



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
FAMILY APPEAL 13 OF 2013

J G K.....APPELLANT

VERSUS

J A.....RESPONDENT

RULING

By way of a notice of motion dated 2nd April, 2013 the applicant/appellant herein seeks a stay of the judgment made by the Children Court delivered on 27th March, 2013 pending the hearing and determination of his appeal. The application for stay is opposed. The application was disposed of by way of written submissions and both parties did file in court their submissions.

I have carefully considered all the material placed before me in this matter. The decision of the Childrens Court which the applicant wishes to have stayed is the order that he pay a sum of Kshs. 4,000/= per month as maintenance as well as that he pays the child's school fees directly to the school which the child attends. The applicant has filed an appeal against this decision in which he is basically challenging the results of the DNA test which found that he was the biological father of the child.

In determining an application of this nature a court will have to consider various factors:

- The arguability of the appeal
- Whether the applicant will suffer any prejudice in the event the stay is not granted
- The best interests of the child as this is a childrens case

The trial magistrate had the benefit of receiving, hearing and analyzing the evidence from both parties. I have perused her judgment. At this point I do not wish to delve into issues which will form the basis of the appeal. It is my considered opinion that the stay sought is not merited. I therefore decline to grant a stay as sought. The present application is hereby dismissed with costs to the respondent.

Dated and delivered in Mombasa this 31st day of March, 2014.

M. ODERO

JUDGE

In the presence of:

Applicant in person

Mrs. Kipsang for Respondent

Court Clerk Mutisya