

REPUBLIC OF KENYA

IN THE HIGH COURT

AT ELDORET

Civil Appeal 9 of 2007

J.K.W.....APPELLANT

VERSUS

K.W.K (Suing through the mother,

A.M.M.....RESPONDENT

R U L I N G

This is an application for stay of execution of the ruling and orders of the Hon. Beatrice Mosiria, Resident Magistrate in Eldoret Child Case No. 1/2007 made on 13th February, 2007, pending the hearing and determination of the appeal filed against the same.

The Respondent, a minor had applied for maintenance from the Appellant whom he claimed was his father pending the hearing of the case. The Honourable Magistrate after hearing the application which was an interlocutory application by way of affidavits, ordered that the Appellant pays Shs. 41,000/= per month as maintenance for the child.

From the Memorandum of Appeal and the rival affidavits in the present application it is clear that the case is still pending and one of the contested issues to be determined is that of paternity. The Appellant has denied that he is the biological father of the Respondent minor. It is common ground at this stage that the Appellant and the Respondent's mother through whom he has come to Court are not and have never been married. The question of paternity will have to be determined by the trial Court when the suit is heard.

The question that this appeal will inter alia raise is whether a trial Court can fairly and reasonably delve into the question of parental responsibility and maintenance before the question of paternity is determined and the same is an issue for final determination. I think that this is a serious ground of appeal which cannot be said to be frivolous or vexatious as alleged.

Section 23 (1) of the Children's Act defines parental responsibility as follows:

"In this Act, parental responsibility means all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property in a manner consistent with the evolving capacities of the child."

This appears to mean that "parental responsibility" is imposed by law on parent/s. Can parental responsibility arise or be imposed before the question of paternity is resolved if the same is disputed? These are very crucial and serious questions being raised by this appeal. The question of the amount and maintenance and whether the Appellant can afford it or not is here nor there until the appeal is heard.

I am of the view that this application is meritorious and this Court should exercise its discretion in granting the stay of execution of the maintenance order pending appeal.

I therefore do hereby grant prayer 3 of the Notice of Motion dated 15th February, 2007. Costs shall be

in the appeal.

DATED AND DELIVERED AT ELDORET THIS 8TH OCTOBER, 2007.

M. K. IBRAHIM

JUDGE