



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 33 of 2009**

**EDWIN MAINA ..... APPELLANT**

**versus**

**CONSOLATA MURUGI ..... RESPONDENT**

**RULING**

This application is based on an appeal which **EDWIN MAINA** has preferred to this court against a decision of the subordinate court in which A. O. A. Aminga, learned Resident Magistrate at Limuru, ordered Maina on 30/4/2009 to pay a monthly sum of Shs. 50,000/= for the maintenance, and also to meet costs of education for his three children who are currently under the custody of his estranged wife, **CONSOLATA MURUGI** ('the respondent').

Maina now seeks an order to stay the execution of the aforementioned order pending the hearing and determination of his appeal. He also prays to be allowed to pay a monthly sum of Shs. 15,000/= instead for maintenance and in addition thereto, to pay the school fees for his three children. Only one child is of school going age.

Maina who claims to have provided medical insurance for the three children and whose offer to pay Shs. 15,000/= was rejected by the respondent relies on the grounds that he stands to suffer irreparable loss should the orders which he seeks not be granted, and also that his appeal stands to be rendered nugatory.

The respondent who opposes the application is of the view that the awarded is reasonable for the children must be provided for.

In an application of this nature, the applicant must satisfy the court that he has an appeal on the record; that unless the order which he seeks is granted, he stands to suffer loss, and also that his appeal will otherwise be rendered nugatory. There is no doubt that he filed his appeal on the 8<sup>th</sup> of May, and he therefore satisfies the first condition.

I have considered his grounds and deposition as well as the contents of the replying affidavit and it is clear that he has not complied with the contentious order.

Be that as it may, I need no reiterate that the welfare of the children is paramount, and I am unable to see how providing for his children would cause him irreparable loss, or even render the appeal nugatory especially because this is not a one off payment and in the circumstances, should he succeed in his appeal, the amount that he will have paid will be set off against whatever sum he may be ordered by the court to pay.

This application lacks in merit. I dismiss it with costs.

Dated and delivered at Nairobi this 6<sup>th</sup> day of August 2009.

**JEANNE GACHECHE**

**Judge**

Delivered in the presence of:

For the applicant – Miss Machio

For the respondent - Mr. Omulele holding brief for Mrs. Kemunto