



REPUBLIC OF KENYA



JNK v HWN (Civil Appeal E079 of 2021) [2022] KEHC 12695 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEHC 12695 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E079 OF 2021
MM KASANGO, J
JUNE 23, 2022

BETWEEN

JNK APPELLANT

AND

HWN RESPONDENT

(An appeal against the Ruling and Order of the Senior Principal Magistrate's court at Limuru (C.N. Mugo, SRM) delivered on 20th April, 2021)

RULING

1. This appeal is directed at Limuru, SPM Magistrate's Court's decision in children's case No. 30 of 2020. The appellant (father of the children) is aggrieved by the order requiring him to produce monthly maintenance for the children of the marriage at Kshs.15,000/= per month. The father depend in the affidavit in support and in his supplementary affidavit that he has continued to pay for the education of the children. That his business has faired badly due to COVID 19 pandemic and he is unable to meet the amount ordered by the trial court. The father was sought by Notice of Motion application dated 7th May, stay of that order of maintenance pending the hearing and determination of this appeal.
2. The mother of the children, the respondent in the appeal deponed in her affidavit in response to the application that the father had defaulted in the payment of the maintenance and as at September, 2021 was in arrears of Kshs.75,000.
3. Although the father seeks stay on the basis that he is unable to pay the amount ordered by the trial court, he did not before this Court, nor in the trial court provide an affidavit of means. When I say there was no affidavit of means, I mean that it ought to be more than casual statements of the father that the rental income is so much and the income of transport is so much. One would expect such deposition to be supported by documents. None were provided by the father.
4. Article 53 of *the Constitution* requires the court to treat the best interest of the child as of paramount importance in every matter concerning the child. The father has failed to show how the stay of



maintenance will be in the best interest of the children of the family. In this regard, see the case of *MNN V. MOK & another* (2017) eKLR thus:-

“...it is in very rare cases that courts grant stay of maintenance orders in cases involving minor children, where the duty to maintain a child is imposed on a parent by statute, as it is not in the best interests of the child to suspend a maintenance order particularly where parentage is not in dispute and that an expedited hearing of the main appeal might be a solution where there is a challenge on quantum of maintenance rather than staying the orders of the trial court pending appeal.

5. With the above in mind and because no material has been placed before court by the appellant to persuade the court stay order is in the interest of the children, the application is declined.

Disposition

6. The Notice of Motion dated 7th May, 2021 for reasons set above are dismissed with costs. I direct this being a children’s matter that this appeal be heard expeditiously.

RULING DATED AND DELIVERED AT KIAMBU THIS 23RD DAY OF JUNE, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For Appellant: - Ms Njoroge

For Respondent :- Present in person

Ruling delivered virtually.

MARY KASANGO

JUDGE

