

REPUBLIC OF KENYA

IN THE REPUBLIC OF KENYA AT NAIROBI

CIVIL APPEAL NO. 23 OF 2014

J W B.....APPELLANT

VERSUS

R N K.....RESPONDENT

RULING

1. The application dated 24th April 2014 in the main seeks stay of execution of orders made on 20th March 2014 in Nairobi Children’s Court Case No. 602 of 2013 pending the hearing and determination of “*this appeal*”.
2. I have carefully and anxiously gone through the documents filed in the matter. I have not come across a memorandum of appeal. There is nothing on record to indicate that one was filed herein.
3. A civil appeal is commenced by way of a memorandum of appeal. The memorandum of appeal is the principal pleading in such appeals. It is the court process which originates a civil appeal.
4. The law on this is Order 42 rule 1 of the Civil Procedure Rules which states as follows:-

“ (1) Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading.

(2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.”

5. By dint Order 42 rule 1(1) of the Civil Procedure Rules there cannot be a valid appeal unless there is on record a memorandum of appeal originating the appeal process.

6 As there is no memorandum of appeal on record in this matter, it is my finding and holding that there is no valid appeal in existence.

7. The Motion dated 24th April 2014, by its design and structure, is meant to be interlocutory, filed within an appeal. It is not originating for it was filed in Civil Appeal No. 23 of 2014. It is therefore not an originating motion.

8. Since there is no appeal on record, the Motion dated 24th April 2014 cannot be interlocutory. It hangs in the air. It has no ground upon which it can be anchored. Without a foundation it cannot have a life of its own. It is dead. It is therefore misconceived, in competent and abuse of the court process.

9. Owing to what I have stated above, the said Motion should suffer the fate of being struck out. I hereby strike the same out. The respondent shall have the costs.

DATED, SIGNED and DELIVERED at NAIROBI this 13th DAY OF February 2015.

W. MUSYOKA

JUDGE