IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

No. QB-2022-000012

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 8 March 2022

Before:

HIS HONOUR JUDGE SHANKS
(Sitting as a Judge of the High Court)

B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED — Applicant

- and -

MICHAEL OTOBO — Respondent

MR A. SOLOMON QC (instructed by Capsticks) appeared on behalf of the Applicant.

THE RESPONDENT did not attend and was not represented.

J U D G M E N T

JUDGE SHANKS:

1 I have before me an application by Solicitors Regulation Authority Limited ("SRA") to commit a former solicitor, Michael Otobo, for contempt of court by breaching an order made by a Divisional Court (Irwin and Hickinbottom JJ) made on 22 February 2012. That order prevented Mr Otobo from using various documents which had been disclosed to him during a county court race discrimination case that he had brought against the Law Society which went back to 2006. During that case, he had been injuncted from using the documents by HHJ Corrie on 10 June 2008. The Divisional Court injunction was made in the course of contempt proceedings relating to his use of the documents and not only was the injunction granted but on 9 March 2012 he also received a sentence of six months suspended for two years for his contempt.

2 There is also an application today for a civil restraint order. It is not clear on the papers I have before me whether, in fact, that order has already been made by Ms Margaret Obi sitting as a High Court judge back on 18 August 2021. It certainly appears that she had intended to do so but nobody could find a sealed order but, in fact, ironically Mr Otobo himself has applied to set aside Ms Obi's order by an application notice issued on 26 January 2022. In the application he has asked for the civil restraint order to be set aside because he did not have notice of the hearing before Ms Obi; he asked that his application be dealt with at a hearing which he thought would last five hours and should be listed in front of a High Court judge.

3 At today's hearing, SRA is represented by Mr Solomon QC (who has, I think, represented them many times in the course of these long proceedings) but Mr Otobo is not here. He has applied by email for the proceedings today to be adjourned. That email was sent to the court last night (7 March 2022) at 10.13 p.m. and later received by Capsticks who are the solicitors to SRA. The email says as follows:

> Dear Sir/Madam
> **Re: QB-2022-000012. Request to adjourn Hearing 8/3/2022 pending outcome of application to set aside civil restraint order.**
> Please, could the above matter be adjourned pending outcome of my application to set aside civil restraint order. I have application pending with the High Court to set aside the civil restraint order obtained by the Respondents. The Respondents are aware of the pending application because I wrote to them not to proceed with their contempt of Court because of my application to set aside civil restraint order. The application is with the designated Judge because I asked the court to send application to the designated Judge. I do not know how the Respondents were able to get their application for contempt listed for tomorrow 8 March 2022 when there is a pending application to set aside the civil restraint order they obtained. The application to set aside civil restraint has case number-**CO/271/2022.**
> I am very sick at the moment and I am receiving various medical treatments in Ireland. I have informed both the Respondents and the Court that I have been outside UK for more than one year now. Find attached some of my medications. The Respondents can get their doctor to confirm the side effects of the medications. I have to keep my medical information confidential because the Respondents disclosed my confidential medical record to third parties.
> Michael Otobo

4 There is then attached to the email a picture of four boxes of medication which have been sent to the court on previous occasions by Mr Otobo (I was shown the same document by Mr Solomon at p.882 in the bundle prepared for this hearing). There is a box of tablets called Co-codamol which I understand to be a pain-killer. There is a box of tablets called Losartan Potassium; those apparently are for high blood pressure and it is evident that the expiry date of those is "07.2022" which Mr Solomon QC says indicates that that box of tablets have been around for some time. There is then a box of Citalopram which is, I am told, an antidepressant; the date on that box is "25.04.20", which looks like the day that it was supplied to Mr Otobo which is nearly two years ago. There is then an ointment which

is simply given for an eye infection; the date on that box is "03.2020" and it looks as if it was supplied quite some time ago (unless that is the expiry date in which case it has expired quite some time ago).

5 Notwithstanding Mr Otobo's application for an adjournment, Mr Solomon QC invites me to proceed with the hearing of the contempt application. He has alerted me very fairly to the case of *XL Insurance Company SE v Ipors Underwriting Ltd & Ors* [2021] EWHC 1407 (Comm) (a decision of Cockerill J dated 26 May 2021) which draws together the law on the topic of whether to grant an adjournment in this type of case. He reminds me that contempt proceedings are quasi-criminal and that it is only in exceptional circumstances and with great care that a court should proceed with such an application in the absence of a defendant. The particular matters to be taken into account are very helpfully set out in a checklist at [46] in Cockerill J's judgment and I will address them one by one.

6 I should say before I deal with the matters in the checklist that there is a very long history to these proceedings and that that history is full of cases where Mr Otobo has failed to attend hearings and has made applications in similar circumstances to adjourn at the very last minute. Those applications have frequently failed in front of county court judges, Employment Tribunal judges, and High Court judges. And in the contempt application before the Divisional Court, a warrant had to be issued to secure Mr Otobo's attendance. The papers before me contain much of this background and I inevitably take it into account in deciding whether to adjourn or proceed today.

7 The first item on the checklist is whether the respondent, Mr Otobo, has been served with the relevant documents, including notice of the hearing. There can be no doubt about that. In fact, in order to regularise the position, SRA applied for and obtained an order which made clear that the court was satisfied that Mr Otobo had full notice of the contempt application and papers relating thereto: that was an order made on 10 February 2022 by Cutts J. By that stage, of course, he had already made his application which was in response to the order made by Ms Obi which gave permission for the contempt application to proceed as well as making a civil restraint order. In any event, it is clear that the papers have been served at an email address that he has very often in the past insisted was used to serve him.

8 So far as this date is concerned, I have seen an email sent a month ago from Ms Lines of Capsticks on 9 February 2022 to the same email address I mention above specifically telling Mr Otobo that the contempt application had been listed for 8 March 2022. So he had a month's notice of this hearing. He was then sent a reminder on 3 March 2022 along with an electronic copy of the large bundle I have. In the meantime, on 28 February 2022, he sent an email to Ms Lines from the same email address enclosing a witness statement with exhibits and an invitation to SRA to reconsider their position on this matter after reading the attached documents. It says:

> **I shall be sending in further documents and a second (inaudible) witness statement sent to you on Friday 25 February 2022. I hope to send these documents and the second part of the witness statement on 4 March 2022. I have sent you some of my medications and there is little I can do now because I obviously moved outside the UK and I've got a treatment date today.**

In spite of that, there was no application to adjourn today's hearing. On 4 March 2022, as promised, he emailed the second part of his witness statement and he sent some further

documents on Friday 5 March 2022. So there can be no doubt that he had notice of this hearing and that he was putting in material to deal with it.

9 The second question is whether the respondent has had sufficient notice to enable him to prepare for the hearing. The answer to that is he has prepared for the hearing by putting in voluminous material. As I say, he has had at least a month's notice of the hearing and he has had many months' notice of the application being made.

10 The third item on the checklist is whether any reason has been advanced for his non-appearance. I have already read out Mr Otobo's email. There is a suggestion he may be in Ireland but he may not be there; in any event, that is his choice and it would not be difficult to get here. So far as the medication is concerned, it does not come close to providing an explanation for non-attendance: what I have already said about the various tablets that are pictured speaks for itself; there is nothing further by way of current relevant medical evidence. The other reason advanced for an adjournment is that his application in relation to the civil restraint order should be dealt with first. That just makes no sense at all. It is irrelevant to the question of whether he should be committed for his contempt of court in breaching the order of the Divisional Court. So he has not in my view provided any good reason for his non-appearance.

11 The fourth question is whether by reference to the nature and circumstances of his behaviour he has waived his right to be present, i.e. is it reasonable to conclude that he knew of and was indifferent to the consequences of the case proceeding in his absence? As I have already said, Mr Otobo is, or was until he was struck off, a solicitor. He has been through

all this before. He has had many occasions when a court has proceeded in his absence and it seems to me there can be no doubt that he was aware of the possible consequences of not being here and that he has therefore deliberately waived his right to be present.

12 The fifth question is whether an adjournment would be likely to secure the attendance of the respondent or facilitate his representation. As I have said, it is not clear where he is. He says he is in Ireland and one can see there may be difficulties in issuing a warrant and having it returned in a reasonable amount of time if that is where he is. Otherwise, from what he says, if we adjourn for a few days, there is little prospect that he will physically appear of his own volition.

13 The sixth matter is the extent of the disadvantage to him in not being able to present his account of events. As I have said, he has presented a great deal of material. I do not pretend to have read it all in detail but most of it seems to be entirely irrelevant and I think Mr Solomon is right to describe parts of it as disgraceful. He repeatedly raises allegations of fraud against SRA and refers to the case of *Takhar v Gracefield Developments* [2019] UKSC 13 which is the most recent authority in relation to setting aside judgments for fraud. What he really fails, as far as I can see, to address is that the only relevant judgment that we are concerned with is the injunction granted by the Divisional Court back in 2012. There has been no application to set that aside on any grounds. There was, however, an appeal brought against the injunction which was abandoned; the Court of Appeal on 13 November 2012 gave a short judgment allowing Mr Otobo to abandon his appeal and said, incidentally, that the appeal was wholly and totally without merit.

14 The seventh consideration is whether undue prejudice would be caused to the applicant by any delay. The applicant is a regulator, SRA. It has limited funds. There are numerous costs awards, I am told, which add up to tens of thousands of pounds which SRA have obtained against Mr Otobo in the course of all these proceedings which have not been paid. He is (or was) bankrupt and the chances of recovery of costs is slight, in my view. Any delay is going to involve yet further expense (not to mention trouble) to SRA which is likely to be irrecoverable.

15 The eighth consideration is whether undue prejudice would be caused to the forensic process if the application was to proceed in the absence of the respondent. Having looked at his extensive witness statements it is not clear that Mr Otobo's presence would contribute to the process in any helpful way, although it is fair to say that one can never say for sure what difference the presence of a litigant might make.

16 The ninth consideration is the terms of the overriding objective, including the obligation on the court to deal with the case justly, which includes doing so expeditiously and fairly and taking any step or making any order for the purposes of furthering the overriding objective. So far as fairness is concerned, this application for an adjournment was, looking at the history, entirely predictable (and indeed was predicted by Mr Solomon). It seems to me that by leaving it until the last possible moment to make his application for an adjournment having indicated by sending in substantial material that he was intending to participate in the hearing Mr Otobo has behaved unfairly towards SRA and the court. Overall, it is clear to me that taking into account Mr Otobo's conduct the overriding objective points firmly to proceeding with this hearing rather than throwing away valuable court time and incurring additional expense and effort on the part of SRA.

17 Taking everything into account and acting with due caution, I therefore have no hesitation in deciding to proceed with the hearing of the contempt application today.

18 I have considered, having made that decision, whether to take steps now to alert Mr Otobo to it and to see if there some way he could be invited to join in today's proceedings, either by a video-link or in some other way. I think, on reflection, that he has waived any such right; I do not see why the court and the SRA should be put to any further trouble and expense before proceeding with this hearing.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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