



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**FAMILY DIVISION**  
**CIVIL APPEAL NO. 18 OF 2020**

**HASSAN RAJAB ALLI.....APPELLANT/APPLICANT**

**VERSUS**

**ZAINAB OMAR GANAMO.....DEFENDANT/RESPONDENT**

**RULING**

Hassan Rajab Ali who is the Applicant herein has moved this court in a Notice of Motion dated 5<sup>th</sup> March 2020 seeking seven (7) orders:

- 1. THAT this Application be certified urgent and be heard ex parte in the first instance.**
- 2. THAT the Honourable Court be pleased to order stay of execution of the Decree of the Kadhi's Misc. Application No. 8 f 2016 dated 8<sup>th</sup> January 2020 at Nairobi and the Ruling and orders made on 12<sup>th</sup> February 2020 and 26<sup>th</sup> February 2020 by Hon. T. W. Karanja Resident Kadhi pending hearing and determination of this Application.**
- 3. THAT the Honourable Court be pleased to order stay of execution of the Decree of the Kadhi's Misc. Application No. 8 f 2016 dated 8<sup>th</sup> January 2020 at Nairobi and the Ruling and orders made on 12<sup>th</sup> February 2020 and 26<sup>th</sup> February 2020 by Hon. T. W. Karanja Resident Kadhi pending hearing and determination of the intended Appeal.**
- 4. THAT the Honourable Court be pleased to lift the travel restriction orders that were issued against the Applicant on 26<sup>th</sup> February 2020 barring him from leaving the jurisdiction of this court.**
- 5. THAT this Honourable Court be pleased to adopt the payment structure as indicated in details in the affidavit of one Hassan Rajab Ali and further allow the Applicant to travel to his country of origin as scheduled in his return flight date.**
- 6. THAT the costs incidental to this Application be provided.**
- 7. THAT the Honourable Court be pleased to issue such further orders it deems just and convenient in the circumstances of this case.**

In his brief submissions made orally to the court while conducting a virtual hearing, Mr. Obwogi, learned counsel holding brief for Mr. Hibo for the Applicant, told the court that preventing the Applicant to travel is not in the best interest of the child because the Applicant needs to return to work in order to earn take care of the child. He also said there is a payment structure on record which he asked the court to adopt. He asked the court to lift the restriction of the travel order issued against the Applicant and order costs of this Application to be paid to the Applicant.

I have considered this application. I have also read the Memorandum of the intended appeal. To succeed in an application for stay of execution an applicant who claims to be aggrieved by the orders sought to be stayed must meet certain parameters, namely:

- i. That the applicant must demonstrate that he will suffer substantial loss if the application for stay is not granted.
- ii. That his appeal is arguable, is not frivolous and has chances of success and that if not granted stay of execution his appeal would be rendered nugatory.

iii. The application must be brought without unreasonable delay and that there must be sufficient cause to seek stay of execution.

The Applicant has not demonstrated substantial loss if stay is not granted. He has argued that he needs to have the travel restriction lifted so that he could travel and earn a living. He has not provided evidence to show where he works and how the travel restriction will amount to substantial loss. Besides, this issue is better argued during the canvassing of the Appeal because handling it at this stage will be prejudicial to the Respondent. Further handling the issue of adopting the payment structure at this stage is to interfere with the intended appeal. I bear in mind the best interest of the child and it is my view that it would be prejudicial to the best interest of the child if this court were to grant the orders the orders lifting the travel ban and interfering with the payment structure.

Having considered the brief oral submissions, the grounds in support of the application found on the face of it and int the supporting affidavit it is my finding that the Applicant has not satisfied the requirements of the law to benefit from orders of this court staying the lower court orders. The Applicant has not satisfied this court that he will suffer substantial loss. It is my view and I so find that failing to grant stay of execution will not render the intended appeal nugatory. This application fails. I hereby dismiss the same with no order to costs. The Applicant is at liberty to pursue the intended Appeal. Orders shall issue accordingly.

**Dated, signed and delivered this 17<sup>th</sup> day of December 2020.**

**S. N. MUTUKU**

**JUDGE**