

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Appeal 143 of 2009

ASHA FAHIYE FARAH..... PLAINTIFF/RESPONDENT

- Versus -

HINDU SAID ALI.....DEFENDANT/APPELLANT

RULING

The applicant's application dated and filed on 17th August, 2009 came up before the Court on the same date. Learned applicant's counsel, *Mr. Mwakisha*, asked the court to certify the matter urgent, and to set it down for hearing on the basis of priority. Counsel had a second prayer, however, which, on account of its contentious nature, necessitated the reserving overnight of this ruling.

Counsel asked for a stay of orders already granted by the Court, i.e *prayer No. 2* in the substantive Notice of Motion application of 17th August, 2009, which reads:

"That this Honourable court be pleased to vary and/or set aside the order made herein on 5th August, 2009 especially as relates to the release of the child to attend school at St. Kevin Hill, Voi".

On 5th August, 2009 Lady Justice Odero made an order in the following terms:

"That there be a temporary stay of execution of the judgment and order on custody and education of the minor herein issued on 29th July, 2009 in CCT No. 145 of 2009 pending the hearing and determination of this application".

That order was made in relation to another Notice of Motion application dated 3rd August, 2009.

The applicant, by the earlier application, sought the orders which he, indeed, obtained. It is the applicant, again, who is now seeking a variation of that same order. If this Court were to accede to this request, it would be sending out confusing signals. The Court must always speak reliably, while standing on firm ground, as, out of its pronouncements, the rights of parties are spelt out, and its decisions are precedent – setting.

On this account, the applicant's second prayer cannot be allowed *ex parte* as it is sufficiently controversial to require the hearing of both parties.

It is now ordered that the applicant's Notice of Motion of 17th August, 2009 shall forthwith (and in any case, within three days of the date hereof) be served upon the respondent.

The Registry shall fix the application for hearing within five days of the date hereof.

Orders accordingly.

DATED and DELIVERED at Mombasa this 18th day of August, 2009.

J. B. OJWANG

JUDGE

Coram: Ojwang, J

Court clerk: Ibrahim

For the Applicant: Mr. Mwakisha