



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO. 66 OF 2014**

**P N K.....APPELLANT**

**-VERSUS-**

**M W K.....RESPONDENT**

**RULING**

1. The Motion dated 19<sup>th</sup> August 2014 seeks in principal stay of execution of orders that were made on 5<sup>th</sup> June 2014 and 30<sup>th</sup> June 2014 in Nairobi Children's Case Number 1113 of 2013, and also stay of proceedings in the said suit.
2. The application arises from what the appellant calls a consent judgment. He avers that the parties have a consent judgment which the lower court has failed to adopt. He seeks that the court's orders of 5<sup>th</sup> June 2014 be stayed to allow the adoption of the so called consent judgment.
3. The record of the lower court, which I have had access to after the lower court file was availed to me, shows that the ruling of 5<sup>th</sup> June 2014 was on an application dated 7<sup>th</sup> August 2013. It is a ten (10) page ruling where the court analyses the facts and the arguments placed before it before it made its final orders. Shortly after the ruling was delivered counsel for the appellant rose to state that the parties had a consent to record. The said consent had already been filed in court. As the other party was not in court nor represented, the court stood the matter over to 30<sup>th</sup> June 2014 for the purpose of the recording of the alleged consent. On 30<sup>th</sup> June 2014, the respondent, the plaintiff in the lower court, was present in court. She indicated that she was unaware of the consent and said she would have liked to proceed as per the ruling of 5<sup>th</sup> June 2014.
4. The consent that the appellant is referring to as a consent judgment is dated 5<sup>th</sup> June 2014 and is signed by counsel for the parties. It was lodged in court on 5<sup>th</sup> June 2014, that is on the day the court was to rule on the application dated 7<sup>th</sup> August 2013. The court still delivered its ruling. If the filing of the consent was designed to arrest the ruling, then no doubt the parties failed in their effort. The said consent has not been adopted by the court and it is neither a judgment nor an order. It is therefore not binding on the parties. Furthermore, the respondent went on record on 30<sup>th</sup> June 2014 as renouncing the same.
5. The appeal herein was filed on 19<sup>th</sup> August 2014. The grounds are that:-
  - (a) That the lower court erred in failing to adopt the consent dated and filed on 5<sup>th</sup> June 2014;

- (b) That the lower court erred in lifting the stayed orders staying the orders of 5<sup>th</sup> June 2014;
- (c) That the lower court erred in failing to find that the consent represented the will of the parties;  
and
- (d) That the lower court erred in failing to find that the consent dated 5<sup>th</sup> June 2014 was valid as it had been signed by counsel for both sides.

6. Is there a viable appeal? The consent dated 5<sup>th</sup> June 2014 was filed in court on 5<sup>th</sup> June 2014, on the same day that the court made its orders on the application dated 7<sup>th</sup> August 2013. After the orders were made the appellant through counsel stated that the parties had a consent they wanted the court to adopt. Unfortunately, neither the respondent nor her counsel was in court, so it was ordered that the consent be formalized in the presence of both parties. The matter was fixed for *inter parties* mention on 30<sup>th</sup> June 2014. On 30<sup>th</sup> June 2014 both parties were in court without their advocates. The defendant acknowledged the consent, but the plaintiff said she had not seen it and she was inclined to go by the ruling of 5<sup>th</sup> June 2014.

7. Going by the events of 5<sup>th</sup> June 2014 and 30<sup>th</sup> June 2014, the court cannot be said to have erred in anyway. The court could not adopt the consent dated 5<sup>th</sup> June 2014 before it was confirmed by the parties. The parties were in court in person, one of them confirmed the consent, while the other renounced in. The consent had been signed by the advocates, not the parties themselves, yet it was to bind the parties. Once the respondent renounced the consent the court had no alternative. Following the renunciation of the consent, there was no basis for letting the orders staying the orders of 5<sup>th</sup> June 2014 remains in force.

8. In view of the above, I find no merit in the application dated 19<sup>th</sup> August 2014 and I do hereby make the following orders:-

- a. That the said application dated 19<sup>th</sup> August 2014 is hereby dismissed;
- b. That the court file in Nairobi Children's Court **SRMCCC No. 1113 of 2013** shall be returned to the Children's Court registry forthwith; and
- c. That as the respondent did not reply to the application, there shall be no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 28<sup>th</sup> DAY OF November 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mr. Kimathi for Mr. Waiganjo advocate for the applicant.**