

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL APPEAL NO. 20 OF 2013

E M N.....APPELLANT/APPLICANT

VERSUS

W R N.....RESPONDENT

In the matter of S W M (Minor)

R U L I N G

The appellant/applicant herein filed an appeal and this application dated 15/4/2013. The application was heard on 28/5/2013 but the Court was not able to give a date for Ruling because the lower Court proceedings were not before the Court. Meanwhile the Court urged the appellant/applicant to comply with the order on the Children's matter even as he pursued his appeal and this application.

On 25/9/2013 it became apparent that the applicant had not complied with the order inspite of the promises. In the meantime the proceedings in the Children's case No. 1/2013 plus the lower court file have now been availed to me. I will therefore proceed to make a Ruling on the application dated 15/4/2013. The appellant/applicant was seeking stay of execution of the order issued by the Principal Magistrate on 3/04/2013 in respect of the Children's Case No. 1/2013. The gist of the grounds raised and the supporting affidavit is that he is not in a position to make those payments as he has other commitments to meet. In paragraph 5 of his affidavit he outlined his monthly expenses amounting to Shs.26,964/=.

The Respondent in her replying affidavit sworn on 30/4/2013 opposed the application saying the same was not made in good faith as the applicant had not paid any cent in respect of the Court order. She further states that the applicant is in a position to pay the money as stated in the order by the Principal Magistrate.

I have read through the affidavits and annexures by both parties. It is clear that the child who is the subject of this matter is a child with mental and physical challenges. Its also undisputed that the child needs special medical care. Both parents are responsible for the needs of this child. Its also not disputed that the respondent is the one who has custody of the child.

The parties have appeared before me severally and I have made it clear to the appellant/applicant he must obey the order of the Children's Court first even as he challenges it. He has not done so and has not been honest in the promises he has made to this Court. He is a man of means and is in a position to meet his obligations as directed by the Children's Court. He has abused the many opportunities given to him to make payments by the Court. No efforts have been made by him to obey the Court Order complained of.

My finding therefore is that he has not made out a case for this Court to stay the orders issued by the Children's Court on 3/04/2013. The application dated 15/4/2013 is therefore dismissed with costs. The order of 25/9/2013 which indicated that the application be listed for hearing within 60 days was an error as the said application had already been heard on 28/5/2013. The said order is set aside. The order for payment of Shs.10,000/= also made on 25/9/2013 if not complied with should be enforced. Following the dismissal of the application dated 15/4/2013 the applicant should now prepare his appeal for hearing.

The lower court file may be returned to the said Court for enforcement of its order of 3/04/2013.

DATED, DELIVERED AND SIGNED AT EMBU THIS 21ST DAY OF NOVEMBER, 2013.

H.I. ONG'UDI

JUDGE

In the presence of:-

Respondent

Njue CC