



**PSL v SNN (Children's Appeal Case E011 of 2023)  
[2024] KEHC 6819 (KLR) (5 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6819 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CHILDREN'S APPEAL CASE E011 OF 2023**

**GMA DULU, J**

**JUNE 5, 2024**

**BETWEEN**

**PSL ..... APPLICANT**

**AND**

**SNN ..... RESPONDENT**

**RULING**

1. Before me is an application dated 27<sup>th</sup> September 2023 brought by way of Notice of Motion through counsel Mwazighe & Company Advocates.
2. The application was filed under Order 51 Rule 1 and Order 42 Rule 6 of the Civil Procedure Rules, as well as Section 1A, 1B and 3A of the Civil Procedure Act (Cap.21), and seeks the following orders:-
  1. (Spent)
  2. (Spent)
  3. The court be pleased to issue an order staying the execution of the judgment and all consequential orders made therein pending hearing and determination of the appeal.
  4. The court be pleased to issue an order allowing the appellant to continue paying Kshs. 5,000/= as maintenance and pay school fees for the minors pending hearing and determination of the application and appeal.
  5. That the court be pleased to issue any further orders it deems fit to grant in the interest of justice.
  6. The costs of the application be in the cause.
3. The application has grounds on the face of the Notice of Motion that the respondent had moved to execute the ex-parte judgment as she had already served an order to attach the applicant's salary.



4. The application was filed with a supporting affidavit sworn by Mwazighe Micar Advocate for the applicant, which amplifies the grounds of the application.
5. The application was opposed through a replying affidavit sworn by the respondent Susan Nyanguthi Ngacha, in which it was deponed that the applicant had adequate time to defend himself, but chose not to appear in court.
6. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Mwazighe & Company Advocates for the applicant, and the submissions filed by the respondent in person.
7. This court has jurisdiction to grant stay of execution of judgment or decree orders pending determination of appeal. I note that the applicant has already filed appeal herein.
8. The consideration to be taken by a court in determining an application for stay of execution of decree or judgment are contained in Order 42 Rule 6 of the *Civil Procedure Rules*, especially Rule 6(2), which lists the said considerations as:-
  - i. Whether substantial loss may result unless the stay order is made.
  - ii. Whether the application for stay was made without unreasonable delay.
  - iii. Whether security has been given or offered by the applicant.
9. On substantial loss, in the circumstances of this present application in which there is no dispute that the decision of the Magistrate's court contested on appeal was made ex parte, and the salary of the applicant having been deponed to in an affidavit filed herein, in my view, if the stay orders are not granted, the applicant is likely to suffer substantial loss.
10. With regard to whether the application was filed without unreasonable delay, I note that the ruling of the Magistrate was delivered on 28<sup>th</sup> March 2023 and this application filed on 20<sup>th</sup> September 2023. As the ruling was delivered ex-parte, I find that the application herein was filed without unreasonable delay.
11. With regard to provision of security by the applicant, I note that the applicant has offered to pay Kshs. 5,000/=per month for maintenance and pay school fees for the children, in this matter where both the *Constitution* Article 53 and the *Children Act* Section 4, require that matters relating to children be determined in a way that will ensure that the welfare of the children is of paramount importance.
12. In my view, since parental responsibility is for both parents, the proposal of the applicant herein is sufficient protection for the children and is sufficient security, until the appeal is heard and determined, as I am not in the know about the financial means of the respondent. However in my view, the appeal herein has to be expedited, and I will hereafter make appropriate orders for that.
13. Consequently, and for the above reasons, I allow the application and order as follows:-
  - i. I grant stay of execution orders of the judgment/ruling herein and all consequential orders pending the hearing and determination of the appeal.
  - ii. The above stay orders are granted subject to the applicant paying the respondent Kshs. 5,000/= per month as maintenance and pay school fees for the minors pending hearing and determination of the appeal.
  - iii. The appeal will however be expedited and heard within twelve (12) months from today, otherwise the stay orders issued above will automatically lapse and be of no effect.



iv. Costs of the application will abide the decision in the appeal.

**DATED, SIGNED AND DELIVERED THIS 5TH DAY OF JUNE 2024 IN OPEN COURT AT VOI.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

**Alfred/Trizah – Court Assistants**

**Mr. Mwandoto for applicant**

**Respondent in person**

