



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**KIAMBU H.C. CIVIL APPEAL NO.3 OF 2019**

**(Arising From the Thika Children's Case No.191 of 2018)**

**JNK.....APPLICANT**

**VERSUS**

**JWM.....RESPONDENT**

**RULING**

It is clear from the submission made that the custody of the subject is currently with the Applicant. He has had the custody of the subject since November 2016. The Applicant is aggrieved by the decision of the Children's Court directing that he surrenders custody of the subject to the Respondent. This court is aware of its primary mandate in determining any issue concerning the welfare of a child: It is the best interest of the child that should be of paramount consideration to the court. That is not to say that the rights that accrue to parents by virtue of their status should be overlooked. This court is of the view that the issues raised by the Applicant in this application are weighty and require the full hearing of the application. In the interim, status quo in respect of the custody of the subject should be maintained. The concerns raised by the Respondent shall be addressed in the orders that shall be made in the Ruling.

In the premises therefore, this court issues the following orders:

- (I) There shall be a stay of proceedings of **Thika Children's Court Case No.191 of 2018** pending the hearing and determination of the application for stay of the said court's orders on 25<sup>th</sup> February 2019.
- (II) The custody of the subject shall remain with the Applicant pending further orders of this court.
- (III) The Children's Officer, Thika shall be allowed access to the child and to the home where the child resides so that a report can be prepared regarding how the child is being taken care of. The report shall be submitted to the court by 25<sup>th</sup> February 2019.
- (III) The Respondent shall have supervised access to the child on every Saturday beginning 2<sup>nd</sup> February 2019 at a place that shall be agreed between the Advocates for the Applicant and the Respondent. The access shall be for three (3) hours from 11.00 a.m. to 2.00 p.m. until further orders of the court.
- (IV) The parties shall be at liberty to apply.

**DATED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY 2019**

**L. KIMARU**

**JUDGE**