

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY AND PROBATE DIVISION

CIVIL APPEAL NO. 48 OF 2016

R M K.....APPELLANT

VERSUS

E M R.....RESPONDENT

(Being an appeal filed against the ruling delivered in Nairobi Children Case No. 90 of 2016 on 5th April 2016)

RULING

1. The application for determination is a Motion dated 28th April 2016. It seeks the following principal orders: -

(a) that this Honourable Court be pleased to grant order for stay of execution or issue an injunction pending the hearing and determination of the intended appeal; and

(b) that the respondent be ordered to continue paying the Kshs. 50,000.00 maintenance pending the hearing and determination of the appeal.

2. The application was placed before the Duty Judge on 28th April 2016 and it was ordered: -

(a) that there be an interim stay of execution of the court orders of the Children Court; and

(b) that the applicant to file appeal within 14 days from today (28th April 2016) in default the stay of execution shall vacate forthwith.

3. Upon being served with the application, the respondent swore a detailed affidavit on 2nd September 2016 in response to the said application. To which affidavit the applicant swore a detailed affidavit on 20th September 2016.

4. When the matter was placed before me on 3rd November 2016, I directed that the said application be disposed of by way of written submissions. There has been compliance with the directions for both sides have filed their respective written submissions. I have read through them and noted the arguments made therein.

5. I agree with the respondent. The orders made on 28th April 2016 were final. The said orders do not have a time stipulation within which it is to lapse. Read together with the second order, that appeal was to be filed within 14 days otherwise the stay order would lapse, would mean that the stay order was intended to last beyond the 14 days. The plain reading of it would be that it was intended to last during the pendency of the appeal. It will be noted that even as the said order was being made the applicant had already filed an appeal on 27th April 2016, a day before she lodged her stay application in court.

6. There is therefore nothing for me to determine. The applicant shall move the court for directions on the disposal of the appeal herein. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 12TH DAY OF MAY, 2017.

W. MUSYOKA

JUDGE