabogu Esq, 15, Awoyemi Close, Off Ogunlana drive, Surulere, Lagos, Nigeria and email: somvialex@yahoo.com) by 4pm Tuesday 16 June.*
>
> *A PENAL NOTICE IS ATTACHED TO THIS PARAGRAPH"*

A penal notice was attached to the Order.

70. In terms of service, Miss Atabo was present at that hearing, and the Order was emailed to her at the email address she has consistently used, and she refers to the terms of the Order in her own email dated 16 June 2020 16.06.20 at 10:50pm. It is beyond reasonable doubt that she knew about the Order. The terms of the Order are perfectly clear – she had to instruct her lawyers to hand over the child's UK and Nigerian passports.

71. The context is that, at that stage, Miss Atabo was in the UK and Mr Emoni was saying he would fly to Lagos to collect the child. The mother was saying that the passports were held by her solicitors rather than by the maternal grandmother, where the child was living. That is why I made Order that the lawyer was to hand over the passports. I did not want Mr Emoni to fly to Nigeria and then find the passports had not been handed over.

72. The evidence of what happened next is that in his 4th witness statement dated 29 June 2020 the Applicant says:

> *"After 4pm on Tuesday 16 June 2020, I contacted my lawyer, she confirmed that she was yet to receive Nizana's passports…".*

73. There is an email from Miss Atabo on 16 June 2020 at 10:50 saying:

> *"I sent Dayo [Miss Atabo's Nigerian lawyer] order yesterday to action. Please read the order. Your Lawyer was never supposed to receive the passport today. I was supposed to inform my lawyer to handover".*

74. I take it from that that Miss Atabo was suggesting she had complied with the Order by instructing her lawyers to hand over the passports and that is all she was required to do.

75. On 22 June 2020 Mr Emoni's lawyer confirmed by email:

> *"I am yet to receive the passport from your wife's lawyer. I have not even gotten a call yet from them concerning the delivery of the passport to my residence".*

76. On 11 November 2020 Mr Emoni's lawyers confirmed in a letter than no attempt had been made to arrange to hand over passports, and they still do not hold them.

77. In her statement dated 31 August Miss Atabo states at paragraph 8:

> *"I complied with paragraph 1 of the order of 10th June and paragraph 1 of the order of 21 July."*

However, she provides no details to substantiate that assertion.

78. There is an email from Miss Atabo's lawyer dated 21 July 2020 at 9:34 which says:

> *"Good day Sandra.*
>
> *With respect to the above I have not received a call from the lawyer or anyone with respect to the passport; neither is there a telephone number indicated on the order for me to call. A letter was sent to the address indicated on the order to arrange for a meeting but received no response.*
>
> *With the present pandemic ravaging I don't consider good for my health to start going about scouting or looking for an address.*
>
> *The issue is also too sensitive to just hand over without proper verification or identification. Thanks."*

79. It is possible in the light of that email that Miss Atabo would argue that she had instructed her lawyer to hand over the passports, but that he was not capable of doing so for the reasons set out. It seems possible that that email was sent on the morning of 21 July 2020 before the hearing before me took place remotely at 10.30am in London.

80. I will go on to consider the facts in relation to the fourth alleged breach, then set out my conclusions in relation to both.

81. The fourth alleged breach is in relation to my Order 21 July 2020. Again the mother was present, by video or phone. The terms of that Order:

> *"5. The Mother is to instruct her lawyers in Lagos (Dayo Odeseye Esq, Seye Fasoranti & Co, 11b Samuel Awonoyi Street, Opebi, Lagos, Nigeria, tel: +234803 824 3058, email: dayoodeseye@yahoo.com) to hand over the Child's (Nizana Emoni) Nigerian and UK passports to the Father's lawyers (Ndayisa and Co, C/O Chisom Akabogu, 35, Simpson Street, Lagos Island, Lagos, Nigeria, tel: +234 810 860 1799) by 4pm on 23 July 2020, at their business address or private address."*

82. Again a penal notice is attached and referred to and there is proof of service by email on 23 July 2020 at 4.07pm and 4.20pm, and the mother was present at the hearing and was fully aware of the terms of the Order.

83. On 21 July 2020 at 4:12pm, obviously after the hearing, the father's Nigerian lawyer Mr Akabogu emailed the mother's Nigerian lawyer saying:

> *"I will [sic] like to confirm your schedule/availability to pick up Nizana's Passport from your office. We were informed by Ms. Atabo that the passport is in your possession and I would like to come and pick it up on behalf of my Client.*
>
> *Please, can you furnish me with the day and the time I can come around to pick up the said documents from you?"*

84. He then followed this up on 23 July 2020 and the Respondent, who had been copied in, replied "*Hopefully Dayo will get in touch*".

85. At 5:57pm the Respondent emailed the applicant stating:

> *"I AM IN LONDON HENRY.. I HAVE NO CONTROL over our child or her passports since you lied in court that i mutilated her genitals. MY LAWYERS ARE HANDLING. IF I HAVE A LAWYER, THEY ADDRESS THE RELEVANT PARTIES INCLUDING You.*
>
> *Kindly address all matters to my lawyers and STOP HARASSING ME."*

86. At 18:47 the Applicant replied: *"I am pleased to know that your lawyers are handling the handover of Nizana's passports. My lawyer is yet to hear from Mr Dayo; please advise him to act quicker."*

87. In his witness statement dated 6 August 2020 the Applicant stated that his lawyers had still to hear from Miss Atabo's lawyers in Lagos or in London and there had been no attempt to hand over the passports and he says at paragraph 17 of that statement:

> *"On the night of Thursday 23 July, the Respondent called my mobile telephone with a blocked number. I engaged with the Respondent, hoping she would confirm that she would obey the Court Order. During the call, the Respondent made it clear that the passports would not be handed over and that she would take her chances at the committal hearing in September. She tried to discourage me from going ahead with the committal application. I made it clear she was the reason for the court proceedings, and she must instruct her lawyer to hand over Nizana's passports. The Respondent suggested mediation. I made it clear that I was willing to engage with mediation when Nizana is back to the UK as ordered by the Court".*

88. As I have already said, on 11 November 2020 Mr Emoni's Nigerian lawyers confirmed in a letter to the court that no attempt has been made to hand over passports.

89. In my view, the evidence shows Miss Atabo is in clear and undoubted breach of the Orders of 10 June 2020 and 21 July 2020. Although the evidence is absolutely overwhelming in respect of breach of the order of 21 July 2020, it is also beyond reasonable doubt that she is in breach of the Order 10 June 2020.

90. First, there is no evidence of any written instruction to the lawyers to hand over the passports. She is a lawyer herself and, if she had seriously intended to comply, I have no doubt she would have given written instructions to her lawyers and no such written instructions have been produced. Furthermore, as is clear from the chronology, although she has not attended today, she has produced evidence since the orders were made and yet she has not produced evidence of any such written instructions.

91. Second, there is no evidence from her Nigerian lawyer in respect of attempts to hand over the passports, the most is the email of 21 July 2020 which is equivocal and very far from any confirmation that she had instructed passports to be handed over.

92. Most importantly, it is beyond doubt that no passports to date have been handed over and there is a complete lack of evidence from the Respondent's Nigerian lawyer that he had attempted to hand over the passports. I see no possible basis for the Mother's lawyers failing to hand over the passports if they had been instructed to do so.

93. At the 21 July 2020 hearing it was suggested by the Respondent's lawyer that there were problems getting around the city of Lagos and problems arranging meetings. We are now five months from 10 June Order and four months from 21 July Order. On any possible basis, there has been more than adequate time to arrange handover and that has not happened.

94. It is also the case that Mr Emoni went to Nigeria in August in an attempt to bring Nizana back and if there had been the slightest intention on the part of the Respondent to comply with the Orders 10 June and 21 July it could easily have been done. In fact, Mr Emoni says in his affidavit dated 17 November 2020 that when he attended the maternal grandmother's house in Lagos to meet his daughter in August 2020, he was told that the Respondent had taken possession of their daughter and was no longer in the house. I am satisfied he was unable to return to the UK with his daughter because he did not have her passports and did not know where in Lagos she had been taken.

95. The evidence shows beyond reasonable doubt that the orders of 10 June 2020 and 21 July 2020 have not been complied with by the Respondent and deliberately not been complied with in order to prevent Mr Emoni from bringing Nizana back to UK. I therefore find breach of those Orders.