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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
**[2022] EWHC 3465 (Fam)**

No. FD22P00373

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 2 December 2022

Before:

MR JUSTICE FRANCIS

**(In Private)**

B E T W E E N :

SAMIRA ADDOU — Applicant

- and -

SIDALI BENNABI
(AKA SID ALI BENNABI) — Respondent

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MR M BASI (instructed by Dawson Cornwell Solicitors) appeared on behalf of the Applicant Mother.

THE RESPONDENT FATHER did not appear and was not represented.

MR FARMER on behalf of PA Media Group

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**J U D G M E N T**

MR JUSTICE FRANCIS:

1 By an application dated 2 September 2022, the applicant, Samira Addou ("the mother"), seeks the committal to prison of the respondent, Sidali Bennabi ("the father"), for a series of alleged breaches of various court orders to which I shall shortly refer. The applicant is the mother of Yanis Rabah Bennabi, a boy, who was born on 15 March 2020 and is, therefore, a little over two-and-a-half years old. Yanis's father is Sidali Bennabi, the respondent.

2 This case has a very unhappy background. Yanis has been in Algeria since 30 November 2021, at which point the mother and Yanis were stranded by the father. Yanis has been there without his mother since 1 February 2022, when the mother had to return to the jurisdiction of England and Wales without Yanis in order to seek the court's assistance here. I am told (and I have no reason to doubt) that until the mother and Yanis were separated against her will, she was his primary carer. It is hard to imagine how difficult it must be for her (the mother) to be separated from her son for all of this time. It is wrong, I say almost obviously wrong, that a son should be separated from his mother in this way and, indeed, it would usually be wrong for him to be separated from either parent in such a way.

3 On 9 May this year, Yanis was made a ward of court by an order made by Sir Jonathan Cohen. Yanis continues to be a ward of court and I am going to do nothing today to interfere with that order, which is to continue during his minority or further order. Algeria, of course, is not a Hague Convention country, hence the wardship route was used to try and ascertain his return to this jurisdiction.

4 This committal hearing has been listed for one day to consider the mother's committal application. There was a previous committal application listed before Hayden J on 13 October this year and the matter was adjourned by him until 25 November this year. Shortly before 25 November, the matter was adjourned until today due to lack of judicial availability and the matter has been listed before me for one day, and I now give this *ex tempore* judgment.

5 I shall return in a moment to the issue of service, which is obviously highly material when considering committal proceedings. Before I do so I am going to set out something of the very brief background to this case. Yanis was born at the West Middlesex Hospital in Feltham on 15 March 2020. He has British nationality. Yanis has a British passport and, I am told, an Algerian passport. The mother is Algerian and has an Algerian passport. The father, I am told, has both British and Algerian passports.

6 On 30 November 2021, the mother, the father and Yanis all left England to go to Algeria for a holiday. Whilst they were in Algeria, the father issued divorce proceedings there and he retained the mother's and Yanis's travel documents, including their passports. With the assistance of the British Embassy in Algeria, the mother was eventually able to return to London on 1 February 2022. The Algerian Border Control prevented Yanis from travelling. Yanis remained with the maternal family in Algeria until he was, I am told, forcibly removed from their care by the father. I have not heard oral evidence from the mother and I make it clear that this is not a finding that he was forcibly removed, but, on the best evidence presently available to me, I accept the mother's evidence that that was the position. The father returned to London at the end of April this year and left Yanis in the care of the paternal family in Algeria.

7 I am told that the father then reported the mother to the police in Algeria for the criminal offence of child abandonment. The mother, on 26 September this year, gave instructions to her solicitors, Dawson Cornwell, that the Algerian Court sentenced her in her absence to

six months in prison for the offence of abandonment of her son, Yanis. This is no place for this Court to make any criticism of Algerian legal system, and I do not so do. However, it seems to me, sitting here, that it is more than remarkable that the mother could be sentenced to a term of imprisonment for child abandonment where Yanis was removed from the care of his family in the circumstances that I have related and where the mother thought that she was going to Algeria for a holiday, then to return to England, only to find the father had the plans to which I have just referred. So, the mother now finds herself not only sentenced to a term of imprisonment in Algeria, but she finds herself, contrary of course to her will, separated from her son. It is a very sad story indeed.

8 I am told that no mandatory arrest was attached to the term of imprisonment pending the possibility of the mother appealing, but I am told that the time for appealing has now expired and that there are sound reasons why the mother had been advised that it would not be in her interests to pursue an appeal. It is not appropriate for me to say any more about that.

9 As I have said, Yanis was made a ward of court in May 2022. There was a hearing before Moor J, on 5 and 6 July 2022, when he made the following findings:

(1) Yanis was habitually resident in England when the family left England for Algeria in November 2021;

(2) The father unilaterally decided that the parties' marriage was over, but did not convey this to the mother;

(3) The father decided that it would be better for the mother to remain with her family. The mother did not agree with this decision;

(4) The effect of the father's action stranded the mother in Algeria. He retained her passport.

(5) The father surrendered the mother's passport following an order of the Algerian courts.

(6) The father refused to return Yanis's passport to the mother. In doing so, he prevented Yanis from returning to the country of his habitual residence.

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(7) Finally, Moor J said:

> "It is clear that, one way or the other, he [the father] prevented Yanis, from leaving Algeria, whether he initially did so deliberately or not."

Mr Justice Moor found that England and Wales was the more appropriate natural forum in which Yanis's welfare should be determined.

10 The father was then ordered to cause Yanis's return to this jurisdiction by no later than 15 July 2022. A series of failures to comply with various court orders followed and I am going to return to those in due course.

11 As soon as I came to court this morning, I raised with Mr Basi, counsel for the mother, for whose assistance the Court is very grateful, the question of whether I should adjourn today's hearing or not, given that the father has not attended. I am going to deal with the issue of

service on the father shortly but, in summary, I now make it clear that I am satisfied that the father has been properly served with notice of today's hearing. Given that the committal application had already been adjourned by Hayden J earlier this year (as referred to above), there seemed to me to be little obvious advantage in adjourning. However, I wanted to canvass with counsel for the mother whether a committal order by me today, if I proceed to make one, would help the mother or not in securing Yanis's return. The last thing that this court wants to do is to make an order that would hinder his return when the whole point of these proceedings is to secure his return. I am not going to go very much into the debate that we had for the purposes of this Judgment, not least because I do not want to say anything that might in any way impact on the mother's ability to secure Yanis's return. But I am satisfied, having heard from Mr Basi on behalf of the mother, that it is right that I go on and continue with this hearing.

12 I also make a point that the father owns a property in this jurisdiction which I am told may have an equity of around £120,000. I am told that it may be easier for the mother to make applications in relation to that property and it seems to me that there is an obvious fighting fund there for her if she is able to secure a charging order in relation to that property and, in due course, a sale. I say fighting fund for, although the mother, of course, has the benefit of legal aid certificate in this jurisdiction, she would not be so advantaged in Algeria and any proceedings that she may seek to take there would have to be funded by her. I am far from clear whether she is likely to secure any help at all from the Algerian Court, but, plainly, she needs to take advice from those familiar with that jurisdiction as to what possible steps she can take to secure Yanis's return to this jurisdiction.

13 Accordingly, I decided that there was no benefit today in adjourning to another date. I have had regard to the overriding objective and it seemed to me that there is no benefit to anybody in this case in any further delay. Moreover, the mother has the benefit of a legal aid certificate and adjourning would just result in additional costs. Whilst, of course, costs are not at the forefront of my mind when dealing with the return of a young child who has been wrongfully retained in another jurisdiction, it is nevertheless part of the overriding objective to which I have to have regard.

14 I, therefore, have considered very carefully with Mr Basi the issue of service on the respondent. I say that because, of course, it is important that I make sure when dealing with a committal application that all of the relevant technicalities have been complied with. It would be of no use to anybody, least of all the mother, if I was to proceed if I was in any doubt as to whether the technicalities had been complied with. I make it clear now that, in my judgment, they have properly been complied with.

15 I have been taken through the supplementary bundle in this case and it is necessary for me to refer to a number of documents in that in relation to the issue of service. On 5 September 2022, Mr Terry of Dawson Cornwell, one of the solicitors with the conduct of this case at that firm, sent to the father by e-mail some large files. It referred to the hearings before Moor J at 10.30 on 7 September. That e-mail from Mr Terry was sent on 5 September 2022 at 14.43. Dawson Cornwell operate a system which enables them to tell when an e-mail has been received and when a file has been opened. The evidence that I have seen clearly demonstrates to me that, at 14.48 on same day, so only five minutes after it was sent, the father downloaded the files that he had been sent. Clearly, the service on him of documents by e-mail had been successful on that occasion.

16 On 13 September, at 18.39, Mr Terry sent further files to the father. Again, the same recording system shows that on the same day, at 19.22, so less than an hour later, the father downloaded the relevant file that he had been sent.

17 On 30 September, Mr Terry sent further files to the father at 18.06. Their recording system shows that those files were download the same day at 23.25. All of the times that I am referring to are UK times; of course, we were still, at that stage, in British Summer Time.

18 On 28 October, at 14.55, further files were sent by Mr Terry to the father. The recording system shows that he downloaded those files at 15.04 the same day, that is only nine minutes after they were sent.

19 On 31 October, at 13.43, Mr Terry sent to the father an Arabic translation of the order made by Hayden J on 13 October 2022. The reason that an Arabic translation of that order was sent to Mr Terry was because one had been obtained by Dawson Cornwell in order to use in Algeria. There is no issue here that the father speaks reasonably good (if not very good) English. It is recorded in the order of Sir Jonathan Cohen made on 04 August 2022 that the father has a reasonable understanding of English and that he communicated with the court in English and this recital was repeated in the Order of Mrs Justice Theis of 12 August. I am told by the mother that he speaks good English. E-mails have been sent by him to Dawson Cornwell in what seem to me to be perfectly good English. There is no suggestion that the father has been unable to understand the nature of the documents that he has been receiving because they are not in his first language. It is, I suppose, possible that some of the legal detail of some of what he had sent was not completely clear to him as it was not translated, but I am satisfied from everything that I have read and been told that the father speaks perfectly good enough English in order to understand what the documents were that he was receiving.

20 Out of an abundance of caution, a North African Arabic interpreter was available in court for the father today. This was an obviously sensible precaution because if the father had attended, it would have been a complete waste of money if he had said that he needed an interpreter to proceed, since at a committal hearing I would not have felt able to proceed if he had said that he had to have an interpreter. But this is not in any way to be seen as an excuse by him should he ever seek to suggest that he did not know the nature of the proceedings that were being served on him.

21 On 4 November 2022, at 12.50, Mr Terry sent further files to the father by e-mail. These were downloaded by him at 13.13 the same day, that is only some twenty-three minutes later.

22 On 22 November, at 14.19, Mr Terry sent further files to the father, together with a narrative e-mail. The recording system shows that the e-mail was viewed and the files were downloaded at 14.35 the same day, that is about sixteen minutes later.

23 I am, therefore, entirely satisfied that the service by Dawson Cornwell of papers in this case on the father by e-mail has at all times been received by him.

24 As I have said, the court adjourned this committal application (it was due to be heard on 25 November) due to lack the judges and the matter was relisted for today, that is Friday, 2 December. On 22 November, Mr Terry of Dawson Cornwell sent an email to the respondent, at 15.28, informing him of the relisting of the hearing today. On 24 November, at 13.28, Ms Forum Shah, also of Dawson Cornwell, and one of the other solicitors at that firm with the conduct of this case, sent to the father the notice of hearing, which by this time had been received from the court, and Ms Shah told the father in that e-mail that the hearing is on 2 December at 10.30 a.m. and that his attendance is required at court.

25 I am satisfied, therefore, that the father has full notice of today's hearing. He was served with notice of today's hearing on 24 November, which is eight days before the listed date. The changing of the date could not possibly have prejudiced his preparation for this hearing, had he made any, because it gave him more time rather than less time.

26 Alas, the respondent is not here, he has not communicated with the court and he has not asked if he can attend remotely. He did ask Hayden J if he could attend his hearing remotely and the judge on that occasion refused. Had he asked me if he could attend this hearing remotely, I would, in all probability, have made the same decision since what we want is to have the father in this jurisdiction. However, had the father telephoned the court or asked the court if he could join by CVP or Teams or some other remote way today, during the course of the hearing, I am fairly sure that I would have allowed him to be heard since it seems to me that having him engage in the proceedings remotely would have been better than not having him here at all.

27 Everything that I have heard and read suggests to me clearly that he has little, if any, regard for the judicial and legal process in this jurisdiction; and, of course, he has secured matters to his very considerable advantage in Algeria, and, as I have said, has also succeeded in achieving a prison sentence against what is now his former wife, the mother of their child, so that not only has he caused their child to be separated from his mother, he has caused the country where his child now lives to impose a term of imprisonment on his mother. Unless somebody can persuade me otherwise, which they have not yet done, I cannot see that it could possibly be in Yanis's best interests for these circumstances to pertain. It is altogether shocking and profoundly depressing for the mother to find herself in this situation; but, of course, even more importantly, dreadful for this young boy to be deprived of his mother's care. I find that the father's conduct is reprehensible.

28 The grounds for committal that were drafted very carefully by Mr Basi and his team contain a number of alleged breaches which he very sensibly has decided not to rely upon today. He has pared down his grounds today, sensibly realising that, in the absence of the father, he needs to pin his colours very, very clearly to the mast of those allegations which are likely or bound to succeed.

29 I remind myself that the test that I am dealing with here is the heavier criminal standard of proof, beyond reasonable doubt. The mother brings these committal proceedings and the mother has to prove them. She has to prove them to that higher standard. I make it clear now, at this point in my judgment, that I find that she has proved each and every one of the allegations that she relies upon. I now propose to go through the alleged breaches and to say why it is that I find that they are proved.

30 The first is that there is a breach of the order of Moor J of 6 July 2022, which said as follows:

> "As soon as possible, and in any event by no later than 4.00 p.m. on Friday, 15 July 2022, the respondent father, Sidali Bennabi, must cause the child, Yanis Rabah Bennabi, to be returned to the jurisdiction of the England and Wales."

Unsurprisingly, the mother's solicitors had successfully applied for a location order. This necessarily involves a passport order. There is no record from UK Border Control that Yanis has entered the UK since the date of Moor J's order. In the absence of any such record and in the absence of Yanis in this jurisdiction, it is obviously clear to me that the

father has failed to comply with the terms of Moor J's order of 6 July 2022. It is clear to me from everything that I have read, not least the father's own e-mails, coming as they do from Algeria, that Yanis remains in Algeria with his father.

31 The second ground relied upon by the mother in the reduced grounds to which I have referred is that the father is in breach of the para.9 of the order of Moor J of 6 July 2022, which is that:

> "As soon as possible, and in any event by no later on 4.00 p.m. on Monday. 25 July 20229, the respondent father, Sidali Bennabi must cause the child, Yanis Rabah Bennabi, to be returned to the jurisdiction of England and Wales."

I make it clear that this was a variation by Moor J of his own order of 6 July, the father having failed to comply with the earlier return date of 15 July. For the reasons set out above and without needing to repeat them, it is clear that the father is in breach and remains in breach of that order.

32 The third ground relied upon is a breach of the order of 28 July 2022, which provided that:

> "The respondent father, Sidali Bennabi, must cause the child, Yanis Rabah Bennabi, to be returned to the jurisdiction of England and Wales by 5.00 p.m. on 2 August 2022."

Again, without the need to repeat them but for the same reasons set out above, it is obvious to me that the father is and remains in breach of that order.

33 A further order was made on 12 August 2022, and it provides:

> "The respondent father, Sidali Bennabi, must cause a ward of this court, Yanis Rabah Bennabi, to be returned to the jurisdiction of England and Wales as soon as possible and by later on 4.00 p.m. (BST) on 4 September 2022."

Again, there is no evidence of a return to the jurisdiction from UK Border Control and there is no evidence that Yanis has been returned to this jurisdiction, and I find beyond reasonable doubt that the father is in breach also of this order.

34 A further order dated 13 October 2022, provided that:

> "The father, Sidali Bennabi (also known as Sid Ali Bennabi) shall, by 4.00 p.m. on 19 October 2022, cause the return of the child, Yanis Rabah Bennabi, to the jurisdiction of England and Wales."

Again, for the same reasons set out above, that is the lack of evidence from UK Border Control, the absence of Yanis in this jurisdiction and the father plainly still being in Algeria with Yanis, I find beyond reasonable doubt that the father is in breach of this order.

35 The location order to which I have referred and which is dated 09 May 2022 also provided as follows in para.10:

> "The respondent, Sidali Bennabi, and any other person served with this order, must 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 child, Yanis Rabah Bennabi, including an adult passport on which the child, Yanis Rabah Bennabi, may travel, and every identity card, ticket, travel warrant or other document which would enable the child, Yanis Rabah Bennabi, to leave England and Wales; and

(b) every passport relating to the respondent, Sidali Bennabi, and every identity card, ticket, travel warrant or other document which would enable the respondent to leave England and Wales."

There was also an order made that:

> "The father should not and must not make any application for, obtain, seek to obtain or knowingly cause, permit, encourage or support any steps being taken to apply for, or obtain, any passport, identity card, ticket, travel warrant or other document which would enable either (a) the child or (b) the father to leave England and Wales."

After discussion, Mr Basi sensibly, in my judgment, decided not to proceed with this ground as a breach leading to a committal order. However, it is important that I identify some rather important issues in relation to these parts of the location order.

36 It became apparent to the father's solicitors that he had been seen in Algeria on or around 15 September 2022. The letter from Ms Shah of Dawson Cornwell asked Ms Land of the Tipstaff Office whether it would be possible for her to ascertain whether Mr Bennabi "made any attempts to travel out of the jurisdiction last week". By "out of the jurisdiction", this letter was referring to out of England, where it seems the father must have been. The reply from Ms Land in the Tipstaff Office provided as follows:

> "Requested movement check request. It appears respondent father, Sidali Bennabi, travelled from Stansted on 16 September 2022 at 19.00 hours to Algeria."

As I have already said, there was a passport order included in the location order and it ought to have been impossible for the father to pass through Border Control without being apprehended.

37 Accordingly, Ms Shah wrote, on 21 September, to Ms Land in the Tipstaff Office:

> "I would be grateful if you could confirm which passport/travel document the father used to travel and whether the port alert was triggered."

With customary speed and efficiency, Ms Land replied saying:

> "Mr Bennabi travelled on a document ref: 307913671(DZA). We did not receive an alert the father was travelling. It may be possible he was travelling on a passport in another name."

38 Within an hour of receiving that response from the Tipstaff Office, Ms Shah wrote back to Ms Land asking for the available details as to how the father was able to travel so that they

can pass them on to the judge to explain how the father managed to leave the jurisdiction when there are orders and a port alert in place. I should say that it is understood that the father came to England, leaving Yanis in Algeria with his family there. Again, with customary alacrity, Ms Land replied, a couple of hours later the same day, giving details as to the father's travel. The letter from Ms Land said as follows:

> "Further to your e-mail informing me the respondent father, Mr Bennabi, had been sighted in Algeria on or around 15 September 2022, I conducted a movement check that resulted Mr Bennabi had travelled from Stansted on 16 September 2022 at 19.00 hours to Algeria on a document ref: 307913671(DZA). Attached information sheet you provided providing details of the child and respondent father. The name you provided the respondent was Sidali Bennabi. On requesting the movement check, I referred to the respondent's passport. The correct spelling of the name on his passports is Sid Ali Bennabi, not Sidali Bennabi. Please be advised names of subjects are word sensitive when creating port alerts. This will explain why Tipstaff was not alerted to the respondent travelling. Therefore, no intercept was sent."

39 As I said, this is not any longer a ground of committal pursued by the mother. The reason for that is I think it would be difficult for me to find beyond reasonable doubt that the father travelled on a different passport or travel document from the one that the mother and her team were familiar with. However, it seems to me, on the balance of probabilities, more likely than not that the father had, in breach of the order of this court, applied for either an alternative passport or some other form of travel document, and it seems to me to be more likely than not that he applied for that document in a deliberately different name in a hope (which may well have been one that bore fruit) that he could pass through UK Border control on a different passport with a slightly different name. I deal with this as an essential part of the narrative of this case, but I make it clear that I do not make any finding in respect of this which forms part of my committal hearing or which leads to a committal order.

40 It is clear to me that the father has deliberately caused the mother to go to Algeria, deliberately stranded her there in the circumstances to which I have referred. It is shocking that she had to make the decision as to whether to leave Algeria and leave her son there or to remain there in circumstances that would, I know, have been incredibly difficult for her. She did what it seems to me is the only thing that she could do, which is to leave Algeria without her son. As I have said, it is shocking and tragic for both the mother, but particularly for the son, who, as a ward of this court, is my first consideration, shocking that he has been deprived of any contact whatsoever with his mother, other than, as I understand it, very occasional, remote contact when the father thinks it fit to afford it to the mother.

41 The father has broken the orders of the court to which I have referred above. He has done so knowingly and deliberately and I have no difficulty at all in finding on the necessary standard to which I have referred, that is beyond reasonable doubt, that the father is in breach of the court orders that I have referred to above.

42 I have very properly been referred to the law in this case and, again, I am grateful to Mr Basi for the careful way that he has taken me through it. In considering whether it is appropriate now to proceed to deal with this in the absence of the respondent, as I have chosen to do, I have been reminded of the guidance referred to in the cases of *R v Jones* [2003] 1 AC 1 and *R v Purvis* [2001] QB 862 , and I have been directed by those cases to the following specific issues:

1. Whether the respondent has been served with the relevant documents, including the notice of this hearing. I have set out above in detail the circumstances which cause me to find that the respondent has been properly served with the notice of this hearing and with all of the relevant documents. It is clear to me that Dawson Cornwell, with all of their considerable experience in this area of the law, have painstakingly gone through the position carefully to ensure that all of the necessary requirements have been complied with.

2. Whether the respondent has had sufficient notice to enable to him to prepare for the hearing. I have already indicated that he has had and the fact that this hearing was put back obviously afforded him more time and, plainly, caused him no prejudice and, plainly, he knew of the change of date. I should add that there is no indication whatsoever that he attempted to attend the court hearing which has been fixed for 02 December.

3. Whether any reason has been advanced for the father's nonappearance. None has been given at all.

4. Whether by reference to the nature and circumstances of the respondent or the respondent's behaviour he has waived his right to be present. In other words, is it reasonable to conclude that he knew of, or was indifferent to, the consequences of the case proceeding in his absence. He got told specifically by Dawson Cornwell what was going on, the date of the hearing, the time of the hearing and he was given all of the relevant documents. It is clear to me that he has waived his right to be present and quite deliberately decided not to attend this court; and, as I have said, not even deigned to try and telephone or seek to set up a remote link. It is, of course, well-known to all of us now, and I am sure it was known to him because of his previous attendance at court hearings remotely, that the court is perfectly able to set up remote hearings with him wherever he may be. As I have said, he was not given permission to attend the hearing of Hayden J remotely. He probably would not have been given it by me either. But had he written to this court saying, "Please can I attend remotely?", or, as I have said, had he tried to attend remotely today, I would probably have decided to hear him remotely rather than not to hear him at all.

5. Whether an adjournment would be likely to secure the attendance of the father or at least facilitate his representation. I have already referred to the fact that there was a previous hearing which he did not attend and the fact that I could see no point in putting this over to another date. I could not find that it would be more likely that he would attend on that date than that that he has attended this on this date or the earlier date referred to above.

6. The extent of the disadvantage to the father in not being able to present his account of events. Well, the father has not sought to present any account of events. He has had plenty of opportunity to do so. I should also point that at the stage that at hearing before Moor J the father was represented by Cliona Papazian, who is very well-known in this court as an advocate very experienced in this area of work and there is no doubt that he knew that he could get access to representation if he wanted to.

7. Whether there would be any undue prejudice caused to the mother by delay. The mother is entitled to have her application heard and, more importantly, Yanis is entitled to have his application heard because this court will do everything that it

can within its power to secure Yanis's return to this jurisdiction in accordance with orders previously made.

8. Whether undue prejudice would be caused to the forensic process if the application was to proceed in the absence of the father. Of course, there is prejudice to the forensic process because the judge, when having to decide questions of fact, would far prefer to have the principal people involved in the case under consideration here to give evidence to the court. But the father has chosen not to do so in circumstances which I have identified. Any prejudice to him is the result of his own inactivity and, therefore, could not possibly be considered to be undue prejudice, that I find that it was right and proper that I continued the forensic process today and have gone to on make the findings that I have.

43 Finally, I have to have regard, of course, to the overriding objective, including the obligation on the court to deal with the case justly, including doing so expeditiously and fairly and taking any step or making any order for the purposes of furthering the overriding objective. I have already referred to the overriding objective in this context, but simply set out that the most important thing here is for this court to do all that it be can to secure Yanis's return to the jurisdiction whilst, of course, being scrupulously fair to the father, who finds himself as a respondent to committal proceedings. I am satisfied that I have, today, been scrupulously fair to the father and that he has been afforded ever possible opportunity to come to this court to make his case as to why I should not commit him to prison, and he has failed to do so.

44 I turn, therefore, to the question of what sentence I should impose upon the father. Given the disgraceful conduct to which I have referred, the detriment that that causes to Yanis, a ward of this court, I have no doubt at all that a term of imprisonment is appropriate. I have been referred to the decision of Peel J in *Bailey v Bailey (Committal) (Rev1)* [2022] EWFC 5 where he said:

> "I have wide powers of sanction in circumstances in which I find that the respondent has disobeyed an order. The precise form of sanction is within the discretion of the court. I may impose a sentence of up to 2 years' imprisonment or a fine of an unlimited amount. If I impose a sentence of imprisonment, it is open to me to order that execution of the committal order can be suspended for such a period on such terms as I consider appropriate."

45 Mr Justice Peel then referred the decision of Hale LJ (as she then was) in *Hale v Tanner* [2000] EWCA Civ 5570:

> "25. In making those points I would wish to emphasise that I do so only in the context of family cases. Family cases, it has long been recognised, raise different considerations from those elsewhere in the civil law. The two most obvious are the heightened emotional tensions that arise between family members and often the need for those family members to continue to be in contact with one another because they have children together or the like. Those two factors make the task of the court, in dealing with these issues, quite different from the task when dealing with commercial disputes or other types of case in which sometimes, in fact rarely, sanctions have to be imposed for contempt of court.

26. Having said that, firstly, these cases have to come before the court on an application to commit. That is the only procedure which is available. Not surprisingly, therefore, the court is directing its mind to whether or not committal to prison is the appropriate order. But it does not follow from that that imprisonment is to be regarded as the automatic consequence of the breach of an order. Clearly it is not. There is, however, no principle that imprisonment is not to be imposed at the first occasion: see *Thorpe v Thorpe* [1998] 2 FLR 127, a decision of this court. Nevertheless, it is a common practice, and usually appropriate in view of the sensitivity of the circumstances of these cases, to take some other course on the first occasion.

27. Secondly, there is the difficulty, as Mr Brett has pointed out, that the alternatives are limited. The full range of sentencing options is not available for contempt of court. Nevertheless, there is a range of things that the court can consider. It may do nothing, make no order. It may adjourn, and in a case where the alleged contemnor has not attended court, that may be an appropriate course to take, although I would not say so in every case. It depends on the reasons that may be thought to lie behind the non-attendance. There is a power to fine. There is a power of requisition of assets and there are mental health orders. All of those may, in an appropriate case, need consideration, particularly in a case where the court has not found any actual violence proved.

28. Thirdly, if imprisonment is appropriate, the length of the committal should be decided without reference to whether or not it is to be suspended. A longer period of committal is not justified because its sting is removed by virtue of its suspension.

29. Fourthly, the length of the committal has to depend upon the court's objectives. There are two objectives always in contempt of court proceedings. One is to mark the court's disapproval of the disobedience to its order. The other is to secure compliance with that order in the future. Thus, the seriousness of what has taken place is to be viewed in that light as well as for its own intrinsic gravity.

30. Fifthly, the length of the committal has to bear some reasonable relationship to the maximum of two years which is available.

31. Sixthly, suspension is possible in a much wider range of circumstances than it is in criminal cases. It does not have to be the exceptional case. Indeed, it is usually the first way of attempting to secure compliance with the court's order.

32. Seventhly, the length of the suspension requires separate consideration, although it is often appropriate for it to be linked to continued compliance with the order underlying the committal.

33. Eighthly, of course, the court has to bear in mind the context. This may be aggravating or mitigating. The context is often the break-up of an intimate relationship in which emotions run high and

> people behave in silly ways. The context of having children together, if that be the case, cannot be ignored. Sometimes that means that there is an aggravation of what has taken place, because of the greater fear that is engendered from the circumstances. Sometimes it may be mitigating, because there is reason to suppose that once the immediate emotions have calmed down, the molestation and threats will not continue."

46 These are very serious breaches and, in my judgment, the term of imprisonment which should be imposed by this court is one of 18 months custodial sentence. I considered very carefully whether I should suspend that sentence and I have decided that I should. I am going to set out very clearly the reasons for that. It is not because the father's conduct does not attract an immediate rather than a suspended sentence. But my primary concern, as I have already said, is to secure the return to this jurisdiction of my ward, Yanis. I am far more concerned with securing Yanis's return than I am with seeing the father being sent to prison immediately.

47 Dawson Cornwell will, I am sure, following this judgment, want to write to the father setting out what we often refer to in this these courts as the 'soft landing' provisions that might be facilitated for the father were he to return Yanis. I would encourage, although not in any sense direct, Dawson Cornwell to explain to the father that he has the option of seeking to purge his contempt. It seems to me that, if he were to return Yanis to this jurisdiction and apologise for what he has done, it is possible, and I would possibly go further than that and say likely, that I might decide not to trigger the sentence. Indeed, it seems to me that having passed at the moment a suspended sentence, it would be quite wrong for me to do so. Therefore, it is reasonable, in my judgment, for Dawson Cornwell to say to the father that if he does bring Yanis back to this jurisdiction (I am going to make a fresh return order in a moment), then he will escape an immediate custodial term. But I, of course, in saying that, cannot bind the hands of what another judge may do if it is not me that hears this case.

48 Therefore, the sentence imposed by this court is of 18 months' imprisonment to be suspended for a period of 2 years.

49 It seems to me, although Mr Basi has not expressly asked me to do so, that I should now make a fresh return order. I am going to say in that case that the respondent shall, by no later than 23.59 on 9 December 2022, return, and I will set out his full names again, Yanis Rabah Bennabi to the jurisdiction of England and Wales. In the event that Yanis is returned, the matter should be restored to court within 48 hours of his return. Plainly, if that falls over the immediate Christmas period, that may need to be slightly modified, but Dawson Cornwell will know only too well that there is, of course, an out-of-hours service 24/7. Having said that, I suspect that if it was Christmas Day or Boxing Day, they would probably want to defer it by a few days. But this is a matter which should come back, even if it is during vacation, other than, of course, on those central days, unless there is some very urgent reason why it needs to come back then, in which case, of course, it should.

50 That is the judgment of this court.

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