



**JKM v LMM (Suing for and on Behalf of as the Mother of JGJ, KBJ & JLJ - Minors)  
(Children's Appeal Case E004 of 2025) [2025] KEHC 9130 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9130 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CHILDREN'S APPEAL CASE E004 OF 2025**

**RC RUTTO, J**

**JUNE 19, 2025**

**BETWEEN**

**JKM ..... APPLICANT**

**AND**

**LMM (SUING FOR AND ON BEHALF OF AS THE MOTHER OF JGJ, KBJ & JLJ  
- MINORS) ..... RESPONDENT**

**RULING**

1. Before this Honourable Court for determination is a Notice of Motion application dated 7th March 2025, filed by the Applicant, seeking the following primary orders:
  - (a) Spent.
  - (b) That this Honourable Court be pleased to order a stay of further proceedings in Children Case No. E030 of 2024 at the Chief Magistrate's Court, Mavoko, pending the hearing and determination of the Appeal.
  - (c) That this Honourable Court be pleased to issue any other order as it may deem just, appropriate, and expedient in the interest of justice.
2. The Application is premised upon the provisions of Article 50(1) and 159(2)(a) & (b) of *the Constitution* of Kenya, 2010, Sections 1A, 1B, 3, and 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya, and Order 50 Rule 1 and Order 42 Rule 6 of the Civil Procedure Rules, 2010. It is further supported by the grounds set out on the face of the application and the Supporting Affidavit sworn by the Applicant.
3. The Applicant deponed, inter alia, that maintenance orders were issued against him without due regard to the law, his earning capacity, and the immediate needs of the minors. He avers that he is unable to provide Kshs.20,000/- monthly for maintenance, as his net salary is only Kshs.32,000/-. He



- further stated that Children Case No. E030 of 2024 at the Chief Magistrate's Court, Mavoko, was scheduled for a pre-trial conference on 10th March 2025. The Applicant also contended that he has been denied custody of the minors without consideration of the underlying special circumstances and the evidence on record. He submits that it is in the interest of justice that a stay pending the hearing and determination of the appeal be issued, as he possesses an arguable appeal with high chances of success.
4. During hearing of the Application, the Application remained unopposed, as the Respondent did not file any response despite being served. However as at the time of writing this Ruling the respondents had filed its Replying Affidavit sworn on 13<sup>th</sup> May 2025 by Luck Mwelu Makau opposing the application. She deponed that the application and the appeal were filed in bad faith, the applicant is seeking to avoid parental responsibility, he does not address the issue of security; he has not made an attempt to comply with the orders he is appealing against
  5. This Court notes that the ruling and orders subject of this application were issued by the Children's Court in Mavoko Children's Case No. E030 of 2024. In that ruling, the trial court made the following interim orders:
    - (i) The Applicant herein was directed to pay Kshs.20,000/- with effect from 25th February 2025 and on the 5th of each succeeding month thereafter, to cater for the basic necessities of the minors pending the hearing and determination of the suit.
    - (ii) The Applicant was directed to avail to the Respondent the medical cover cards (and relevant details) for the minors for use as and when necessary.
    - (iii) The Respondent was granted primary care and control of the minors, with reasonable access for the Applicant during weekends only, in the interim.
    - (iv) Parties were encouraged to explore an out-of-court settlement of the matter.
  6. Aggrieved by the aforementioned orders, the Applicant filed an appeal vide a Memorandum of Appeal dated 1st March 2025, before this Court.
  7. When the application came up for hearing, this Court directed that the Respondent be served and be afforded an opportunity to file a response. As at the time of writing this ruling, no response had been filed. The Applicant contends that the Court should proceed and grant the orders sought since the application is undefended. This Court respectfully disagrees with the Applicant's assertion. This Court has a duty to independently analyse the issues raised and apply its mind to the law. It would be an abdication of judicial duty to simply grant orders because an application is unopposed.
  8. The Applicant seeks an order for stay of proceedings in a children matter. The power of the court to grant or refuse an application for a stay of execution is a discretionary power, which must be exercised judiciously. In determining whether or not to grant orders for stay of execution pending appeal, this Court is guided by the fundamental principle of the best interest of the child, as enshrined in Article 53(2) of *the Constitution* of Kenya, 2010, and Section 8 of the *Children Act*, 2022. Additionally, the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules, 2010, require the Court to satisfy itself that:
    - (a) The application has been brought without undue delay.
    - (b) The Applicant stands to suffer substantial loss if the stay is not granted.
    - (c) The Applicant has provided security for the due performance of the decree.



9. In *RWW v EKW* [2019] eKLR, the Court aptly considered the purpose of a stay of execution order pending appeal, stating:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs. Indeed, to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”

10. In the present instance, the ruling being appealed was delivered on 20th February 2025, and by 1st March 2025, the Applicant had filed his appeal and moved this Court. I find that the application for stay was indeed timely filed. However, it is crucial to consider the potential effect of granting a stay in this matter. Such an order would not only stay the ongoing children's case but also suspend the implementation of the ruling requiring the Applicant to pay maintenance for the minors.

11. This Court is guided by the pronouncements in *ZMO v EIM* [2013] eKLR, where the court stated:

“As a matter of principle, grant of stay of execution of maintenance orders in children's cases should be made in very rare cases. I say so because parents have a statutory and mandatory duty to provide for the upkeep of their minor children. There are no two ways about. Suspension of a maintenance order is not in the best interests of the child, particularly in cases such as this one, where paternity is not in dispute. To my mind once a maintenance order is made where parentage is undisputed, it should not be suspended pending appeal where the appeal is on the quantum payable.”

12. Guided by the foregoing authority, I find that the Applicant has not demonstrated valid grounds to stay the orders of the Children's Court at this juncture. The reason that his take-home salary is KShs. 32,000/- is not a sufficient basis to grant an order for stay, particularly given the paramount consideration of the children's welfare. The children's well-being and their continued care cannot be stayed. Furthermore, the assertion that he has been denied custody does not hold at this moment, as no such final determination has been made by the interim orders. Instead, this Court notes that the Applicant has been allowed reasonable access to the children during weekends.

13. Based on the foregoing, I find no merit in the present application. The same is hereby dismissed in its entirety. For avoidance of doubt, the orders of 20th February 2025 made by the Children's Court in Case No. E030 of 2025 remain valid and enforceable. This being a children's matter, I make no orders as to costs.

14. The Appellant is directed to file and serve a record of appeal. Mention on 7th October 2025 to confirm compliance and take directions on the hearing of the Appeal.

15. It is so Ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19<sup>TH</sup> DAY OF JUNE 2025**

**RHODA RUTTO**

**JUDGE**



In the presence of;

.....Appellant

.....Respondent

Sam, Court Assistan

