

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 22 OF 2014

B K NAPPELLANT

VERSUS

J N KRESPONDENT

(Being an appeal from the decision of Hon. E. Boke (Mrs) – PM in Children’s Case No. 92 of 2013 delivered on 14th March, 2014)

RULING

1. The motion for hearing is dated 18th August 2014. It principally seeks stay of execution of all proceedings and orders of the Nairobi Children’s Court in **Children Case No. 92 of 2013** pending appeal. The application is predicated upon the grounds set out on the face of the application, as well as in the facts deposed to in the affidavit of the appellant, B K N, sworn on 18th August 2014.
2. The parties are the parents of the minor in question. The appellant contributes a sum of Kshs. 10,000.00 towards the child’s clothes and food. He states that the said amount was revised on 14th March 2014 to Kshs. 30,000.00 per month without his affidavit of means being taken into account. He states that his salary stands at Kshs. 71,000.00 per month and the sum awarded far exceeded his financial capability. He also complains that the respondent has unilaterally transferred the child to **[particulars withheld]** School where the school fees per term is Kshs. 1,000,000.00, which is way beyond his financial means. It is on this basis that he seeks stay of execution of orders and of proceedings pending appeal.
3. He has attached to his affidavit several documents. There is the order of 12th August 2013 by C.C. Ocharo, PM, where he was ordered to pay Kshs. 30,000.00 monthly interim maintenance with effect from August 2013. There is his affidavit of means sworn on 25th September 2013 which puts his monthly expenses at Kshs. 187,000.00 as against a net monthly pay of Kshs. 189,251.00. There is a bank statement for the period 15th May 2013 to 21st August 2013. Then there is the application dated 25th September 2013 which culminated in the order of 14th March 2014, where orders were made relating to custody of the child, payment of school fees and school related expenses at **[particulars withheld]** School, payment of Kshs. 30,000.00 per month for upkeep, among others. An invoice for the **[particulars withheld]** International School, Nairobi, is attached. It is dated 22nd April 2014. Tuition fee per term is put at range of Kshs. 215,306.00 to Kshs. 215,397.00. A letter from **[particulars withheld]** School where the child allegedly was previously, dated June 2013. He has attached his payslip for October 2013, where his basic pay is put as Kshs. 338,520.00 and Kshs. 192,401.30 after deductions.
4. The application was served and the respondent replied to it vide her affidavit sworn on 8th September 2014. She explains that the order of 18th September 2013 that he pays a monthly maintenance of Kshs. 30,000.00 was made after the court had heard both sides. She asserts that she shoulders the greater burden of the order – she pays half of the school fees, all the school related expenses together with rent and household expenses, while the appellant only caters for half of the school fees and the monthly interim maintenance of Kshs. 30,000.00. She states that the child has never attended **[particulars withheld]** School. She denies that school fees at **[particulars withheld]** International School is Kshs. 1,000,000.00 per term, pointing out that as

per the documents attached to his affidavit the termly fee is only Kshs. 342,285.00, translating to Kshs. 170,000.00 when split between the two of them. She also states that his monthly salary is not Kshs. 71,000.00 as claimed in his papers for the documents attached to his affidavit tell a different story.

5. The respondent has attached to her affidavit several documents. There are copies of some of the processes undertaken at the lower court. There is a receipt from *[particulars withheld]* International School, being collection of school fees for term 1 2014 where a sum of Kshs. 240,513.00 was paid, among others.
6. I directed on 25th September 2014 that the said application be disposed of by way of written submissions. Both sides have filed their respective submissions, and lists and copies of the authorities that they proposed to rely on. The applicant's submissions are dated 13th October 2014 and were filed herein on 16th October 2014, while the respondent's submissions are dated 5th November 2014 and were filed herein on 6th November 2014. Both sides summarize the facts of their respective cases, and state the law as set out in the authorities that they have placed before me.
7. I note that the orders appealed against were made at the interlocutory stage and are meant to be interim. The suit is yet to be heard and finalized. I note too that the orders were made after the court had heard both sides. They relate principally to the maintenance of the child. One concerns his schooling, while the other is on his maintenance in terms of catering for his food and clothing. The appellant urges me to interfere with those orders on the grounds that the amounts stated are way above his means.
8. I have closely perused through the documents that the parties have placed before me on the school fees payable at *[particulars withheld]* International School, as well as the appellant's monthly earnings. I get the impression that the appellant is exaggerating the school fees payable for the minor, and understating what he earns from his employment. This obviously raises questions about the appellant's credibility and honesty.
9. The orders in question were made on an interim basis. The full suit yet is still pending. The appellant still has a chance to pursue his case before the lower court comprehensively. The issues being raised in the application are also the matters to be canvassed at the full hearing of the instant appeal. A determination of the application dated 18th August 2014 would be tantamount to finally and completely disposing of the appeal herein.
10. I am being invited to stay the orders made by the lower court and the proceedings being conducted there pending appeal. The orders sought to be stayed touch on the rights of the child. There are statutory obligations in the Children Act for provision of food, clothing, health care and education to children. Stay of the orders would not in my view be in the best interests of the child, for to stay the orders pending appeal would mean that the rights of the child in question will have to be suspended until such time that the appeal herein is heard and determined. I cannot possibly grant an order of that nature.
11. My conclusion, based on the above, is that the application dated 18th August 2014 is without merit. It cannot be granted and it should suffer the fate of being dismissed, and I do hereby dismiss the same with costs. The appellant should strive to have his appeal disposed of at the earliest opportunity. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 31ST DAY OF JULY, 2015.

W. MUSYOKA

JUDGE

