

HONG KONG / JUDGMENT

TKLK v. WKJ**[2024] HKFC 181****COURT**

Family Court

DECIDED

23 September 2024

CASE / FILE NUMBER

FCMP38/2007

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bjbj FCMP 38/2007

**[2024] HKFC 181 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MISCELLANEOUS PROCEEDINGS NO. 38 OF 2007**

BETWEEN TCLK Applicant and Respondent

Coram: HH Judge C.K. Chan in Court Date of Hearing: 23 September 2024 Date of Judgment: 23
September 2024**J U D G M E N T** (Committal Proceedings: Sentencing and Costs)

On 9 September 2024, this court has delivered a judgment on the Applicant (s Committal Summons to commit the Respondent () to prison for his contempt in breaching court orders. In the Judgment, this court found R not guilty of contempt in respect of the 2020 Order, but guilty of contempt in respect of the 2021 Order in not providing his residential address as ordered. The proceedings were adjourned to today for sentencing on the contempt of the 2021 Order, and to deal with the issue of costs. Mitigation R appeared in person and submitted a written note in which he raised 7 points for the purpose of today s hearing. Points 1 and 2 concern with the so called irregularity or flaws in the Committal Proceeding. I have already pointed out to R that those points might be more properly argued in an appeal, but not in sentencing as this court has already found him guilty of contempt in respect of the 2021 Order. R has sensibly decided not to pursue those points at this hearing. Point 3 concerns with R s submission that the non-provision of residential address was closely connected with his default in maintenance payment, on which he was found not guilty of contempt. In my view, the provision of R s residential address was

expressly ordered by this court independent of the other maintenance payment orders. There is no substance in this point. Points 4 was an attempt to explain why R did not provide his residential address by referring to the past harassing acts of A. As one would note from the judgment, R elected not to give evidence at the committal hearing. In any event, this court was fully aware of A s previous acts before convicting R of contempt of the 2021 Order. Point 5 concerns with R s submission that he has never wasted the court s time on the issues of service and penal notice by not providing his residential address. This might be the case, but the non-provision of residential address was surely an impediment to A s enforcement procedures. Point 6 argues that A has also not provided her residential address. This is certainly not an arguable point for R for defying a court order. After all, this court has to bear in mind that we are here to deal with a committal proceeding against R, but not against A. Point 7 was labelled as mitigation . Sub-point (i) submits that R has already paid over HK\$6,000,000 of children maintenance in the past. However, this cannot be a justification for not complying with a court order in the provision of his residential address. Sub-points (ii) to (iv) and (vi) deals with A s past harassing acts. This has already been dealt with in paragraph 6 above. Sub-points (v) argues that an imprisonment term will be out of proportion and unjust. I will take this into account in passing sentence on R. Penalty to be imposed In considering what penalty to be imposed, it must be acknowledged that contempt of civil court orders is a serious matter. A prime consideration of the court in sentencing contempt is to signal the importance to litigants that orders of the court are to be obeyed. R was in contempt of the 2021 Order by not providing his residential address as ordered. Someone may view the non-provision of residential address a minor matter. But in the context of family proceedings, the payment of children maintenance is a continuing duty and such default renders the continuation of the proceeding and subsequent enforcement extremely difficult. Moreover, this blatant disregard of court order, especially by a practising solicitor should not be treated lightly. It was further pointed out by Ms. Ho for A that even up to this hearing, R still insisted not to provide his residential address despite the finding of contempt of the 2021 Order. After considering R s submissions on mitigation, I am minded to impose a term of imprisonment for 14 days to reflect the severity of the contempt, but I have decided to suspend it for 7 days to give R a last chance to comply. Therefore, unless R shall file and serve an affirmation to provide his current residential address within 7 days of this order, R be committed to a prison term of 14 days. If R shall breach the suspended sentence by failing to file the affirmation with court and to serve the same on A s solicitors, A is at liberty to file and serve an affirmation to prove such breach, and this court will consider to issue a warrant of arrest to bring R to this court to consider an activation of the suspended sentence. Costs Although A fails in her committal proceeding concerning the 2020 Order, she nevertheless succeeds in the 2021 Order. Under these circumstances, it is fair that she is only awarded half of the costs of and in relation to the Committal Summons, including all costs reserved, with certificate for counsel. A only asks for party and party costs. Therefore, the costs order in favour of A is to be taxed on a party and party basis, if not agreed. A s own costs are to be taxed in accordance with the Legal Aid Regulations. C.K. Chan District Judge Representation: Ms. K. Ho of Messrs. Chiu & Co., solicitors for the Applicant The Respondent acting in person PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C

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