

H.H.M.....APPELLANT

VS

B.B &

N.A.....RESPONDENTS

R U L I N G

1. I have considered the Appellant's application filed on 14th October, 2011 in light of the provisions of Order 42 rule 6(1) of the Civil Procedure Rules upon which it is expressed to be brought. I have also read through the respective affidavits and written submissions.
2. The brief background to the case is that the Appellant and the 2nd Respondent are a divorced couple. They have two minor children, who have remained in the custody of the 2nd Respondent since the parents' divorce in February, 2011.
3. The subject matter of the present application are the orders made in Civil Suit No. SRMCC 14/2011 (Kilifi) awarding the custody of the minors to the latter. The court also ordered the Appellant to cater for the school fees, medical and clothing needs as well as pay a monthly sum of shs. 15,000/- for their food.
4. At the initial stage, this court granted conditional stay of execution. It appears that the appellant has continued to comply with the conditions given by this court. In this case, the welfare of the children deserves higher consideration than the precise conditions for granting stay prescribed in Order 42 rule 6(2) of the Civil Procedure Rules. In my view, the welfare of the minors may be prejudiced if the court upholds what the appellant claims is an onerous maintenance order, as he may eventually be destabilized by an execution process. At the same time, the Appellant is duty bound to make adequate provision for the upkeep of his children, who ought not to suffer because their parents have divorced.
5. Secondly, this is not the proper stage for the appellant to ask the court to reverse the custody order to his favour; that would amount to disposing of the appeal at the interlocutory stage in addition to destabilizing the minors.
6. Considering all the relevant matters, I am of the view that at this point, it is more prudent to maintain the status quo, pending the hearing and determination of the appeal.
7. In the circumstances, I order that my orders (a), (b), and (c) as made on 19th October, 2011, do remain in force pending the hearing and determination of the appeal. Costs will be in the cause.

Delivered and signed at Malindi this **23rd May, 2012** in the absence of the parties.

C. W. MEOLI
JUDGE