



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 54 OF 2013**

**M S O.....APPELLANT**

**VERSUS**

**M A O.....RESPONDENT**

**R U L I N G**

- 1). The appellant's application dated 6-8-2013 prays for stay pending appeal pursuant to the Children's Court judgment delivered on 20-6-2013. The said application is supported by the appellant's sworn affidavit dated 6-8-2013.
- 2). The substance of the said application and as argued by his counsel when submitting is that should the application not be allowed he stands to suffer irreparable harm and loss and the intended appeal rendered nugatory.
- 3). The applicant has equally prayed that pending the determination of the appeal he be allowed to continue paying to the respondent the monthly maintenance of Kshs. 3000/= as earlier ordered by the court.
- 4). The respondent has counteracted the application vide the replying affidavit sworn on 20-8-2013. She deponed that the applicant is a person of means and that he shall suffer no loss since in any case he is supporting his child as the issue of paternity was well settled through the DNA analysis.
- 5). I have carefully heard the parties counsels as well as perused the rival affidavits. The purpose of this court at this juncture is not to determine the appeal but to ensure that justice is served to both parties while the appeal is pending. I note from the judgment of the lower court that the question of the subject's paternity was settled and that currently it is the respondent who has the physical custody of the subject.
- 6). I also note from the applicant's application that he has other children, wives and orphans he is supporting.

In light of the above observation I do make the following orders:

- a. **The application is hereby allowed on condition that the appellant pays a monthly sum of Kshs. 5000/= pending the hearing and determination of the appeal.**
- b. **The appellant shall further if he has not settled pay the sum of Kshs. 12,500/=, being the cost of the DNA within the next 14 days from the date herein to the respondent.**
- c. **The costs of this application shall abide the main appeal.**

Orders accordingly.

**Dated, signed and delivered at Kisumu this 17<sup>th</sup> day of September, 2013.**

**H.K.  
JUDGE**

**CHEMITEI**