



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL APPEAL NO. E007 OF 2020

DMG.....APPELLANT

VERSUS

LN.....RESPONDENT

RULING

1. This is an appeal from the Children's Court at Thika on the maintenance of two children of the marriage between **DMG** (the father) and **LN** (the mother). The appeal is preferred by the father of the children. The memorandum of appeal reveals that the father's appeal is directed only towards the orders of maintenance of the children of the union.

2. The father has filed a Notice of Motion application dated 3rd December, 2020 which is the subject of this Ruling.

3. The father, by his affidavit in support of the application deponed that he is dissatisfied with trial court's decision which ordered him to provide Kshs.8,000/= for rent and Kshs.8,000 for food and provide for educational needs, which includes buying uniform and shopping for the two children. The children are 15 years (the daughters) and 3 years (the son).

4. In his affidavit, the father also stated that the trial court failed to consider that the daughter is in boarding school and that because parenting is a shared responsibility the mother should be ordered to provide for herself and the young son who attends pre-primary school. The father therefore termed the trial court's judgment as oppressive towards him. He did offer in his affidavit to continue providing for the children's educational needs and provide Kshs.5,000/= during school holidays.

5. The application is opposed by the mother of the children through her replying affidavit dated 5th January, 2021. By that affidavit, the mother deponed that the trial court took into consideration the actual amount needed for the upkeep of the children. The mother further stated that she will not be able to provide for the children as sought by the father because she lost her job due to what she termed as the 'doings' of the father. The mother deponed that the trial court took into account that the father had historically paid the children's school fees, rent, medical needs and much more.

ANALYSIS

6. I will begin by making reference to the Article in the Constitution, which was also referred to by the trial court that is, **Article 53(2)**. That Article provides:-

“(2) A child's best interests are of paramount importance in every matter concerning the child.”

7. In my consideration of the father's affidavit, I failed to find any mention that the stay of execution he seeks will be in the best interest of the children, yet, that is the yardstick of any decision that involves children. Further, I will assume as correct that the mother is unemployed presently, as she deponed in her affidavit, which deposition was not controverted by the father.

8. It is because of the above sentiments that I am persuaded by the finding in the case ***M.N.N. VS. M.O.K. & ANOTHER (2017) eKLR*** as follows:-

“I have noted the opinion of Musyoka, J. in two decisions – Z.M.O. v. E.I.M. [2013] eKLR and M.N. v. P.A.S. [2015] eKLR, and I, respectfully, agree with the learned judge that it is in very rare cases that courts grant stay of maintenance orders in cases involving minor children, where the duty to maintain a child is imposed on a parent by statute, as it is not in the best interests of the child to suspend a maintenance order particularly where parentage is not in dispute and that an expedited hearing of the

main appeal might be a solution where there is a challenge on quantum of maintenance rather than staying the orders of the trial court pending appeal.”

9. My view, just as stated in the above case is that the hearing of this appeal should be expedited. For now it is not in the best interest of the children to grant stay of execution as sought.

DEPOSITION

10. I grant the following orders:-

a. The Notice of Motion dated 3rd December, 2020 is dismissed with costs.

b. The lower court file, if need be may be returned to Thika Law Courts to enable the mother execute the trial court’s judgment.

RULING DATED, SIGNED and DELIVERED at KIAMBU this 3rd day of JUNE, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant: Ndege

For Appellant: no appearance

Respondent: no appearance

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE