



**MST v LNK (Appeal E030 of 2025) [2025] KEHC 10285 (KLR) (Family) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10285 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**APPEAL E030 OF 2025**  
**H NAMISI, J**  
**JULY 18, 2025**

**BETWEEN**

**MST ..... APPELLANT**

**AND**

**LNK ..... RESPONDENT**

**RULING**

1. The appeal herein arises from an Order made by the Children’s Court on 24 January 2025 as follows:
  - i. That the Defendant’s employer to settle Kshs 178,790/- out of the Defendant’s pension;
  - ii. That further the Defendant’s employer to release 1/3 of the Defendant’s pension to the Plaintiff to cater for the children’s education;
  - iii. That consequently order number 2 of 22/7/2024 is hereby lifted;
  - iv. That Mention on 5 March 2025.
2. Aggrieved by this Ruling, the Appellant lodged the appeal herein on the following grounds:
  - i. The learned Magistrate erred in law and in fact when she ordered that one third of the Appellant’s pension to be released to the Respondent to cater for the Children’s education;
  - ii. The learned Magistrate erred in law and in fact when she made the order for the release of one-third of the Appellant’s pension to the Respondent while there are already subsisting orders directing the Appellant to pay specific amounts in order to provide maintenance and school fees for the children;
  - iii. The learned Magistrate erred in law and in fact when she made an order that was not even sought by the Respondent in her application for execution;



- iv. The learned Magistrate erred in law and in fact when she failed to consider the Appellant's response to the Application filed by the Respondent;
  - v. The learned Magistrate has on the whole failed to ensure that both the Appellant and the Respondent equally participate and take parental responsibility for the children since the Respondent has never demonstrated her contribution at all towards the upkeep of the minors;
3. Along with the Memorandum of Appeal, the Appellant filed a Notice of Motion dated 24 February 2025 seeking the following orders, inter alia:
- i. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue an order staying execution of the order made by the Magistrate Court on 24 January 2025 in Milimani Children Court Case No MCCHCC/E1629 of 2023 to the effect that one third of the Plaintiff's pension be released to the Respondent to cater for the children's education;
  - ii. That pending the hearing and determination of this appeal, this Honourable Court be pleased to issue an order staying execution of the order made by the Magistrate Court on 24 January 2025 in Milimani Children Court Case No MCCHCC/E1629 of 2023 to the effect that one third of the Plaintiff's pension be released to the Respondent to cater for the children's education.
4. The Application is supported by the Affidavit sworn by the Appellant/Applicant and premised on the grounds on the face of it. The Applicant avers that in 2023, through mediation, the parties agreed upon the manner in which the Applicant would provide for the children and cater for their education. The agreement was adopted as an order of the Court. Later, in 2024, the Applicant began ailing from a nervous health condition that requires a lot of financial resources for treatment. The Applicant took a loan facility in order to cater for his medical treatment.
5. The Applicant further avers that he is retired, surviving on a monthly pension, which, to a large extent goes towards repaying the loan facility. As a result of this unexpected expenditure, the Appellant fell into arrears of Kshs 178,790/=. The Respondent then filed a Notice to Show Cause for recovery of the said sum by way of attaching the Applicant's pension, thus resulting in the impugned Ruling.
6. The Applicant states that it is the Respondent who has caused delay in the processing of his pension since she keeps seeking orders to stop the processing of the Applicant's pension yet this is the only source of income that the Applicant can utilise to provide for the children.
7. In response, the Respondent filed a Replying Affidavit sworn on 3 March 2025. The Respondent contends that if in deed the Applicant took out a loan, then the same was done in bad faith in an attempt to evade paying the maintenance for the children as ordered. Further, no evidence of the said loan has been presented to Court.
8. The Respondent avers that owing to the Applicant's blatant disobedience of the Court orders issued, the Respondent has been struggling to cater for the minors' education and related expenses, food, and medical expenses single handedly. The Respondent has been compelled to sell her flock in order to meet these expenses. She avers that one of the minors has a medical condition which requires regular medical check-ups, which the Applicant has refused to cater for.
9. In his Supplementary Affidavit, the Applicant reiterated that the loan facility he took was to cater for his medical expenses and not the expenses of the children. He denied having disobeyed any Court orders.
10. The application was canvassed by way of oral submissions.



11. The Applicant submitted that the appeal is arguable with high chances of success. Secondly, the Applicant is likely to lose his money if the order of the trial court is effected before the Appeal is heard and determined. This is because once the money is deducted, it will be deposited in the Respondent's personal account and the Applicant will have no control over the funds. The Applicant argued that the Respondent could easily use the funds for purposes other than the education of the minors and then continue to harass the Applicant about these expenses.
12. It was the Applicant's contention that the children are still provided for. 30% of the Applicant's pension is deducted at source and remitted to the Respondent's account for maintenance and education of the children. That is about Kshs 30,000/- per month. The Applicant argued that he has other dependants who also need provision.
13. The Applicant proposed that if the amount is deducted, then it should be remitted to a joint account, so that the Applicant has a say over how the money is utilised.
14. On her part, the Respondent confirmed that the agreement was that the Applicant would pay Ksh 30,000/= per month. The Respondent confirmed that she has been receiving the same every month since January 2025. In the lower court, the Respondent had requested that she should get a lumpsum, from the Applicant's pension. That money is meant to cater for the educational expenses.
15. Regarding the Applicant's proposal for a joint account, the Respondent opposed the same on the basis that communication between the parties was difficult. She lamented that the Applicant's current wife is very abusive and the Respondent and Applicant are not able to agree on anything.

### **Analysis & Determination**

16. The conditions for stay pending appeal are set out in Order 42 Rule 6 (2) of the Civil Procedure Rules, 2010 as follows:

“No order for stay of execution shall be made under sub-rule (1) unless–

  - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
  - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
17. In the case of *Vishram Ravji Halai vs. Thornton & Turpin* Civil Application No. Nai. 15 of 1990 [1990] KLR 365, the Court of Appeal held that whereas the Court of Appeal's power to grant a stay pending appeal is unfettered, the High Court's jurisdiction to do so under Order 41 rule 6 of the Civil Procedure Rules is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further the application must be made without unreasonable delay.
18. In *Kenya Hotel Properties Ltd V Willesden Investments Ltd* (2007) eKLR the Court of Appeal held that where undue hardship is occasioned on the applicant then the balance of convenience is in his favor. When the Court has to determine an application for stay of execution, it is bound to consider whether the said application meets the threshold and requirements for granting the order as stipulated under Order 42 rule 6. In this case the application was made timeously without unreasonable delay. The grounds to consider, therefore, are sufficient cause, substantial loss and overriding objective of the best interest of the children as argued by the Applicant.



19. The Appellant/Applicant has attached the Memorandum of Appeal, challenging the Ruling of the trial Court on several grounds. One such ground is that the trial Court made orders when there were subsisting orders regarding the provision of maintenance and school fees for the children. It is my considered view that the Applicant has established sufficient cause for the orders sought herein.
20. On the issue of substantial loss, the same was discussed in the case of James Wangalwa & Another vs. Agnes Naliaka Cheseto, Bungoma High Court Misc Application No 42 of 2011, where the Court held that:

“The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail.”
21. The substantial loss argued by the Appellant/Applicant is as regards the deduction of one-third of his pension, in lumpsum, to cater for the educational needs of the children.
22. In ZMO v EIM [2013] eKLR, Musyoka J 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.”
23. Whereas the Applicant has demonstrated that he has an arguable appeal, I am not satisfied that the stay is in the best interests of the children subject of these proceedings. I find, therefore, there are no valid reasons for the stay of the orders issued by the trial court on 24 January 2025, as this would be detrimental to the welfare of the children.
24. In view of the foregoing, I find no merit in the present application. The same is dismissed in its entirety. For avoidance of doubt, the orders of 24 January 2025 made by the Children’s Court remain valid and enforceable.
25. This being a family matter, I make no orders on costs.

**DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF JULY 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Appellant/ Applicant: Mr. Njenga

Respondent: Leah Kinya (in person)

Court Assistant: Libertine

