Neutral Citation Number: [2020] EWHC 1585 (Comm)

Case No: CL-2019-000481

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/06/2020

Before :

MR JUSTICE JACOBS

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Between :

SAHARA ENERGY RESOURCE LIMITED	**Claimant/Applicant**
- and -	
(1) RAHAMANIYYA OIL AND GAS LIMITED	**Defendant/Respondent**
(2) ULTIMATE OIL & GAS DMCC	
- and -	
(1) MR ALHAJI ABDULRAHAMAN BASHIR	**Additional Respondents**
(2) MR ADEBOWALE ADEREMI	

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- -

Nicola Allsop (instructed by **Stephenson Harwood LLP**) for the **Claimant**
Andrew Thomas (instructed by **Simon Bethel Solicitors**) for the **First Defendant** and **Additional Respondents**

Hearing dates: 12th June 2020.

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 11:00am 18th June 2020.

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MR JUSTICE JACOBS

Mr. Justice Jacobs :

A: The applications

1. These are my reasons for dismissing an application by three Respondents ("the Respondents") to set aside three previous orders made in the present proceedings. These Respondents are: (1) Rahamaniyya Oil and Gas Ltd. ("Rahamaniyya"), (2) Mr. Alhaji Abdulrahaman Musa Bashir ("Mr. Bashir") and Mr. Adebowale Aderemi ("Mr. Aderemi"). Each of the three orders relates to committal proceedings against the Respondents.

2. The first order was made by Moulder J on 7 November 2019 pursuant to a without notice application by the Claimant ("Sahara"). This order ("the Service Order") related to the service of the committal proceedings and other documents upon the three Respondents (as well as upon another respondent, Mr. Ben Umeano, whose position is no longer in issue). In particular, the order permitted service of the committal documents by alternative means, namely by e-mail to 5 e-mail addresses in the case of Rahamaniyya, 2 e-mail addresses in the case of Mr. Bashir, and 2 e-mail addresses in the case of Mr. Aderemi.

3. The second order was made by Butcher J. on 17 January 2020. This was made pursuant to the hearing of the committal application initiated in November 2019, and served pursuant to Moulder J's order. Butcher J. determined that each of the three Respondents was in contempt of court. He decided to adjourn the question of punishment for 3 weeks.

4. The third order was made by Butcher J. on 7 February 2020. The sanctions imposed for the contempts previously determined were as follows. Rahamaniyya was fined £ 500,000. Mr. Bashir was imprisoned for 10 months, with the court giving a non-binding indication that the sentence could be reduced to 6 months in the event that he complied with the relevant order which had previously been breached. Mr. Aderemi was fined £ 10,000.

5. The Respondents contend that they only became aware of these three orders on or around 12 February 2020. Subsequently, after some delay which Mr. Bashir has sought to explain in his witness statements, the present application to set aside these orders was made on 21 April 2020.

6. In relation to the Service Order, the application is made pursuant to CPR 23.10 and the usual express provision, contained in an order made on a without notice application, that a party affected by the order could apply to set it aside within 7 days of service of the order. Mr. Andrew Thomas, who appeared for the Respondents on the hearing of this application, recognised that this application would require a discretionary extension of time, but he submitted that it was appropriate to grant such extension. If the Service Order were to be set aside, then there was no dispute that it would follow that the two subsequent orders would be set aside as well, since they were consequential on the Service Order.

7. If that application were to fail, then the Respondents applied to set aside the two orders of Butcher J. pursuant to CPR 39.3, which is applicable where a committal

application proceeds in the absence of a party. Such application can only be granted if the three requirements set out in CPR 39.3 (5) are satisfied, namely that the applicant:

a) acted promptly when he found out that the court had exercised its power to strike out or to enter judgment or make an order against him;

b) had a good reason for not attending the trial; and

c) has a reasonable prospect of success at the trial.

8. The Respondents' application was opposed by Sahara, represented by Ms. Nicola Allsop. She submitted that the court should not exercise its discretion to extend time in relation to the application concerning the Service Order and should in any event dismiss that application. In relation to the two orders of Butcher J., she submitted that none of the requirements of CPR 39.3 (5) were satisfied.

B: Factual and procedural background to the applications

9. I describe below the course of the events which led to the present applications, including material correspondence and discussions involving Sahara's solicitors and Mr. Dada Awosika (a Nigerian lawyer) and to some extent Mr. Bashir himself. My description of events in this section includes certain comments or conclusions relevant to my determination of the present applications.

10. Sahara is an Isle of Man company engaged in the oil industry. Rahamaniyya is a Nigerian incorporated entity. It has a trading arm, the Second Defendant in these proceedings, called Ultimate Oil & Gas DMCC ("Ultimate"). Mr Bashir, a Nigerian national, is the CEO and a director of Rahamaniyya. Mr Aderemi, also a Nigerian national, is manager of Rahamaniyya's terminal in Nigeria. There was no dispute that Rahamaniyya, as might be expected from a company that runs an oil terminal and could enter into contracts of the magnitude relevant to the present proceedings, is a reasonably substantial business in Nigeria. The fine of £ 500,000, imposed by Butcher J on that company, took into account the size of the company.

11. The present proceedings have their origins in a contract between Sahara and Ultimate Oil & Gas DMCC dated 16 July 2018. Ultimate agreed to buy, and Sahara agreed to sell 15,000 MT VAC +/- 5% of Gas Oil (the "Sale Contract"). Prior to entering into the Sale Contract, a "Collateral Management and Storage Agreement" ("CMA") was entered into on 8 July 2018 between Sahara, Rahamaniyya (as the 'Storer' of the Gas Oil) and two other parties. Under the CMA, Rahamaniyya agreed to store the gas oil at its terminal pending payment by Ultimate. The CMA contains a London arbitration clause.

12. Clause 12.2 of the CMA contained various addresses at which "all processes and notices arising out of or in connection with this Agreement" could be served. In the case of Rahamaniyya, there were three e-mail addresses identified after its physical address in Lagos and phone number. These e-mails were: adebowale.aderemi@rahamaniyyagroup.com.ng; remdebowal@yahoo.com; and ops@ultimateoilngas.com. There is no dispute that the yahoo.com e-mail address was one which belonged to Mr. Aderemi.

13. It is not necessary to describe the underlying dispute in detail, and indeed there are currently LCIA arbitration proceedings underway in relation to that dispute. In summary, Sahara's case is that a total of 14,967.159 MT of Gas Oil was delivered to Rahamaniyya's terminal in Nigeria. Sahara issued invoices for the Gas Oil on 26 October 2018 for USD 10,760,728.77 and payment should have been made by 29 August 2019. Ultimate subsequently defaulted in making payment under the Sale Contract. On or around 19 December 2018, Ultimate and Sahara entered into a settlement agreement, in which Ultimate confirmed that the value of Gas Oil that had been delivered was USD 10,760,728.77, and agreed to make a series of monthly payments for the Gas Oil.

14. Some payments were made, in consequence of which some 8,566.469 MT of Gas Oil was released to Ultimate. Ultimate did not, however, perform the terms of the Settlement Agreement in full by making all the payments due. After various warnings, on 10 May 2019 Sahara terminated the settlement agreement and notified Ultimate that its agent, Asharami Synergy Plc would take delivery of part of the remaining Gas Oil from the terminal**.** Thereafter, various attempts were made by Sahara to obtain delivery of the Gas Oil, including sending a "Release Order" issued on 12 July 2019 for the entirety of the 6,400.69 MT of the Gas Oil which remained at the terminal. This order was not complied with, and this resulted in the present proceedings.

15. On 1 August 2019, Robin Knowles J. granted Sahara an order made on a without notice application ("the Ex Parte Order"). The order was made against Rahamaniyya: neither Mr. Bashir nor Mr. Aderemi was at this stage a respondent to the proceedings. Paragraph 1 of that Order provided as follows:

> "The Defendant shall upon 24 hours' notice being given by Sahara or its agent to the e-mail addresses in paragraph 3 comply with the Release Request dated 12 July 2019 and release 6,400.69 MT of gas oil to Sahara or Sahara's agent by permitting Sahara or its agent to attend at Rahamaniyya Oil and Gas Ltd, Jetty 6.436181, 3.319889; 6°26'10.3 "N 3°19'11.6"E, Ibafon, Kirikiri Waterfront, of Aero Maritime Street, Apapa, Lagos, Nigeria ("the Terminal") between 0800 and 1600 hours local time and remove the said gas oil by loading the same onto a vehicle or vehicles".

16. The Ex Parte Order granted Sahara permission to serve all documents in the claim by e-mail to the three addresses identified in the CMA plus a further address, arb@ultimateoilngas.com. It is Sahara's case that this further e-mail address is Mr. Bashir's, although Mr. Bashir does not accept that this is so. He has not, however, identified any other ultimateoilandgas.com e-mail address that he uses. Nor has he identified who does use this "arb" e-mail address.

17. Sahara then sent the documents by e-mail to these addresses and also arranged for copies of the documents themselves to be left at the terminal. An important feature of the subsequent history is that all subsequent service of documents has been by e-mail. The only service of physical documents by courier was the service of the Ex Parte Order. The Respondents say that physical documents should have been sent to them in

the same way as they were in August 2019. Sahara by contrast says that it is clear that service by e-mail has been effective; since the evidence shows that the Respondents have throughout been aware of the material orders made by the court, leading to the present application. Such knowledge could, Sahara contends, only have been acquired as a result of e-mail service, since no other physical documents have been served.

18. No application was made by Rahamaniyya to set aside the Ex Parte Order, which provided for a return date just over a month later (on 6 September 2019). Nor was there at that time any suggestion that there were any difficulties with the e-mail addresses identified in the Ex Parte Order.

19. In fact, some 6 days after the Ex Parte Order had been made, on 7 August 2019, Sahara's solicitor, Mr Lakin of Stephenson Harwood, received an e-mail from a Mr Dada Awosika of Awosika & Partners, a firm of Nigerian lawyers. As will become clear from the description of the events which followed, Mr. Awosika continued to act for Rahamaniyya as matters developed over the following months, including following the January order of Butcher J.

20. In his e-mail dated 7 August, Mr. Awosika introduced his firm as being the solicitors/counsel acting for Rahamaniyya, and as having been instructed by their client to "respond to your most recent mail relating to certain release order". Mr. Awosika's e-mail said "your various e-mails and bundles of court's processes and order made by High court of England have been forwarded to us for further legal action and scrutiny." This sentence in itself shows that e-mail had been an effective means of communicating with Rahamaniyya: the company had received notice of the proceedings and the order made, and not simply as a result of the physical delivery which had been effected.

21. Mr. Awosika and his client Rahamaniyya were therefore by now aware of the terms of Knowles J's order, including the provision for service of the Claim Form "and any other documents in this claim" by email to the four identified addresses. The order also directed, in paragraph 5, a further hearing of the application to take place on 6 September; i.e. the return date of the without notice application. Significantly in my view, no issues were then raised, whether in correspondence or by way of application, as to any difficulties relating to any of the e-mail addresses. No application was made to challenge the order of Robin Knowles J, whether prior to or at the return date.

22. Mr Awosika's e-mail to Mr. Lakin had a short string of e-mails beneath it. This starts with an e-mail from Mr. Lakin dated 6 August 2019 which is headed "RE: URGENT – NOTICE PURSUANT TO ORDER REQUIRING ACTION". The full text of this email has not been reproduced in the hearing bundle, but it is clear that Mr. Lakin's e-mail had been forwarded to Mr. Awosika by a Mr. Rajesh Dhuri. Mr. Dhuri had an "ultimateoilngas.com" e-mail address, which indicates that Ultimate Oil's e-mail system was working at that time.

23. Mr. Awosika's e-mail of 7 August was sent both to Mr. Lakin and to Mr. Dhuri. Importantly, it was also copied to four e-mail addresses. These included adebowale.aderemi@rahamaniyyagroup.com.ng and remdebowal@yahoo.com. These are the two e-mail addresses associated with Mr. Aderemi, and they had (as described above) been contained both in clause 12.2 of the CMA and subsequently the order of Knowles J. A third recipient shows on the hard copy of the e-mail as

"Bashir", and I was told (and it was not disputed) that the soft copy of the e-mail shows that this e-mail address is that which features subsequently in the chronology: amb_bashir@yahoo.com. Neither the CMA nor the order of Knowles J. had referred to this particular e-mail address, but it was in due course an e-mail address used by Sahara and which is contained in subsequent orders including that of Moulder J. There is no dispute that this is an e-mail address which belongs to Mr. Bashir. The final e-mail address appears on the hard copy as "Ultimate oil", but the full e-mail address is not shown in the hard copy so the precise recipient is not clear. However, as already noted, it is apparent from the fact that Mr. Dhuri forwarded the e-mail that Ultimate Oil's e-mail system was at that time effective.

24. Mr. Awosika's e-mail therefore also shows that he, as Rahamaniyya's Nigerian legal adviser, felt it appropriate to communicate by e-mail not only with Mr. Lakin, but also with both Mr. Bashir and Mr. Aderemi.

25. The case came back to the Commercial court on 6 September 2019 on the return date before Bryan J. Rahamaniyya did not attend the hearing. The judge gave a short judgment explaining why it was appropriate to continue the order made by Robin Knowles J. for delivery up of the Gas Oil. Sahara was again given permission to serve any documents in the claim on the 4 e-mail addresses originally included in the order of Robin Knowles J.

26. On the same day (6 September 2019), the order of Bryan J. was sent by e-mail to these four e-mail addresses, as well as to the e-mail of Mr. Dada Awosika. The e-mail indicated that a copy of a transcript of Bryan J's judgment would be provided in due course. The approved judgement was later sent (on 17 October) again by e-mail. In that judgment, Bryan J. addressed points taken in correspondence. The judge said that these essentially related to whether Sahara was registered in Nigeria and liable to pay tax in Nigeria. He was satisfied that these were wholly lacking in substance, and would in any event not affect Rahamaniyya's contractual obligation to deliver up the remaining gas oil. These points had been raised in Mr. Awosika's email of 7 August 2019.

27. On 18 September 2019, Stephenson Harwood sent a 3-page letter to various addressees by e-mail: the letter was addressed to Mr. Awosika, Rahamaniyya, Mr. Bashir and Mr. Aderemi. The e-mail addresses were, in addition to Mr. Awosika's, the 4 e-mail addresses previously used in the court's orders. The letter warned that failure by Rahamaniyya to comply with the terms of the court's order would result in Sahara commencing committal proceedings against Rahamaniyya, Mr. Bashir and Mr. Aderemi. In due course, as described above, this is what happened.

28. On 19 September 2019, Mr. Awosika e-mailed various individuals to advise of the commencement of proceedings against Sahara in Nigeria. The e-mail addressees included Mr. Lakin and some colleagues at Stephenson Harwood, as well as Mr. Bashir and Mr. Aderemi.

29. This in turn led to Sahara making an application for an anti-suit injunction. This was granted by HHJ Pelling QC on 4 October 2019, and continued on the return date by Robin Knowles J. on 21 October 2019. Two e-mails sent, prior to the order made on 4 October 2019, are of importance in the context of the present application.

30. On 1 October 2019 Mr. Lakin had sent an e-mail to the Commercial court enclosing an exhibit to his witness statement for the purposes of the anti-suit injunction application. The e-mail was copied to various e-mail addresses of the Respondents previously used by Sahara, as well as the amb_bashir@yahoo.com address initially used by Mr. Awosika in August 2019. One of the recipients was remdebowal@yahoo.com, the e-mail address identified in the notice provisions of the CMA and in subsequent orders. The e-mail was then forwarded, using a Galaxy smartphone, from that e-mail address to "Afolarin Awosika" on 2 October 2019. Immediately afterwards, a related e-mail from Mr. Lakin was forwarded, using the same phone, from the same e-mail address again to Afolarin Awosika. These two e-mails were clearly sent to that recipient in error. Mr. Afolarin Awosika was a solicitor at Stephenson Harwood, and he happened to share the same name as Rahamaniyya's Nigerian lawyer.

31. The reason that this episode matters is that it provides evidence that the e-mail account remdebowal@yahoo.com was in effective use at that time. It was not disputed that this was an account of Mr. Aderemi, although the suggestion from the Respondents is that it is an account shared with his wife. Whether shared with his wife or not, the obvious inference is that Mr. Aderemi was, at that time receiving and sending e-mails relating to Sahara's proceedings, using that e-mail account. Mr. Aderemi, who has not himself provided a witness statement in these proceedings, has suggested via Mr. Bashir that these two particular e-mails must have been sent by someone else, using his account. He has not, however, identified any individual with access to his e-mail account, nor explained how any such individual would appreciate that the e-mails should be sent to Mr. Dada Awosika.

32. The next relevant events are those leading to the order of Moulder J. On 4 November 2019, Stephenson Harwood sent a letter, again by e-mail, to the Respondents, copied to Mr. Dada Awosika. The letter referred to the 4 orders which had by that time been made (two relating to delivery up, and two on the anti-suit application). It demanded compliance with the injunctions, and warned that failure to do so would result in committal proceedings against Rahamaniyya, Mr. Bashir and Mr. Aderemi. The e-mail addresses used were those previously used: 4 e-mail addresses for the company; two for Mr. Bashir, including amb_bashir@yahoo.com; and two for Mr. Aderemi.

33. The without notice application was then made in relation to the service of the various "committal documents." This came before Moulder J. who dealt with the application without a hearing. Her order dated 7 November 2019 granted permission to serve the documents out of the jurisdiction on the Respondents. (It was at this time that Mr. Bashir and Mr. Aderemi, as well as Mr. Umeano, became "Additional Respondents" to the proceedings). Moulder J. also granted dispensation from the requirement to serve the Respondents personally with the Committal Documents, pursuant to CPR 81.10 (5). She also granted permission to serve the various Respondents by alternative service "by the following means". 5 e-mail addresses, including that of Mr. Awosika, were then identified for Rahamaniyya; 2 e-mail addresses for Mr. Bashir; and two e-mail addresses for Mr. Aderemi.

34. Sahara's committal application, the order of Moulder J., and various associated documents were then served by e-mail on the afternoon of 7 November 2019.

35. The service of the committal application plainly caused a reaction on the Respondents' side. Mr. Lakin's evidence is that he spoke to Mr. Awosika and Mr. Bashir on 27 November 2019. This evidence was not substantially challenged, and it is supported by Mr. Lakin's contemporaneous attendance note as well as by the course of events over the next couple of weeks. The call involved a "without prejudice" discussion, but there has rightly been no objection to the admissibility of the evidence. (There were a number of reasons why the evidence was admissible notwithstanding that the conversation was without prejudice, but it is not necessary to explain these in detail in view of the fact that no point was taken). Mr. Lakin's attendance note records:

> "He confirmed that Mr. Bashir now wanted a complete resolution to this case, especially given his likely personal liability in the upcoming committal proceedings on 6 December 2019. He said that Mr. Bashir was very keen to resolve the matter and that he was currently travelling to Abuja in order to meet personally with Mr. Bashir in order to finalise a settlement proposal that they intend to send to Sahara tomorrow.
>
> …
>
> Mr. Awosika then received a call from Mr. Bashir, who he conferenced in to our call. I explained Sahara's position to him in detail, saying that Sahara had no personal animus against Mr. Bashir but that we would take every step necessary to enforce Sahara's right and that he would have to act very quickly by releasing the Gas Oil and withdrawing the Nigerian Proceedings if a settlement was to be contemplated. He said that he understood the situation and that we would have his proposal on Friday".

36. It is clear from this communication, and indeed the communications which followed, that both Rahamaniyya and Mr. Bashir were aware of the imminent committal hearing and wished to take steps to avoid it. For his part, Mr. Bashir does not dispute that he was aware that a committal application was pending at the time of the settlement discussions initiated on 27 November, and continued over the next 10 days. But he says that he only became aware of this because Mr. Lakin, in the course of the settlement discussions, "mentioned" that the application was pending at the High court. He maintains, however, that no copy of the committal application was provided to him or the other Respondents. He also says in his witness statement that at 'no time did Mr. Awosika inform me that there was a pending committal application or a service order made by the English court until on or about 12 February 2020.'

37. On behalf of the Respondents, Mr. Thomas accepts that Mr. Bashir and therefore Rahamaniyya were aware at that time of the pending committal application. This had always been accepted by Mr. Bashir. The point that Mr. Thomas then developed was therefore a narrow one. Although Mr. Bashir was aware of the application, and indeed sought to postpone it via the settlement discussions, he was not aware until much later that Moulder J. had made the order permitting service of that application by e-mail. I shall return to this argument below.

38. On 29 November 2019, Mr. Awosika e-mailed Mr. Lakin. The e-mail was copied to Mr. Aderemi at the rahamaniyyagroup.com e-mail address, and to Mr. Bashir at the two e-mail addresses identified in the order of Moulder J. Mr. Awosika said that he continued to act for Rahamaniyya. The e-mail thanked Mr. Lakin for finding the time to 'speak with us on Wednesday 27, 2019 in regard to the lingering dispute between Sahara vs Rahamaniyya particularly in view of the committal proceedings scheduled for 6 December 2019'. He said that his client was 'desirous of settling this matter amicably'. His client was prepared to withdraw the suit filed in Nigeria in the event that the proposed settlement was acceptable, and he asked Sahara 'to respectfully exercise restraint in the proceedings in London'. The e-mail then put forward a proposal for payment for the balance of product still held at the terminal.

39. This e-mail is therefore consistent with, and provides support for, Mr. Lakin's evidence that a conversation had indeed taken place on the previous Wednesday and as to the substance of that conversation. The reference to 'particularly in view of the committal proceedings scheduled for 6 December 2019' confirms not only the knowledge of Mr. Awosika and his client (Rahamaniyya) as to the existence of those proceedings, but also that they were a significant reason as to why settlement discussions were now taking place. As might be expected when a lawyer is putting forward a settlement proposal on behalf of his client, Mr. Awosika clearly considered that both Mr. Bashir and Mr. Aderemi should be aware of this communication. As with his earlier e-mails, it was therefore sent to their e-mail addresses.

40. Mr. Bashir had participated to some extent in the call on 27 November. There is no doubt that, at this time and throughout, he was representing Rahamaniyya. He was, of course, the CEO of the company. He also accepts in his evidence that Mr. Awosika was his personal lawyer and was instructed in connection with the proposed settlement.

41. Mr. Lakin's evidence describes the progress of the settlement discussions on 2 and 3 December: Sahara made a counterproposal on 2 December, and this was discussed between Mr. Lakin and Mr. Awosika on the following day. Mr. Awosika said that he was going to speak with Mr. Bashir later that day as to his response. No proposal was, however, received. Mr. Lakin then followed up on the morning of 4 December, indicating that time was running short, given the hearing on 6 December. Later that day, he spoke to Mr. Awosika again, and the latter confirmed that a further counterproposal was being discussed between himself and Mr. Bashir. Mr. Lakin said that, if he recalled correctly, Mr. Bashir was 'also on that call, and he explained why he would not be in a position to make an immediate upfront payment before the hearing on 6 December'.

42. Mr. Lakin's evidence as to those negotiations and the telephone calls is again not the subject of any material challenge. His evidence as to the call on 4 December is in substance confirmed by the e-mail then sent by Mr. Awosika on the evening of 4 December. That e-mail, again copied to Mr. Bashir and Mr. Aderemi, began by thanking Mr. Lakin 'for taking time out to speak to our Dada Awosika and Alhaji Musa Bashir with a view to find a workable and realistic resolution to the above referenced subject matter particularly the committal proceedings coming up before the English High court on the 6th of December 2019'. He made a revised proposal, and asked Sahara graciously to accept it 'and give instruction for the deferment of the committal proceedings of 6th of December 2019 by mandating counsel to seek

adjournment to the 1st week in February 2020' to allow the parties to 'concretise' the other critical part of the settlement; i.e. the money to be paid. Mr. Awosika also advised that Mr. Bashir/ Rahamaniyya had directed him to withdraw the proceedings commenced in Lagos, and this was a demonstration of Rahamaniyya's good faith in seeking to resolve matters amicably.

43. Mr. Lakin's evidence (again not materially challenged and consistent with the documents) is that further calls and e-mails were then exchanged between himself, Mr. Awosika and Mr. Bashir on 5 December. This resulted in a further proposal from Sahara made by e-mail at 17:21 on 5 December. Mr. Awosika responded late that night (at 23:56 according to the English timing of the e-mail), accepting the proposal. Mr. Awosika said that he had the instructions of Mr. Bashir/ Rahamaniyya to confirm the content of Mr. Lakin's e-mail by way of settlement. The terms of the proposed settlement, as set out in the e-mail exchange, included:

> "5. Sahara and Ultimate will seek adjournment of the Committal Hearing tomorrow upon confirmation that the Nigerian Proceedings have been withdrawn.
>
> 6. If payment is not made as set out above, Sahara will be entitled to immediately seek an urgent re-listing of the Committal Hearing"

44. Pursuant to this exchange, on 6 December 2019, Butcher J. made an Order adjourning the hearing of the committal application to the first available date in February 2020. The order recorded that without prejudice negotiations had taken place between the parties and these had an impact on the contempt application, 'such that both parties agree that it is desirable and appropriate that the Contempt Application is adjourned'. It recorded the parties' agreement that it was appropriate to adjourn the hearing 'so that the without prejudice negotiations can continue in the hope that such negotiations will ensure compliance with the injunctions granted by the court'. The recitals to the order recorded that the Respondents were not represented, but it is clear (and there is no dispute) that the order reflected the agreement reached in their calls and e-mail exchanges over the previous days.

45. At this time, there was no formal signed Settlement Agreement, but this was then drafted and formalised in a written document dated 6 December. The parties to the agreement were Sahara, Rahamaniyya and Ultimate. It was signed by Mr. Bashir on behalf of both companies. The recitals included a lengthy description of the background, including the following description of the committal proceedings:

> (S) On 6 November 2019 Sahara made an application for the committal of Rahamaniyya for breaches of the Injunctions and against Mr. Bashir, Mr Aderemi and Mr. Umeano of Rahamaniyya for wilfully permitting the breach of the Injunctions (the "Committal Proceedings").
>
> (T) The Committal Proceedings are fixed to be heard on 6 December 2019 (the "Committal Hearing").

> (U) The Parties have reached an agreement on certain aspects of the disputes between them. In particular, Rahamaniyya and Ultimate have agreed to make payment for the Remaining Gas Oil as per the price agreed in the Sale Contract and Settlement Agreement and Rahamaniyya has agreed to withdraw the Nigerian Proceedings on the basis that Sahara seek an adjournment of the Committal Hearing until the first available date in February 2020.

46. Clause 7 of the Settlement Agreement, headed "Adjournment of the Committal Hearing" contained the parties' agreement in that respect:

> 7.1 Sahara and Rahamaniyya will jointly seek an adjournment of the Committal Hearing until the first available date in February 2020. The Parties agree that the English High Court should be informed in the application for an adjournment that the Parties have engaged in without prejudice communications and that they are in the process of trying to agree terms that would have an impact on the Committal Hearing.
>
> 7.2 If the terms of this Agreement are complied with as at 1 February 2020, then Sahara and Rahamaniyya agree that they will seek a further adjournment of the Committal Hearing until the first available date in July 2020. In making that application, the Parties confirm that they agree to the disclosure of the terms of this Agreement to the Court.
>
> 7.3 If Rahamaniyya or Ultimate fail to comply with any of the terms of this Agreement, then Sahara will be free to continue with and take any and al steps or proceedings, including but not limited to seeking an urgent re-listing of the Committal Hearing, or an application to vary any of the Injunctions in order to enforce its rights under the Sale Contract, Settlement Agreement, the CMA and the Injunctions."

47. The Settlement Agreement provided for a first payment of US$ 500,000 on 20 December 2019. This was not paid. This led to a letter dated 23 December 2019 sent by Stephenson Harwood by e-mail to the various e-mail addresses for the Respondents previously used, as well as to Mr. Awosika. The letter demanded payment not only of the US$ 500,000, but also of other sums which (as a result of the default) were now said to be due. The letter gave Rahamaniyya and Ultimate the option of paying the amounts then owed (US$ 4.5 million) or confirming that it would release the remaining Gas Oil within 24 hours. The letter then said:

> "If Rahamaniyya and/or Ultimate do not take one of the steps set out above, then Sahara will immediately write to the High Court in London at 1730hrs GMT on 24 December 2019, requesting the expedition of the Committal Hearing in

> accordance with Clause 7.3 of the Agreement, for the first available date in January 2020".

48. On 29 December 2019, Mr. Lakin e-mailed an urgent letter to the Commercial court seeking expedition of the re-listing of the committal application for the first available date in January 2019. He asked for the letter to be placed before the vacation judge. The e-mail was copied to 7 different e-mail addresses on the Respondents' side, including those used in the prior correspondence described above.

49. On 30 December 2019, the listing officer of the Commercial court responded by e-mail, copying all the recipients of the 29 December e-mail. The court offered 17 January 2020 as the hearing date, and asked for confirmation that this was acceptable. Mr. Lakin provided that confirmation on 30 December, again copying the usual e-mail addresses on the Respondents' side. The listing officer then confirmed that the hearing was now re-listed for 17 January, again copying all recipients of the prior e-mails on this issue.

50. The committal application therefore came before Butcher J. on 17 January 2020. There is no approved transcript of his judgment available, but a detailed note was taken by Stephenson Harwood. The judge decided that it was appropriate to hear the application in the absence of the Respondents. In reaching the conclusion that it was appropriate to proceed, Butcher J. said that: it appeared to him that the Respondents had been served with the relevant documents, including the notice for the hearing; that they had been informed by e-mail on 30 December 2019; and that they had been aware of the committal application since 6 November 2019. He had previously referred in his judgment to the exchanges with the court on 29 and 30 December 2019. He also referred to having seen a series of e-mails serving the committal application and skeleton argument. Those e-mails had contained a warning that the court may proceed in the absence of the Respondents. On the previous day, Stephenson Harwood had sent an e-mail to the parties with details of the listing on 17 January 2020, including the court where the hearing was to take place. The court's order recorded the failure of the Respondents to attend, and that the court had been satisfied that it was appropriate to proceed in their absence.

51. On 22 January 2020, Mr. Lakin e-mailed the order of Butcher J. on the committal application to the Respondents' various e-mail addresses. He advised that the question of appropriate punishment had been adjourned to 7 February 2020, and that there was therefore a brief window whereby Mr. Bashir might be able to purge his contempt and 'some of the serious consequences of his contempt might be lessened'.

52. Mr. Lakin's evidence is that on the same day, 22 January 2020, he received a call from Mr. Awosika which he recorded in an attendance note. This was referred to in a witness statement served by Mr. Lakin on 21 May 2020, in which he said that he had omitted this evidence from an earlier witness statement but that it was relevant to the Respondents' present application. His attendance note records the following conversation with Mr. Awosika:

> "Later on 22 January 2020 I received a call from Dada Awosika at Awosika & Partners. He appeared part panicked and part despairing with his client. I set out our position in detail and we agreed that I didn't need to convince him what a

> bad position his client was in and how his failure to pay under the 6 December agreement had damaged any good faith/ trust. He then proceeded to dial in Mr. Bashir who made a somewhat emotional plea, claiming that he hadn't been able to go on holiday for months because of the proceedings in London and that he was absolutely committed to paying his obligations. I took a firm line and informed him that absent a very significant show of good faith, such as releasing the cargo or making a very significant payment of the amounts owed, there was no chance that Sahara would let up on the proceedings and would push for a maximum punishment on 7 February 2020. The conclusion of the call was that Dada would meet with Mr. Bashir asap and that they would come up with a proposal. I reminded them that any proposal would have to contain very, very significant steps from Rahamaniyya before Sahara would change course".

53. There was no challenge to Mr. Lakin's evidence as to this conversation. Mr. Awosika has not provided a witness statement in relation to the present application, and Mr. Bashir's evidence does not address it.

54. There is no evidence of any further proposal then made by Rahamaniyya, and the hearing to determine punishment then took place before Butcher J. on 7 February 2020 with the consequences described above.

55. The present application was then filed on 21 April 2020.

C: The evidence for the present application

56. The Respondents' evidence in support of the present application was contained in an initial witness statement of Mr. Bashir dated 17 April 2020, and a short second statement served on 21 May 2020.

57. In his first statement, Mr. Bashir says that he and the other Respondents did not become aware of Moulder J's order dated 7 November 2019 'for a considerable period'. He first became aware of it on or about 12 February 2020, when Mr. Awosika had told him about it. Mr. Awosika had just had a telephone conversation with Mr. Lakin where the order of 7 November 'was first mentioned by the said Mark Lakin'. It was only at this time that Mr. Aderemi learnt of the order, having also been informed by Mr. Bashir's 'personal solicitor' Mr. Awosika.

58. As far as the various e-mail addresses used in the correspondence, the position was said by Mr. Bashir to be as follows.

59. The adebowale.aderemi@rahamaniyyagroup.com.ng address was the official e-mail address of Mr. Aderemi, but this had been down since June 2019 'till date', and therefore Mr. Aderemi did not have access to that address. The remdebowal@yahoo.com address was the social email address of Mr. Aderemi and his wife, but no orders or court processes were 'seen by him' on that e-mail address. Whilst two e-mails were sent from that account to (the wrong) Mr. Awosika on 2 October 2019, Mr. Aderemi did not send any such email and was not aware of it being

sent. He could therefore only speculate that someone else with access to his account had sent it. But Mr. Aderemi himself had not used that yahoo account for 8 months.

60. The ops@ultimateoilngas.com address was not an account under Mr. Bashir's direct custody/control, and no communication or mail was sent to him from that account. The arb@ultimateoilngas.com address was that of 'one of the officials' of Ultimate, and no mail had ever been sent to him from that address. The amb_bashir@yahoo.com address was Mr. Bashir's account, but he had not accessed it for 10 months 'due to poor network and data issues within Nigeria'.

61. The awosikalaw@gmail.com address was the address for his personal lawyer in Nigeria, but 'the said lawyer never mentioned to me to have received any order or mails from the Claimant'.

62. Mr. Bashir said that the documents should have been sent physically. Sending documents by e-mail was not enough to ensure that (and did not ensure) that the Respondents had a proper opportunity to fully respond to the application.

63. The reason that the Respondents did not attend the committal hearings was that they were 'not aware of those hearings'. Mr. Bashir accepted that he was aware that a committal application was pending, because this had been 'mentioned' by Mr. Lakin in the course of the settlement discussions. But Sahara had agreed to suspend the application in order to give room for the settlement agreement to thrive. After the 6 December date was vacated, the Respondents did not receive any notice of the new hearing dates. The first time that he heard of the hearings which took place in January and early February (before Butcher J.) was when Mr. Awosika had informed him on around 12 February 2020.

64. Mr. Bashir then identified the various grounds on which he contended that there was a reasonable prospect of successfully defending the committal proceedings.

65. Mr. Bashir also explained the reason for the delay after 12 February 2020 when he became aware of the terms of the order dated 7 November. Various issues arose. It was difficult for him to get a solicitor in the UK to verify the position and take appropriate steps. When he did finally get a solicitor at Simon Bethel Solicitors, there were 'hiccups transferring funds from Nigeria to the UK' to enable work to commence. Covid-19 also created unforeseeable 'traffic' to the entire process.

66. Sahara's response to that statement comprised, principally, the 7th witness statement of Mr. Lakin. This described the history of the case with specific reference to the correspondence and discussions with Mr. Awosika and Mr. Bashir. Mr. Lakin said that Mr. Bashir's case that he did not become aware of the service order until 12 February, and did not become of the hearings before Butcher J. until afterwards, was 'indisputably false'. Mr. Lakin's 7th witness statement was later supplemented by the further statement from Mr. Lakin, served on 21 May 2020 (principally in support of an application for permission to bring further contempt proceedings against Mr. Bashir) in which, as described above, he gave evidence as to his conversation on 22 January 2020.

67. Mr. Bashir responded to Mr. Lakin's 7th witness statement, and the allegation of 'indisputable' falsity, on 21 May 2020. He reiterated that Mr. Lakin had indeed

mentioned that a committal application was pending. But no copy of the application or supporting evidence was provided. He denied that there was anything implausible about his evidence that no emails had been received. The suggestion of implausibility did not 'take account of the business culture and technology in Nigeria'. He said that the Covid 19 lockdown in Nigeria, and Mr. Bashir's consequent inability to access his Lagos office, had hampered his ability to provide further evidence to support the truthful evidence which he had given about the e-mail addresses. It was credible that the CEO of an oil and gas trading group would not be able to access his email account for an extended period of time: Nigeria is a developing country, and there are a number of billionaires there whose upbringing and education mean that they have no access to smartphones.

68. In support of the case that Mr. Aderemi was not able to access his rahamaniyyagroup.com email account, Mr. Bashir said that repairs were performed on the server in December 2019. He produced an invoice from the 'repairer' dated 15 December 2019.

69. Mr. Bashir repeated that Mr. Awosika had not informed him that there was a pending committal application or a service order made by the English court until on or about 12 February. It then took time to provide funds to lawyers in the UK, because the transfer of currency from Nigeria involves bureaucratic bottlenecks due to money laundering concerns. Mr. Bashir also indicated that he had faced other problems in the past few months impacting on his ability to deal with legal matters. He had a chronic ailment, and produced a medical report dated 4 November 2019 in which a medical practitioner placed Mr. Bashir on 'bed rest of the next 4 months' starting on 1 November 2019 and ending on 28 February 2020.

D: Discussion

Approach to the application and the factual evidence

70. An initial issue addressed in the course of argument was the approach which the court should take to the evidence of Mr. Bashir. In her skeleton argument, Ms. Allsop had submitted that the contemporaneous documents, including the file notes of phone conversations, demonstrated that Mr. Bashir's evidence was untruthful, and indeed that he had committed a further contempt by deliberately placing false evidence before the court in support of the present application. This submission was principally directed to the Respondents' evidence that they were not aware of the orders of Moulder J. and the orders of Butcher J. until 12 February 2020. However, the skeleton recognised that the court need not and may not be willing to make a finding of falsity at this stage. Accordingly, she submitted that the court could and should reject Mr Bashir's evidence on the basis there is no real substance in it and/or it is inherently improbable because it is contradicted by the contemporaneous documents. In effect, the court should take the approach the court would adopt on a summary judgment application, as summarised in paragraph 24.2.3 of the White Book. In her oral submission, she said that it was for the Respondents to satisfy the court that it was appropriate to make the orders that they sought. Whilst factual questions were to be resolved on the balance of probabilities, the court's approach should be to disregard evidence (as it would on a summary judgment application) which was of no real substance or inherently improbable.

71. On behalf of the Respondents, Mr. Thomas submitted that the court should, particularly in the context of an application concerned with committal proceedings, exercise great care and caution before rejecting factual evidence submitted in support of the application by Mr. Bashir. On the critical question of whether the relevant information had come to the attention of the Respondents prior to 12 February, the court could only disregard this evidence if satisfied 'so that it is sure' that the material came to the attention of the Respondents. In his closing submission, Mr. Thomas indicated that there was no real difference between his approach and that for which Ms. Allsop was contending: i.e. the balance of probabilities as qualified by the summary judgment threshold. If the evidence were indeed implausible to the point where it could be disregarded, then the court would be sufficiently 'sure' so as to meet the test for which he contended.

72. In my view, the starting point is that it is for the Respondents to satisfy the court that it is appropriate to set aside orders previously been made by the court. The application to set aside Moulder J's order is made long after 7 day period commencing with the date when the order was served, and Mr. Thomas accepted that this meant that he needed to show 'exceptional circumstances' which warranted an extension of time. In relation to the application to set aside the orders of Butcher J., it is again for the Respondents to demonstrate to the satisfaction of the court that the requirements of CPR 39.3 (5) are satisfied.

73. In so far as the arguments in relation to these applications rely upon factual assertions contained in evidence submitted by the Respondents, it is now common ground that the court is not bound automatically to accept such assertion, and that they can be disregarded if the court considers that there is no real substance to them, as may be the case if they are clearly contradicted by contemporaneous documents. I approach the evidence on that basis.

The application to set aside Moulder J's order

74. I consider that there is no basis for extending time for setting aside the order of Moulder J, let alone for setting it aside. That order permitted service using various e-mail addresses that had either been set out in the original CMA, or which had been used in correspondence which had taken place subsequent to 1 August when the court's first order (of Robin Knowles J.) was made, or both.

75. Furthermore, most of the e-mail addresses had been identified in the order of Robin Knowles J., in circumstances where no difficulties in relation to any of the e-mail addresses were identified at the time. As described above, Mr. Awosika was on the scene, acting for Rahamaniyya, within a few days of this order being made, and no point was taken in relation to the use of e-mail addresses in the order. Nor was there then any challenge to the order of 1 August. Where an original order provides for service in a particular manner, there can be no realistic complaint if subsequent orders for committal provide for the same manner of service: see *Al-Baker v Al-Baker* [2015] EWHC 3229 (Fam). This is particularly so where, as here: there has been no challenge to the original order, and where (as described in above) the evidence shows that the order was sent by e-mail and came to the attention of both Rahamaniyya and its lawyer via that route.

76. Furthermore, Moulder J's order properly and appropriately permitted service on Mr. Awosika, whose initial e-mail had made it clear that he was acting for Rahamaniyya in response to the order made by Robin Knowles J. Prior to the 7 November order, Mr. Awosika had himself used the relevant e-mail addresses when sending or copying e-mails to all of the Respondents.

77. The evidence which existed prior to 7 November 2019, when Moulder J's order was made, therefore showed that the court's order of 7 November, and the relevant documents in support of the committal application, would come to the attention of the relevant Respondents.

78. In my view, the evidence summarised in Section B above shows clearly that this is indeed what happened. Following service of the committal documents, there was a period at the end of November and early December when there was anxious and ultimately an urgent attempt, on the part of Rahamaniyya and Mr. Bashir, assisted by Mr. Awosika, to reach agreement in order to defer the committal proceedings due to be heard on 6 December 2019. It is accepted by Mr. Bashir that he was aware of these proceedings, as indeed he is bound to do, because they are referred to in the Settlement Agreement which he himself signed.

79. There is in my view no real substance to his evidence that he only became aware of the proceedings as a result of Mr. Lakin 'mentioning' them in the course of one of the conversations. Nor is there any real substance in his evidence that at 'no time did Mr. Awosika inform me that there was a pending committal application or a service order made by the English court until on or about 12 February 2020'. The 'without prejudice' conversation that took place on 27 November 2019, and the subsequent without prejudice e-mail sent by Mr. Awosika on 29 November 2019, can only have been the result of a discussion between Mr. Awosika and Mr. Bashir which related to and encompassed the committal application due to be heard shortly thereafter. In order for such discussion to take place, the committal documents must have been received to the knowledge of both participants. The only way in which this could have happened was because e-mail service was effective, since the documents had not been sent physically.

80. These conclusions are reinforced when considering the evidence relating to the period from 27 November – 6 December as a whole. That evidence, both the e-mail correspondence and Mr. Lakin's account of the conversations, shows Mr. Awosika communicating with Mr. Lakin with a degree of intensity in the week or so prior to 6 December, and keeping both Mr. Bashir and Mr. Aderemi informed by copying them into the e-mails. The clear picture is one of concern on the part of Mr. Bashir, and therefore Rahamaniyya, at the prospect of the forthcoming hearing, and an anxiety to avoid it if possible. This culminated in the signed settlement agreement, which references the committal proceedings in both the preamble and the contractual provisions. It is in my view wholly implausible that the subject of the committal proceedings was not the subject of discussion between Mr. Awosika and Mr. Bashir. Mr. Awosika could not otherwise have acted as he did in relation to the negotiation and conclusion of the settlement agreement, since he would need to take instructions from his client in order to put forward the offers that he made and to work on the agreement itself. It is equally implausible that Mr. Bashir could have had sensible discussions with his lawyer in relation to the settlement, without Mr. Bashir having seen the committal documents.

81. Since Mr. Bashir and Rahamaniyya were fully aware of the committal proceedings, I cannot see that it would make any difference even if they were not aware of the order of Moulder J. which permitted service of documents by e-mail. The purpose of that order was to bring the committal proceedings to the rapid attention of the Respondents. That purpose was accomplished, certainly in relation to Rahamaniyya (for whom Mr. Awosika said that he was acting) and Mr. Bashir, who participated in some of the calls and from whom Mr. Awosika was clearly taking instructions. In that regard, Mr. Bashir accepts that not only was Mr. Awosika his personal lawyer, but that he was instructed in relation to the settlement agreement.

82. Furthermore, it seems to me that the Settlement Agreement in itself is a decisive factor against the present application in relation to Moulder J's order, certainly as far as Rahamaniyya and Mr. Bashir are concerned. Clause 7 of that agreement, which was signed by Mr. Bashir, expressly permitted Sahara to proceed with the committal hearing in the event of non-payment. If the application to set aside Moulder J's order were successful, this would have the effect of negating the agreement reached. Having expressly agreed that the committal proceedings could continue, neither Rahamaniyya nor its signatory Mr. Bashir can now advance an argument that there was, in some way, inadequate service of the original committal papers.

83. I also consider that there is no real substance to the evidence that any of the Respondents were unaware of the terms of Moulder J's order. The order was itself sent to numerous e-mail addresses without (on Mr. Lakin's evidence) any bounce-backs being received. The relevant e-mail addresses were themselves used by Mr. Awosika to communicate with the Respondents. In addition to the evidence of Mr. Awosika using the relevant addresses to send e-mails to all of the Respondents, there is also evidence of the two e-mails being sent on 2 October 2019 from Mr. Aderemi's yahoo account to Mr. Awosika. This happened to be the wrong Mr. Awosika. But the episode does show that Mr. Aderemi's yahoo account was receiving e-mails at the relevant time, and that the recipient understood that it was important to forward e-mails related to the English proceedings to Rahamaniyya's Nigerian lawyers. Given that these e-mails were sent from Mr. Aderemi's account, it is inherently probable that they were sent by Mr. Aderemi himself. Mr. Aderemi's speculation that someone else must have sent it can in my view be disregarded as having no substance, in the absence of evidence as to the existence of any other individual who had access to Mr. Aderemi's yahoo account and who would have known sufficient about the English proceedings to know that documents needed to be forwarded to Mr. Awosika.

Application to set aside the orders of Butcher J.

84. In order for the application to succeed, each of the requirements in CPR 39.3 (5) needs to be fulfilled.

85. I start with 39.3 (5) (b), namely whether each of the Respondents had a good reason for not attending the committal hearing. The only substantial reason advanced is the Respondents' alleged lack of awareness of the hearings. For essentially the same reasons already given, I consider that there is no substance in the Respondents' evidence that they did not receive the e-mail communications which related to the fixing of the hearings and the service of documents relating to those hearings; i.e. those which took place in January and February 2020 before Butcher J. Indeed, there

are three additional points which in my view make the Respondents' argument unsustainable.

86. First, Mr. Bashir's evidence as to alleged problems with the rahamaniyya.com e-mail system does not assist in relation to notice of the January and February hearings and service of the materials relating to those hearings. Mr. Bashir's evidence in his second witness statement (see paragraph 8 (iv)) is that repairs were carried out resulting in an invoice dated 15 December 2019. The relevant notices and other materials were served subsequent to that time.

87. Secondly, the Settlement Agreement is again significant. Mr. Bashir and Rahamaniyya knew, from clause 7, that the committal proceedings would likely be "urgently" re-listed in the event of default under its terms. If (contrary to my view) there was any real substance in their argument that they did not know that it had been refixed, I consider that they should have taken steps to find out from their lawyer or Stephenson Harwood whether this had happened. The background was that they knew that the committal hearing on 6 December had only been averted at the last minute as a result of the settlement agreement reached, and that they knew that there had been a default in payment with the consequence set out in Clause 7.3.

88. Thirdly, it is apparent from Mr. Lakin's evidence as to the conversation on 22 January 2020 that Mr. Awosika and Mr. Bashir both knew of the result of the hearing that had taken place earlier that day, and that a subsequent hearing to determine punishment would shortly take place.

89. These conclusions are sufficient to dispose of the application under CPR 39.3. However, I also determine that application in favour of Sahara because I do not consider the evidence to be sufficient to demonstrate that any of the Respondents acted promptly when they found out that the court had made the orders in January and February. Even if I were to accept that they only became aware of the orders on 12 February, there was in my view a material delay thereafter. No documentation has been provided to support the argument that there were bottlenecks in obtaining permissions to remit funds to the UK. Nor has any detail been provided as to any difficulties in identifying legal advisers in England. Nor can any difficulties caused by Covid-19 explain the delay, bearing in mind that such difficulties would not have arisen before mid to late March at the earliest and in any event it is possible to give instructions to overseas lawyers remotely, as is what has actually happened in this case.

90. As far as Mr. Bashir's illness is concerned, the position is that this was not identified as a cause of any problem in Mr. Bashir's first witness statement. But in any event, I do not see that it can excuse the delay which occurred. The doctor may have advised bed rest, but the contemporary correspondence shows that Mr. Bashir was nevertheless attending to his business affairs after November, including in relation to the discussion and conclusion of the settlement agreement in late November/ early December. Furthermore, the bed rest period finished at the end of February 2020, and there was still a significant delay thereafter in making the present application.

91. I should add that I do not consider that Mr. Bashir's alleged illness provides a good reason for not attending the committal hearing or subsequent sentence. Had Mr. Bashir wished to attend in person, then he could and should have identified to Sahara

and the court any medical issues which prevented his attendance, and if appropriate sought an adjournment supported by up-to-date medical evidence.

92. In the light of these conclusions, I accept Ms. Allsop's submission that the evidence shows that the Respondents ignored or turned a blind eye to the committal proceedings until a belated change of attitude. There was in my view, a reasonable opportunity for each of the Respondents to present their case, but for no good reason they declined to participate in the committal proceedings.

93. Various arguments were addressed as to whether the Respondents had a reasonable prospect of success in relation to the merits of the case for committal or in relation to the punishment imposed. I did not consider any of those arguments to have any significant force, but in view of my earlier conclusions it is not necessary to address those arguments in detail.

94. The Respondents' application is therefore dismissed.