

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

Family Division

2024/FAM/div/00117

B E T W E E N:

J.G.N.L

Petitioner

V

E.E.L. (Nee M)

Respondent

Before: The Honourable Madam Justice C.V. Hope Strachan,
Justice of The Supreme Court of The Commonwealth of The Bahamas

Appearances: Mrs. Marylee Braynen – Symonette for the Applicant
Ms. Cyd Ferguson for the Respondent

Hearing Date: 4th December 2024

Family Law – Divorce – Matrimonial Causes Act – Use of The English Civil Procedure Rules in Divorce proceedings - urgent application for order for maintenance pending suit – Interim order - modification of order for maintenance pending suit – objection in limine - has there been a contempt of court – is there entitlement to a Hadkinson order

RULING

Introduction

[1] The present application was begun by Summons filed by the Petitioner (“the Husband”) on 28th May 2024 seeking a modification Order (“the modification application”) pursuant to Rule 44 of the Matrimonial Causes Rules, Ch. 125 (“the MCR”) and/ or the inherent jurisdiction of the Court modifying the Interim Order made herein on 16th April 2024 (“the said order”). Prior to filing his Summons, the Husband filed an Affidavit in support of the modification application together with the Affidavit of his parents, G.Y.L. and J.L. on 24th May 2024.

[2] The Respondent (“the Wife”) in reply to the modification application filed an Affidavit on 19th August, 2024 together with the Affidavits of her parents, B.C. M. and S.M. The modification application was scheduled to be heard on 23rd January, 2025.

[3] On 21st January, 2025 two (2) days before the scheduled hearing date, the Wife filed a Notice of Application (Notice of Preliminary Objection) to the modification application. The grounds of which were:

- i. The Respondent filed a Notice of Application for Ancillary Relief on 5th April 2024, supported by an Affidavit of the Respondent filed the same day.
- ii. The Petitioner, who was represented by McKay, Culmer and Associates filed an Affidavit in Response on 15th April, 2024.
- iii. An inter parties Order was made on 16th April, 2024 (hereinafter referred to as the “Maintenance Pending Suit Order.”)
- iv. The Maintenance Pending Suit Order, to date has not been complied with.
- v. To date, the Petitioner has not complied with Paragraph three (3) of the Maintenance Pending Suit Order and has not returned the items belonging to the Respondent, the Respondent’s mother and the minor child.
- vi. The Petitioner is therefore in contempt and prohibited from bringing an application before this court before purging his contempt.

The Claimants seek an Order in the following terms:

- a.) The Petitioner’s Summons is hereby dismissed and/or stayed until the Petitioner has purged his contempt.
- b.) The Petitioner shall pay to the Respondent Costs, to be assessed if not agreed.

[4] It is notable that the modification application overtook a Notice of Application filed by the Wife on 29th July, 2024 with a Certificate of Urgency filed even date, wherein the Wife claimed that the Husband was in breach of the said court order and sought:

- a. The immediate payment of maintenance owing to the Wife and the minor child in the sum of \$9,868.00
 - b. That the Husband immediately return the belongings of the Wife and the minor child.
 - c. The Husband pay Costs to the Wife to be fixed by the Court, if not agreed.
- It appears that this application through some clerical inadvertence did not get a hearing date prior to the Husband’s application for modification.

This decision is the determination of the objection taken to the modification application.

Background

[5] The Husband and the Wife were married on 22nd May 2021. The marriage produced one child namely A.J.E.L a female born on 18th October 2023. (“the child”). The Husband filed his Petition on 18th March 2024 on the ground that since the celebration of the marriage the Wife has treated him with cruelty. It should be noted, at this stage, that the hearing of the divorce has not commenced. Prior to being served with the Husband’s Petition, the Wife entered an appearance in the matter by filing a Memorandum of Appearance on 5th April 2024. On the same date, the Wife filed a notice of application for Ancillary Relief in which she sought an Order for maintenance pending suit (MPS), pursuant to s. 26 of the Matrimonial Causes Act, Ch. 125 (“the MCA”). The maintenance pending suit was heard before my sister, *Madam Justice Simone Fitzcharles*, on 16th April 2024, as emergency judge on duty, on a Certificate of Urgency application filed on 8th April 2024. As a result, an Interim Order was granted. The relevant parts of the Interim Order are indicated below:

- i) The [Husband] shall pay maintenance to the [Wife] for herself and the infant child in the amount of \$3,467.00 per month on or before the 19th day of April, A.D., 2024 and on the 19th of every month thereafter until further Order.
- ii) The [Husband] is to return to the [Wife] the Honda CRV, licence plate number AM6878 that was confiscated on the 4th April, 2024 for the [Wife’s] use on or before 19th April, 2024.
- iii) The [Husband] shall arrange for the transfer and delivery of the belongings of the [Wife] and the belongings of the infant child, inclusive of a queen bedroom furniture set which is comprised of a queen bed, nightstand and wardrobe, from the matrimonial home to the [Wife’s] home on or before 30th April, 2024.”

[6] Both the Husband and the Wife have filed comprehensive Affidavits to support their positions on the application. However, in many instances those Affidavits are replete with information that is irrelevant to the present application. Therefore, I will refer only to the extracts considered pertinent to this court’s determination.

The Husband’s Evidence

[7] The Summons filed on 28th May 2024 is supported by the Affidavit of the Petitioner filed on 24th May 2024. The Affidavit states:

- i) I am the Petitioner named herein and I depose hereto from my personal knowledge where otherwise stated from my information and belief.

ii) I make this Affidavit in support of my application that the Interim Order made herein on 18th April, 2024 be modified. I am informed by my attorney and verily believe that as at the date of my sustaining this Affidavit, the said interim order has not yet been served on me.

iii) On 18th March 2024 I filed my Petition herein for a Decree of Divorce from The Respondent on the ground of her cruelty towards me.

iv) Prior to the service of my Petition on the Respondent, the Respondent on or about 8th April, 2024 filed a Certificate of Urgency in this Honourable Court seeking inter alia maintenance pending suit.

v) The Respondent's application was heard by the Honourable *Justice Fitzcharles* on 18th April, 2024, when the Interim Order was made *inter alia* that, (or to the effect that) I pay to the Respondent the monthly sum of \$3,467.00 for herself and our then, six (6 months old daughter who is now seven (7) months old; and that I deliver to the Respondent her belongings, "*inclusive of a queen bedroom furniture set*".

vi) I was served with the Respondent's application and supporting Affidavit about (5) working days prior to the fixture hearing. Notwithstanding, I did not have sufficient time to provide the Honourable Court with a full picture of my financial position. I did the best I could in the circumstances by attending to average my income.

vii) On a monthly basis my average basic financial needs and obligations totaling \$4,623.00 exceed my average monthly income of \$3,830.57 by some \$792.43. I have not included in my list of financial obligations my monthly Health Insurance premiums of \$1,504.00 as my parents have graciously agreed to continue to pay the monthly premiums as I simply do not have the means to do so.

viii) When we moved into my parents' home, it was fully furnished and all of the furniture, save for Amiyah's crib etc., belonged solely to my parents, including the "Queen bedroom set" that the Learned Judge ordered me to deliver to the Respondent.

ix) That I am categorically unable to comply with the Order relative to the Queen bedroom set as the same does not belong to the Respondent nor I, but beneficially to my parents. As such, I verily believe that I cannot legally be expected by this Honourable Court to take property that does not belong to me, either beneficially or at all, to deliver and/ or transfer to the Respondent on an interim basis or at all.

x) I have informed my parents of the Interim Order relative to the bedroom set, however, my parents have expressed their unwillingness to relinquish their bedroom set to me for the purposes of delivering the same to the Respondent or at all.

xi) In fact my parents have informed me that I have until the end of the year to secure my own accommodation as they do not wish to have their asset exposed and/or factored into these divorce proceedings or at all.

xii) I am suffering extreme anxiety, distress, and fear as I am informed by my attorney and verily believe that notwithstanding the impossibility of the Interim Order, unless I comply with it's terms or this Honourable Court modifies the Order, I am liable to imprisonment.

xiii) That I am willing to discharge my moral and legal financial obligation to my infant daughter, however, I can only do so within my own means and not of my semi-retired parents.

xiv) I verily believe that unless this Honourable Court modifies the Interim Order, to enable me to legally comply with the terms thereof, the Respondent will unreasonably seek to have me imprisoned despite my inability to legally obey the Order.

xv) That I make this Affidavit in support of my application for an Order modifying the Interim Order as follows:-

- a) I pay to the Respondent the monthly sum of \$800.00 towards the maintenance of Amiyah on the 1st day of each month until further ordered;
- b) The term of the Order relative to the "queen bedroom furniture set" to be discharged;
- c) I do have reasonable staying access to my daughter.

The Wife's Evidence

[8] The wife filed three Affidavits. The first Affidavit was filed on 5th April 2024 in support of an application for maintenance pending suit. The second Affidavit was filed on 29th July 2024 in support of an urgent notice of application for the enforcement of the Interim Order made on 16th April 2024. The third Affidavit was filed on 19th August 2024 in response to the Affidavit of the Petitioner filed on 24th May, 2024 and provides the relevant information for this present application. The relevant parts of the wife's third Affidavit are outlined below:

- i. I am the Respondent named herein
- ii. I make this Affidavit in response to the Affidavit of the Petitioner filed herein on the 24th May 2024 (the Petitioner's Modification Affidavit)... for a modification of the Interim Order made herein on the 18th of April 2024.
- iii. The Petitioner has intentionally ignored the Interim Maintenance Pending Suit Order and directions made on the 18th of April, 2024. To date, the Petitioner

has made 14 payments totaling \$4,900.00 for maintenance of our daughter, A.J.E.L. born the 18th day of October, A.D., 2023. As of 14th August, 2024, the Petitioner owes \$8,968.00. Copies of the receipt of payment(s) are now produced, shown to me, and marked “Exhibit EML-1”.

- iv. The Petitioner’s actions which resulted in me leaving the matrimonial home, has left my daughter and I financially strained. As the primary caregiver for our daughter A, and a soon-to-be single mother, I sought employment. I am currently on probation as a Skin Therapist at Dermalogica Skin Centre. My salary is \$2,233.17 per month. My probationary period is for the next six (6) months, which commenced on the 1st of June 2024. My monthly expenses amount to \$5,235.00, which my salary does not fully cover, and which I will expand on in this affidavit in response. I get paid once per month and have received two (2) paychecks since starting this role. These are reflected in my bank statements previously exhibited.

The Issues

- [9] Whether the Husbands’ application for modification of the order of 18th April, 2024 should be dismissed or stayed (Hadkinson order) on the basis that the Husband is in contempt of Court.

Wife’s Submissions made through her counsel, summarized;

[10] The Wife objects to the application for modification on the grounds that the Husband has willfully failed to comply with the order made on 16th April 2024. She contends that in the circumstances the Husband as a contemnor cannot bring a fresh application before the court before purging his contempt.

[11] The Wife’s counsel in reliance on **William Lamar Chester et al v Darby Shores Ltd. et al 2023/CLE/gen/00670** where the Honourable *Madam Senior Justice Deborah Fraser* stated that the court had a duty to ensure that its orders are obeyed and should not entertain any applications by persons who are in contempt. Her Ladyship based her exposé on the seminal case of **Hadkinson v Hadkinson [1952] P.285** where the court expounded the following:

“It is the plain and unqualified obligation of every person against or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”

[12] **Hadkinson** also illustrates the consequences which flow in instances where orders are disobeyed and persons are found to be in contempt; they “may be punished with committal or

attachment or otherwise and no application would be entertained by the court where persons are in contempt.”

[13] Counsel also made the point that while the contempt is not a bar to being heard, because the Court does have a discretion. But where the contempt “impedes the course of justice” the court may exercise the discretion to refuse the contemnor an audience; “**Hadkinson**” supra.

[14] The Wife’s Counsel also called in aid Part 1 of the Supreme Court (Civil Procedure) Rules (CPR) and the overriding objective in dealing with cases justly and fairly underscoring the powers provided in Part 51 of the CPR to commit contemnors to prison.

[15] She made the point that there has been no appeal of the said order.

[16] Finally, the Wife’s Counsel asks the court to dismiss and/or stay the Husband’s application to vary the Maintenance Pending Suit Order until the Husband’s contempt is purged.

Husband’s Submissions made through his counsel

[17] The Husband contends, that the premise upon which the Wife has based her objection is misconceived. The reason being that there has been no finding by the court that the Husband has willfully neglected to comply with the said Court order and is therefore in contempt. Moreover counsel submitted that there is no application before the court for a **Hadkinson** order. They contend that in the circumstances, the grant of a “**Hadkinson**” order is beyond the court’s jurisdiction.

[18] There needs to be an application, by way of Summons and Affidavit or something of that nature or a clear indication that a hearing to determine that the alleged contemnor was adjudged to be such by a court of competent jurisdiction. The Husband’s counsel made the point that this was clearly illustrated in the case of **David Munoz v Brenna Marie Smith** SCCivApp & Cais No. 170 of 2019, where *Milton Evans JA* made the point succinctly;

“In our view, it was unfortunate that *Justice Bowe-Darville* took the position to find that the appellant was in contempt of *Justice Newton’s* order. Number 1, there was no application, filed no summons nor affidavit nor anything of that nature, nor is there any clear indication that there was a hearing and a specific finding before arriving at that position.”

[19] Counsel points out that the Wife’s case is not supported by the **William Lamar Chester** case supra, as unlike in this case a formal case for the respondent to be found in contempt was before the court and this was apparent when *Fraser J* said:

“The court must determine whether or not the first and second Defendants are in contempt of Court.”

[20] Counsel also makes the case that even if the Wife had applied for a **Hadkinson** order she would not have succeeded in obtaining one given that such orders are made where the disobedience impedes the course of justice. Per Lord Denning in **Hadkinson** stated;

“It is a step which a court will only take when the contempt itself impedes the course of justice and there is no other effective means of securing his compliance.”

[21] Counsel suggests further that the court would be hard pressed to find the Husband in contempt where he was ordered to pay his whole salary over to the Wife and consequently it would be untenable to issue a **Hadkinson** order in the circumstances.

[22] The Husband’s counsel emphasized further the nature and intent of a **Hadkinson** order as pronounced in **Assoun v Assoun** [2017] EWCA Civ 21 “Such an order is draconian in its effect because it goes directly to the litigant’s right of access to a court. It is not and should not be commonplace. As developed in case law, it is case law, it is a case management order of last resort in substantive proceedings (for example for a financial remedy order) where a litigant is in willful contempt rather than a species of penalty or remedy in committal proceedings for contempt.”

[23] Counsel offered several cases illustrative of circumstances which justified the issuance of a **Hadkinson** order; **Mubarik v Mubarik** [2004] 2 FLR 932 and in **C.v C. (Appeal: Hadkinson Order** [2011] 1 FLR 434; The court laid down criteria for that case which are pertinent for the present application;

“When considering the Hadkinson criteria, I bear in mind the draconian nature of the Hadkinson order. That the power must be exercised judicially, sparingly and proportionately.

Turning then to the elements in respect of which the court needs to be satisfied before making a Hadkinson order:.....

(a) That the Husband is in contempt

In summary, therefore the Husband in the present case has not to use the phrase adopted by the Court of Appeal in Charman, simply been a “hard-nosed “litigator but rather has shown a pattern of willful disregard of High Court orders both before the making of the final order and in respect of the final order.” [Emphasis mine].

[24] Counsel reiterated that a **Hadkinson** order is not appropriate in circumstances such as this, where on the substantive hearing, the court might substantially remit arrears as in **Laing v Laing** [2007] 2 FLR 199;

“That said it is apparent that this is an unusual application. It should not be taken as a green light for similar applications in cases where it is by no means clear that the defaulting Husband has ready means to pay where there may well be substantial remission of arrears when the final hearing takes place. In such a case the judge would indeed be being asked effectively and inappropriately, to decide in advance issues properly to be examined in depth at the final hearing. For the reasons I have explained that was not so in this case; in which the circumstances of the default and the availability of resources from which to pay were clearly apparent, and the district judge was in a position readily to deal with the elements as to which he had to be satisfied for the purposes of applying the principles enunciated and explained in Mubarak.”

[25] In answer to the Wife’s contention that the Husband has failed to appeal the order, that an appeal was the appropriate application that the Husband should have made, the Husband’s counsel says that S. 35 of the Matrimonial Causes Act vests in the Court unfettered jurisdiction to vary and/or discharge the said order.

The Law

[26] Legislation referred to in this ruling are the Matrimonial Causes Act Chapter 125 (MCA), and the Matrimonial Causes Rule (MCR), Statute Laws of The Commonwealth of the Bahamas, The Supreme Court Civil Procedure Rules of the Commonwealth of The Bahamas (CPR), and The English Rules of the Supreme Court; (ERSC)

Analysis and Discussion

[27] Deliberate or intentional disobedience to the judgments, orders or other processes of the court, may result in contempt of court, from which serious consequences might flow. This means that serious consequences, possibly will, may perhaps or may well flow from intentional disobedience. Even if the Court were to consider the Husband here to be in contempt of Court,(which is doubtful for reasons discussed below), there is no general rule that a contemnor cannot bring a fresh application before the court, for his own benefit, before purging his contempt. “The approach which the court should adopt was to ask whether, in the circumstances of an individual case, the interests of justice, would be best served by hearing the party in contempt or by refusing to do so.” **Raja v van Hoogstraten** [2004] EWCA Civ 968, [2004] 4 All ER 793, [2004] All ER (D) 363 (Jul). [Emphasis Mine]

[28] One of the circumstances alluded to by the Husband is that the order required him to pay over his entire salary to the Wife and I am of the view that this creates a circumstance where the interests of justice might best be served by hearing him. The Wife would be hard pressed to have him declared a contemnor.

[29] I believe there is merit in what was submitted by the Husband's counsel that there has been no finding by the court that the Husband has willfully neglected to comply and is therefore in contempt. There are strict rules involved in proceedings which seek to have a party to proceedings declared a contemnor and to enforce the order that has been disobeyed. Firstly, the court will be concerned to ensure that the order has been properly served on the Husband see S. 58(1) and (2) Matrimonial Causes Rules, Ch. 125, (MCA):

s. 58(1) In default of payment to any person of any sum of money at the time appointed by any order of the court for the payment thereof, a writ of fieri facias, sequestration, or elegit shall be sealed and issued as of course out of the Registry upon affidavit of service of the order and of non-payment.

s. 58(2) A decree or order requiring a person to do an act thereby ordered shall state the time within which the act is to be done, and the copy to be served upon the person required to obey the same **shall be endorsed with a notice in accordance with Form 19** and shall be served personally on that person (the original decree or order or a copy issued by the court being produced to him at the time of service) or shall be delivered to his attorney. [Emphasis mine]

[30] A review of the said order illustrates that no Penal Notice conforming with Form 19 or at all was endorsed on the order. The failure to do so begs the question as to whether the Wife is entitled to claim the Husband's disobedience to the order as the provisions in the law as stated does not allow the Wife a discretion whether or not the penal notice should have been endorsed on the order or not.

[31] There are instances where a penal notice may not be indorsed upon an order of the court which does not require a person either to do an act within a specified time or to abstain from doing a specified act, because the order is not one which is enforceable by committal: **Re P (Minors) (Custody Order: Penal Notice)** [1990] 1 WLR 613, [1990] 2 FLR 223, CA; However that is clearly not applicable in the case.

[32] Secondly the court will look for evidence that contempt proceedings to have the alleged perpetrator declared a contemnor is present. The MCA and MCR are silent as to the mode and method of this procedure and The Supreme Court Civil Procedure Rules 2022 do not apply: S. 2(4) – These Rules shall not apply to:

- (a) -
- (b) – family proceedings except proceedings under the Child Protection Act (Ch. 132)
- (c) –
- (d) –
- (e) -

[33] S. 68 MCA allows the utilization of the Rules of the Supreme Court of England (“the English Rules) which provides:

“Subject to the provisions of these Rules and of any enactment, the Rules of The Supreme Court of England shall notwithstanding the provisions of rule 1(3) of Order 1 thereof, apply with the necessary modifications to the practice and procedure in any case or matter to which these Rules apply.”

[34] The Rules of the Supreme Court of England, are presently the Civil Procedure Rules, 1998 more particularly Part 81 (ECPR Pt. 81) which outlines specific requirements of a contempt application and, once adhered to, makes the nature of the application plain and obvious. Under ECPR a hearing must be conducted where a person is ordered to provide information to enforce a judgment or order. The hearing takes place before a judge, the judgment creditor or his representative must attend court and conduct the questioning. The standard questions will not be used for such a hearing and the existence of which points to the conclusion that contempt proceedings have been undertaken. Some of the standard questions to be asked on a contempt application are listed hereunder and while this is not an exhaustive list those questions which suit our jurisdiction include those pursuant to Part 81 (2) ECPR as follows;

S. 81 (2)

(1) Unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation.

- (a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court) ;
- (b) the date and terms of any order allegedly breached or disobeyed;
- (c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;
- (d) if the court dispensed with personal service, the terms and date of the court’s order dispensing with personal service;
- (e) whether a penal notice had been added to the front of any order allegedly breached or disobeyed;
- (f) that the defendant has the right to be legally represented in the contempt proceedings;
- (g) –
- (h) –
- (i) -
- (j) that the defendant is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test;
- that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant, but that the court may draw adverse inferences if this right is exercised;
- (k)
- (l)
- (m)

- (n)
- (o) that the court may proceed in the defendant's absence if they do not attend but (whether or not they attend) will only find the defendant in contempt if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;
- (p) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine, imprisonment, confiscation of assets or other punishment under the law;
- (q) that if the defendant admits the contempt and wishes to apologise to the court, that is likely to reduce the seriousness of any punishment by the court;
- (r) that the court's findings will be provided in writing as soon as practicable after the hearing; and
- (s) that the court will sit in public, unless and to the extent that the court orders otherwise, and that its findings will be made public.

[35] While the Wife's Affidavit made reference to several of the requisite statements she made no application to the court to have the Husband declared a contemnor. The ambit of the enquiry embodied in the questions in the ECPR to my mind assists the court in answering Two (2) critical questions which need to be answered if the applicant is seeking to have the opposing party adjudged a contemnor; (i) Is the alleged contemnor actually in breach? and (ii) Does the alleged contemnor have the means to pay? If there has been no opportunity for these issues to be adjudicated such finding is beyond the realm of fairness or justice for the alleged contemnor.

[36] Contempt proceedings are the last resort where other means of doing justice between the parties have failed: **Danchevsky v Danchevsky** [1975] Fam 17, [1974] 3 All ER 934, CA. Throughout the proceedings neither the Husband nor the Wife indicated that there had been negotiations towards otherwise settling or resolving the matter. I am cognizant of the fact that the Wife is desirous of this court declaring the Husband a contemnor absent an application in conformity with the rules. It would seem that it would be in keeping with **Danchevsky** that the Husband should be heard on his application for the modification might provide other means of doing justice between the parties.

[37] In the **William Lamar Chester et al v Darby Shores Ltd. et al** 2023/CLE/gen/00670_case. *Fraser J* did not stray from the settled position in law that the Court has a duty to ensure that its' orders are obeyed and should not entertain any applications by parties who are in contempt. I am not at variance with the position at all. She referred to, as I do now, **Hadkinson v Hadkinson** [1952] P 285

“Applying this principle, I am of the opinion that the fact that a party to a cause has disobeyed an Order of the Court, is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the Court to ascertain the truth or to

enforce the Orders which it may make, then the Court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.” [Emphasis mine]

[38] Expressed another way it is Fundamental to the court arriving at a decision to issue a **Hadkinson** order that “The court must determine whether or not theDefendants are in contempt of Court.” *Fraser J.* in **William Lamar Chester** supra.

[39] The request for a **Hadkinson** order at this hearing must then suffer the same fate as that in **David Munoz** supra. To put it succinctly: one is not entitled to a **Hadkinson** order if one did not apply for it; There is “no summons nor affidavit nor anything of that nature, nor is there any clear indication that there was a hearing and a specific finding before arriving at that position.” Counsel’s submission that there is no application before the court for a **Hadkinson** order to be issued is well grounded in authority. [Emphasis mine]

[40] I am also hard pressed to attribute to the Husband the callous disregard for the orders of the Court as was demonstrated in **Mubarik v Mubarik** [2003] 2 FLR 932, where *Bodey J* found that the Husband had sought to mislead the court, told lies, grossly understated his assets and overstated his liabilities and had been prepared to go to great lengths in an attempt to thwart the Wife’s just claims.....’ He set out the egregious nature of the contemptuous behaviour which led to the issuance of a **Hadkinson** order;

“ I accept that a number of propositions concerning the Husband’s behaviour are justified, namely :1) that he conspired with Mr. Wani and others to present to the court a fraudulent account of his affairs in order to minimize his exposure to his Wife and thus pervert the course of justice; 2) that in order to go about this dishonest litigation strategy he had been willing to incur over 80,000.00 in legal costs;...7) that between September 1999 and 29 November 1999, he and Mr. Wani caused jewelry having an auction value of 3.5 million to be removed from the U.K., and that he has consistently refused to bring any of that jewelry back into this country, there, it is said, demonstrating his prepared ness to engage in tactics with a view to frustrating his Wife’s claims....”

[41] A pattern of willful disregard as opposed to just being a hard-nosed litigator justifies the making of a **Hadkinson** order. As a corollary the court laid down the criteria to be used emphasizing that a **Hadkinson** order was draconian in nature and that the power to issue must be exercised judicially, sparingly and proportionately. Bearing in mind that the Husband’s complaint is that his entire salary was ordered to be paid to the Wife and also that he was ordered to transfer to the Wife furniture, particularly a bedroom set that really belonged to his parents, the question arises as to whether the order/orders are capable of performance or enforcement. This is not a case where the party is well able to comply but, knowingly chooses not to do so as in **Laing v Laing** supra [Emphasis mine]

[42] **Laing** has also demonstrated that in situations where the factual circumstances lead to the possibility of a substantial remission of arrears at the substantive hearing the issuance of **Hadkinson** order may well be inappropriate. This could in fact be the case for the Husband. Moreover, even in circumstances where the court has determined that the husband is defiant the exercise must be taken further to determine the level of defiance;

Per *Bain J A v. E* Supreme Court Suit No.: FAM/div 0037;

In **Laing v. Laing** 2005 EWHR 3152 the Court considered the meaning of the contumacious and stated - "In the Hadkinson context, I do not regard the word "contumacious" as a useful addition or supplement to the threshold requirement that the contempt should be willful in the sense of a voluntary, deliberate, knowing (and continuing) breach, by a person well able to comply with the order if he or she chose to do so. Once that threshold is established, then, in deciding whether and to what extent to fetter the right of the applicant to proceed with an application for variation or relief by imposition of conditions, it will be relevant for the Court to take into account the level of defiance displayed, as well as Its effects, without resort to the problems of definition presented by use of the epithet "contumacious" neglects to pay the same."

[43] I do not agree with the Wife's submission that the appropriate forum for the Husband to address his grievance with this interim order made pursuant to a MPS urgent application. This court is empowered to entertain any application for and to vary any order previously made under the provisions of the MCA. Reference should be had to s.35 of the act:

Where the court has made an order to which this section applies, then, subject to the provisions of this section, the court shall have power to vary or discharge or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This section applies to the following orders, that is to say —

(a) any order for maintenance pending suit and any interim order for maintenance;

(b) any periodical payments order;

(c) -

(d) -

(e) -

[44] I am satisfied that the Husband's application is made appropriately. The Wife has failed to persuade this court that she is entitled to a **Hadkinson** order.

[45] Notwithstanding that the overriding objective as defined in the CPR is not applicable to these proceedings, "fairness" has nonetheless played the central role in these deliberations.

[46] **CONCLUSION:**

1. There has been no finding of fact that the Husband has willfully failed to obey the Order made on 16th April, 2024 and is in contempt of court.
2. The preliminary objections taken by the Wife, are overruled.
3. The court refuses the application by the Wife for issuance of a “**Hadkinson**” order.
4. The Husband is entitled to be heard on the fresh application brought to this court for modification of that order made on 16th April, 2024 for Maintenance Pending Suit.
5. Costs of the application are awarded to the husband, and having considered both Counsels submissions in this regard those costs shall be in the sum of Eight Thousand Five Hundred Dollars (\$8,500.00)

Dated the 14th day of March, A.D., 2025



The Honourable Madam Justice C.V. Hope Strachan
Justice of the Supreme Court of The Commonwealth of The Bahamas