



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**DIVORCE CAUSE NO. 178 Of 2014**

**ADC.....APPLICANT**

**VERSUS**

**DPN.....RESPONDENT**

**RULING**

1. A party who is aggrieved by the orders of this court and seeks leave to challenge them on appeal has to be allowed to do so, more so when he has made the request timeously. I consequently allow the applicant 7 days leave to file the appeal at the Court of Appeal and to serve.
2. As for the stay of the orders sought to be challenged, I consider that the appeal has not been filed. Secondly, the orders in question relate to the upkeep and maintenance of the children in this cause. The unpaid amount by the applicant is in excess of Kshs.9,000,000/=. It followed agreement which the applicant has not honored. The obligation was monthly, and is a continuing one.
3. Under **Article 53(2)** of the **Constitution** and **Section 4(3)** of the **Children Act**, the Court has to safeguard and promote the rights and welfare of the children. The court has to bear in mind that the best interest of the children is of paramount importance. The provision of the children's upkeep and maintenance is the applicant's statutory and constitutional responsibility which the court cannot adjourn by way of a stay order.
4. In conclusion, I allow application for leave to appeal, but decline the request for stay of the court orders pending the appeal.
5. The applicant has been indulged. He will pay the costs of the application.

**DATED and DELIVERED at Nairobi this 29<sup>TH</sup> day of APRIL 2019**

**A.O. MUCHELULE**

**JUDGE**