



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CIVIL APPEAL NO.3 OF 2020.**

**SKN.....APPLICANT/APPELLANT**

**VERSUS**

**GMM.....RESPONDENT**

**RULING**

1. The applicants Notice of Motion dated **2<sup>nd</sup> July 2020** prays that there be stay of execution against him pending the determination of this application and thereafter the main appeal. The applicant prays also that he be allowed to continue paying the monthly maintenance fee of Kshs 10,000 per month, medical cover and provide entry into the shelter he co-owns with the respondent.
2. The application is supported by the affidavit of the applicant sworn on the even date as well as the grounds thereof.
3. The applicant and the respondent are husband and wife and have been battling at the Children's Court over the maintenance of their two children. The trial court ordered the applicant to pay a monthly maintenance sum of Kshs. 45,000 pending the hearing and determination of the suit. The applicant being aggrieved has filled this application seeking the above orders as the respondent is intending to execute.
4. The respondent through her replying affidavit dated **11<sup>th</sup> September 2020** has vehemently opposed the application arguing that the same is an abuse of the court process and is only meant to frustrate her and the children. She accused the applicant of failing to honour the court orders and meeting the basic requirements ordered by the trial court.
5. She went on to state that the applicant is a person of means and the amount of Kshs45,000 ordered by the court was not too much in the circumstances considering that the respondent is jobless and is only surviving through relatives and other well-wishers.
6. The parties were then directed to file their written submissions which they have complied and the court has gone through the same and does not intend to reproduce them here.
7. The court is alive to the fact that the main suit at the lower court is pending and the appeal herein is based on a ruling. The court is also alive to the provisions of **Article 53 (1) of the Constitution** dealing with the rights of the child which are essentially paramount.
8. **Section 90 of the Children's Act** grants the responsibility of taking care of the child to both parents. In essence the courts must always weigh the two so as not to burden one parent against the other.
9. What then on the interim basis is suitable position in this matter? The essential rights of the child are of course food, clothing's, shelter, medical as well as educational. In this matter the applicant does not deny that he has the responsibility of providing the above rights. He has acknowledged that he shall provide medical, education and shelter. The latter shall be in the house in which he co owns with the respondent.
10. That being the case what seems to remain contentious is the regular and monthly upkeep for the said children. The trial court which in this case had a better perspective of the matter ordered the applicant to pay a monthly sum of Kshs. 45,000. There was no evidence of what the respondent was to shoulder.
11. The applicant has argued that that amount is too much considering his other needs and the fact that he had provided other necessities stated above. He prayed that he be allowed to pay the sum of Kshs. 10,000 monthly.
12. This court taking into consideration the circumstances herein as well as the fact that the substantive appeal is still pending for determination is of the considered view that the respondent must also hustle and provide for the family. Although she left employment or retrenched she must find something to do to bring bread to the table just like any other responsible parent.
13. At the same time the amount of Kshs. 10,000 proposed by the applicant is too low in my view. The applicant although he may have had

issues with the respondent must nevertheless consider that his children must enjoy the maximum attention and care especially in their formative stages. Obviously the cost of living has never come down and from the little facts gleaned from this proceeding the parties have brought up the said children in a fairly comfortable environment.

14. In the premises the court concludes that pending the determination of the appeal herein;

**(a) The applicant shall meet the children's costs of education and medical expenses the latter whether through his employer or his own private arrangements.**

**(b) The applicant shall provide reasonable housing to the respondent and the children whether through the house he co-owns with the respondent and or alternative house to be agreed on by the parties.**

**(c) The applicant shall pay to the respondent a monthly sum of Kshs. 20,000 which shall meet the costs of food and other daily upkeep for the subjects. In the event that there were any arrears from August 2020 when the trial court made its interim orders the applicant shall be required to pay the same as well as the above instalments which shall take effect from 1<sup>st</sup> of March 2021 and on every 1<sup>st</sup> day of the subsequent months.**

**(d) In default of any of the above orders the respondent shall be at liberty to execute.**

**(e) Costs in the cause.**

**Dated signed and delivered electronically at Nakuru this 25<sup>th</sup> day of February 2021.**

**H. K. CHEMITEI**

**JUDGE**