



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 36 OF 2013**

*(Appeal against the decision of Honourable Kadhi Shaban Issa Mohammed delivered on 3.4.2013 in Kadhi's Court at Kakamega in Divorce Cause No. 1 of 2013)*

**I A A ..... APPELLANT**

**V E R S U S**

**A M N ..... RESPONDENT**

**R U L I N G**

The appellant filed her application dated 15.7.2013 seeking to enforce an earlier order whereby the court ordered the respondent to pay KShs.7,000/= monthly as maintenance for the parties' child. Mrs. Oduyo, counsel for the applicant submitted that the respondent has not complied with that order and has been disobeying the same. Counsel further submitted that the appellant has a proper place of abode.

Mr. Abok, counsel for the respondent filed an application dated 3.7.2013 seeking stay of the execution of the orders made on 26.6.2013. Counsel submitted that a report by the District Children's officer indicate that where the appellant stays the environment is not safe for the minor. The place is still under construction. The respondent is terminally ill. Both the respondent and the appellant together with their children used to be taken care of by the respondent's mother. There are two other children who are also being taken of by the respondent's mother.

I have gone through the pleadings herein. On the 26.6.2013 I did order that the last born child who was about two years old do stay with the appellant while the other children stay with the respondent. I also ordered the respondent to pay Ksh.7,000/= monthly to the appellant. On the 11.11.2013 an application was made by the respondent contending that the last born child had died while in Garissa. The application sought to stop any burial or to exhume the body in the event that the same had been buried. It is clear to me that both the appellant and the respondent may not be in a position to take care of the children. All along the children have been under the care of their grandmother who pays the school fees for the first two children. I do hereby review my earlier orders of 26.6.2013 and direct that the last born child, **L A** be placed in the custody of the respondent's mother who should also have the custody of the other two children namely **H A** and **N A**. Pending the hearing of the appeal the children shall be in the custody of their grandmother. The order of maintenance of KShs.7,000/= monthly is hereby vacated.

***Delivered, dated and signed at Kakamega this 17<sup>th</sup> day of December 2013***

**SAID J. CHITEMBWE**

**J U D G E**