

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT FAMILY CIVIL APPEAL NO. 45 OF 2013

J M K.....APPLICANT

VERSUS

C M M.....RESPONDENT

RULING

1. The appeal herein was commenced on 5th July 2013 vide the memorandum of appeal of even date. It challenges the decision of the lower court in Nairobi Children’s Case No. 37 of 2011 made on 6th May 2013. The appellant is specifically complaining about the order requiring him to pay a sum of Kshs.15,000.00 per month, upkeep for the children the subject of the proceedings.
2. The appellant then filed an application by way of Notice of Motion dated 18th July 2013. He seeks stay of execution of the judgment with respect to the ruling on payment of Kshs.15,000.00 monthly. His argument is that parental responsibility has not been properly apportioned between him and the respondent as he is required to pay the sum of Kshs.15,000.00 in addition to meeting the expenses on school fees, related school needs and medical expenses for the children. He is also to have access to the children on almost equal basis with the respondent during which he will be catering for all their needs.
3. The respondent did not file replying papers, but her advocate presented oral arguments in opposition to the application.
4. The record of the proceedings of the lower court has been placed before me *vide* an affidavit sworn by counsel for the appellant on 4th November 2013. I have gone through the entire record. The respondent has physical custody of the two children. The lower court by its judgment of 7th June 2013 ordered the appellant to cater for school fees, school related needs and medical expenses. The respondent was tasked with house help and miscellaneous expenses. The burden borne by the respondent is no doubt more immediate. The responsibilities assigned to the appellant are occasional, for school fees and school related needs arise only at the beginning of the term – three times a year. Medical care is not an every day expense. On the other hand shelter, utilities and house help are matters to be addressed monthly. It is no doubt with this in mind that the trial court ordered the appellant to pay Kshs.15,000.00 to cater for food, clothing, entertainment and snacks. These items do not fall under shelter, utilities and house help.
5. This is a children’s matter. The child is in law entitled to support from his parents. The order to pay Kshs.15,000.00 is geared to ensuring that the children have access to food and clothing. These are basis needs. If I stay the order on payment of Kshs.15,000.00 for provision of these items, how are the children going to access food and clothing, given that the court did not assign that responsibility to the respondent.
6. Whether the figure of Kshs.15,000.00 is on the higher side and whether the amount ought to be split between the two parents is an area that I cannot venture into at this juncture, for that is the subject of the pending appeal.
7. In the end, I come to the conclusion that I have not been persuaded to stay the order on the aspect of the payment of Kshs.15,000.00 per month. Staying that order would not be in the best interests of the children. The Motion dated 18th July 2013 is hereby dismissed. There shall be no order as to costs. The interim orders granted on 22nd July 2013 are hereby discharged.

DATED, SIGNED and DELIVERED at NAIROBI this 21st DAY OF November 2014.

W. MUSYOKA

JUDGE

In the presence of Ms. Khasiani for Mrs. Mbabu advocate for the applicant.