

JERSEY / JUDGMENT

Mubarik v Mubarak [2008]

JCA 127A (08 August 2008)

[2008] JCA 127A

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COURT OF APPEAL 8th August 2008 Before : Nigel Pleming, Esq., Q. C. sitting as a Single Judge.
Between Aaliya Mubarak Representor And

- (1) Iqbal Mubarik First Respondent
- (2) The Craven Trust Company Limited Second Respondent (before the Royal Court and on Appeal).
- (3) Salem Mubarak and Noor Mubarak Third Respondent (before the Royal Court and on Appeal). Application by the Representor for a payment of interim maintenance and security for costs prior to an appeal by the First Respondent against an order of the Royal; Court of 13th June 2008. Advocate C. G. P. Lakeman for the Representor. Advocate A. P. Begg for the First Respondent.

JUDGMENT

PLEMING JA: 1. The Representor, the First Respondent in the Appeal, seeks an order imposing conditions on the continuing prosecution of the appeal by the Appellant. The proposed conditions are set out in her Summons dated 14th July 2008: " 1. The Appellant be ordered to make the payments referred to in the Order of the Bailiff dated 13th June 2008, namely: 1.1 payment of arrears of periodic or maintenance payments within such period as the Court shall determine, or in any event not later than 90 days from the date of any order; and immediate reinstatement of (it reads "to reinstate") the payment of periodic or maintenance payments in the sum of £14,733 per month pursuant to the Order of Mr Justice Bodley. 4. The Appellant be directed to provide evidence on affidavit of the source(s) of any funds paid in accordance with this summons with documentary evidence in support showing the transfer of funds to the Appellant or his Advocate or English solicitor. 5. Unless the sums in all of paragraphs 1, 2 and 3 (a reference to security for costs not yet pursued) above are paid and continue to be paid, the Appeals shall be stayed and remain unlisted." 2. The Appeals there referred to are the First Respondent's appeals from the Orders of the Deputy Bailiff made on 17th April 2008. The Deputy Bailiff has not yet delivered his detailed reasons for the decisions made. Judgment is now expected not later than 15th August 2008. The hearing of the appeals is set down for 22nd September 2008 - only 58 days from today (and well within the 90 days referred to in the

Summons). 3. The Summons is supported by an Affidavit from the Representor sworn on 21 st July 2008 which paints, together with a letter from the adult children, a desperate picture of acute financial problems, large debts and no income for her or for her children. The Representor claims that her arrears of maintenance have now reached approximately £790,000, and are rising each month . I can see no basis for doubting the accuracy of that figure. The Representor has not received any financial support for 4 years. 4. I have read the comments of the English High Court and Court of Appeal, and the recent report from KPMG appointed to carry out the terms of the April Order. There seems to be support for the First Respondent's comment in paragraph 7 of her Affidavit:- " ... there is and has been for some time a concerted effort to do anything and everything to avoid paying me any sum due under an order dating back to 1999." 5. It is clear from the KPMG report to the Royal Court (by Kevin Mawer, Joint Receiver and Manager) that the First Respondent is not co-operating with the investigations. It is also clear that the First Respondent would prefer to spend money on professional advisers rather than meet the debts due and owing for the maintenance of his family. 6. I approach the Summons on the basis that the Representor's affidavit is an accurate summary of her circumstances, and of the large debts owed to her, and the conduct of litigation by the First Respondent. It seems to me that with or without the concession attributed to Advocate Begg, the Bailiff correctly summarised the position in paragraph 1 of his judgment of 13 th June 2008 when he said:- "It is clear and has been conceded by Mr Begg on behalf of the husband that the Order of the English Court to pay a lump sum and periodic maintenance for the benefit of the wife has not been complied with. It is very difficult in those circumstances, particularly as this matter has been dragging on for years and nothing has been paid to the wife since May 2004, to exercise any discretion in favour of the husband." 7. If this was simply a matter of discretion, untrammelled by rules and principles, I would have little hesitation in doing what I could to assist the Representor out of her extremely worrying financial position and personal circumstances, shared by the children. 8. But, I regret it is not simply a matter of discretion. It is now common ground between the parties that I have jurisdiction to make case management orders - whether under the inherent jurisdiction of the Court, or directly under Article 18(1) of the Court of Appeal (Jersey) Law 1961 :- "a single judge may at any time make any interim order to prevent prejudice to the claims of any parties pending an appeal, as the judge may think fit." The Bailiff added payment of the arrears of maintenance as a sanction or penalty, or simply the price, of seeking leave to amend any notice of appeal. But I do not have any such hook. I am being asked to prevent the First Respondent from prosecuting his appeal - listed for hearing in 8 weeks - unless he pays the monies due and owing, in another jurisdiction. And this in circumstances where the First Respondent has not breached the Bailiff's Order, and there is no evidence in relation to the Jersey appeal to show that there is an abuse of process or a threatened abuse. An application for security of costs would be very different, as accepted by Advocate Begg - although of course not accepting that any such security in this case should be ordered. 9. Advocate Lakeman submitted that the Order he seeks is " essential for good case management ." I regret that I cannot accept that submission. I am prepared to agree that this is an exceptional case and therefore it may attract the exercise of exceptional case management orders and directions, particularly if the case shows signs of becoming a blot on the Jersey litigation landscape, as is said to have happened in England. 10. Advocate Lakeman submits that

there is here no equality of arms in part because of a concerted effort by the First Respondent to run the litigation as long as it possibly can be run, as a campaign designed to put the Representor in a position whereby she will simply give up. Although I have some sympathy for that argument I have seen no evidence of delaying tactics in the Jersey appeal, and (set against the sad chronology of the worldwide litigation) the hearing of the appeal is imminent. 11. Advocate Lakeman accepts there is no precedent to support his submission, apart from the decision of the Bailiff, but, as noted above, there was a case management basis for the ordered payment in that case. 12. If between now and the hearing of the Appeal the First Respondent seeks any indulgence from the Court, that may provide an opportunity for the imposition of a stay conditional on payment. But this is not presently the position. 13. I regret for all these reasons that I cannot make an Order as sought in this application. However, I do consider this to be an exceptional case in the wider sense, and the appropriate course is not to dismiss the Summons, but to adjourn it generally, with liberty to apply on 3 days' notice. Authorities Court of Appeal (Jersey) Law 1961. Page Last Updated: 16 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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