



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CIVIL APPEAL NO. 48 OF 2013**

**S A ..... APPELLANT**

**V E R S U S**

**F J C ..... RESPONDENT**

**R U L I N G**

The application dated 20.9.2013 is seeking stay of execution of orders issued in Vihiga SPMCC Children Case No. 18 of 2010. It is also seeking an order directing the Teachers Service Commission from attaching the applicant's salary as ordered by the trial court. The application is supported by the applicant's affidavit sworn on 20.9.2013. The respondent filed a replying affidavit sworn on the 20.10.2013.

The applicant's contention is that there was a case before the Vihiga Court and the court ordered for the attachment of his salary. He was not asked to call witnesses. He has another child who depends on him and for the last four months he has not had a salary. He contends in his affidavit that his net pay is KShs.9,000/= and after the deduction due to the attachment he gets a net pay of KShs.2,028/=. He has some loans which are being deducted from the pay slip. On her part he respondent contends that the applicant has already completed paying some of the loans but he has attached an old pay slip. It is stated that the applicant failed to comply with the court decree and made a similar application before the trial magistrate that was dismissed. It is the child born out of their relationship that would suffer if the orders are granted. The applicant has other children who are over 18 years and have completed their Form Four education.

The main issue for determination is whether an order of stay of execution should be granted pending the hearing of the appeal. It is agreed that the two parties have a child born out of their relationship. The court ordered attachment of part of the applicant's salary and according to the pay slip part of the salary totaling KShs.7,101/= is being deducted monthly. The applicant's total earnings are about KShs.26,000/=. There are other deductions which are meant for loan repayments. The applicant has not made any alternative proposals as to how he intends to cater for the child. Granting the orders being sought would mean that the child will go without there being funds to cater for its care. Ever since the order for attachment of the salary was made by the trial court the applicant seems not to have made any other proposals with a view to assist the child. According to the respondent the attachment order was made after the applicant failed to satisfy the court decree. I do find that the application cannot be granted at this juncture as it will be tantamount to granting the appeal.

In the end the application dated 20.9.2013 lacks merit and the same is dismissed with no orders as to costs.

Delivered, dated and signed at Kakamega this 26<sup>th</sup> day of June 2014

**SAID J. CHITEMBWE**

**J U D G E**