



REPUBLIC OF KENYA



**MMM v LNN (Civil Appeal 049 of 2020)
[2022] KEHC 9830 (KLR) (Family) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 9830 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL 049 OF 2020
AO MUCHELULE, J
JUNE 30, 2022**

BETWEEN

MMM APPLICANT

AND

LNN RESPONDENT

(Being an appeal from the Ruling of Chief Magistrates Court at Nairobi delivered by Hon. G.N. Opakasi (Ms) SRM on 22nd September 2020 in Children's Cause No. 490 of 2020)

RULING

1. From the sworn affidavit of the applicant MMM dated November 5, 2021, he has been caught up with arrears following the orders in the ruling delivered on September 22, 2020 by the Children Court at Milimani. In the ruling he was ordered to cater for the their children's school fees and school related expenses; he was to pay Kshs.40,000/= per month for the children's rent; and the medical cover was to be shared on 50%:50% basis between him and LNN (the respondent) who is the mother of the children. He is the father. These orders were interim and they were to remain in place until the children's cause was heard and determined. The couple is separated.
2. When the applicant fell into arrears a warrant of arrest was issued against him. He has a date with the Children Court. He fears that he may get jailed. Court orders are made to be obeyed, and if the applicant is for, whatever reason, not able to meet the orders made, he has to return to the Court under section 99 of the Children Act seeking the review of the orders, or whatever other accommodation.
3. The applicant was aggrieved by the orders and filed an appeal to this court to have them set aside. In the application that he subsequently filed in the appeal he asked for the stay of the orders. This was to await the hearing and determination of the appeal. The application for stay was served but did not receive any response.



4. The applicant has to show under Order 42 rule 6(2) of the *Civil Procedure Rules* that he will suffer substantial loss if stay is not granted. There is no dispute that the application for stay was brought about one year following the impugned ruling. The appeal was filed on time and there was no explanation why it took about one year to make the application. Secondly, there was no offer to pay such security for the due performance of the decree that may ultimately be binding upon the applicant. The applicant stated that given his net salary of Kshs.14,659/= (gross being Kshs.69,488/=) he was not able to pay the ordered Kshs.40,000/= monthly towards the rent for the children. He asked the court to consider that parental responsibility is the equal obligation of the spouses. The record shows that the trial court was alive to the financial means of the parties where it made the interim orders. But more important, there is no indication as to what will happen to the children's rent, and therefore their constitutional and statutory right to shelter, if the court were to suspend the payment by the applicant.
5. I have considered all these matters to be able to conclude that it would not be in the best interests of the children to allow the application. The same is therefore declined.
6. The application was not defended. I make no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE 2022

A.O. MUCHELULE

JUDGE

