



REPUBLIC OF KENYA

High Court at Mombasa

Civil Appeal 4 of 2013

SAMUEL PHILLIP MBURA.....APPELLANT

VERSUS

GLADYS MWASUGA.....RESPONDENT

RULING

By this chamber summons brought under certificate of urgency the appellant **SAMUEL PHILLIP MBURA** seeks the following orders:

“(c) THAT the ruling order of attachment dated (sic) and all the consequential orders and decree obtained herein on the 22nd October, 12th and 18th April, 2012 be stayed pending the hearing of the appeal.

(d) THAT the custody of the children be rested (sic) upon the appellant as they are now at an advanced age.

(e) THAT the costs of this application be provided for.”

The application was opposed by the respondent **GLADYS MWASUGA** who filed her replying affidavit on 28th January, 2013.

The application arises from the decision made by the ruling of the learned trial magistrate in Children’s Court Case No. 273/2010 dated 18th April, 2012. By that decision the trial magistrate made orders to attach one-third of the applicant’s salary and allowances to cater for the maintenance and upkeep of his children who currently live with the respondent. The applicant being dissatisfied with this decision has lodged an appeal.

On her part the respondent vehemently opposed the application. She argued that the applicant has been unwilling to make any financial provision for his children and that it is only by way of this court ordered attachment that she is able to get funds to cater for the educational and food needs of the children. Both parties who acted in person appeared and made oral submissions before me.

I have carefully considered the submissions made by each party as well as all the material before me. The applicant stated that he is ready to forfeit only Kshs. 7,000/= from his salary. The respondent on her part stated that she required about Kshs. 12,000/= to cater for the children’s needs. She has annexed copies of school fees invoices. I have looked at the copies of the applicant’s pay slip annexed to his supporting affidavit. The monthly one-third deduction from his salary amounts to Kshs. 13,641/=. The net salary which the applicant receives after all deductions amounts to only Kshs. 3,000/=. This court takes

cognizance of the standard of living in Kenya today. Kshs. 3,000/= is well below the minimum statutory wage set at Kshs. 7,000/=. It is entirely impossible for any Kenyan to make do with only Kshs. 3,000/= per month. The order of attachment places undue hardship on the appellant. However, I must weigh against this the obligation of the applicant to provide for his children and the rights of the said children. It is clear that the applicant must have defaulted in providing for his children leading to the issuance of the order of attachment as a last resort. As such I am persuaded that without the attachment order the applicant would probably make no financial contribution to his children's maintenance.

Taking all factors into account, I decline to allow the applicant's prayer to stay the attachment order. Instead I do hereby vary the order and direct that instead of one-third, a sum of Kshs. 10,000/= be deducted from the applicant's salary each month to provide for his children's school fees and food. This sum be remitted each month to Co-operative Bank A/C No. **01109390886300** Kenyatta Avenue branch in Mombasa.

On the second prayer for custody of the children no submissions were made on this point before me. I therefore will not make any orders on custody. Each party to bear their own costs.

Dated and delivered in Mombasa this 27th day of February, 2013.

M. ODERO

JUDGE

In the presence of:
Applicant in person
Respondent in person
Court Clerk Mutisya