



**REPUBLIC OF KENYA**

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

**CIVIL APPEALS DIVISION**

**CIVIL APPEAL NO. 30 OF 2015**

**J N K.....APPELLANT**

**VERSUS**

**P M N.....RESPONDENT**

*(Being an appeal from the decision of Hon. A Nyoike (Ms.) Senior Resident Magistrate*

*in Children's Case No. 581 of 2014 P M N vs. J N K delivered on 5<sup>th</sup> March 2015)*

**RULING**

1. The application for determination is dated 1<sup>st</sup> April 2015. It seeks stay of all the orders made 5<sup>th</sup> March 2015 by the lower court pending appeal.
2. The grounds upon which the said application is premised are set out on the face of the Motion, and the facts are deposed in the affidavit in support sworn on the 1<sup>st</sup> April 2015. The appellant complains that the lower court made the said orders without looking at the contents of his affidavit, and as a result it arrived at a finding that was erroneous and oppressive to him.
3. There is a reply to the application by the respondent, vide an affidavit she swore on 21<sup>st</sup> April 2015. She avers that the orders sought to be stayed were made after the court had heard both parties.
4. I directed on 8<sup>th</sup> May 2015 that the said application be disposed of by way of written submissions. Both sides filed their respective submissions. I have perused through the memorandum of appeal herein, the application, the rival affidavits, the written submissions, as well as the lower court's file.
5. I have noted that the application herein seeks stay of orders made for the maintenance of the children of the parties. I will not venture to consider the facts of the matter for that is what is at the heart of the appeal. I can only state that I find it difficult to interfere with orders that were made for the welfare of the children the subject of the proceedings.
6. I am entitled to presume that the said orders were made by the trial court after it had considered all the facts that were placed before it. Perhaps it fell into some error, that I cannot determine now, for that is the subject of the appeal before me. As the appeal pends the children ought to be provided for. They were attending certain schools at the time the order was made. I presume that the trial court was alive to that fact at the time. If the fees charged by the schools are beyond the means of the appellant, then he ought to move the lower court appropriately, that is not a matter that the appellate court ought to deal with at the interlocutory stage of the appeal.
7. I do not find merit in the application dated 1<sup>st</sup> April 2015 and I do hereby dismiss the same with costs.
8. It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 8<sup>TH</sup> DAY OF JULY, 2016.**

**W. MUSYOKA**

**JUDGE**