



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**CIVIL APPEAL NO. 102 OF 2019**

JNN.....APPELLANT

**VERSUS**

LWG.....RESPONDENT

**RULING**

1. The application subject of this ruling is dated the 17<sup>th</sup> of October, 2019 and was brought pursuant to **Sections 4(2) & (3) 6(1); 82(1) & 3(a), 83(1)(e) and 114** of the **Children's Act**, **Sections 1A, 1B & 3A** of the **Civil Procedure Act and Order 42 rules (1) (2) and (3) of the Civil Procedure Rules**. The same is seeking to stay orders issued by **Hon. M. Mbatia (Ms)** (SRM) on the 4<sup>th</sup> of September 2019 in Milimani Children's Case No. 1313 of 2017 pending hearing and determination of the appeal herein.
2. The application is predicated on grounds that the applicant was ordered to remit Kshs.25,700 monthly to the respondent to cater for maintenance, education and upkeep of the child of the parties, yet the order is not for the minor's best interest; is prejudicial and will cause misery to the applicant; his application for stay in the trial court was refused; and the applicant and the minor will suffer substantial loss.
3. In support of the application the applicant swore an affidavit in which he contends that the order requires him to meet school fees for the third term of 2019 yet he had already paid the same, the respondent is likely to execute if a stay is not granted. He further alluded that the parties had entered into a parental responsibility agreement (PRA) on 11<sup>th</sup> May, 2017 where they operated peacefully, before the said order. He seems to be asking the court to revert to the same.
4. The application was opposed by way of a replying affidavit dated 14<sup>th</sup> January, 2020 where the respondent on her part contends that the application is an abuse of court process; brought in bad faith; no sufficient reasons have been adduced to warrant the stay order; the appeal will not be rendered nugatory if the application is denied; the orders relate to a minor who is likely to suffer the same is allowed as a stay will expose the child; further the applicant has not disputed his financial capability; and the order did not require repeat payment of fees as claimed.
5. There are set parameters which are to be met before issuance of stay as set out under **Order 42 rule 6(2)**;
  - a. The court must be satisfied that substantial loss is likely to be occasioned if a stay is not granted;
  - b. The application is to be made without undue delay; &
  - c. Security for costs is to be offered.
6. For now this court is to consider whether the applicant has met the conditions referred to above. Clearly the application was filed inordinately late and apart from being aggrieved the applicant has not demonstrated the loss he is likely to incur if the prayer for stay is not granted, or how the child will stand to suffer.
7. It is also worth to note that in his response in the lower court the Applicant had indicated his discomfort with the PRA where he was to spend 30,000 per term & pay for the house-maid.
8. Furthermore for now the claim that he would have paid school fees for the 2019 third term twice has been taken over by events. The applicant also failed to make good an offer for security.
9. For the reasons above the application fails, it is dismissed with costs to the applicant.

**DATED, SIGNED and DELIVERED at NAIROBI this 1<sup>ST</sup> DAY OF OCTOBER, 2020.**

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**ALI-ARONI**

**JUDGE**