



**REPUBLIC OF KENYA**

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

**MISC. APPLICATION NO. 19 OF 2016**

**F W N.....APPLICANT**

**VERSUS**

**C K G.....RESPONDENT**

***(Being an application for leave to appeal out of time from the ruling and decree of the Senior Resident Magistrate at Milimani Children's Case No. 166 of 2015)***

**RULING**

1. The applicant's Motion is dated 10<sup>th</sup> February 2016. It is premised on sections 3A and 79G of the Civil Procedure Act and Order 51 rule 1 and Order 22 rule 22 of the Civil Procedure Rules of the Civil Procedure Rules. It seeks leave to file appeal out of time and stay of execution of an order made by the lower court on 3<sup>rd</sup> July 2015.
2. The papers filed in the matter show that a ruling was delivered on 31<sup>st</sup> July 2015 dismissing an application by the applicant which sought a deoxyribonucleic acid test to determine the paternity of the child the subject of the proceedings. The applicant states that the advocates on record for him did not inform him of the ruling. He desires to appeal against the ruling, but time has run out as he was not made aware of the order in good time.
3. I am satisfied that this is a proper case for grant of leave to file appeal out of time as the delay in filing the same has been adequately explained.
4. I have perused through the proceedings in Milimani Children's Court Case No. 166 of 2016, especially those culminating in the order sought to be appealed against, and I am not at this stage persuaded to grant stay of the maintenance order on record.
5. I allow the application to the extent of prayer 2 thereof. Memorandum of appeal shall be lodged in court within seven (7) days of the date of delivery of this ruling. There will be no order as to costs.
6. The lower court file to be returned to that court.

**DATED, SIGNED and DELIVERED at NAIROBI this 10<sup>TH</sup> DAY OF JUNE, 2016.**

**W MUSYOKA**

**JUDGE**