Neutral Citation Number: [2021] EWHC 3227 (Fam)

Case No: FD17P00043

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 November 2021

Before:

MR JUSTICE POOLE

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Between:

Tanya Borg

Applicant

- and -

Mohammed Said Masoud El Zubaidy

Defendant

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- -

Ms Renton (instructed by Charles Strachan Solicitors) for the **Applicant**
Mr Crawley (instructed by Landmark Legal LLP) for the **Defendant**

Hearing dates: 17 and 29 November 2021

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JUDGMENT

Mr Justice Poole:

1. This judgment is in respect of the court's findings of contempt of court following a hearing on 17 November 2021 and the court's sentence of the Defendant on 29 November 2021.

2. Previous court orders have sanctioned publicity with a view to locating the children and their identities have already been revealed in articles in national newspapers and in broadcast media. In the circumstances, I make no reporting restrictions order in this case.

3. On 24 June 2021, Ms Borg, the Applicant, issued an application for the committal of Mr El Zubaidy, the Defendant, for contempt of court. At the outset of the hearing on 17 November 2021 I advised the Defendant, through his Counsel, that he had the right to remain silent and was entitled, but not obliged, to give written and oral evidence. He did not have to answer questions the answers to which may incriminate him. He has been represented by Mr Crawley, Counsel, and has not required the services of an interpreter.

4. The alleged contempt of court is by breaches of court orders. Those orders were designed to support orders for the return of two of the parties' children from Libya to the jurisdiction of England and Wales where both their parents live. The two children concerned have been in Libya since being retained there by the Defendant in 2015 and are believed to be currently in the care of their paternal grandmother. The High Court first ordered the return of the children from Libya to this jurisdiction on 26 January 2017. There have been numerous subsequent orders for the return of the children with which the Defendant has failed to comply. The Defendant is familiar with committal proceedings. In August 2017 Moor J sentenced him to 12 months imprisonment for breaching court orders made in proceedings concerned with securing the return of the children from Libya. Whilst out on licence following that period of imprisonment he was in breach of further orders for the return of the children. On 26 February 2018 Mostyn J sentenced the Defendant to a further twelve months imprisonment for contempt of court (deferred for one month to allow the Defendant to comply with the order he had breached). Then, on 15 November 2018, Hayden J sentenced the Defendant to two years imprisonment for contempt, again for breaching orders to secure the safe return of his children.

5. The current application for the Defendant's committal concerns alleged breaches of two court orders. These orders were designed to allow the Applicant mother to go to Libya to secure the return of the children without the presence of the Defendant. On 8 February 2021 at a hearing at which the Defendant was the respondent father, and the Applicant was referred to as "the mother", Judd J ordered:

> The respondent father shall use his best endeavours to execute, and to serve upon the mother's solicitor, a duly attested consent to the wards travelling from Libya with the mother without him accompanying them by 4pm on 8th March 2021. The document

> must be signed, dated, and witnessed by an official of the Libyan Embassy/ Consulate in London.

On 5 May 2021 at a further hearing concerning return of the children, Russell J ordered:

> The respondent father shall continue to use his best endeavours by 4pm on 15th June 2021 4.00pm to execute, and to serve upon the mother's solicitor, a duly attested consent to the ward travelling from Libya with the mother without him being in attendance; the said document must be signed, dated, and witnessed by an official of the Libyan Embassy/ Consulate in London.

Penal notices were attached to both orders. The Applicant alleges that the Defendant has breached those orders and that his breaches constitute contempt of court.

6. As can be seen from the history of committal applications, there is a long and involved background to the making of the orders which the Defendant is alleged to have breached. The parties have three children. Two are still under 18, one is over 18 but has been declared by the Court to be a vulnerable adult in whose best interests it was to make orders for her return to the jurisdiction of England and Wales. As shorthand I shall refer to those remaining in Libya as "the children". The youngest of the children is a ward of court. The adult child in Libya is protected under the inherent jurisdiction of the court. The Defendant retained the children in Libya in 2015. The children have therefore been away from their mother and their home country for six years. The Defendant was not released from prison following his previous committals until 15 November 2019. The Applicant travelled to Libya in 2019 and commenced proceedings against the paternal grandmother. The Applicant was awarded custody of the children by a court in Libya which ordered the paternal grandmother to bring the children to court. The paternal grandmother did not comply and went into hiding with the children. Whilst he was in prison the father executed power of attorney in favour of his mother indicating that he knew where she was and was in communication with her. A series of hearings took place in the High Court, Family Division, in November and December 2019 with the purpose of securing the return of the children from Libya. Further return orders were made. Still the children remain in Libya.

7. Notwithstanding the award of custody of the children to the Applicant mother in the Libyan court, she cannot remove the children from Libya without the Defendant father's consent. He has previously signed a consent form but the mother has been advised that his consent must be given by way of a document signed and attested at the Libyan Embassy, and the document must be translated into Arabic. The Applicant's solicitors duly prepared the necessary consent documents (in English and Arabic) ready for signing and witnessing. They were sent to the Defendant and to the Libyan Embassy in London on 8 January 2021

together with an explanation to the Defendant of what steps he needed to take, namely, to sign the documents before a member of the Libyan Embassy as a witness, and for the witness to sign and date the documents accordingly. The Defendant did not respond to the Applicant's solicitors. The Applicant applied to the court accordingly. The Defendant appeared before Judd J on 8 February 2021 and she made the order set out above, attaching a penal notice. The order records the Defendant's email address and that he consented to service by email of court documents. A sealed copy of the order of 8 February 2021 was sent by the Applicant's solicitors to the Defendant by email on 11 February 2021.

8. Although Judd J's order refers to the Defendant being required to use his best endeavours to execute and serve a duly attested consent to the "wards" (plural) travelling from Libya with the mother, and only one of the children is a "ward", the prepared consent documentation clearly refers to both children by name, and the Defendant cannot have been under any misapprehension about what was required of him. No submission otherwise was made on his behalf.

9. The Defendant did not respond to the order. The Applicant's solicitors wrote to him to warn him that if he did not comply with the order an application for his committal would follow. The case was restored to court and heard by Russell J on 5 May 2021. The Defendant attended remotely and was represented by Counsel. The order set out above was made with a penal notice attached. The wording of Russell J's order refers to "ward" (singular). I proceed on the basis that this order applied only to the younger of the two children who is a ward of court. The order of Judd J remained extant but the order of Russell J did not, on the face of it, refer to the elder child who is not a ward of court. Again the Defendant's email address was recorded and service of further court documents was ordered to be served on the Defendant at that address in addition to service upon his solicitors.

10. The Applicant made an application for committal of the Defendant for contempt of court but on 18 May 2021 Peel J noted that the application did not comply with Part 37 of the Family Procedure Rules 2010 and permitted the Applicant to withdraw the application and to issue a fresh application, compliant with the rules, "to commit the respondent for breach of the order of Mrs Justice Judd dated 8 February 2021" by 4pm on 28 June 2021. That application was to be listed for hearing on 21 July 2021.

11. The Applicant had used Form 78 "Notice to Show Good Reason why an Order for Your Committal to Prison should not be made" notwithstanding that Part 37 of the Family Procedure Rules 2010 introduced revised procedures on 1 October 2020 which do not include any reference to a Notice to Show Cause form or procedure. Rule 37.3 provides that a contempt application made in existing High Court or family court proceedings is made by an application under Part 18 in those proceedings. Furthermore, r.37.4(2) requires that the contempt application must include statements of all of the information and matters set out at sub-paragraphs (a) to (s) of paragraph (2). I have seen Peel J's order and Counsel's note of his ruling. Peel J identified that neither r.37.3 nor r.37(4)(2) had been complied with. Information required to be included in the application could not be found in the application and was only arguably contained within a variety of

other documents, including previous court orders, which was clearly a material irregularity.

12. The hearing on 21 July 2021 was vacated because the Defendant reported that he had Covid-19 symptoms. Unfortunately, it was not possible to re-list it until 17 November 2021.

13. The fresh committal application was issued on 24 June 2021 and is accompanied by a statement from the Applicant headed "Applicant's statement pursuant to Family Procedure Rules 2010 FPR 37.4(2)(a) to (s)". Exhibited to that statement was the Applicant's previous statement in support of her application to commit and a "Summary of Facts Alleged to Constitute Contempt". The Part 18 application notice is used under FPR Part 18 for applications in the course of existing proceedings, to start proceedings except where some other Part of the rules prescribes a different procedure to start proceedings, or in connection with proceedings which have been concluded. The standard Part 18 form is therefore not designed solely for use in committal applications. It does not include pro forma standard warnings or information compliant with r.37.4(2). From 30 July 2021, subsequent to the application in this case, a new form FC600 has become available for use in committal applications which does include on its face the standard warnings or information required. Clearly, it still requires the insertion of case specific information.

14. The Part 18 application notice issued on 24 June 2021 states at Part A that the Applicant intends to apply for an order that "The Respondent Mohammed El Zubaidy be committed to prison for contempt" because "He is in breach of court orders to which penal notices are attached as evidenced in a statement in support of this application pursuant to FPR Rules 2010 37(4)(2)(a-s)". Part B includes reference to an attached witness statement/affidavit by way of a ticked box. Part C states that the Applicant wishes to rely on the "statement of Tanya Borg dated 24 June 2021 pursuant to FPR 2010, r. 27(4)(2)(a-s) which also includes written evidence, previous statement dated 22 May 2021".

15. Notwithstanding errors in referring to r.37(4) rather than r.37.4, and r27(4)(2) rather than r.37.4(2), the accompanying statement together with the Summary of Facts document exhibited were served with the application form on the Defendant and they do include statements of the matters and information required to be included by r.37.4(2).

16. Mr Crawley, for the Defendant, accepted that all the information required to be included by r.37.4(2) was included in the application notice and the accompanying statement (and exhibits) taken together, and that the application form, together with statement (and exhibits) had been properly served in accordance with r.37.5. Nevertheless, he took the preliminary point that r.37.4 was not complied with, that the committal application procedure was irregular and that the application should accordingly be dismissed. He suggested that the situation was no different from that presented to Peel J who had found the previous application to be deficient because of non-compliance with the rules under Part 37.

17. I do not agree with the submission that the application of 24 June 2021 was not compliant with the Part 37 rules.

    i) The application was properly made under Part 18 using the standard Part 18 application form.
    ii) It is a common and acceptable practice to refer to a "separate sheet" on a standard application form. The information on the separate sheet is treated as part of the application. Similarly, this application notice referred to an accompanying document and that practice appears to me to be an acceptable one in committal proceedings as it is in other proceedings.
    iii) The accompanying document was a statement which exhibited a "bundle" of documents including the Applicant's earlier witness statement in support of the application, but the body of the accompanying statement was confined to a statement of the matters and information required under r.37.4(2)(a) to (s). Although the Applicant also relies on an exhibited Summary of Facts alleged to Constitute Contempt, which complied with r.37.4(2)(h), the body of the accompanying statement itself also includes a more concise but acceptable brief summary of the facts alleged to constitute contempt.
    iv) Part 37 of the FPR does not prescribe the form by which statements of the matters and information at r.37.4(2)(a) to (s) should be included in the contempt application.
    v) I regard the accompanying statement as part of the contempt application and therefore I am satisfied that the application included statements of all the matters and information required at r.37.4(2)(a) to (s).

18. The position presented to Peel J on 18 May 2021 was very different. Rule 37.3 had clearly not been complied with because the Part 18 procedure had not been adopted: a Notice to Show Good Reason application had been wrongly used. Further, the application itself did not include, by way of an attached document or otherwise, the information required by r.37.4(2).

19. If I am wrong about the Applicant's compliance with r.37.4(2) I would nevertheless have refused to dismiss the application for non-compliance or irregularity. Committal applications ought to comply with the requirements of Part 37 but an irregularity does not necessitate setting aside or dismissing a committal application where it has caused no prejudice to the Defendant. In *M v P and others; Butler v Butler* [1993] 1 FLR 773, the Court of Appeal held that failure to observe the proper procedures for service of a committal order in the High Court and county court were not necessarily fatal to the lawfulness of that order. Where procedural irregularities or defect does not cause the contemnor any injustice, the committal order will not be set aside. More recently in *Devjee v Patel* [2006] EWCA Civ 1211 the Court of Appeal held that the fact that the exact process for bringing committal proceedings for breach of a non-molestation order had not been followed did not render the proceedings unfair as no injustice was caused to the contemnor. In the present case the Defendant was served with the application notice and accompanying documents which set out all the required matters and information. He has had sufficient time to prepare his case, aided by legal representation, on the basis of the application

notice and accompanying statement. He has suffered no prejudice by reason of the manner in which the application notice was compiled.

20. I gave a brief ruling at the hearing on 17 November 2021 refusing the Defendant's preliminary application to dismiss or set aside the committal application of 24 June 2021 on the grounds of irregularity or non-compliance with Part 37 of the FPR. I have given fuller reasons in this judgment. Notwithstanding that ruling, I note that the manner in which the application notice was compiled was not as clear and helpful as it might have been. The requirement under r.37.4(1) for every contempt application to be "supported by written evidence given by affidavit or affirmation" unless and to the extent that the court directs otherwise, is a requirement to provide evidence of the contempt alleged. A statement of supporting evidence is not the same as a statement of the matters and information required to be included under r.37.4(2)(a) to (s). Now that there is a FC600 form that includes the standard information to be proceeded on its face, the case specific requirements under r.37.4(2) could be included on the face of the Part 18 Application Notice itself if room can be made by expanding the boxes on the form under what is now box 6, or by use of a separate sheet. In either case the matters and information required to be included under r.37.4(2) should not, in my view, be conflated with evidence in support of the contempt application. It was unnecessary to provide the required matters and information under r.37.4(2) in the form of a witness statement from the Applicant. If a separate sheet was needed, it would in my view have been preferable to include in the application a "Notice pursuant to FPR r.37.4(2)" which set out the required matters and information. I would also caution against relying on a witness statement with exhibits that include another witness statement with its own exhibits. I do not understand why this was thought necessary – the earlier witness statement had not been withdrawn when the previous application had been withdrawn.

21. Although Peel J's order gave permission for a fresh application to commit for breach of the order of 8 February 2021, the application of 24 June 2021 includes an additional allegation that the Defendant is in contempt for breach of the order of 5 May 2021. No objection was taken to its inclusion and there is no prejudice to the Defendant thereby. However, for the reasons already stated, I take the alleged breach of the order of 5 May 2021 to be the failure to use best endeavours in relation to the consent to removal of the younger child, the ward, only.

22. I have already recorded that the Defendant accepts that service under FPR r. 37.5 was properly effected. I am satisfied that the requirements for service have been complied with.

23. The Applicant applied to rely on new evidence, namely email correspondence between her solicitors and a solicitor for the Charge D'Affaires at the Libyan Embassy in London over the period 10 to 12 November 2021. Mr Crawley for the Defendant did not object to the admission of this evidence, he did not make any submissions that the information in the evidence was inaccurate or unreliable, I was satisfied that there was no prejudice to the Defendant from the admission of such evidence, and I permitted it to be adduced.

24. The Applicant relies on the evidence filed, namely her statement and exhibits of 22 May 2021, and the exhibits to her statement attached to the committal application dated 24 June 2021 which, in effect, together with previous orders and the application, form the committal bundle. The new evidence from the solicitor for the Charge D'Affaires at the Libyan embassy by way of email dated 11 November 2021 is that the Embassy has remained open even during lockdown and beyond, albeit appointments during lockdown were only made for urgent matters. The Applicant's evidence shows that consent forms were prepared for the Defendant to sign, both in Arabic and English, and the process of attending the Libyan Embassy and having his signatures witnessed by a member of the Embassy, was explained to him in correspondence dated 8 January 2021.

25. Mr Crawley for the Defendant wished to cross-examine the Applicant. She was called and, under affirmation, confirmed her statements. They include her recollection of a telephone conversation with the Defendant after he had received the correspondence and consent forms on 8 January 2021, but before the hearing on 8 February 2021 in which the Defendant said that he would not sign anything.

26. In cross-examination the Applicant said that she had been unable to remove the children from Libya because she did not have the requisite signed forms. She had earlier, signed consent forms but they were not attested consent forms. She was challenged about evidence she had given in the Libyan proceedings in which she was granted custody but maintained that she had told the truth.

27. The Defendant chose not to give oral evidence as is his right. However, Mr Crawley did rely on an unsigned, undated written statement from the Defendant. Whilst Mr Crawley said that little weight could be given to the statement he nevertheless wished to rely on it. In that statement the Defendant makes it very clear that he had no intention of signing the consent documents. His reasons for not doing so are less clear, but he maintains that to do so would be to place the children at greater risk than they are under at present.

28. Mr Crawley submitted that the court should take into account the following matters:

    i) The Applicant did not have "clean hands" as he put it. She had been in breach of court orders made on 4 and 19 December 2019. However, as pointed out by Ms Renton for the Applicant, those orders had been amended by the court on 31 January 2020. The Applicant was not in breach of the orders when amended and no action was deemed necessary to be taken at the time. Mr Crawley said that the Defendant did not believe that he had been given notice of the hearing on 31 January 2020 but it is recorded on the face of the order that he had been given notice. In any event, I cannot see the relevance to the committal proceedings before this court that the Applicant may have breached a court order in

2019. Mr Crawley also suggested that the Applicant had given "dubious" evidence to the court in Libya in 2019. Again, I am unclear as to the relevance of her evidence in Libya but in any event I have no reason to doubt the veracity of her evidence and a suggestion that it is dubious without evidence that it was untruthful or inaccurate takes the matter nowhere.

ii) Mr Crawley submitted that the court should not make an order in vain and that an order for committal has no possibility of producing the desired result. This is not an attractive submission. Firstly, although the Applicant accepted in evidence that Libya was a country in which law and order had broken down, her pursuit of a duly attested, signed consent for the removal by her of the children from Libya has not been considered by the courts making the orders set out above, to be a pointless exercise. The orders in question were intended to give effect to ongoing orders for return to the children. The production of the Defendant's attested consent to the removal of the children may be productive and allow the Applicant to remove the children from Libya. Secondly, committal proceedings are a process for upholding the authority of the court, they do not exist purely for the purpose of achieving the end intended by the order allegedly breached. Thirdly, the submission surely goes to the question of sentence rather than guilt.

iii) Mr Crawley submitted that the court should consider the best interests of the children. I am sure that the best interests of the children were considered by the courts when making the orders. That is one reason why breach of the orders would be a serious matter. I cannot see how consideration of the best interests of the children would be relevant to the determination of whether the Defendant is guilty of contempt of court – that is a finding which depends on questions of the existence and knowledge of the order, whether it was breached, and the circumstances of the breach. It does not depend on whether a finding of contempt is in the best interests of the children concerned.

iv) Finally, Mr Crawley raised a question as to whether the Judd J and Russell J had had jurisdiction to make the orders in question. He did not press the point and did not submit that they had not had jurisdiction. The orders have not been appealed. With regard to the elder child of the parties, who is an adult aged over 18, Mostyn J held on 9 May 2018 (when she was no longer a child under the age of 18) that she was a vulnerable adult who required the protection of the court and that it was "necessary and appropriate" for the court to "exercise its inherent jurisdiction with respect to vulnerable adults so as to grant all such relief as may protect and/or assist her." There have been numerous court hearings and orders since that date and I cannot see any evidence of any challenge to the jurisdiction of the court to make orders protecting the adult child who is in Libya and to assist her to return or be returned to England. The point was not argued before me either; it was only raised as an observation that the adult child was not a ward of court. The court has proceeded since May 2018 on the unchallenged basis that it has jurisdiction to take steps to secure the return of the adult child. In the circumstances, albeit challenges to jurisdiction could have been made, I proceed on the basis that the orders alleged to have been breached were

orders the court was entitled to make. In relation to the younger child, who is under 18 and a ward of court, the jurisdiction to make the orders has not been doubted.

29. The burden of proof is on the Applicant to prove the matters relied upon as constituting contempt of court. The standard of proof is the criminal standard. I have to be certain so I am sure that the Defendant is guilty of the alleged contempt of court – anything less and the application should be dismissed.

30. The evidence establishes to my satisfaction to the requisite standard that:

i) The orders set out above were made by Judd J and Russell J respectively on 8 February and 5 May 2021.

ii) The orders were made at hearings attended by the Defendant. It was explained to the Defendant at the hearings what he had to do to comply with the orders.

iii) Penal notices were attached to both orders.

iv) The Defendant was provided with prepared consent forms in English and Arabic. The orders clearly required him to use his best endeavours to execute those consent forms by signing and dating them before a witness from the Libyan Embassy or Consulate in London, and to serve the duly completed forms on the Applicant's solicitors. Judd J's order related to both children, Russell J's to the younger child only.

v) Dates by which he was required to comply with each order were set out in each order.

vi) The orders were properly served on the Defendant in accordance with the rules under FPR Part 37.

vii) It was feasible for the Defendant to have taken steps to comply with the orders. The first step would have been for him to have contacted the Libyan Embassy in London to make an appointment. The urgency was clear from the fact that the courts had on each occasion specified a date for compliance with its order. The Defendant could have used his best endeavours to produce his signed, attested consent but instead he has simply refused to take any steps to do so. The Defendant has refused to sign the forms. I am certain, on the evidence, that he has not made any contact with the Libyan Embassy because, as he has said in his statement, he has had no intention to sign the forms. I am satisfied that he has had no intention to comply with the court orders.

viii) As of 17 November 2021, the Defendant has continued to refuse to sign the forms whether in the Libyan Embassy/Consulate or at all.

ix) As of 17 November 2021, the Defendant has taken no steps at all to seek to execute the consent forms notwithstanding repeated court orders that he uses his best endeavours to do so.

x) The Defendant knows that by refusing to take steps to execute the consent forms he is frustrating attempts to give effect to the return orders made by the courts in this jurisdiction and the custody order made in Libya.

xi) The Defendant has wilfully chosen not to make any effort - not to use any endeavour at all - to execute and serve upon the Applicant mother's solicitor a duly attested consent to either of the children travelling from

Libya with the mother without him accompanying them, whether by the dates specified in the court orders or at all.

xii) The Defendant's conduct is contumelious and the breach of each order constitutes contempt of court as alleged.

31. Whilst a determination of an alleged breach of an order to use "best endeavours" may require anxious consideration in some cases – I was referred to authorities including *Jet2.com v Blackpool Airport Ltd* [2012] EWCA Civ 417, and *Grandison v Joseph* [2019] EWHC 977 Fam in argument – it does not do so in the present case where I find it to be beyond reasonable doubt that the Defendant has made no effort and taken no action whatsoever to secure the steps or outcome set out in the court orders.

32. At the conclusion of my determination on 17 November 2021 that the Defendant is guilty of contempt of court for breaching the court orders of 8 February 2021 and 5 May 2021, I decided to adjourn sentencing until 29 November 2021. The reasons for adjourning were:

i) It was necessary to allow the Defendant a break before hearing mitigation and deciding on sentence, but there was little time left in the court day.

ii) I wished to afford the Defendant a final opportunity, before determining sentence, to take steps belatedly to comply with the orders by making an urgent appointment with the Libyan Embassy, attending, signing the documents before a witness and producing duly attested consent forms. I reminded him through Counsel of the court's power to impose a sentence of imprisonment of up to two years.

33. The case has come back before me for sentencing on 29 November 2021.

34. Since the finding of contempt of court against the Defendant and the adjournment of twelve days before sentencing the Defendant has taken no further action – he has taken no steps to comply with the court orders I have found he breached in contempt of court.

35. The Defendant has three times previously been sentenced to imprisonment for contempt of court in relation to his failure to comply with court orders for the return of the children in Libya to the jurisdiction of England and Wales. He has already been sentenced to a total of four years for his contempts of court. Since his release from the most recent sentence of imprisonment, in November 2019, there have been numerous subsequent orders for him to return the children which he has breached, but those breaches are not the subject of the application now before the court. Instead, as I have found, the Defendant has breached orders designed to assist the mother to recover the children from Libya without him. Despite orders for him to use his best endeavours to provide consent forms for her to recover the children in Libya without him, he has taken no steps at all to do so.

36. I have considered the blameworthiness of the Defendant's actions. He has obdurately defied court orders which are designed to protect his children. He

appears not to recognise the authority of the courts in this jurisdiction or in Libya. His sustained refusal to assist in securing the return of his children is clearly deliberate. He has previously sought to avoid further penalties by assuring the court that he wished to do everything he could to secure the return of the children - that is what he said in a statement to the court in 2018. However, by his actions in 2021 he has shown that he has no such desire or intention. He has openly defied the court. I find it difficult to understand why. He has asserted, without any cogent evidence to support the assertion, that it would create a risk to the children for the mother to remove them from Libya. He has said through Counsel that Libya is a dangerous country but he acts so as to keep his children within that dangerous country. It appears to me that, ultimately, he objects to the prospect of the children living with their mother, and that he has gone to extreme lengths to prevent that possibility from happening. In adopting that position he arrogantly and uncompromisingly places his own judgment above the mother's, above the professionals involved in the case, and above that of successive High Court Judges who have ordered the children's return.

37. I have considered the consequences of the Defendant's breaches. The children remain stranded in Libya, living away from both of their parents. They are also separated from their sibling who lives in England with the mother, and that sibling is enduring separation from them. The children in Libya are also being kept in a country whose structures of governance and public services are under enormous strain and where the people live under the threat of violence. It is difficult to conceive how the children's father can possibly believe that the continued separation of the two children in Libya from their parents and other sibling is in their best interests. The Defendant himself says, through Counsel, that Libya is currently a dangerous country. It is cruel to leave them stranded in Libya and to refuse to do anything to help secure their return. The Defendant's breaches have resulted in continuing harm being caused to his children by separation and by their being deprived an opportunity to come home to a safer and more supportive environment within a reunified family.

38. I can give the Defendant no credit for accepting his guilt for contempt because he has not done so. Although he has flouted court orders, he has not admitted that he has done so. He contended that the court should make no finding of contempt of court. At the committal hearing on 17 November 2021, he required the Applicant mother to give evidence for no apparent useful purpose.

39. The aggravating feature of the contempt is that it follows previous findings of contempt by breaching orders directed at securing the return of the children to this jurisdiction for which the Defendant has served sentences of imprisonment. Whilst the relevant parts of the court orders in February and May 2021were directed to assisting the Applicant mother to secure the return of the children, the breaches should be seen as part of a long history of similar, contumelious conduct.

40. I cannot identify any mitigating features. I gave the Defendant the opportunity to act in mitigation by belatedly complying with the orders, but he has done nothing to comply.

41. I bear in mind that there are disposals open to the court other than imprisonment: the Defendant's assets could be seized, he could be fined, or the court could decide to take no action. The court should not impose a sentence of imprisonment if a lesser sanction is appropriate. Previous sentences of imprisonment for contempt have not secured the return of the children to this jurisdiction. It might be said therefore that imprisoning the Defendant once again will serve no purpose: it will be unlikely to achieve the purpose for which the breached orders were made. I accept that it is unlikely that a sentence of imprisonment will suddenly cause the Defendant to change his approach, although it may do so. However, wilful defiance of the court should not cease to be recognised and appropriately dealt with as contempt of court merely because it is repeated. The Defendant has had it in his own hands to avoid imprisonment, but he has chosen a different course. He leaves this court with no choice. In my judgment, given all the circumstances, the only sentence that is appropriate in this case is one of imprisonment.

42. The maximum sentence that the court can impose is one of two years imprisonment. I take into account the terms of imprisonment previously served by the Defendant when assessing the appropriate sentence. Whereas the continued breaching of court orders is an aggravating feature, not a mitigating feature, in this case, the court should ensure that the totality of the sentences is proportionate to the contemptuous conduct. It is not necessary on each occasion to increase the length of the sentence of imprisonment, even where that is permissible in law. Although the previous sentence for contempt in this case was the maximum permitted of two years, it does not follow that this court should impose the same sentence. That sentence was imposed three years ago. Whilst the Defendant has continued to defy court orders, I have to take into account the nature and circumstances of the current contempt of court. I do take into account the fact that in detention the Defendant will be less able to assist to secure the return of the children if he were to decide to do so. When he is released, he should not think that he is immune from further penalty including imprisonment because he has already spent so long in custody.

43. In my judgment the appropriate sentence weighing the Defendant's blameworthiness, the consequences of his breaches, and the aggravating and mitigating features, is one of 12 months imprisonment for each breach, to run concurrently. That sentence marks the court's strong disapproval of the Defendant's refusal to abide by court orders. A shorter sentence would not be sufficient to reflect the seriousness of the breaches in this case. A longer sentence is not necessary to mark that disapproval and it would not achieve any purpose in terms of securing the return of the children.

44. In the light of the three previous sentences, the Defendant's wilful defiance, and the seriousness of the consequences of his contempt of court, a suspended sentence would not be appropriate. Ms Renton for the Applicant proposed that the court should defer the commencement of the sentences for three to four weeks to allow the Defendant to comply with the breached orders, but I have already adjourned sentence for that purpose and the Defendant did not avail himself of the opportunity. I have no reason to believe that he would do so if given yet another opportunity to comply and I see no justification for delaying

the sentence for that purpose. The 12 month sentences of imprisonment will begin immediately.

45. The Defendant will serve half of that twelve month term of imprisonment and then he will be entitled to be released. He may seek to purge his contempt by complying with the court orders, but he now has a limited opportunity to do so from prison unless members of the Libyan Embassy are prepared to visit him in prison, or some other arrangements can be made.

46. The Defendant has 21 days in which to appeal the judgment and sentence of this court which he may do without requiring permission.
I direct that the order and the judgment shall be made available to the press and public. Both will be placed on the judiciary website. Copies will be provided to the Defendant in prison.