



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 42 OF 2014

G K.....APPELLANT

VERSUS

C C K.....RESPONDENT

RULING

1. The appellant lodged the memorandum of appeal herein on 10th June 2014. The same challenges the decision of the Nairobi Children's Court in Children's Case no. 65 of 2014 made on 29th May 2014.
2. He complains that the amount of Kshs. 30,000.00 arrived at by the lower was extremely high and beyond his means, the lower court failed to take into account the fact that he was servicing loans and meeting his own expenses, failed to consider that the respondent also had an income and did not apportion her any parental responsibilities. He seeks that the decision of the lower court be set aside, he be allowed to continue paying Kshs.10,000.00 per month as maintenance school fees, school related expenses, and medical care and to assign some parental responsibility to the respondent.
3. He filed a Notice of Motion on 13th June 2014, dated 10th June 2014, seeking that there be a stay of the orders of the lower court dated 29th May 2014 pending appeal and that he be allowed in the meantime to continue paying the sum of Kshs.10,000.00 towards maintenance of the children, school fees and related expenses and medical care.
4. The grounds upon which the application is premised are set out on the face of the application and in the affidavit of the applicant sworn on 10th June 2014. He avers that he has lodged an appeal against the order of 29th May 2014. He states that there is a real possibility that the respondent would execute the said order. He fears that such execution would render his appeal nugatory, and expose him to court irreparable loss and damage if the interim maintenance orders are not stayed.
5. He avers that the orders made on 29th May 2014 granted joint custody of the minors to the two parties, with care and control going to the respondent, but he having access on alternate weekends. He was to cater for school fees, school related expenses and medical care. He was also to pay a sum of Kshs.30,000.00 per month as maintenance of the children. He states that prior to the said order being made he was on his own volition providing school fees, school related expenses and medical care and Kshs.10,000.00 per month towards maintenance.
6. His case is that the monthly maintenance ordered by the court was on the higher side and beyond his means. It is in respect of maintenance that he has moved the appellate court. He has loans he is offsetting and his own usual monthly expenses. He puts his net monthly income at Kshs.58,000.00. He complains that the lower court has placed parental responsibility solely on him, yet the respondent is herself drawing

a salary.

7. He has attached several documents to his supporting affidavit. There is the formal order issued on 11th June 2014, extracted from the orders of the lower court made on 29th May 2014. There is a copy of the memorandum of appeal filed herein. There is also a set of the application dated 17th January 2014 complete with the rival affidavits and written submissions. It is this application that culminated in the orders of 29th May 2014. There is a letter from the respondent's advocate dated 5th June 2014 complaining that the appellant had only paid Kshs.10,000.00 instead of the Kshs.30,000.00 ordered by the court. The last document is a letter dated 30th May 2014 requesting for proceedings.

8. The respondent replied to the application through her affidavit sworn on 25th June 2014. She deposes to be unaware of the loans that the applicant alleges to have taken, stating that he has been stubborn in his refusal to furnish the court with his payslips. She puts her own monthly income at Kshs.20,689.00, which she says she spends on the children and on her needs. She has tabulated her expenses at Kshs.66,940.00 per month, which is curious given that she avers her monthly income to be Kshs.20,000.00. She has attached a copy of her payslip which indicates her gross earning per month to be Kshs.55,895.00, which reduces to Kshs.20,689.15 after deductions.

9. The appellant put in a further affidavit sworn on 26th June 2014. The same sought to correct errors made in his supporting affidavit to the Motion in terms of the earlier affidavit omitting certain annexures.

10. I directed on 3rd July 2014 that the application dated 16th June 2014 was to be disposed of by way of written submissions. Only the appellant filed his written submissions dated 22nd July 2014. In the submissions he states that the amount ordered by the court is oppressive for it will leave him with an amount that he cannot realistically live on. He offers to pay Kshs.20,000.00 instead.

11. The applicant principally seeks stay of the orders of the lower court on maintenance but purposes that he be allowed to continue paying the sum of Kshs.10,000.00 as earlier ordered by the said court pending appeal.

12. I am cognizant of the fact that this is a children's case. The best interests of the child are of paramount consideration. The lower court arrived at the sum of Kshs.30,000.00 per month after hearing both sides. I cannot consider at this stage whether the said amount is reasonable for that is what should be determined at the appeal itself.

13. I am reluctant to interfere at this stage with what the lower court arrived at after hearing both parties. The appellant ideally should strive to dispose of the appeal itself at the earliest opportunity for it is at that stage that the amount fixed by the lower court may be varied or reviewed.

14. In the end, I do not find merit in the application dated 10th June 2014. The same is hereby dismissed. There shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 23rd DAY OF January 2015.

W. MUSYOKA

JUDGE