



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI  
H.C.C. APPEAL NO. 23 OF 2004**

**E M K.....APPELLANT**

**Versus**

**J W.....RESPONDENT**

**RULING ON APPLICATION DATED 29/4/04**

This is an application by way of Chamber Summons brought under Order 21, Rule 22 of the Civil Procedure Rules. Section 3 A of the Civil Procedure Act and Section 80 of the Children Act 2001. The applicant is seeking for an order of stay of execution of the judgment delivered on 25th February 2004 before the Kigumo Children's Court in Cases No. 76, 77, and 78 of 2003 pending the hearing and determination of the Appeal. The applicant has filed a Memorandum of Appeal against the said judgment. This application is premised on the grounds that the applicant who is the father of the three children was ordered to pay a sum of Kshs.30,000/= being a one time payment to enable the elder son who is in Form IV to clear the balance of school fees and a monthly sum of Kshs.5,000/= per month towards the upkeep of the three children.

The applicant has filed an appeal against this judgment and according to him the appeal has high chances of success. The applicant is a local leader of his community, he is a councilor of Maragua County Council.

According to him the sum ordered is way beyond his means as he relies on a letter written by the county clerk of the county council of Maragua which confirms that he earns Kshs.12,000/= per month. He has also attached a form A by the Ministry of Education whereby the 1st son had applied for the Secondary School Bursary allocation and a receipt issued on 23rd March 2004 for Kshs.42,000/= which was received by Githumu High School on account of his son. Hence in his argument the son received a bursary fund and should not be entitled to maintenance.

According to him this information was concealed from the Lower Court. This application was opposed by the Children's mother Jane Wairimu. She relied on the matters deposed in her replying affidavit sworn on 12th May 2004, the applicant has parental responsibility to share in the costs of brining up and educating his children. If the Order of Stay is granted the welfare of the children will be compromised as the respondent does not have enough resources to provide for their basic needs.

I have carefully evaluated the application for Stay of Execution of the orders by the Children's Court. The applicant is the biological father of the three children. He is a leader in his community by virtue of being a councilor of the Maragua Community Council. He is supposed to be a responsible member of the society who should understand his parental responsibilities as stipulated in the Children Act 2001 Section 23.

The applicant has a statutory duty and obligation to provide maintenance for his children. The meager earnings by the respondent is not adequate to meet the needs of the three children. I find that the order by the learned Resident Magistrate is in accordance with the provisions of the law, the Children Act 2001 and even social expectations, I find no reasonable cause why the same should be stayed. The children will need to eat, go to school, have shelter and have all their needs attended to while the applicant is pursuing his appeal. Unfortunately the needs of the children cannot be stayed and this court has a duty to ensure that the welfare of the children is protected all the time.

Accordingly I find no merit in the application for stay of execution which I hereby dismiss with costs to

the respondent. The temporary order of stay of execution made on 29th April 2004 is hereby discharged.

Orders accordingly.

Ruling read and signed on 4th June 2004.

**MARTHA KOOME**

**JUDGE**