



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION, MILIMANI LAW COURTS**  
**CIVIL APPEAL NO.79 OF 2014**

J I .....APPELLANT

-VERSUS-

S K ..... RESPONDENT

**RULING**

1. The Notice of Motion before me is brought under **Section 80 and 99** of the **Children's Act No. 8 of 2001 and Order 42, rule 6** of the **Civil Procedure Rules**. It is dated 2<sup>nd</sup> October 2014 and was filed under certificate of urgency. It mainly seeks for orders that there be a stay of execution of the orders of Hon. C. A. Ocharo issued on 25<sup>th</sup> June 2013, pending the hearing and determination of the appeal therefrom. The application relies on the grounds on the face thereof and on the supporting affidavit sworn by the Applicant/Appellant on 2<sup>nd</sup> October 2014.
2. The grounds of the application are that the appeal filed herein has high chances of success and unless the orders sought are granted the Applicant/Appellant will suffer irreparable loss and damage. This is said to be so because the lower court has issued a warrant of arrest against him for failing to maintain his children and his arrest is imminent.
3. I note however, from the averments of the Applicant/Appellant in the supporting affidavit, that he has hitherto provided for the children but is now without the means to do so, due to his current state of unemployment.
4. Mr. Olonde learned counsel for the Applicant/Appellant told the court that the Respondent had been duly served. Indeed an affidavit of service was filed in court on 6<sup>th</sup> November 2014 to that effect. The Respondent did not file a response or appear in court at the hearing. Mr. Olonde submitted that one of the children has since completed his secondary school education with the support of the Applicant/Appellant and is waiting to join the University and that the Applicant/Appellant was paying school fees for the second child who is now in secondary school before he lost his job.
5. Without delving into the merits and demerits of the pending appeal therefore, I find that this application has merit and should be granted.

Reasons wherefore I order that:

1. There be a stay of execution of the orders of the lower court issued on 25<sup>th</sup> June 2014 pending the hearing and determination of Civil Appeal No. 79 of 2014 filed in court on 1<sup>st</sup> October 2014.
2. The said Appeal shall be served and listed for hearing on priority basis to safeguard the interests of the minor involved.
3. That in any case the said Appeal should be listed for hearing before the close of this term.

It is so ordered.

**SIGNED DATED and DELIVERED** in open court this **27<sup>th</sup> day of November 2014.**

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**L. A. ACHODE**

**JUDGE**