



EOO v LAB (Civil Appeal E050 of 2023) [2024] KEHC 7965 (KLR) (Civ) (7 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7965 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E050 OF 2023

PM NYAUNDI, J

JUNE 7, 2024

BETWEEN

EOO APPELLANT

AND

LAB RESPONDENT

RULING

Introduction

1. The application for determination is Notice of Motion dated 30th June 2023 presented under Section 1A, 1B, 3A of the *Civil Procedure Act*, Article 53 (2) of the *Constitution* of Kenya; Sections 4, 6, 9, 23, 24, 73, 82, 83, 91 and 92 of the of the *Children Act* and Order 42 rule 6 as read with Order 51 of the *Civil Procedure Rules* 2010 in which the appellant seeks stay of proceedings and execution pending determination of the appeal. The appellant is already enjoying stay orders pending the hearing and determination of this application issued on 4th October 2023.
2. It is not contested that the parties are the biological parents of the minor. The appellant has preferred an appeal against a part of the decision of the trial court and specifically the order requiring that the applicant pay a monthly sum of kshs 40000 for the purchase of food and shopping utilities. The Appeal therefore is solely on quantum.
3. In the Judgment this is how the Magistrate allocated the responsibility for the minor
 1. Parties to share joint legal custody of the minor
 2. The plaintiff to have actual custody, care and control of the minor.
 3. The defendant shall have reasonable and unlimited access to the child



4. the defendant shall pay school fees and related expenses for the child at the current school. Should they wish to change schools, they should engage and mutually agree. The defendant to pay school fees until the minor turns 18
 5. both parties to maintain their medical cover for the child to use in case of sickness.
 6. That the plaintiff shall provide clothing, accommodation, clothing and nanny's salary
 7. That the defendant pays Kshs 40000 for food, shopping and utilities. The same must be paid by the 5th of every month beginning June 2023
4. He intends to appeal this judgment and it is his contention that unless stay pending appeal is granted his appeal will be rendered nugatory. It is his submission that he falls within the boundaries of Order 42 rule 6 of the Civil Procedure Rules and the decision in the locus classicus case in Butt v Rent Restriction Tribunal [1982] KLR 417. In addition, that applicant submits that in matters involving children the primary consideration is the best interests of the child.
 5. In opposition the applicant submits that the orders sought are not in the best interests of the minor. The best interests tilt towards maintaining the order of the Court. The granting of the prayers will be tantamount to denying the successful litigant the fruit of his labours. Reliance is placed on the decision on ZMO vs EIM [2013] eKLR on the guidelines of granting stay in matters concerning children.
 6. The issue before me is whether a stay should be granted pending appeal and whether that stay is in the best interests of the child.
 7. Having considered the application and submissions made along with authorities cited and the relevant law, it is clear that when it comes to matters relating to children the stay pending appeal especially on quantum of maintenance should be granted only in exceptional circumstances when it can be demonstrated that it is in the child's best interests.
 8. Interim orders have been in force pending the hearing and determination of the application. It is conceded that the appellant has been complying. In the circumstances I will grant the stay pending appeal on condition that the appellant;
 1. Remits the sum of kshs 20000 to the respondent on the 5th of every successive month
 2. Files and serves the record of appeal within 90 days
 3. Each party will meet their own costs
 4. Mention on 25th September 2024 to confirm compliance and take directions on the hearing of the appeal.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF JUNE 2024.

P M NYAUNDI

JUDGE

In the presence of:

Advocates for the Applicant

Ms Kathurima Advocates for the Respondent

Sylvia Court Assistant

