



Neutral Citation Number: [2022] EWFC 160

Case No: MA22P02300

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
PRESTON DISTRICT REGISTRY

Sessions House Lancaster Road
Preston
Lancashire
PR1 2PD
Date: 05/12/2022

Before:

THE HONOURABLE MR JUSTICE MACDONALD

IN OPEN COURT

Between:

Manchester City Council
- and -

Applicant

Maryan Yusef
-and-

First
Defendant

Farad Abdi

Second
Defendant

Ms Sara Mann (instructed by **Manchester City Council**) for the **Applicant**
Mr Matthew Lord (of **Pluck Andrew Solicitors**) for the **First Defendant**
The Second Defendant appeared in person

Hearing dates: 5 December 2022

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mr Justice MacDonald :

INTRODUCTION

1. The substantive proceedings in this matter concern twin girls, S and E, born in December 2011 and now 10 years old and their full siblings, H, a boy born in October 2015 and now aged 7 and D, a girl born in March 2017 and now aged five. The children are not parties to the contempt application but are today represented through their Children's Guardian by Ms Helen Wilkinson of counsel. The substantive application before the court is application by Manchester City Council for wardship order in respect of the children, an order for summary return to this jurisdiction and location orders, issued on 13 October 2022. Manchester City Council is represented by Ms Mann of counsel.
2. On 14 November 2022, HHJ Singleton KC made location orders in respect of the children. This matter now comes before the court on the local authority's application to commit the mother and the father of the children, Maryam Yusef and Farad Abdi, for contempt of court for failing to comply with the terms of those location orders. The mother is represented by Mr Lord, solicitor. Whilst the father was granted legal aid by the court at the outset of these contempt proceedings and was represented by counsel at the last hearing before this court, at that hearing counsel representing the father applied to withdraw on the grounds that she was professionally embarrassed, which application the court granted. The father is today unrepresented. He informs me that he has now also dispensed with the services of his solicitors and indicated that he now represents himself. He did not make an application to further adjourn this hearing.
3. In determining this matter, the court has had the benefit of the evidence provided by the police, arising from the arrest of the parents on behalf of the Tipstaff on suspicion of failing to comply with the location order, together with a statement of the mother, and the exhibits thereto, provided subsequent to her arrest. No party has sought to challenge the evidence of the police officers recording the exchanges that took place on arrest.

BACKGROUND

4. The children were born in the United Kingdom and were habitually resident in the United Kingdom at the time they were removed from this jurisdiction in March 2022. The father shares parental responsibility for the children. The parents are Somalian, although the mother is understood also to have Dutch Nationality. The children also have Dutch passports, but are not on the Dutch National Register and the Dutch authorities report that the children are not known to the Dutch immigration and naturalisation authorities. It is not at present clear how the children and the mother came to be Dutch citizens. The court has invited the local authority to inform the Dutch authorities as to the current circumstances of the mother and the children. The father's nationality remains unknown as he has thus far failed to produce his travel documents, although he claims recently to have gained British citizenship. The families immigration status in the United Kingdom is currently the subject of a request for clarification from the Home Office.
5. The Family were first referred to Manchester Children's Services in 2012 due to concerns relating to parental domestic abuse and physical chastisement of the children, the local authority having been made aware by a neighbour of disturbances at the family

home in from which it was alleged shouting and slapping noises could be heard. At that stage, the mother alleged that the father would not allow her to leave her home, controlled her finances and had taken her passport. On 6 March 2012 the mother allegedly ran away from the family home. In her statement to this court, the mother alleges in respect of the father that:

“Throughout the relationship he was controlling and aggressive. There were many occasions when he was violent and I would say the relationship was very abusive. He is very religious and has a hard-line view of our religion. He controlled almost every aspect of my life.”

6. A Core Assessment was completed, and the mother retracted the claims of domestic violence. In circumstances where there was no evidence of domestic violence, the case closed.
7. The mother made further allegations of domestic violence and physical harm in September 2013. In particular, the mother alleged that on Saturday 28 September 2013 she was feeding the twins when S started to misbehave and spit food, leading to the father to slap her on the left cheek causing a 1 cm red mark and resulting in S screaming and then choking on her food. During this incident the father is also alleged to have slapped the mother and, later in the day, to have grabbed the mother by the wrist, twisted it backwards and slapped her again. On Sunday 29 September 2013 the mother is said to have left the house, gone to a friend’s house, and reported the incident to the Police. The father was arrested and bailed away from the family home. S and E were made subject to Child Protection plans under the category of physical abuse until March 2014. The police took no further action after the mother retracted her statement to the police. The case was later closed to Manchester Children Services following Child Protection planning and Child in Need planning. The father had completed a domestic violence course and had returned home with no further incidents reported.
8. The family were not known to the local authority between 2014 and 2019. However, on 16 December 2019, Manchester Children Services received a referral from the mother’s sister raising concerns for the welfare of the mother and the children. It was alleged that neither parent took good care of the children, that there was ongoing domestic abuse and that the father was abusing drugs. Upon investigation, it transpired that the family had been in Dagenham since September 2019. Dagenham Children’s Services undertook a Strategy Discussion, a s. 47 investigation and an assessment in in January 2020. The mother was said to have been very difficult to engage and uncontactable. Whilst the local authority attempted three unannounced visits to the home, social workers were unable to gain access.
9. The children were enrolled in school on the 17 December 2019 by the father. On 11 February 2020, it transpired that the father had used a false address to enrol the children. There was a further period of minimal involvement by social services. The children report that they were taken by the mother to Turkey in 2020, where they were left in the care of an aunt for a month.
10. On 14 March 2022, police attended the family home. The school were told by H that the mother had been taken away by the police, and the head teacher spoke to S and E the following day. On 15 March 2022 the children spoke about their lives at home, detailing their alleged exposure to the parents’ volatile relationship and made a number

of allegations of physically and emotionally abusive conduct towards them on the part of the parents and significant allegations of ongoing domestic abuse between the parents. The children stated that they had been told that they must not say anything to anyone and that they would be in trouble if they did. They described their parents as fighting a lot, and that they were “like a drama series”. The children were fearful of their parents finding out what they had said and the parents were not informed of the allegations when they collected the children from school. A referral was made to children’s services by the school. The children made further allegations to the school on 16 March 2022.

11. The social worker spoke to the mother on 17 March 2022 about the issue of domestic abuse in the home and offered counselling for the children. The mother stated that she wished to speak to the father before agreeing to any counselling. The children did not attend school on 18 March 2022. A strategy meeting took place on that date and the father was spoken to about the domestic violence incident but not the allegations made by S and E. The father accepted that there had been an argument and claimed that the mother was now in London with the children whilst she “calmed down”. The children were again not taken to school and on 21 March 2022. The school were again informed by the father that the children were in London. He further claimed that the children would now be going to New York.
12. On the 23 of March 2022 the Police visited the family home and spoke to the father. He refused to give the specific whereabouts of the children other than saying that they are in New York. The police spoke to the mother and the children on phone but the mother was not forthcoming with information. On the 25 of March 2022 a follow up strategy discussion was held whereby the Police shared that Border Force checks had showed that Mrs Yusef and all the children had flown to Istanbul on 18 March, not New York. Border alerts were implemented on the children so authorities would be alerted if the children re-enter the United Kingdom.
13. In her statement to the court in the proceedings, the mother now accepts that she removed the children from the jurisdiction on 18 March 2022, but contends that this was not in response to allegations made by children but rather to secure urgent medical treatment for S. In this regard, her statement provides as follows:

“10. In March 2022 I went to Turkey with the children on my own. This was for S to receive urgent medical treatment. I had been to Turkey previously on holiday in 2020 and I was aware that they offered a very good and efficient medical service. In 2020 we spent the whole summer staying with Mr Abdi’s sister, Shuruuq Abdi. S had been in pain for some time, complaining of stomach cramps. Teachers at school had noticed this and had informed me that the pain she was in was affecting her running and general movement. I had understood that Mr Abdi had spoken to the GP practice ... but was told that S was fine and did not need any treatment. They said that she had a rash and might need some cream. We thought it was much more serious than that due to the level of pain she was in.

11. I know my children and I knew that S wasn’t right. I was extremely concerned about her deteriorating health and I was willing to pay whatever I needed to get her seen urgently. I flew to Istanbul and urgently sought medical attention. I was informed that if I had left it 24 hours later S’s

appendix would have burst. Her appendix was immediately removed. I have provided medical evidence to the police which confirms this. This is all in Turkish however. We stayed with Mr Abdi's sister for the length of that stay."

14. Whilst on its face an incredible claim, translated medical documents from Turkey do corroborate the mother's claim that she travelled to Turkey to seek treatment for S's acute appendicitis. The mother's passport, now disclosed by her, indicates that the mother did travel to Turkey on the dates claimed.
15. The Mother alleges that in April 2022 she then flew from Turkey to Somalia with the children. The mother further alleges that this course of action was taken as she was under duress from the father and the wider paternal family. The mother alleges that on arrival in Somalia she and the children were collected at the airport by the paternal uncle, Said Abdulqadir, and other males who the mother had never met before. The mother contends she felt extremely uncomfortable and intimidated, that her phone was immediately taken off her as was her passport and the children's passports. The mother states that she and the children were taken to a gated community in Mogadishu.
16. At this point, for reasons that are hard to fathom in light of the history recounted in this judgment thus far, a Service Manager for the local authority decided that proceedings should *not* be instituted in respect of the children in circumstances where the children had left the jurisdiction and it was believed, wrongly, that the court had no jurisdiction to make orders. This was patently incorrect as the current application demonstrates. Equally remarkably, the case was thereafter simply closed by Manchester City Council. In due course, I shall be directing that the Head of Children's Services, and the Head of Legal Services, for Manchester City Council write to the court to explain the apparent failure to pursue proceedings in respect of the children in a timely fashion. That decision of the local authority to take this course is thrown into even starker relief given the following analysis contained in the social worker's statement in support of the application for relief under the inherent jurisdiction that was ultimately issued by the local authority some seven months after the children had been removed from the jurisdiction:

"Prior to the children's disappearance, S and E have extensively voiced their lived experiences which is centred around domestic abuse within the family home. Despite multiple local authorities being involved, historic child protection planning and [the father] completing domestic abuse courses it is clear that this interventions have not reduced the risk to the children as the domestic abuse continued throughout the children's lives which they have witnessed. This will have been extremely distressing for the children and caused them to be fearful and feel unsafe at home and based on S and E's last conversations with school it is evident that the children have been significantly impacted by violence and aggression they have witnessed from their parents. Although H and D's voice has not been ascertained at present, it is clear that they are highly likely to have witnessed the domestic abuse and are more than likely to share the views of S and E."

And

“There are increasing concerns that the children have been subjected to physical harm by both [the father] and [the mother] whilst in their care. S and E have made significant allegations of physical chastisement throughout all the children’s lives and these concerns were what prompted the local authority to make S and E subject to Child Protection planning and despite this intervention, the children have continued to be subjected to physical harm by both parents. The local authority have been unable to address the specific concerns with [the father] and [the mother] due to the perceived risk to the children as their whereabouts are currently unknown. The local authority would be concerned if the full range of concerns were discussed with the parents at this time, this may leave the children at risk of further significant harm when parents discover that they have told professionals about the physical and emotional abuse that has occurred, and it is also not known whether the children are currently experiencing this harm.”

17. Subsequent checks with the UK Border Force indicated that the mother returned back to the United Kingdom alone in April 2022. In her recent statement the mother contends that, approximately two weeks after arriving in Somalia, she was woken in the middle of the night and forcefully removed from the property by the father’s cousin, Abdul Kadir, and forced into a car. The mother further alleges that she was thereafter taken to the airport and put on a flight to England, landing in Manchester where the father met her. The mother says the father stated that he would return to Somalia to recover the children and that she remained with him in the hope that he would do this as soon as possible.
18. Within this context, the mother alleges that in May 2022 the father travelled to Somalia whilst she remained in England. The Police have provided information that the mother’s bank accounts were used in Manchester on the 16 of May 2022. The mother states that the father assured her that the children were safe and well in that jurisdiction and promised that he would return them to England. Whilst the mother says the father facilitated some telephone contact between her and the children, in May or June 2022 she asserts that the father returned to England without the children. Whilst the father has denied that he travelled to Somalia in May 2022, a boarding pass for a flight home to Addis Ababa dated 6 May 2022 was located at his property following his arrest.
19. In seeking to explain why she failed immediately to report the children as having been abducted, the mother alleges that the father threatened that if she reported the children missing, he would make sure she got sent to prison and never had any form of contact with them again. The mother contends this explains her delay in reporting the children missing, and before this court she states that she regrets deeply taking that course. The mother contends that she and the father separated in May or June 2022.
20. Instead of reporting the matter to the authorities in this jurisdiction, the mother contends she travelled to Somalia to try and find the children herself, without informing the father. The mother’s now surrendered passport indicates that she left for Turkey again on the 12th August 2022. The mother then flew to Somalia on 14 August 2022. The police have provided information that indicates that the mother’s bank accounts were used in London on the 11 of August 2022 and that on 13 August 2022 the mother’s internet banking app was accessed in Somalia where a transaction was made to someone bearing the surname of the father. The mother thereafter emailed the children’s school

on 16 August 2022 to say that she did not know where the children are. She alleged that they had been kidnapped by the father and may be in the UK.

21. The mother further asserts in her statement that whilst in Somalia she attended the police station in Mogadishu on a daily basis and also made an application to the Somalian Court to try to locate the address of a house owned by the father, but occupied by his uncle. In this context, the mother contends that the Somalian Court issued warrant for the arrest of the father's cousin, Xiss Mohammed and that pursuant to the warrant the police were able to gain entry to latter's property, which was empty. The documents from Somalia now exhibited to the mother's statement appear to corroborate the mother's account in this regard, one of the documents translated being the warrant the mother describes. The mother contends that her own father also flew out to Somalia to help me search for the children.
22. The mother alleges that during the period in which she was in Somalia the father sent her a voice note threatening that she should "behave" and stating that she had no right to go to Somalia to search for the children without his permission. The voice note is in Somali and has been provided to the police. A certified translation of the voice-recording is exhibited to the mother's statement. The father did not seek to deny that his is the male voice that can be heard on the voice note. Of note in light of the mother's contention regarding the warrant issued by the Somali court, the voice note records the father admonishing the mother for "going to the house without telling me so that you can take the children back to England". In this context, the certified translation of the call repays recitation in full:

Male: 'This man who is called Abdullahi Ahmed who are interested in you will not any anything for you. You will see.'

Female: 'What will I see? What will I see?'

Male: 'Tell him that he tells other people's secrets. Information about him has been passed on.'

Female: 'What will I see?'

Male: 'If you don't misbehaving you never see those children.'

Female: 'How am I misbehaving? You are'

Male: 'Listen carefully, stop misbehaving. You have been misbehaving from day one. And you are still misbehaving. You are still misbehaving Maryan.'

Female: 'It is you who is misbehaving. It is you who is not letting me see my children.'

Male: 'So now you want to remain in this situation? Misbehaving?'

Female: 'In what situation am I in?'

Male: 'This is your choice.'

Female: 'What is my choice? To not let me see my children?'

Male: ‘Will you stop misbehaving?’

Female: ‘So you don’t let me see my children?’

Male: ‘Maryan’

Female: ‘Is that my choice?’

Male: ‘Maryan’

Female: ‘Yes.’

Male: ‘Will you misbehave or not? That is all I am asking.’

Female: ‘Will you let me see my children or not?’

Male: ‘I want one final answer’

Female: ‘Will you let me see my children or not.’

Male: ‘I will not let you see you children unless you behave well. You will not see and you will not talk to or see the children.’

Female: ‘How would you like be to behave?’

Male: ‘Going back and forth and being cunning is not going to help. The stupidity of going to the house without telling me.’

Female: ‘Okay what do you want’

Male: ‘The stupidity of going to the house without telling me and to try to take children so they can go with you to England, and you are doing all that.’

Female: ‘I just wanted to see the children.’”

23. Within the foregoing context, the police visited the father in England on the 16 of August 2022. The police reported the father as being very disruptive and not complaint. The father was visited again by the police on the 18 of August 2022 at his place of work. The father alleged that he didn’t know where the family were and had not been with them since April 2022. He claimed to be under the impression that the mother and the children were still in Turkey. The father further claimed to be working hard to save money so that eventually they could all move to America as a family. The father alleged that the mother was “manipulative and nasty” towards him and was “getting inside his head”. He claimed that he was under the impression that the mother and the children were going for a holiday and they went off “galivanting” while he stayed at home working hard. He claimed not to be concerned when they had not returned to the jurisdiction as the mother was “always doing this”. The father further claimed he had no means of contacting the mother.
24. The following day officers again attended the father’s home. On this occasion, the father claimed that he had rung his family in the United Kingdom to try and ascertain whether there were members of his family in Somalia that could help look for the

children. The father went on to claim that he has no immediate family in Somalia and does not know of anyone that he could speak to in that jurisdiction, albeit that there may be distant relatives that could help. The father had made no mention of Somalia when speaking to the police the day before. The father is recorded as having broken down in tears and stated that he was worried for his children and did not know where they are and that he would do anything to help the authorities find them.

25. The mother arrived back in the United Kingdom from Somalia on 10 September 2022. The mother contends that she thereafter provided information to the Manchester police regarding her knowledge with respect to the whereabouts of the children. Now exhibited to the mother's statement is an email confirming that the mother was in communication with the police in this regard. The email exchange makes it clear that the mother forwarded to the police details of the paternal uncle who it is alleged met her and the children at the airport in Somalia, Said Abdulqadir, including his phone number, and the voice note recording of the father allegedly telling the mother in Somali that she would not see the children again, which I have already detailed. The mother would not disclose her own location. On 9 October 2022, the police reported these matters to the local authority suggesting that the children are currently in Somalia under the control of the father or his family. However, for reasons that remain unclear, the police did not translate the documents and voice note provided by the mother, and took no steps to interrogate the parents mobile telephones.
26. The children remain out of the jurisdiction and their whereabouts remain unknown. As I have noted, and very belatedly, on 13 October 2022 Manchester City Council issued proceedings in wardship in respect of the children. On 14 November 2022 HHJ Singleton KC sitting as a judge of the High Court warded the children, made an order under the inherent jurisdiction requiring the parents to return the children to the jurisdiction of England and Wales and made location orders in the following terms:
- “8. Maryam Yusef and Farad Abdi (described below as the respondents) must each immediately:
- (a) Inform the Tipstaff of the whereabouts of the children S, E, D and H.
 - (b) Also in any event inform the Tipstaff of all matters within their knowledge or understanding which might reasonably assist him in locating the children.
 - (c) if it is requested by the Tipstaff, the address at which that person will be living in England and Wales and (if practicable) a telephone number and email address at which that person can be contacted.
9. The applicant's solicitors Manchester City Council must forthwith inform the Tipstaff in writing in the event that the applicant should independently of the Tipstaff locate the children or if there is no further need for the Tipstaff's services.
10. The respondent(s) and any other person served with this order must each hand over to the Tipstaff (for safe-keeping until the court makes a further order) as many of the following documents as are in his or her possession or control:

(a) every passport relating to the children, including an adult's passport by which the child/ren are also permitted to travel, and every identity card, ticket, travel warrant or other document which would enable the child/ren to leave England and Wales; and

(b) every passport relating to the respondents Maryam Yusef and Farad Abdi and every identity card, ticket, travel warrant or other document which would enable the respondent to leave England and Wales.

11. The respondent(s) and any person served with this order must not (i) remove, or (ii) knowingly permit the removal of, the child from the jurisdiction of England and Wales.”

27. The location order was executed in respect of the father on 18 November 2022. The father was arrested on that date for failing to provide the information required by the terms of the location order. The father also refused to surrender his passport, stating that it had been reported as stolen or lost by him. He then claimed that he had found it, but that it had been cancelled by the Home Office. A statement has been provided from DC Williams, the arresting officer who also attended the fathers address on 18 November 2022 and seized some documentation pursuant to the location order. As I have noted, that documentation included a boarding pass for a flight to Addis Ababa, Ethiopia on 6 May 2022. The police also seized a confirmation of citizenship ceremony for the father from his home on 18 November 2022. The police have produced a record of the answers given by the father in response to questions as to the children’s whereabouts when he was arrested:

“I Fahad Abdi am making this statement following being served with a High Court Warrant Location Order by Detective Constable Gary Williams. I was asked to provide the full address of where my four children S, E, D & H. I have no idea where they are accept that they are with their mother. However, I have no idea where their mother is. I do not even know what country she is in. The last I knew was in March when she took them to Turkey on holiday. I have not had any contact with my children in person or by any other means since then including phone calls, messages or social media. I have no way whatsoever of contacting my children. I do not have any travel documents for my children whatsoever.”

28. The location order was executed in respect of the mother on 21 November 2022. On that date the mother was also arrested for failing to provide the information required by the location order and for failing to hand over her passport. A statement from DS Redford sets out the mother’s responses to being questioned and arrested pursuant to the location order. I will come to that evidence in more detail later.
29. The parents were brought before HHJ Woodward sitting as a Judge of the High Court on 21 November 2022. On that date, the local authority sought the committal of the parents for contempt of court on the grounds that each were in breach of the location orders, which orders were endorsed with a penal notice. HHJ Woodward remanded the parents in custody overnight, relying on the decision of Butler-Sloss P in *Re B (Child Abduction: Power to Detain)* [1994] 2 FLR 479 in which the former President held that:

“The purpose of a bench warrant is to bring the person detained to court and its purpose is effected as soon as he appears before the judge. At that moment he may or may not be in contempt of a court order. If he is not in contempt then in my view there is no power to detain him further. The direction of the court has been complied with and there is nothing before the court to enable the further power of detention to be invoked. If the person is prima facie guilty of contempt but the proceedings are part heard and are continuing, I can see no reason, in certain circumstances, not to detain him pending the conclusion of the case if the court is satisfied that he will not voluntarily attend on the next hearing day. The purpose is to secure the attendance of the alleged contemnor for the next court hearing.”

30. When the parents came before HHJ Singleton KC on 22 November 2022 she further remanded them in custody to be produced before this court on 29 November 2022. It is of note that before HHJ Singleton KC the father agreed to provide any travel documents in his possession to the local authority. To that end the father provided his keys to his legal representatives with a view to them visiting his home to retrieve the travel documents.
31. On 29 November 2022 I directed the release of the mother in circumstances where she had by then surrendered her passport and travel documents, had provided a statement detailing her knowledge concerning the whereabouts of the children and gave undertakings regarding her place of residence pending a final hearing of the local authority’s committal application. The father had still not surrendered his travel documents as at the hearing on 29 November 2022. He again claimed at various points during the hearing that the documents had either been mislaid or stolen and then found at his home but then cancelled. When it was pointed out to the father that on 22 November 2021 he had agreed to provide any travel documents and provided his keys to his legal representatives with a view to them visiting his home to retrieve the documents, the father claimed that he had provided his keys but his solicitor had since failed to contact him. Whilst the father was represented by counsel at the hearing on 29 November 2022, as I have noted counsel sought permission to withdraw by reason of professional embarrassment, which application was granted by the court. On 29 November 2022 I further remanded the father in custody pending today’s hearing on the grounds that he constituted a clear flight risk and that there was a real risk he would not attend this hearing if released. I further directed that the statements and documents provided by the police in relation to the arrests of the parents on 18 and 21 November 2021 respectively in execution of the location order dated 14 November 2022, and relied on by the local authority in support of its applications to commit, be served on the parents and that such documents should form part of the court bundle. That has been done.
32. The local authority’s applications to commit the mother and the father for breach of the terms of the location order are each dated 22 November 2022 and have been served on each of the parents. Each application form pleads the contempt as (i) the parents failed to comply with the passport and location orders made on 14 November 2022 and (ii) the parents breached the return order made on 14 November 2022 requiring them to return the children forthwith to the jurisdiction of England and Wales. The summary of facts alleged to constitute the contempt is set out as follows in each Form N600:

“1.The Defendant has failed to comply with Passport and Location Orders dated 14.11.2022 in respect of his children ...and has failed to comply with an order of the same date to return the children to the Jurisdiction of England and Wales.

2. The Defendant was ordered to immediately: (a) Inform the Tipstaff of the whereabouts of the children S, E, D and H. (b) Also in any event inform the Tipstaff of all matters within their knowledge or understanding which might reasonably assist him in locating the children.

3. The Defendant was ordered to hand over to the Tipstaff (for safe-keeping until the court makes a further order) as many of the following documents as are in his or her possession or control: (a) every passport relating to the children, including an adult's passport by which the child/ren are also permitted to travel, and every identity card, ticket, travel warrant or other document which would enable the child/ren to leave England and Wales; and (b) every passport relating to the respondents Maryam Yusef and Farad Abdi and every identity card, ticket, travel warrant or other document which would enable the respondent to leave England and Wales.

4. The Defendant has not complied with these orders and the whereabouts of the children is unknown.”

33. The mother contends that she continues not to know where the children are. She believes they are somewhere in Somalia and that they are with the paternal uncle Said Abdulqadir. She does not accept that she is in contempt of court, contending that she was unaware of the location order until the 21 November 2002 and that she was not given any chance to comply with the location order. In any event, the mother points to the fact that she has now surrendered her passport and has provided all of the details she has regarding the current whereabouts of the children. It is accepted by the mother that she should have done more to inform the authorities of what had happened in April, and of the risk to the children at that time. She points to the fact that she did eventually contact the authorities and sought to assist them in locating the children, having herself travelled to Somalia to that end.
34. The father likewise insists that he does not know where his children are and contends that they were last known to be with the mother earlier this year. He repeats before the court today that his travel documents were lost, and then found, but by the time they had been found they had been cancelled. The father did not seek to call witnesses nor to cross examine the evidence of the local authority.

LAW

35. With respect to the law and procedure the court must apply, the process of committal for contempt is technical in nature and of some little complexity. Within this context it is important, in circumstances where the liberty of the citizen is at stake, to recall the strict procedural requirements of a properly constituted committal hearing that have to be complied with in respect of the local authority's applications to commit the parents for contempt. I have in particular borne in mind the following requirements:

- i) The committal application must be dealt with at a discrete hearing and not alongside other applications.
- ii) The alleged contempt must be set out clearly in a notice of application or document, the summons or notice identifying separately and numerically each alleged act of contempt.
- iii) The application notice or document setting out separately each alleged contempt must be proved to have been served on the Respondent in accordance with the rules.
- iv) The Respondent must be given the opportunity to secure legal representation as he or she is entitled to.
- v) The committal hearing must be listed publicly in accordance with the Lord Chief Justice's Practice Direction: Committal / Contempt of Court – Open Court of 26 March 2015 (and as amended on 20 August 2020) and should ordinarily be held in open court.
- vi) Consideration must be given to whether the allocated judge should hear the committal or whether the committal application should be allocated to another judge.
- vii) The burden of proving the alleged contempt lies on the person or authority alleging the contempt.
- viii) The Respondent is entitled, subject to the case management powers of the court, to cross-examine witnesses, to call evidence and to make a submission of no case to answer.
- ix) The alleged contempt must be proved to the criminal standard of proof, i.e. beyond reasonable doubt.
- x) The Respondent must be advised of his or her right to remain silent and informed that he or she is not obliged to give evidence in his or her own defence.
- xi) Where a contempt is found proved on the criminal standard the committal order must set out the findings made by the court that establish the contempt.
- xii) Sentencing should proceed as a separate and discrete exercise, with a break between the committal decision and the sentencing of the contemnor. The contemnor must be allowed to address the court by way of mitigation or to purge his or her contempt.
- xiii) The court can order imprisonment (immediate or suspended) and/or a fine, or adjourn consideration of penalty for a fixed period or enlarge the injunction.
- xiv) In sentencing the contemnor, the disposal must be proportionate to the seriousness of the contempt, reflect the court's disapproval and be designed to secure compliance in the future. Committal to prison is appropriate only where no reasonable alternative exists. Where the sentence is suspended or adjourned

the period of suspension or adjournment and the precise terms for activation must be specified.

xv) The court should briefly explain its reasons for the disposal it decides to impose if it finds the contempt proved.

36. In this case, I am satisfied that each of the aforesaid procedural imperatives has been met ahead of and during this hearing.

DISCUSSION

Contempt

37. The location order made by HHJ Singleton KC on 14 November 2022 was clear in its terms. It required each parents to inform the Tipstaff immediately of the whereabouts of the children S, E, D and H Abdi and, in any event, inform the Tipstaff of all matters within their knowledge or understanding which might reasonably assist him in locating the children. The location order further ordered the parents immediately to hand over to the Tipstaff every passport relating to the children, including an adult's passport by which the child/ren are also permitted to travel, and every identity card, ticket, travel warrant or other document which would enable the child/ren to leave England and Wales and every passport relating to the parents and every identity card, ticket, travel warrant or other document which would enable them to leave England and Wales.

38. Dealing first with the mother, having regard to the evidence, I am satisfied that at the time the location order was executed the mother was aware that the children were likely to be in Somalia. As at 21 November 2022 the mother had had, effectively, confirmation of this from the father by way of the voice note. She had herself travelled to Somalia in an effort to locate the children. On her return from that jurisdiction, she informed the police that she suspected that the children were in Somalia.

39. As Mr Lord points out, it is important in this context to note that at the time she was arrested on 21 November 2022 the mother had *already* provided to the police the voice note from the father, the documents obtained through her efforts to locate the children in Somalia and an account of her belief that the children were in Somalia. Within this context, had the arresting officer on 21 November 2022 sought to cross-reference the matter he would have discovered that the mother had, on the topic of the children's whereabouts, already given extensive information to the police and provided the message and documents to which I have referred.

40. Within that important context, upon her arrest the Police officer recorded the conversation with the mother as follows:

“Where are your children? - In Somali.

Where in Somalia? - I don't know I just know their last location.

Where was that location? - Darulaslam – A city in Somalia. Within Mogadishu.

When did you last see your children? - 14th August 2022.

Where? - In Daruaslram.

Are you able to communicate with your children now? - No.

Can you provide proof of their address or residence now? - No.

Can you provide any of your children's passports, travel warrants etc?
- No.

Are you able to provide your own passport? - Yes – Either at my friend's house in Manchester or London with my mum.

Who was responsible for the children travelling to Somalia? - I was forced to do so by their father.

Who travelled with the children when they went to Somalia? - Only me.

Whose care or control were the children left when you last saw them? - His cousin – I was thrown out the house there. Her name is Hiss (female) of the phone number – ... (mobile phones). Somalian number.

Why did you take your children to Somalia? - I was forced to do so. My ex-partner Fahad and his family members made threats towards me which caused me to take the children to Somalia.

Where are the children's passports? - In Somalia with them.”

41. With respect to her travel documents, it is true that the mother did not immediately produce those documents to the police officer. It is perhaps not uncommon for persons not to be carrying their passport or travel documents or for those documents to be with family members. In that context, the mother did provide two alternate locations for her travel documents, it transpiring that the documents were at one of those locations when the documents were subsequently surrendered by the mother.
42. Examining the evidence as a whole, I am not satisfied that the local authority has proved beyond reasonable doubt that the mother failed to inform the Tipstaff immediately of the whereabouts of the children S, E, D and H Abdi and, in any event, to inform the Tipstaff of all matters within her knowledge or understanding which might reasonably assist the Tipstaff in locating the children. This is particularly so when the mother's responses to the arresting officer are considered in the context of the detailed and extensive information and material she had already provided to the Manchester police in respect of the children. Within that context, the extent of the answers given by the mother to another police officer attending without notice are entirely understandable and do not in my judgment evidence the breaches contended for by the local authority.
43. Whilst I accept that the mother did not *immediately* produce her passport in response to the order, she did not have the relevant documents in her possession at that point and she did make clear where she believed they were located. Further, she surrendered them at the first opportunity to the Tipstaff via her solicitors. In the circumstances, whilst technically in breach of the location order as at 21 November 2021, in that I am satisfied beyond reasonable doubt that the mother failed to *immediately* to hand over to the Tipstaff every passport every passport relating to her and every identity card, ticket,

travel warrant or other document which would enable her to leave England and Wales, I consider that breach can, in the particular circumstances I have described, properly be classed as a minor one.

44. Finally, I am not able to find beyond reasonable doubt that the mother is in breach of the return order made by HHJ Singleton KC on 14 November 2022. In order to comply with that order, the mother would need to know where the children are. In that regard, I am satisfied that she does not at the present time have that information in her possession. In the circumstances, whilst I am satisfied that she has continued to make efforts to locate the children with a view to recovering them to this jurisdiction, I accept that at the present time she is not able to comply with the return order. It would not therefore be just to hold her in breach of that order at this point.
45. Turning to the father, having regard to the evidence before the court I am satisfied that at the time the location order was executed, the father knew the then current location of the children. Notwithstanding his continued denials, the voice note sent by the father to the mother, which the father did not deny or seek to dispute, proves beyond reasonable doubt that the father knows where the children are, as does the fact that he travelled to Somalia in May 2022, as I am satisfied beyond reasonable doubt that he did. I accept the submission that the voice-message is incriminating and clearly suggests that the father knows the children's whereabouts and had detailed knowledge of the mother's actions in Somalia attempting to locate them. In addition, I note that notwithstanding his purported worry concerning the children's whereabouts, unlike the mother he has never reported them missing to the authorities nor sought the assistance of the court to locate the children in one of the alternative locations he has mentioned, namely Turkey or the United States. I am satisfied that this is because he knows full well where the children are currently. When arrested and spoken to by police, I am satisfied beyond reasonable doubt that the father made no mention at all of the children being in Somalia, denying all knowledge of their whereabouts. The recording of the father's statement on 18 November 2022 makes no mention of the children being in Somalia, the only reference to another country being to Turkey.
46. In these circumstances, I am satisfied beyond reasonable doubt that on 18 November 2022 the father failed to inform the Tipstaff immediately of the whereabouts of the children S, E, D and H Abdi and, in any event, inform the Tipstaff of all matters within his knowledge or understanding which might reasonably assist the Tipstaff in locating the children.
47. I am further satisfied beyond reasonable doubt that at the time the father was arrested he failed to provide his passport and any other document which would enable him to leave England and Wales. The fact that the father flew to Addis Ababa in May 2022 shows that he had available to him travel documents as at that date. Whilst the father's story with respect to the travel documents continues to change and evolve (today a further element was introduced when the father claimed that his travel documents exist but others are not interested in collecting them), he concedes that he had travel documents as at 18 November 2022, albeit he asserts they had been cancelled. Within that context, I am further satisfied beyond reasonable doubt that on 18 November 2022 the father failed to immediately to hand over to the Tipstaff every passport relating to him or other document which would enable him to leave England and Wales.

48. Finally, in respect of the allegation that the father has breached the return order of 14 November 2022 by failing to return the children to the jurisdiction of England and Wales, the position is complicated by the fact that the father was arrested on 18 November 2022, four days after the order was made. He has been remanded in custody ever since. In those circumstances, it has not been possible for him to comply with the return order himself. It also is not clear to what extent he has been able to communicate with members of his family to ensure the return of the children, although I take it to be unlikely that he has been able to communicate with Somalia from prison. In the circumstances of those uncertainties, and whilst the continuing absence of the children from the jurisdiction is powerful evidence of the father's failure to comply with the return order, I am not satisfied that it would be safe to conclude today that the local authority has proved beyond reasonable doubt that the father has failed to comply with the return order.

Sentence

49. Having made my findings in respect of contempt of court, I adjourned for a short period to allow the mother and the father to consider the decision of the court and any mitigation they sought to offer to the court before sentence was passed.
50. The general legal principles applicable to the sentencing of a contemnor are now well established and can be summarised as follows:
- i) The court can order imprisonment (immediate or suspended) and/or a fine, or adjourn consideration of penalty for a fixed period or enlarge the injunction.
 - ii) In sentencing the contemnor, the disposal must be proportionate to the seriousness of the contempt, reflect the court's disapproval and be designed to secure compliance in the future.
 - iii) Committal to prison is appropriate only where no reasonable alternative exists.
 - iv) Where the sentence is suspended or adjourned the period of suspension or adjournment and the precise terms for activation must be specified.
 - v) Imprisonment is not the starting point and is not the automatic response to a contempt of court.
 - vi) Equally, there is no principle that a sentence of imprisonment cannot be imposed on a contemnor who has not previously committed a contempt.
 - vii) In assessing the seriousness of the contempt, it is right to have regard to the purpose for which it was committed and the likelihood of any risk to the process of justice.
 - viii) In circumstances where the disposal chosen must be proportionate to the seriousness of the contempt, where an immediate term of imprisonment is appropriate it should be as short as possible having regard to the gravity of the contempt and must bear some reasonable relationship to the maximum sentence of two years imprisonment that is available to the court.

- ix) Where a term of imprisonment is the appropriate sentence, the length of the term should be determined without reference to whether the term is to be suspended or not.
 - x) Having determined the length of the term of imprisonment, the court should expressly ask itself whether a sentence of imprisonment might be suspended.
 - xi) The court should briefly explain its reasons for the disposal it decides to impose if it finds the contempt proved.
51. As Marcus-Smith J made clear in *Patel v Patel and Ors* [2017] EWHC 3229 (Ch) at [22] and [23], a penalty for contempt has two primary functions. First, it upholds the authority of the court by marking the disapproval of the court and deterring others from engaging in the conduct comprising the contempt. Secondly, it acts to ensure future compliance. In some cases therefore, and in particular those cases where the contempt arises from the breach of a court order, a penalty will have the primary objective of ensuring future compliance with that order.
52. With respect to the mother, in circumstances where the only breach I have found proved can, in the particular circumstances of this case, be properly characterised as a minor one. The mother thereafter surrendered her passport to the Tipstaff via her solicitors at the first opportunity. In the circumstances, I am satisfied that it is appropriate to impose no penalty on the mother.
53. With respect to the father, I have found as a fact that on 18 November 2022 the father failed to inform the Tipstaff immediately of the whereabouts of the children S, E, D and H Abdi and, in any event, inform the Tipstaff of all matters within his knowledge or understanding which might reasonably assist the Tipstaff in locating the children.
54. I have also found as a fact that on 18 November 2022 the father failed to immediately hand over to the Tipstaff every passport relating to him or other document which would enable her to leave England and Wales.
55. The aggravating factors in this case in respect of the father breaches of the location order are his failure to comply with the terms of the location order either in respect of assisting with the whereabouts of the children or in handing over his travel documents when ordered to do so. A further aggravating feature is the father's persisting in this course notwithstanding the evidence now before the court that indicates beyond reasonable doubt both that he knows where the children are and that he has travel documents. Within this context, the father has made no further attempt to assist the court by now indicating where the children are, in order that steps can be taken to recover them to the jurisdiction of their habitual residence. With respect to mitigating factors, the father has sought during this hearing to proffer an explanation to the court, albeit one that seeks to place responsibility for the abduction of the children solely onto the mother and an explanation the court was not prepared to accept.
56. Having regard to the aggravating and mitigating factors in this case, and to function of the sentence in first marking the disapproval of the court and deterring others from engaging in the conduct comprising the contempt and second to ensure future compliance, I am satisfied that the starting point for the appropriate sentence for the breach of the location order I have found is one of four months imprisonment. I propose

however to reduce that sentence to three months immediate imprisonment to reflect the fact that the father has spent nearly three weeks on remand ahead of this hearing.

57. In addition, I will make a further order under the inherent jurisdiction requiring the father to facilitate the return of the children to the jurisdiction of England and Wales forthwith. It will of course be open to the father to apply to purge his contempt of court, and hence to secure his release from custody, if the children are returned to jurisdiction of England and Wales pursuant to that return order. If the children are not returned to England and Wales in breach of that order, it will be open to the local authority to make a further application to commit the father for breach of that order, at which time he will be liable to a further period of imprisonment if he is once again found in contempt.
58. I advise the father that he is able to apply to court to purge his contempt, in particular should the children be returned to his jurisdiction as ordered by the court.
59. I make no order as to costs.
60. That is my judgment.