

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

CIVIL APPEAL NO. 110 OF 2016

G K K.....APPELLANT

VERSUS

M N M.....RESPONDENT

RULING

1. The application dated 30th November 2016 seeks stay of execution of orders that had been made by the lower court in Nairobi Children’s Court Case No. 102 of 2009 pending appeal. The appellant avers that he would suffer substantial loss should the stay not be granted.

2. The record does not have copy of any response to the application by the respondent, but there is evidence that she was served with the relevant papers.

3. The said application was urged before me on 15th December 2016. It was pleaded that the application was unopposed and therefore the same be allowed. It was said that if stay was not granted the appellant would suffer substantial loss. It was conceded that the appellant was the father of the subject child, but counsel said he was unaware whether the appellant had been maintaining the subject child.

4. I have perused through the record. The central issue is about maintenance of a child. It would appear that orders had been made on maintenance, but it would appear that there was no compliance. The appellant does not assert that he complied with the orders, or that he was even ready to so comply. He has not pleaded that he has been maintaining the child, and if not, the plans that he has in that regard. He merely states that he would suffer loss and would be unable to cater for his other children.

5. The law enjoins me in all cases touching on children to treat the welfare of the child as the paramount factor to be taken into consideration. I am talking about Article 53(2) of the Constitution of Kenya and section 4(2) (3) of the Children Act, Cap 141, Laws of Kenya which state the paramountcy principle.

6. The lower court had made orders on maintenance of the subject child. It is those orders that the appellant would like to be stayed. He has not made any proposals on how the child is to be maintained pending the hearing and determination of the appeal. Staying the maintenance order, no doubt, would be contrary to the best interests of the child.

7. I do not find any basis for granting the orders sought. Consequently, I shall dismiss the application dated 30th November 2016. Costs shall abide the outcome of the appeal.

DATED, SIGNED and DELIVERED at NAIROBI this 20TH DAY OF JANUARY, 2017.

W. MUSYOKA

JUDGE