

IN THE COUNTY COURT AT BOW

Case No: 3BO02371

96 Romford Road
London
E15 4EG

Date: Tuesday, 1st December, 2015

Before:

DISTRICT JUDGE NORTH

Between:

OLD FORD HOUSING ASSOCIATION

Claimant

- and -

MR. DJIBY SOULEYMANE DIALLO

Defendant

COUNSEL (Name not given) for the Claimant

THE DEFENDANT appeared in person

JUDGMENT
(Approved by DJ North)

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DISTRICT JUDGE NORTH:

1. This is my judgment in the case of Old Ford Housing Association v Djiby Souleymane Diallo and the claim number is 3 BO02371. The matter was listed before me today to deal with the issue of whether Mr. Diallo had breached the terms of an order made on 3rd August 2015 under the Antisocial Behaviour Crime and Policing Act 2014 and, if time allows, for me to deal with sentencing if the allegations are proved. I have heard today from counsel for the Claimant and from Mr. Diallo in person. I have not heard any evidence because Mr. Diallo has admitted a single breach of the order in that he entered within the exclusion zone on 24th November this year, the very day of his release from prison, following a sentence that I had previously imposed for being in breach of that same order.

2. The Claimant has invited me to adjourn generally the application for committal in respect of other allegations of being in breach of the injunction on that day, namely the intimidation or attempted intimidation of Mr. Quinlan. I am quite content to adjourn those allegations generally, and Mr. Diallo understands, it having been explained to him, that if there were any further alleged breaches of the injunction the Claimant would be able to restore those particular allegations and seek committal if it can prove the breaches.

3. Before dealing with sentencing it is appropriate to set out the procedural history. As I have said, Mr. Diallo has now been in front of me several times. The Claimant originally obtained an Antisocial Behaviour Injunction with a power of arrest on 25th July 2013 under sections 153(a) and 153(c) of the Housing Act 1996. The order forbade Mr. Diallo from various acts which

included entering or remaining within an exclusion zone, namely the Ranwell Estate and, therefore, the property resided in by Mr. Harold Quinland, a vulnerable man, who Mr. Diallo has always maintained is a friend of his.

4. On 3rd August 2015, I made a further injunction under the Antisocial Behaviour Crime and Policing Act in identical terms to the injunction that had previously existed under the Housing Act 1996. On that day, 3rd August, I imposed a six week sentence which I suspended for a period of one year until 2nd August 2016 after Mr. Diallo had admitted various breaches of the order. I dispensed with service of the order as Mr. Diallo was present in court when the order was made and he acknowledged that he understood its terms.
5. On 22nd September this year, Mr. Diallo was arrested again for being in breach of the terms of the order, once again by being within the exclusion zone. I dealt with sentencing in respect of that matter on 7th October this year, Mr. Diallo effectively having pleaded guilty by admitting breaches of the injunction. I then sentenced him to a period of fourteen weeks. As I said, on the very day of his release from prison, Mr. Diallo was again arrested for being within the exclusion zone. Mr. Diallo has admitted the breach today and therefore obviously the breach has been proven beyond any reasonable doubt. That is the criminal standard that is appropriate in committal cases.
6. It is therefore necessary for me to sentence in respect of the admitted breach. As Counsel for the Claimant has rightly pointed out, I am required to consider the guidelines issued for sentencing in respect of breach of an Antisocial Behaviour order. I must first assess the seriousness of the breach in three levels: namely that of serious, a lesser degree of harm and no harm. As I said

on a previous occasion, being in the exclusion zone does not fall within the lower bracket, particularly when the exclusion zone is meant to provide protection for a vulnerable man. The guidelines state that for serious harm to be caused or intended that will usually involve violence, which is not the case here. As with the previous sentencing, I put the breach into the category of a lesser degree of harm. That category has a sentencing range from six weeks up to twenty-six weeks. I remind Mr. Diallo that the court's power to sentence for contempt of court, which is what is happening when he breaches the order, is up to two years imprisonment, and Mr. Diallo is putting himself in great jeopardy of a long prison sentence if he continues to breach the order. The starting point here at the moment is between six weeks and twenty-six weeks.

7. In assessing the seriousness of the breach, I must have regard to culpability which requires me to consider the extent to which Mr. Diallo had intended to breach the order, because there can be a breach of an exclusion zone inadvertently. However, here Mr. Diallo went close to the Ranwell Estate area, and it seems likely that he did so in order to recover money from Mr. Quinland, to whom he wrote whilst in prison, and so he put himself very close to a deliberate breach of the order. Furthermore, according to Mr. Diallo's statement, he entered into the zone in order to speak on the mobile telephone with Mr. Quinland's social worker. In my view, that is a deliberate breach of the order, but it comes against a background where Mr. Diallo had written a letter to Mr. Quinland in which he expressed his intention to comply with the order and simply wished to recover his own money. That is a matter which I think is appropriate for me to have regard to.

8. However, the guidelines require me, and Mr. Diallo must be getting very familiar with these guidelines, to consider any aggravating or mitigating factors. When I go down the list of aggravating factors, number one is a history of disobedience to court orders. As I have recited in this judgment, there is a history of disobedience, quite a long history. The next factor, was the breach committed immediately or shortly after the order was made? There have been breaches continuously in this case, but more importantly the breach was committed immediately after Mr. Diallo had come out of prison. The next aggravating factor, was the breach committed subsequent to earlier breaches arising from the same order? Yet again we fit into that aggravating factor. Another aggravating factor to consider is whether there has been targeting of a person that the order was made to protect or of a witness in the original proceedings. There, it is a more difficult decision that I must make. In one sense, it is targeting the person because Mr. Diallo is going back to Mr. Quinland, and Mr. Quinland is one of the main reasons the Claimant sought its order, but I have regard to the fact that Mr. Diallo would appear to have been attempting to recover his money from Mr. Quinland, and then to stay away from him, which is vitally important because otherwise he would continue further to breach this injunction order.

9. Mitigating factors in the guidelines include where the breach occurred after a long term of compliance. This obviously does not apply. The second potential mitigating factor is where the term that had been breached was not fully understood. Again that does not apply because Mr. Diallo has been in front of me several times and we have had long discussions now about this order, and he knows what he must do, and he expressed that clearly in his

letter. I have to have regard to the fact that sentencing for committal has a dual purpose in my view. One part of the purpose is to punish a defendant for being in contempt of court. The other part is to try to ensure that there will be no further breaches, that is to ensure there is compliance with the court order.

10. The first thing I have to decide is whether this is a breach which ordinarily demands a custodial sentence. By reference to the guidelines, it clearly is. It is indeed a breach that demands a custodial sentence. However, when I consider the need to ensure future compliance, there is in my view some light to this case in that there is a letter from Mr. Diallo, sent from prison, to Mr. Quinland in which he makes plain his intention to abide by the injunction going forward. For that reason, I think it is appropriate for me to suspend the sentence. However, when I come to suspension of the sentence I deal with it in this way. I first have to decide the appropriate length of the sentence and I note from previous occasions that, when breach of the exclusion zone was established, I imposed a period of eighteen weeks. This was before I took into account what time Mr Diallo had spent on remand. So again here, although there is just one breach by going into the zone which would appear to be only briefly, in my view, because of the fact that there have been a series of breaches, it would now be appropriate to impose a period of eighteen weeks as the proper period of custody. Mr. Diallo has been on remand now for a period of one week, so there should be credit given for the period on remand, which I will then double up because of course 50% remission applies to sentences, so that would amount to two weeks and the period of eighteen weeks is therefore reduced to sixteen weeks.

11. Having regard to the overall sentencing power, it seems to me appropriate therefore to impose a committal of sixteen weeks but to suspend for a period of one year. Mr. Diallo, you need to have very plainly in your mind that if you go within that exclusion zone you will, if it is proven, be subject to a sixteen week period of imprisonment and, of course, the court would also at that point in time be dealing with no doubt the allegations which have been adjourned generally. Furthermore, there would also be the possibility of sentencing in respect of any other further breach that was proven. You could be looking at a very long and substantial period of imprisonment because, if there is a breach of the order, the suspended period of sixteen weeks will become operative. Is that absolutely clearly understood?

THE DEFENDANT: That is absolutely clear, yes.

12. So, in the particular circumstances of this case, and I have done so with a view to ensuring future compliance, it seems to me that is the appropriate sentence. There will be a term of sixteen weeks suspended for one year, and the other allegation of intimidation will be adjourned generally with liberty to restore, which no doubt will be restored if there is a breach or an alleged breach of the order, Mr. Diallo.
13. I am going to also provide, as discussed earlier, for the order made in August to be varied so that it will be operative now for a period of three years, up until 30th November 2018. I am dispensing with personal service of that order because you are in court in front of me, Mr. Diallo, and you understand the order that you must comply with, yes? Do you want me to read it to you?

THE DEFENDANT: Yes, I do understand.

JUDGE NORTH: So you do not want me to read it? You are quite clear?

THE DEFENDANT: Yes.

JUDGE NORTH: All that I am altering is the period of its duration to make it three years, yes?

THE DEFENDANT: Yes.

JUDGE NORTH: Do you have a present address where post can be sent to you at the moment?

THE DEFENDANT: Yes, sure. 14D (Parfett?) St., E1 1HD.

JUDGE NORTH: That is where the order will be sent by post. I am giving you notification of it today in court. Anything else?

FEMALE COUNSEL: Yes, sir. There has been no costs schedule filed in light of the short notice of the hearing. I seek my brief fee.

JUDGE NORTH: Yes. Mr. Diallo, I am also ordering that you pay costs of £450, counsel's brief fee for attending this hearing. You have got away quite lucky. There could have been more substantial costs claimed against you. That is to be paid within a period of twenty-one days. If you cannot make that payment in one sum, you need to make some proposals to Old Ford as to how you will pay by way of instalments. But I am making an order for you to pay it in twenty-one days. If you can't pay they will have to enforce, so you will come to an arrangement with them I trust.

THE DEFENDANT: Well, right now, I haven't got a penny.

JUDGE NORTH: I am not sending you to prison for not paying that. I have made an order and they will have to figure out how they enforce that order. But it is right that they recover their costs of £450 from you if they can. If you have not got the means to pay, then they will have to decide how they enforce or do not enforce. The important thing for you to do is not to breach the terms of the order.

THE DEFENDANT: Thank you very much for giving me a chance.

JUDGE NORTH: I hope that you don't come back in front of me and I won't have to make that suspension operative. I really do not.

THE DEFENDANT: Thank you, Your Honour. Oh, just one more thing. Can I get in touch with Old Ford Housing to see how I am going to get my £600?

JUDGE NORTH: Like I said before, you need to do it through the social worker. Have you got the social worker's details. **(interjection from behind offering assistance on details)**. Thank you very much indeed.
