

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIV APP 51 OF 03

HILLARY KIBET MELLY.....APPELLANT

=V E R S U S=

JANE NZULA KIOKO.....RESPONDENT

R U L I N G

The matter before the court relates to the maintenance of the children who were born during the 4 year cohabitation period between the parties. The lower court found the Application to have parental responsibility for the children. It is this finding that is being challenged on appeal. In the meantime pending determination of the appeal the Applicant seeks stay of the order made against him to pay Kshs.5,000/- per month towards maintenance of the children. Their mother does not earn a living. After consideration of the provisions of Order 41 rule 4 I am of the view that the Applicant has not satisfied the requirements set out therein. No sufficient case has been shown to warrant stay.

That the Applicant has other financial responsibilities is not sufficient here. Substantial loss to the application if order is not granted has not been proved. To delay the enjoyment by the children of the fruits of the ruling would be heartless. They need to eat. They are entitled to shelter and other basic necessities of life. They should enjoy the judgment until their rights are set aside by the court on appeal. On that ground alone I do not find any reason to grant stay of the maintenance order. Applicant is dismissed with costs.

Dated this 15th day of March, 2004.

JOYCE KHAMINWA

J U D G E