

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

CIVIL APPEAL NO. 13 OF 2017

AMA.....APPELLANT

VERSUS

LAO.....RESPONDENT

RULING

1. The application subject matter of this ruling is dated 8th May 2019 and brought pursuant to **Order 22 Rule 22, Order 42 rule 51(1)** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act**.
2. The application seeks for stay of warrant of arrest issued on the 27th of February 2017 against the applicant for the reason that the Applicant having been dissatisfied with the ruling of Hon. Otindo preferred an appeal and now seeks for stay pending appeal.
3. The subject matter of the appeal is school fees payable to a university for the parties' son.
4. The applicant filed a similar application on the 2nd of March 2017 the same time he filed a notice of Appeal and Memorandum of Appeal. It is not clear why in the first place the earlier application was not prosecuted and why the current one filed several years later.
5. Notable is that no a record of appeal has since been filed nor reasons for the delay offered.
6. The Applicant in his application deposes that the son has not been sent home for non-payment of school fees. He has not demonstrated compliance with the court order though. In my considered opinion the applicant ought to prove his assertion by filing receipts or a letter from the school which he failed to do.
7. On her part the Respondent in opposing the application deposes that no school fees have been paid in compliance.
8. Under **Order 42 rule 6** of the **Civil Procedure Rules** provides that, no order for stay shall issue unless the court is satisfied that substantial loss may result to the applicant unless the order is made, the application has been made without unreasonable delay and security for due performance of such decree offered.
9. The current application was made more than two years since the warrants were issued. There has been inordinate delay on the part of the applicant. Secondly It has not been demonstrated that the applicant will suffer any prejudice or hardship if he settles school fees for his son lastly no security for due performance was offered.
10. The above conditions are necessary before the court can exercise discretion without the same this application must fail.
11. Costs to the Respondent.

SIGNED DATED and DELIVERED in open court this 14TH day of NOVEMBER, 2019.

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ALI-ARONI

JUDGE