



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY AND PROBATE DIVISION
CIVIL APPEAL NO. 2 OF 2014

B W NAppellant

Versus

G W WRESPONDENT

(Being an appeal filed against the ruling of Hon. A W Nyoike in Nairobi Children Case No. 1105 of 2013 delivered on 3rd December 2013)

RULING

1. This ruling is in respect of several applications, which I had directed on 16th April 2015 should be disposed of simultaneously to pave way for the hearing of the appeal itself.
2. The first application is dated 10th January 2014. It seeks stay of execution of a ruling that is not identified on the face of the application, but which was made by the lower court in Children's Case No. 1105 of 2013. The stay orders are meant to last during the pendency of the appeal filed simultaneously with the application. The affidavit sworn in support of the application by the appellant on 10th January 2014 also does not identify the ruling sought to be stayed. The supplementary affidavit sworn by the appellant on 15th January 2014 does not too identify the said ruling. A copy of the alleged ruling is not attached to either of the affidavits.
3. The second application is a Motion dated 2nd March 2015. It seeks, in the main, orders relating to execution of a warrant of arrest alleged issued by the lower court. The application is that execution of the said warrant be stayed pending the hearing and disposal of the appeal herein.
4. The grounds upon which the Motion is premised are set out on the face of the application, while the facts are deposed in the affidavit in support sworn on 3rd March 2015 by the appellant. The appellant avers that he faces arrest following the taking out of a Notice to Show Cause in respect of an order of payment of a sum of Kshs. 440, 000.00, which he alleges was imposed by the court *ex parte*, and which is the subject of an appeal that he has filed.
5. On the facts, it is deposed that a warrant of arrest had been issued by the lower court, unless the appellant deposits a sum of Kshs. 2, 100, 000.00 in court. He complains that that order was made *ex parte* and was meant to be paid at once rather than being settled monthly. He states that he has been complying with the earlier orders of the court on maintenance. He states that a Notice to Show Cause has been taken out against him for payment of a sum of Kshs. 2, 400, 000.00. The same was allegedly allowed, subject to a stay thereof upon the appellant depositing a sum of Kshs. 1, 200, 000.00 within a specified period of

time. He states that he cannot afford the amount, hence the application for stay. Attached to the affidavit in support of the application is an order made by Hon. A W Nyoike, Ag. Senior Resident Magistrate, on 3rd December 2013.

6. Then there is the Motion dated 5th March 2015. It seeks that the stay order granted on 3rd March 2015, on the application dated 2nd March 2015, be lifted and the Motion of 2nd March 2015 be heard *inter partes* on a priority basis. It is averred in the application that the stay order was against the interests of the minors the subject of the suit.

7. The last substantive application is dated 10th April 2015. It seeks that the Officer in Charge of the Hardy Police Station be restrained from arresting the appellant pending further orders of the court. The appellant points to the orders made on 3rd March 2013 on his application dated 2nd March 2015.

8. The parties appeared before me on 16th April 2015 when I directed that all the pending applications be argued simultaneously, and ordered the parties to file written submissions as the applications were to be disposed of in that manner. The parties complied and filed their respective written submissions.

9. I have scrupulously gone through the file of papers before me, that is the memorandum of appeal lodged herein, the applications and the written submissions. I will deal with the applications sequentially.

10. I have already mentioned that the Motion of 10th January 2014 seeks stay of a ruling that has not been identified. It is not stated when the ruling was delivered and by which judicial officer. A copy of the offending ruling has not been exhibited. In the circumstances any order that I would make on such application, if I were minded to grant it, would be vague, spurious and incapable of enforcement. In any event what ought to be stayed are the orders made in the ruling, and not the ruling itself. A ruling is not capable of being executed or enforced, it is the orders made in the ruling that are enforced or executed. A ruling is not synonymous with the orders made in it. Ruling refers to the entire pronouncement, from the first word to the last. So what should be sought to be stayed with respect to a ruling should be the orders made in it or the reading of or delivery of the ruling itself.

11. The Motion of 2nd March 2015 seeks stay of execution of a warrant of arrest issued by the lower court. There is no indication on the face of the Motion as to when the alleged warrant of arrest was made and by which judicial officer. A copy of the order commanding the arrest of the appellant was not exhibited. The affidavit in support of the application merely talks of a warrant of arrest being issued but it is not indicated when it was so issued and by who.

12. I therefore have before me a Motion which seeks stay of execution of a warrant of arrest which does not provide any proof that such warrant had been issued. Indeed there is no proof attached that any arrest orders were ever made, and although there is extensive reference in the affidavit to a Notice to Show Cause, there is no evidence that the lower court ever dealt with such a Notice. There is therefore no basis upon which I can grant the orders sought in the said Motion of 2nd March 2015.

13. I believe that I finally dealt with the applications dated 5th March 2015 and 10th April 2015 on 10th April 2015 when I ruled that the orders made on 3rd March 2015 had the effect of staying the arrest of the appellant pending the hearing and determination of the application dated 2nd March 2015. These two applications were therefore disposed of on 10th April 2015.

14. Based on the material before me, I hereby make the following final orders: -

- a. **That the applications dated 10th January 2014 and 2nd March 2015 are hereby dismissed;**
- b. **That the interim orders made on 3rd March 2015 are hereby discharged;**
- c. **That the appellant is hereby directed to file the record of appeal to the appeal herein within**

fourteen (14) of today's date and to thereafter have the appeal fixed for directions; and

d. That the respondent shall have the costs of the applications dated 10th January 2014 and 2nd March 2015.

15. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 8TH DAY OF JULY, 2016.

W. MUSYOKA

JUDGE