

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
CIVIL APPEAL NO. 1 OF 2016

J M MAPPELLANT

VERSUS

A J RRESPONDENT

RULING

1. On the 22nd December 2015 the applicant J M M filed on notice of motion under Order 41 Rule 4, Order 50 rule 1 Section 3 A and 63 (e) of the Civil Procedure Act. The applicant seeks the following orders;

(1) That pending the hearing and determination of the application interpartes there be a temporary stay of the orders granted by the court on the 14/12/15 against the applicant therein.

(2) That pending the hearing and determination of the appeal there be a temporary stay of the orders granted by the court on the 14/12/15.

2. The application is supported by the affidavit of the applicant dated the 22/12/2015. In it he depones that a ruling was made against him in the lower court on the 14/12/15 that he pays in full the outstanding fees for his son P new school and failure of which ½ of his stay be attached. He argues that he is dissatisfied with the ruling because it failed to appreciate the fact that he has a good and arguable defense raising triable issues and that he has already commenced the process of appeal and that he is ready to give security pending the appeal and that is good grounds of appeal. That he is likely to suffer substantial loss unless the application is denied.

3. The application was opposed. The respondent filed a replying affidavit dated the 1/3/16 together with grounds of opposition dated the 5/2/16. The respondent arguments are that the application is premature misconceived, premature and speculative, that the applicant has not met the threshold of grant of stay of the orders issued, that the orders sought are not in the child's best interest and that the applicant will suffer no prejudice as the main suit is to be set down for hearing and determination by the children's court, thus the applicant has not been looked out of the judgment seat. That the applicant is merely being made to discharge his parental responsibility by payment of school fees and school. That the applicant's action have frustrated the expeditious disposal and setting claim of the main suit and yet he has neglected , refused or failed to perform his obligations as a parent. That the lower court made a ruling basing its decision on parties affidavits of means and lastly those schools have opened and the minors are in need of school fees.

4. I have considered what has been deposed and the law related to stay of execution pending appeal as provided under Order 42 rule (2) (a) and (d).The ruling in the lower court was delivered on the 14/12/15. The notice of motion was filed in this court on the 22/12/15 together with the memorandum of appeal. The application therefore was made without unreasonable delay. The applicant is required has to show the court the substantial loss he will suffer. The order the applicant seeks is a discretionary order. Has the applicant persuaded this court that he will suffer substantial loss?. He states that he is dissatisfied with the ruling and that he has good grounds of appeal and will suffer substantial loss. These are mere statements and nothing to demonstrate the loss he will suffer. He also stated that he is ready to give security but offers none. The applicant's averments in his affidavit are not persuasive at all. I note that the matter in

the lower court has not even been heard and finalized. He never went back to the lower court for a review of the orders if he felt the sum was unreasonable. I find that the application lacks merit and dismiss it with costs. It is so ordered.

Dated, signed and delivered this **15th** day of April **2016**

R. E. OUGO

JUDGE

In the presence of:

.....**Appellant**

.....**Respondent**

Charity Court Clerk