

REPUBLIC OF KENYA

High Court at Nakuru

Civil Appeal 99 of 2012

B W W.....APPELLANT/APPLICANT

VERSUS

DR. J M N.....RESPONDENT

RULING

At the centre of this dispute, is the paternity of a minor MN. The lower court having initially obtained a DNA result from the Government Chemist following a consent of the parties was subsequently moved by the respondent to order for a repeat DNA test. The initial report confirmed the respondent as the biological father of the minor.

In the application for a repeat DNA test the respondent also sought to stay earlier orders of maintenance of the minor.

On 18th April, 2012, when the matter came up for mention before the learned magistrate, the respondent was heard in his application for a repeat DNA test and stay of maintenance. The hearing proceeded *ex parte* and the learned magistrate reserved the ruling to 25th April, 2012, on which day he ordered that a repeat DNA test be conducted at Easy DNA Kenya Laboratories, Nairobi on 10th May, 2012 at 9a.m.

The court also ordered that further execution of the orders of maintenance issued pursuant to the ruling of 14th November, 2011 be stayed until the results of the second DNA tests are received by the court. The applicant was aggrieved and has challenged that decision on appeal to this court. In the meantime she has brought the instant application for stay of the learned magistrate's orders of 25th April, 2012 pending the determination of the appeal herein. Learned counsel for the respondent argued that the application is incompetent as the Children Act makes no provision for the orders sought. The answer to that argument is **Regulation 21 of the Children (Practice and Procedure Parental Responsibility) Regulations, 2002** which states that:

“All appeals under regulations 20 shall be governed by the provisions of the Civil Procedure Rules.”

A court will order a stay of execution if it is satisfied that substantial loss may result to the applicant if the stay is not granted; if the applicant is ready to furnish security and only if the application has been brought without unreasonable delay.

The applicant has appealed against the decision of the learned magistrate. If a stay is not granted, the minor will be subjected to a fresh DNA testing yet that is the basis of the appeal. But more significantly without an order of stay, the maintenance of the minor will be suspended to her detriment.

This application was brought without undue delay.

An order of security would be unconscionable in the circumstances of this case. There will be an order of stay in terms of paragraph 3 of the motion dated 9th May, 2012. Being a matter involving a child, record of appeal to be filed without delay.

Costs to be costs in the appeal.

Dated, Signed and Delivered at Nakuru this 2nd day of November, 2012

**W. OUKO
JUDGE**