

Mubarak v Mubarik

Jurisdiction:	Jersey
Judge:	The Bailiff
Judgment Date:	13 June 2008
Neutral Citation:	[2008] JRC 95A
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Text

[2008] JRC 95A

ROYAL COURT

(Samedi Division)

Before:

Sir Philip Bailhache, **Kt.**, Bailiff(**sitting alone**).

In the Matter of the Trusts (Jersey) Law 1984, as Amended

And in the Matter of the Imk Trust

Between
Aaliya Mubarak
Representor
and
(1) Iqbal Mubarik
(2) The Craven Trust Company Limited

(3) Salem Mubarak and Noor Mubarak
(4) Osman Mubarak and Hamza Mubarak (the minor and unascertained beneficiaries)
Respondents

Advocate C. G. P. Lakeman for the Representor.

Advocate A. P. Begg for the First Respondent.

Authorities

Re Barker [1987-88] JLR N6A .

White Book.

The Bailiff

- 1 It is clear and it has been conceded by Mr Begg on behalf of the husband that the order of the English Court to pay a lump sum and periodic maintenance for the benefit of the wife has not been complied with. It is very difficult in those circumstances, particularly as this matter has been dragging on for years and nothing has been paid to the wife since May 2004, to exercise any discretion in favour of the husband. On the other hand, the Court is bound by the rules and by a duty to show procedural fairness to the husband notwithstanding his failure to behave fairly towards the wife.
- 2 Mr Begg has drawn my attention to the Judgment of this Court in *Re Barker* [1987-88] JLR N6A and to the White Book at page 19 - 1355, under the heading "Abridging Time". I am satisfied that there were, and are grounds for abridging time for the hearing of this summons, in that proceedings are taking place next week in Bermuda and in Hong Kong, and the Judgment of this Court of 17th April, 2008, and the sequels to that Judgment, are of interest in the Courts of those other jurisdictions.
- 3 Nevertheless, I must ensure that there is no injustice to the husband. Mr Lakeman for the wife has drawn my attention to a letter dated 29th May, 2008, from Hughes Fowler Carruthers acting for the husband in the context of the Hong Kong proceedings. That letter included the following paragraph:-

" Mr Mubarik had hoped that a reasoned judgment would be delivered in the near future but given the delay he has decided that he has no option but to file a "holding" notice of appeal in the near future and apply for a stay of the order pending any appeal. We expect to be in a position to file these documents within the next few days, or at the very least, [I interpose that must mean "latest"] at the beginning of next week."

That being so, there seems to me to be no injustice to the husband in requiring that the

notice of appeal be lodged within 2 days from the date of this order.

- 4 Counsel for the wife has sought a number of other orders in relation to the request that the notice of appeal be filed within that period of time. I am not minded to accede to all those submissions, in particular in relation to security for costs, because it seems to me that this matter is better dealt with by the Deputy Bailiff whose Judgment is awaited. Nonetheless there seems to be no reason why a further order should not be made in relation to the periodic or maintenance payments where it has been conceded that there are arrears and that nothing has been paid since May 2004.
- 5 I will therefore make the order in the following terms: Paragraph 12 of the Act of this Court dated 17th April, 2008, shall be varied:-
 - (a) so that any notice of appeal by the First Respondent, [i.e. the husband], must be lodged within 2 days of the date of this order;
 - (b) leave to amend any such notice is reserved to a single Judge of the Court of Appeal;
 - (c) no such leave for amendment shall be allowed unless the provisions of the following paragraph (d) are met;
 - (d) no such leave for amendment shall be allowed unless the arrears of periodic or maintenance payments due to the wife [the Representor] have been paid and arrangements put in place for payment at the due time of the sum of £14,733 per month pursuant to the order of Mr Justice Bodey.
- 6 I further order that no stay in whole or in part be granted until the orders for payment of the periodic or maintenance payments have been complied with, and/or further order of the Royal Court or Court of Appeal.
- 7 I also order that the First Respondent [the husband] shall provide evidence by affidavit of the source of any funds paid in accordance with this order, with documentary evidence in support, showing the transfer of funds to the First Respondent [the husband or his lawyers].
- 8 So far as security for costs are concerned I adjourn consideration of that part of this summons to the Deputy Bailiff when judgment is handed down.
- 9 I also order that the Receivers be directed to continue to take all steps described in the order at 17th April, 2008 and as further directed by the Court on 28th May, 2008.
- 10 It seems to me that costs must follow the event and I order the husband to pay the costs of the wife on the standard basis.

