



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 73 OF 2018

IN THE MATTER OF DGK (MINOR)

PKW.....APPELLANT/APPLICANT

Versus

CWM.....RESPONDENT

RULING

1. The Application coming for consideration in this Ruling is the one dated 17th September 2018 seeking the following orders seeking the following orders:

(i) THAT this Application be certified urgent and be heard ex-parte at the first instance.

(ii) THAT there be a stay of execution of the Ruling of Hon. M. A. Otindo delivered on the 29th June 2018 in Milimani CC No. 340 of 2013 and all consequential orders arising there from pending the hearing and determination of this Application inter-parties.

(iii) THAT there be a stay of execution of the Ruling of Hon. M. A. Otindo delivered on the 29th June 2018 in Milimani CC No. 340 of 2013 and all consequential orders arising there from pending the hearing and determination of the appeal

(iv) THAT there be a stay of proceedings in Milimani CC No. 340 of 2013 pending the hearing and determination of this Application.

(v) THAT there be a stay of proceedings in Milimani CC No. 340 of 2013 pending the hearing and determination of the Appeal

(vi) THAT the costs of this Application be the costs in the appeal.

2. The Application is based on the following GROUNDS:

(i) THAT the Applicant has an arguable appeal with a high probability of success.

(ii) THAT if the said stay of execution is not granted the Applicant's appeal will be rendered nugatory and the applicant will suffer irreparable damage and loss.

(iii) THAT the applicant is facing eminent danger of having his assets attached or committed to Civil Jail in execution of the orders issued by the Children's Court on 29th June 2018 to his detriment.

(iv) THAT substantial loss will result to the Applicant unless the orders sought are granted.

(v) THAT its in the interest of justice that the application is allowed.

3. The Application is supported by the Affidavit of PKW the Appellant/Applicant herein in which he has deposed as follows;

(i) THAT he entered into a consent with the Respondent that part of his pension funds would be released directly to the Respondent so as to clear the outstanding arrears and the same was to be remitted directly to her bank and he said order was

adopted by the Court.

(ii) That the Respondent served the order upon the Director of Pensions and it was made clear to her that the funds would be released to her after all the necessary tax deductions of Ksh.700,000/-.

(iii) THAT the Respondent did not seek to have the funds exempted from being taxed but instead filed an application dated 6.4.2018 seeking the Court directions that the funds be released to the Applicant's bank and account then to her Account.

(iv) THAT the Applicant has paid all the arrears and the same were catered for by the Pension funds

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 19TH DAY OF DECEMBER, 2018

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI

IN THE PRESENCE OF: