



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 23 OF 2014

J W B APPELLANT

VERSUS

R N KRESPONDENT

*(Being an appeal from the Ruling / Order of the Principal Magistrate Hon. F. K. Munyi (M/s)
delivered on 10th March 2014 at Nairobi Children's Court Cause No. 602 of 2013)*

RULING

1. The Motion dated 24th March 2014 seeks stay of execution of the Orders made on 12th March 2014 in Nairobi Children's Court Case No. 602 of 2013 pending appeal.

2. The orders of 12th March 2014 were to the following effect:-

(a) That the appellant pays 50% of the rent payable by the respondent for the house where she resides with the subject minor;

(b) That the appellant pays Kshs. 20,000.00 for the medical care and attention of the minor, to be replenished periodically by amounts of not less than Kshs. 5,000.00; and

(c) That the appellant do contribute Kshs. 15,000.00 monthly for the minor's upkeep.

3. The appellant lodged a memorandum of appeal in this registry on 8th April 2014 against the said orders in a memorandum of appeal of even date. He complains:-

(i) That the 50% contribution to rent is unconscionable;

(ii) That there is no equitable distribution of responsibilities as between the appellant and the respondent;

(iii) That the court ought to have ordered the parties to agree on an affordable house before ordering the appellant to bear half of the rent;

(iv) That the court failed to inquire into the financial circumstances of the appellant before making the orders;

(v) Among others;

4. The grounds upon which the Motion dated 24th April 2014 is predicated are set out on the face of the application as well as in the affidavit sworn by the appellant on even date. The application is predicated on the same grounds as those set out in the memorandum of appeal.

5. The application is opposed. The respondent swore an affidavit to that effect on 15th May 2014. She essentially seeks to justify the orders of the lower court and urges this court to dismiss the application.

6. The orders made on 24th March 2014 were in respect of the welfare of the minors in question, with regard to their accommodation, medical care and monthly upkeep. It is now notorious that such orders are not available for stay. Stay of maintenance orders cannot possibly be in the best interests of the child.

7. The appellant appears to be saying that the lower court either improperly exercised discretion or followed the wrong procedure or made an error of one kind or other. These ideally are matters for consideration in an application for review or at the hearing of the appeal itself. Such matters are not for determination at the interlocutory stage of the appeal. Delving into them now would be tantamount to determining the appeal itself.

8. Having taken everything into account, I am persuaded that there is no merit in the application of 24th March 2014. I hereby dismiss the same. Costs shall be in the appeal.

DATED, SIGNED and DELIVERED at NAIROBI this 18TH DAY OF DECEMBER, 2015.

W. MUSYOKA

JUDGE