Neutral Citation Number: [2025] EWHC 307 (KB)

Claim No: KB-2024-000960

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London
WC2A 2LL

Date: Wednesday, 12 February 2025

Before:

MR JUSTICE KERR

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Between:

(1) TITAN WEALTH HOLDINGS LIMITED **(2) TITAN SETTLEMENT & CUSTODY LIMITED** **(formerly known as Global Prime Partners Limited)** **(3) GRETCHEN ROBERTS** **(4) TIFFANY ROBERTS**	**Claimants**
- and -	
MARIAN ATINUKE OKUNOLA	**Defendant**

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ROBIN LÖÖF and **MARCUS FIELD** (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) appeared for the **Claimants.**

THE DEFENDANT appeared **in person.**

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APPROVED JUDGMENT

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MR JUSTICE KERR:

Introduction

1. This is an application made by the claimants on 9 September 2024 to activate a suspended sentence of six months' imprisonment imposed by Chamberlain J in an order made on 21 June 2024. In that order the sentence of six months' imprisonment was suspended for as long as the defendant complied with three conditions.

2. The actual wording of the conditions is set out in the section of the order headed "The Suspension Conditions" in the written order. I can summarise them for present purposes from Chamberlain J's judgment on penalty given the same day, and I quote:

> "The terms will be, first, that Ms Okunola complies in all respects with the order of Freedman J. Secondly, in particular, that she now complies, and I will set a date which I will discuss in just a moment, with the obligation in paragraph 3 to deliver up relevant documents. That must be done very shortly. Thirdly, that she now provides a disclosure statement which is true and which lists all relevant documents in accordance with paragraph 4 of Freedman J's order."

3. The reference to Freedman J's order is to an order he made in April 2024, as I shall explain. The present application is brought because the claimants say the defendant has breached all three of those conditions and that the penalty of six months' imprisonment should be activated.

Background and Trial

4. The present application arises from an unhappy history of animosity felt by the defendant toward the claimants, in particular the third and fourth claimants. The defendant used to work for the first or second claimant. The first claimant is an asset management company. The defendant's employment was terminated in November 2022.

5. The defendant then conducted herself in a manner that led to interim injunctions to restrain her from harassing the third and fourth claimants, requiring her to cease disseminating confidential information and to take steps, including delivery up of confidential information in her possession.

6. It is unnecessary to set out the detailed facts here; they are in the public domain and can be found in the judgment of Hill J in these proceedings, given on 25 October 2024; see [2024] EWHC 2718 (KB). The judge ordered the defendant to pay a total of £80,000 in damages; and £288,344.50 on account of costs. She ordered or continued injunctive relief and made provision for deletion of material on computer devices in the defendant's possession.

7. Hill J also made a three year extended civil restraint order lasting until 25 October 2027. Certain other proceedings and orders have since taken place since, in which Steyn J and Johnson J have made orders intended to facilitate access to materials on the defendant's devices. I do not propose to go into the detail of those matters at this stage.

The Contempt Proceedings

8. In the course of managing the case towards trial, the claimants sought and obtained interim relief, as I have said, initially from Freedman J. His order made on 5 April 2024 and sealed on

10 April, restrained the defendant on an interim basis, pending a return date, from disseminating confidential information.

9. The order also required her to preserve and not to destroy or tamper with relevant documents as defined, to deliver up relevant documents as defined and to make a disclosure statement by 16 April 2024. There was, in the usual way, an exception for documents disclosed in the course of certain employment tribunal proceedings or required for litigation in the High Court.

10. The defendant was also restrained from directly or indirectly harassing the third and fourth claimants by sending or publishing any threatening abusive or demeaning communication, including on social media or by any electronic means. There was, in the usual way, an exception for communications with professional advisers or purely personal communications.

11. The claimants considered that the defendant had already violated Freedman J's order even before the return date and filed a contempt application to which "grounds of contempt" were attached, on 6 April 2024. The grounds included the allegation that the defendant had harassed the third and fourth claimants, had failed to deliver up relevant documents and had made two false statements in a disclosure statement verified by a statement of truth. The harassment consisted of a string of shockingly worded sexually insulting emails sent in April 2024, after the hearing before Freedman J.

12. On the return date, the matter came before Chamberlain J. That was on 23 May 2024. His order made that day was sealed on 9 June 2024. It included a penal notice. In that order Chamberlain J continued, with some modifications, the injunctive relief granted by Freedman J, made provision for that relief to last through to trial and gave directions for that trial and for the hearing of the pending contempt application.

13. Those contempt proceedings then came before him, Chamberlain J, on 20 June 2024. On that date he found three contempts proved beyond reasonable doubt. His judgment is in the public domain; see [2024] EWHC 1646 (KB). I therefore need not go through it in detail.

14. The first contempt he found proved was sending, and I quote: "sexually abusive, grossly offensive messages which had no possible legitimate purpose" ([23]). The second contempt he found proved was deliberate failure to deliver up relevant documents as defined in Freedman J's order. The third was the making of a false statement in the defendant's disclosure statement. The false statement concerned documents the defendant had retained which she was required to deliver up. After making the disclosure statement, she emailed documents to other people which the disclosure statement said she no longer possessed.

15. As I have said, he decided to impose a prison sentence of six months, suspended, on the terms that I have already summarised. In full, the suspension conditions were as follows:

> "a. The Defendant shall comply with the INTERIM INJUNCTIONS section of the 23 May Order, for as long as that order remains in force;
>
> b. The Defendant shall, by 4pm on 28 June 2024:
>
> i. deliver up any Relevant Document (as defined in the 5 April Order) which remains in her possession or to which she has access or a right to possession, such delivery up to be effected by:

> 1. in the case of any Relevant Document held in paper form, by delivering them to the Claimants' solicitors (Quinn Emanuel Urquhart & Sullivan UK LLP) FAO Yasseen Gailani, [*address given*]; and
>
> 2. in the case of any Relevant Document held in electronic form, by providing an electronic copy of the Relevant Document to the Claimants' solicitors at the email address [*address given*]
>
> (the Delivery Up Obligation).
>
> ii. make and serve on the Claimants' solicitors a witness statement in the proceedings verified by a statement of truth and/or an affidavit sworn by the Defendant:
>
> 1. confirming the Defendant's compliance with the Delivery Up Obligation;
>
> 2. verifying, subject to inspection, that the Defendant does not have in her power, possession, custody or control any hard copies of Relevant Documents;
>
> 3. identifying what, if any, soft copies of Relevant Documents the Defendant retains, and where and how the same are retained (whether on personal computers, laptops, tablets, smartphones, hard drives, servers, email accounts, cloud storage, or stored in some other way)."

16. The next paragraph of the order said this:

> "If the Defendant does not comply with the Suspension Conditions, the Claimants shall have liberty to apply for the prison sentence to be activated."

17. Well, the claimants did soon come to the view that the defendant had breached the suspension conditions. They brought the present activation application on 9 September 2024. In short, they allege that the defendant has breached the suspension conditions in the following ways, and I take the summary formulation from the draft order which accompanies the activation application:

> "a. Indirectly harassing the Third and Fourth Claimants, in violation of paragraph 4 of the INTERIM INJUNCTIONS section of the 23 May Order,
>
> b. making a false disclosure statement, in violation of paragraph 1(b)(ii) of the 21 June Order, and
>
> c. failing to comply with a request for irretrievable deletion of documents, in violation of paragraph 3 of the INTERIM INJUNCTIONS section of the 23 May Order."

18. The application was to be determined at the same hearing as the trial, but there was not enough time. Hill J gave directions in an order sealed on 15 October 2024 for the hearing of the activation application. The defendant was required to inform the claimants and the court whether she wished to seek legal aid or represent herself. She represents herself. Directions for filing of evidence were given.

19. The claimants filed four affirmations from their solicito,r Mr Yasseen Gailani. The claimant has also submitted a detailed skeleton argument from Mr Lööf and Mr Field of counsel. The defendant did not file written evidence. She has not given oral evidence or filed a skeleton argument. She did not seek to cross-examine Mr Gailani.

20. She did make some observations in addressing the court quite briefly. She submitted that the emails she had sent, of which complaint is made in this application, were free speech and she felt it was right she should be able to and permitted to say what she said in those emails.

21. She said that her personal emails did not come under the definition of "relevant documents". She said she had moved everything into one folder on a hard drive, and as for the issue of deletion, she said that there had been a disagreement about what was required to be deleted, that a number of documents of which deletion were sought were her own personal work as a contractor or were documents used in the employment tribunal claim or High Court litigation and therefore excluded from the deletion obligation.

22. She said that the deletion process was agreed but there was then a disagreement about what had been agreed. She pointed out that Hill J had attempted to solve this problem by arranging the appointment of an independent IT consultant and an independent barrister to check and verify what fell within the deletion obligation and what did not.

23. She said that the short point was that there were no relevant documents still in her possession. A hard drive had been lost in Tunisia and a computer of hers stolen from her car.

24. In response, Mr. Lööf submitted that the defence of freedom of speech was not open to the defendant. The issue had been aired at the earlier stages of these proceedings and fully taken into account when formulating the scope of the injunctions of which she had then been found in breach.

25. Mr. Lööf pointed out that the defendant's observations did not include any denial that the messages of which complaint was made were sent. Indeed, what she said implies that they were. They are in their content, he said, as aggressive, abusive and demeaning as those on the basis of which she was found liable in harassment. There was no reason to suppose other than that she must have known and intended that they would cause distress.

26. As for the points on deletion and retention of information, Mr. Lööf submitted that a breach of an order is a matter of strict liability. There is no requirement of knowledge that the breach has occurred, only a requirement of intention to do the act which objectively constitutes the breach. And, he said, the documents alluded to in his skeleton argument and to which Mr Gailani has referred in his affirmations, amply prove the violations.

Findings of Fact

27. The first condition is that the defendant complies in all respects with Freedman J's order of 5 April 2024. I am satisfied so that I am sure, beyond reasonable doubt, that the defendant has breached that obligation. The unchallenged evidence of Mr Gailani establishes to my satisfaction the following, and I take this from paragraphs 16 to 25 of his second affirmation.

28. The most recent abusive emails are attached to that affirmation. They include on 8 to 10 July 2024 a series of emails sent to members of Mr Gailani's firm disparaging and demeaning the third and fourth claimants, saying that they had engaged in sexual impropriety and prostitution.

29. They are, I accept, of the same kind and mirror the sentiment of those which formed the basis of the order, the original injunctions and the finding of contempt; particularly referring to the third and fourth claimants as sex workers and to the first and second claimants as running a brothel.

30. On 12 July 2024, emails were sent by the defendant to the claimants' solicitors and counsel's chambers using phrases such as "you fucking bastards" and "your clients are not safe. If you do not release me!!! They claim they want to attack me but they will push me to strike first!!!" and the like.

31. In another email, which I pick out by way of example, the defendant addressed Mr Gailani himself, calling him "a pathetic insolent prick" and later in the same email referred to having proved her case that "blow jobs and pussy cannot create good performance. It is not contempt. That is their reputation .... ."

32. On 18 and 19 July 2024, further sexually graphic grossly offensive and abusive emails were sent to the claimant's solicitors. I accept that these amounted to indirect harassment of the third and fourth claimants in breach of the first suspension condition. Among the offensive things said were remarks on the subject of vaginal hygiene, about which I need not say more. They were disgusting and offensive and without doubt amounted to harassment.

33. That for the most part will suffice for present purposes. I just add that on 13 August the defendant sent Mr Gailani about 98 emails making allegations of professional misconduct but also including the words "slags and whores, that is who you associate with". That was a clear reference, I am satisfied, to the third and fourth claimants. I think I have said enough to explain my reasons for being satisfied and sure that the first condition of the suspension has been breached, without going further through the detail.

34. I will come now to the second and third conditions, which can be taken together since they both relate to documents. I remind myself that, as summarised by Chamberlain J, the second condition is that the defendant must comply with the obligation to deliver up relevant documents as defined; and the third is that the defendant must provide a disclosure statement that is true and lists all the relevant documents.

35. Again, I am satisfied so that I am sure, beyond reasonable doubt, that the defendant has breached those obligations. The unchallenged evidence of Mr Gailani establishes to my satisfaction the following, and I can take it from paragraphs 28 to 41 in his second affirmation.

36. The defendant, it is there said, on 26 June 2024 did give delivery up of 377 documents and did provide an updated disclosure order; and after that Mr Gailani's firm did a comparison exercise comparing what she had disclosed with other documents known to be in her possession. The solicitors deduced that she must have retained significantly more material than anticipated.

37. The documents appeared to be stored only in one folder on a hard drive back-up with no reference to emails. They were in pdf form but must have been held also in native form; and certain of them were delivered up with annotations from the defendant without any un-annotated copies being delivered up.

38. The concerns to that effect were put in a letter to the defendant on 29 July 2024, to which she responded on the same day asserting, implausibly in my judgment, that any documents not disclosed were not required to be and that she did not need to delete documents from one email account, saying it had allegedly been hacked by the second claimant and suspended by Google.

39. She refused to accept that any of her mobile devices could contain relevant documents, even though those devices store emails that do contain or constitute relevant documents as defined

in the earlier injunctions; and she refused at that stage to agree to a forensic e-disclosure services provider carrying out the deletion exercise.

40. Further correspondence ensued without resolving the issue and a letter of 12 August 2024 from Mr Gailani's firm, which I have seen, enclosed a list of documents of which deletion was sought. I have seen and am satisfied that those documents were within the definition and should have been deleted and have not been.

41. The defendant responded to that saying that she needed a further two weeks and then asserted that she would need more time because she wished to attend the Notting Hill Carnival over the bank holiday weekend at the end of August 2024. She also said, and I quote, that she did

> ".... not agree with Chamberlain J's judgment in contemplating .... for indirect harassment and delivery up of documents that were given to me and your clients have copies [but] "would not challenge it because [her] sentence was suspended."

42. And she went on to say that "the injunction should never have been granted". I will not go through all the detail but there was an email from the defendant on 15 August 2024 in which she took issue with the wording and scope of the deletion obligation and included "no documents will be deleted"; and in early September 2024 said she would no longer be prepared to respond to communications from Mr Gailani or his firm.

43. I accept the evidence of Mr. Gailani, which is unchallenged, that I can be sure from it that the deletion obligation has been breached.

44. For those reasons, breach of all three conditions is proved and I will come next to the question of sanction, i.e. whether to activate in whole or in part the suspended sentence order.

[*after hearing brief arguments on the question of sanction*]

Sanction

45. This is my ruling on the question of sanction in this application to activate a suspended sentence imposed by Chamberlain J on 21 June 2024. He imposed the suspended sentence subject to three conditions. The application to activate the suspension was made in September last year by the claimants, asserting that she had breached all three of the conditions and should serve the sentence of six months which Chamberlain J suspended.

46. I have already given reasons in my previous ruling for finding breaches of all three conditions proved beyond reasonable doubt. On sanction, the principles applicable enabling me to perform this unenviable task are set out in, and I can conveniently take them from, paragraph [41] in the lead judgment of Coulson LJ in *Ellis V His Majesty's Solicitor General* [2023] EWCA Civ 585:

> "The relevant principles are set out in *Liverpool Victoria Insurance Company Co. Ltd v Khan* [2019] EWCA Civ 392, [2019] 1WLR 3833, reiterated by the Supreme Court in *Attorney-General v Crosland* [2021] 4 WLR 103. The general approach is to follow the approach of the Sentencing Guidelines and, in particular, to consider the same factors that they do, namely culpability, harm, aggravating factors, mitigating factors, whether a fine is appropriate or whether the custody threshold has been passed, and, if

> custody is appropriate, whether the sentence could be suspended. I consider those matters in that order."

47. I pause to observe that we are at one stage beyond that point in the proceedings now because it has already been determined that the custody threshold has been crossed and a sentence of custody has already, albeit suspended, been imposed.

48. Mr. Lööf for the claimants submitted in effect that there really is no alternative to activation of the sentence, that all other avenues have been explored and left open to the defendant and that she has not taken the opportunities offered to her to avoid going into custody.

49. The defendant herself did not wish to say very much. I asked her if she wanted to use the opportunity to speak against activation of the sentence and she said that she is not a criminal and does not think she needs to go to prison. She lives with her mother, does not have any assets of substance, she is already subject to heavy liabilities from these proceedings and she is not in work. She does not have dependent family members.

50. In the position the court is in, the issue before me is not, as I have said, what the appropriate penalty is for the contempts of court previously found by Chamberlain J to have been committed. He has already addressed that issue, decided that the custody threshold was crossed and imposed the suspended sentence, which I must now decide whether to activate.

51. It is not useful in the present case to speak of whether a fine is appropriate when the defendant owes the claimants over £350,000 in damages and costs already and has no assets of substance.

52. In my judgment, her culpability is high, as much distress has been caused to the third and fourth claimants. The defendant has been warned several times about the harm she is causing. She has been given the chance to stop harassing them and has not stopped doing so. The harm is at a high level because of the distress caused and how long drawn-out the ordeal of the victims has been; principally, but not only, the third and fourth claimants.

53. The sentencing guideline on activation or non-activation of a suspended sentence is not directly applicable, but I was properly referred to it by the claimants as it may assist. In a criminal context, which this is not, the first issue is whether the offender has breached a requirement or committed a further offence during the suspension period and where that is so the court must activate the custodial sentence unless it would be unjust in all the circumstances to do so.

54. The predominant factor in determining whether activation is unjust relates to the level of compliance with the suspended sentence order. In addition, the court must consider any strong personal mitigation, any prospect of rehabilitation and any impact on others, such as dependent family members in the event of immediate custody. All those matters within the sentencing guideline are of relevance here.

55. The aggravating features are, first, knowledge of the distress caused. I have no doubt that the continued campaign of harassment included knowledge and intention that it should cause distress, as it has done. An aggravating feature is the motive of vengeance. That is not in doubt. It has been a sustained campaign over a period and there has been non-cooperation with the process of attempting to gain access to devices which has necessitated the proceedings recently before Steyn J and Johnson J.

56. In mitigation, as far as I am aware, the defendant is of previous good character and I am unaware that she has ever been convicted of anything in any court or been in trouble with the law.

57. There is among the documents before me evidence of a medical issue in the past. A previously instructed solicitor informed the court at an earlier stage that there had been a diagnosis at some stage of schizophrenia. While the presumption of capacity is not rebutted and does not come close to being rebutted, that is something I do not overlook: that there is evidence of this previous diagnosis of schizophrenia.

58. I am no medical expert, but from my judicial experience including nearly ten years in this job, the defendant's behaviour and lack of insight is consistent with litigants I have previously encountered who have been diagnosed with mental disorders. I am therefore concerned about the defendant being in custody, but I have no power to order a pre-sentence report as I would have if these were criminal proceedings.

59. I have come to the conclusion with a heavy heart that I cannot do other than activate the suspended sentence. In my judgment, activation is appropriate for the reasons that I have given. I do not think this is a case for partial activation. The sentence is a relatively short one and the breaches were what lawyers call contumelious, which in plain English means in deliberate defiance of the court and its process. The court has stayed its hand in mercy once already and I do not think it would be right to do so again.

60. Ms Okunola, I am sorry to say that you will serve a prison sentence of six months starting now. You will serve half your sentence in custody and half on licence in the community. I also need to remind you that the extended civil restraint order continues until 25 October 2027 and will still have a long time to run when you are released from prison. If you breach that order while in custody or on licence three months from now, or at any time up to 25 October 2027 you will be in further contempt of this court and if you are on licence at the time it could lead to your recall to prison. You must now go with the officer.

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