



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

CIVIL APPEAL NO. 55 OF 2015

T N N.....APPELLANT/APPLICANT

VERSUS

H T.....RESPONDENT

RULING

1. Before this Court for determination is a Notice of Motion dated 23rd June, 2015 and taken out under **Order 42 Rule 6 (1), Order 51 rule 1, Order 22, rule 22, Order 10 rule 11 of the Civil Procedure Rules and Sections 3 and 3A of the Civil Procedure Act and all other enabling Provisions of the Law**. The 1st and 2nd prayers having been spent the Appellant/ Applicant now seeks Stay of Execution of the ruling, order and/or decree issued by Hon. Gichana Resident Magistrate on 4th of June 2015 pending the hearing and determination of the appeal, Nairobi HCCA No. 55 of 2015.

2. The application is premised on the grounds that Ruling in this matter was given on 4th of June 2015 and there being no stay orders on record, the Applicant is open to execution at any time. That the Applicant's appeal against the said Ruling has overwhelming chances of success. That if execution of the said ruling, decree or order is not stayed, the aforesaid appeal will be rendered nugatory thereby occasioning loss to the Applicant. That in the premise, it is only fair that there be stay of execution of the ruling, decree or order, pending the inter-parties hearing of the Appeal. Lastly, that the Applicant has moved the court timeously.

3. The application is supported by the affidavit of T N N, the Appellant/Applicant herein, sworn on even date, in which he deposes inter alia, that the Children's Court ruled on 4th June 2015 that the parental responsibility agreement dated 14th of May 2013 be reviewed to reduce the Applicant's contribution from Kshs. 85,000/- to Kshs. 75,000/- per month, to allow the Respondent make her contribution.

4. The Applicant further avers that the Court also ordered him to pay Kshs.255,000/- within seven days from the date of ruling or else an order for attachment of his salary to recover the said amount of money to issue forthwith. That being dissatisfied with the decision of the court he filed a memorandum of appeal, which appeal has overwhelming chances of Success because the Magistrate erred in law and fact by failing to carefully evaluate his evidence.

5. The Applicant contends that the parental responsibility agreement was signed on 14th of May 2013 and was to be reviewed after a year which has not been done. Further that the Magistrate did not take note of his net salary as evidenced by his affidavit of means, so that the maintenance amount imposed on him exceeds a third of his salary. That he therefore has an arguable appeal with good prospects of success and

he stands to be greatly prejudiced unless execution is stayed.

6. Opposing the application, the Respondent filed a Replying Affidavit on 10th July, 2015 and averred that the Applicant has completely abdicated his parental responsibility and has failed, neglected and/or refused to provide maintenance for the minor, unless the court intervenes. That on 26th of September 2014 the court ordered in the interim, that the Applicant do provide for the minor as per the parental responsibility agreement entered into by the parties, but the Applicant failed to obey the said court orders.

7. The Respondent asserts that the Applicant does not deserve at all, the orders being sought and in any event, he has come to court with unclean hands. That the granting of any of the orders sought by the Applicant will greatly prejudice the welfare of the minor and that the application is frivolous, sham and scandalous and is not deserving of the orders sought since the appeal has no chances of success.

8. This court having carefully considered the application, the affidavits for and against, as well as the respective oral arguments, finds that the main issue for determination is whether the Applicant has made a case to warrant the exercise of this court's discretion in his favor, by granting him the orders of stay of execution sought.

9. The Applicant filed the application herein within twenty (20) days of the impugned ruling. He therefore cannot be said to have moved with speed but, be that as it may, the orders that the Applicant seeks to stay relate to a child. In any matter concerning children, the law is quite clear that the best interests of the children is paramount. See **Section 4(3)** of the Children Act, which reads as follows:

“(3) All judicial institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration to the extent that is consistent with adopting a course of action calculated to -

(a) safeguard and promote the rights and welfare of the child;

(b) conserve and promote the welfare of the child...”

The orders made by the Children's Court, which are now impugned and which this Court has been invited to stay, were made in favor of a child and were meant to serve the interests of the said Child.

10. More importantly, the Applicant has not obeyed the said orders. Court orders have to be obeyed as soon as they are issued and it matters not whether the Applicant agrees with them or not. In ***Hadkinson vs. Hadkinson (1952) All ER 567***, the court maintained that court:

“Orders must be obeyed whether one agrees with them or not. If one does not agree with an order, then he ought to move the court to discharge the same. To blatantly ignore it and expect that the court would turn its eye away is to underestimate and belittle the purpose for which the court is set up”.

This point was emphasized in ***Kanchanben Ramniklal Shah vs. Shamit Shantilal Shah & 6 Others (2010) EKL R by Njagi, J (as he then was)*** as follows:

“A Court Order is valid and effective from the moment it is made. It is born mature and has no period of infancy, and therefore commands obedience forthwith.”

11. Therefore, it is not lost on this Court that when the Children's Court made the said orders it considered the welfare of the child and the Applicant has not established that this was not the case. What this court has been told by the Applicant is that the sum of Kshs.75,000/- ordered by the Children's Court is beyond his means. This court did not have sight of the affidavit of means referred to but it is pertinent to note that the Applicant entered into the said Parental Agreement willingly and of his own free will. Mr. Nyangito, learned Counsel for the Applicant submitted that his client was ready to contribute a sum

amount of Kshs.30,000/- per month. In my view this is too little in the circumstance.

12. The Applicant has not endeavored to make any payment, to date, to convince this Court to take him seriously. According to Mr. Mugisha learned Counsel for the Respondent, the sum of Kshs.140,000/= was obtained from the Applicant by attachment and thereafter the applicant has not paid a penny more. The court observes that it took a long period of disobedience of court orders to get the Applicant to the position he finds himself in today. The applicant is the author of his own misfortune.

13. The applicant in refusing to obey court orders has shown that he will not submit himself to the Jurisdiction of the court when it does not suit his purpose and should not now seek the protection of the court when in need. To blatantly choose to disobey orders made by a Court of competent jurisdiction is to abuse the dignity of the court, and to have no regard whatsoever for the rule of law. I call to mind the sentiments of Ibrahim J (as he then was) in **Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828**, wherein he stated as follows:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void”.

14. In view of the foregoing, this court holds that the circumstances of this case are such that it cannot exercise its jurisdiction to grant the orders sought, for to do so would not serve the best interest of the child herein. Secondly, these orders having been made by a court of competent jurisdiction, the Applicant who is aggrieved thereby must first indicate that he has endeavored to comply with them even as he moves the higher court on appeal. The conduct of the Applicant demonstrates that he does not deserve the discretion of this Court.

Accordingly, the Applicant’s application must fail, with costs.

SIGNED DATED and DELIVERED in open court this **31st day of July 2015.**

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L. A. ACHODE

JUDGE