



Marete & another v JM (A minor suing through a next friend/mother SMA) & another (Civil Appeal E009 & E010 of 2023 (Consolidated)) [2023] KEHC 21232 (KLR) (28 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E009 & E010 OF 2023 (CONSOLIDATED)**

**WM MUSYOKA, J
JULY 28, 2023**

BETWEEN

ELIAS MARETE 1ST APPELLANT

MASAVA AMBANI MARTIN 2ND APPELLANT

AND

JM (A MINOR SUING THROUGH A NEXT FRIEND/MOTHER SMA) RESPONDENT

**AS CONSOLIDATED WITH
CIVIL APPEAL E010 OF 2023**

BETWEEN

ELIAS MARETE 1ST APPELLANT

MASAVA AMBANI MARTIN 2ND APPELLANT

AND

SMA RESPONDENT

RULING

- I will start by stating that the causes herein are described as “civil appeal.” However, no appeals have been filed herein. No memoranda of appeal have been lodged herein, to commence the appeals. The proceedings were initiated by Motions, in both causes, dated June 12, 2023, seeking stay of execution of judgments delivered on December 7, 2022, in Busia CMCCC Nos E005 and E006 of 2022.



2. It was directed, on June 20, 2023, that the Motions be disposed of by way of written submissions. Both sides have filed written submissions. I have read through the same, and noted the arguments made.
3. The 2 substantive Motions are for stay of execution pending hearing and determination of presumed appeals. The Motions are premised on the existence of the appeals. No appeals have been filed herein. The Motions themselves do not seek leave to file appeal, seeing that the impugned judgments were delivered on December 7, 2022, and no appeals appear to have had been filed against them, as at June 13, 2023, when the Motions were lodged herein.
4. The Motions, dated June 12, 2023, by their very wording or language, are intended to be interlocutory, rather than originating. They are meant or supposed to ride on the back of another pre-existing or pending process, appeals in this case. Interlocutory applications are only legitimate if the principal pleading on which they ride on is in existence. Where no such pleading exists, they cannot stand, and are, therefore, rendered incompetent.
5. The presumption here is that there are appeals, and the Motions are meant to be interlocutory applications within the appeals. It transpires that no such appeals exist, rendering the Motions deficient. There could have been some respite, if the Motions sought leave to appeal out of time, which would have then rendered the Motions originating, rather than interlocutory, and interlocutory stay orders would have been feasible in the circumstances. However, the Motions do not pray for leave to appeal out of time. They are, therefore, not originating in that sense. They cannot, therefore, provide a foundation or platform for grant of the interlocutory orders sought.
6. There can be no merit in Motions that are misconceived and not properly founded. The same are for dismissal, and I hereby dismiss them, with costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 28TH DAY OF JULY 2023

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Ms. Bett, instructed by Millimo Muthomi & Company, Advocates for the appellants.

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the respondents.

