

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

CIVIL APPEAL NO. 71 OF 2019

HAM.....APPELLANT

VERSUS

SOS.....RESPONDENT

RULING

1. The application before me is dated 26th June 2019. It seeks time to enlargement of time within which an appeal and for stay of the orders by the trial court to have the Appellant maintain minors of a union between him and the Respondent to a tune of Kshs.40,000/= a month. The orders subject of the appeal made on the 26th of April 2019.
2. The application is opposed on grounds that despite there being no order of stay, the Respondent has failed to pay maintenance and remains in contempt.
3. It is a right for an applicant to appeal against any decision to the highest level of court permissible in law. I will therefore enlarge the time which an appeal may be lodged to 14 from today's date.
4. I however decline to grant a stay of the proceedings in the lower court as the intended appeal is on a specific order which in my view has no bearing on the case in the Children's court.
5. As relates to the application of the stay of the order being appealed from, Order **42(6)(1) rules 46** is very specific, on conditions necessary before such an order can issue. The court has to be satisfied that a substantial loss will be suffered by the applicant, the application was made without unreasonable delay and security for due performance has been issued.
6. The application was brought late in the day and I do agree with the respondent that the annexures in support of the application do not support the same. Further no security for due performance was offered.
7. I also take judicial notice that though the order was made several months ago the applicant has not bothered to comply.
8. For avoidance of doubt the application succeeds only to the extend allowing the intended appeal be filed within 14 days of the date hereof.
9. Costs to the Respondent in any event.

SIGNED DATED and DELIVERED in open court this 19TH day of DECEMBER, 2019.

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ALI-ARONI

JUDGE