



**Kariuki v Kamau (Civil Appeal E021 of 2025)
[2025] KEHC 13763 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E021 OF 2025
DO CHEPKWONY, J
SEPTEMBER 17, 2025**

BETWEEN

SANDRA ANNE NYAMBURA KARIUKI APPELLANT

AND

BENJAMIN KAHUNGO KAMAU RESPONDENT

(Being an Appeal against the ruling and order of the Children Court at Kikuyu delivered on 14th February, 2025 by Hon. L. Kwamboka (RM) in Children;s Case No.E001 of 2024)

RULING

1. For determination before this court is the Notice of Motion application dated 28th May, 2025 filed under Certificate of Urgency in which the Appellant/Applicant is seeking the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That the Honourable Court be pleased to issue a stay of proceedings, Ruling and/or orders given by Hon L. Kwamboka (RM) on 14th February, 2025 in Kikuyu CMCC No. E001 of 2024 pending the hearing and determination of the lodged appeal.
 - d. That the costs of this application be provided for.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Sandra Anne Nyambura Kariuki sworn on even date. The Applicant holds that in the trial court, a Ruling was delivered on 15th January, 2025 which held both parties are in contempt for disobeying the court orders issued on 27th November, 2024. The parties were directed to purge the contempt within fourteen (14) days and in default, a notice would issue for them to show cause why they should not be committed to civil jail in disobedience of the court orders.



3. The Applicant holds that being aggrieved with the Ruling, she has lodged the present appeal and thus seeks for orders of stay of proceedings since she stands to be committed to civil jail and yet her appeal is arguable with high chance of success which would be rendered nugatory and an academic exercise, if the orders sought are not granted. She also contends that she is willing to abide with any conditions that the court may impose and no prejudice will be suffered by the Respondent if the orders are granted. She thus urges that the court exercises its discretion and grant the orders sought.
4. The Application is opposed through the Replying Affidavit of Benjamin Kahungo Kamau sworn on 10th March, 2025, wherein he confirms that indeed they were both found guilty of disobeying the court orders and the Ruling of the court was meant to deter further violation of the minor's right to education. According to the Respondent, the appeal is against the Ruling of 14th February, 2025 which found both of them in contempt and he has since purged the contempt by apologising to the court and the applicant. He holds that the Applicant continues to disobey the court order by failing to present the minors in school as required while they are in her custody.
5. He is opposed to the prayer for stay of proceedings since the proceedings before the court concern the welfare of the minors particularly their education. He claims that the appeal is not an arguable one, does not raise any triable issue and argues that if the orders are granted, the Applicant will continue keeping the minors away from school to their detriment. The Respondent has thus urged the court to dismiss the application with costs to the Respondent.
6. The application herein had been canvassed by way of written submissions as directed by the court on 19th March, 2025, whereby the Applicant filed her submissions dated 22nd April, 2025 while the Respondent's submissions are dated 16th May, 2025. The court has read and considered the same in consideration of the orders being sought.

Determination

7. In considering the prayers being sought by the Applicant, I have carefully read through the respective affidavits in support and in objection of the same alongside the written submissions and cited law and authorities by either party herein. I find the issue for determination being whether the court can grant an order for stay of proceedings, ruling and or order issued by Hon. Kwamboka (RM) in Kikuyu CMCC No.E001 of 2024, pending he hearing and determination of the appeal herein.
8. it is trite that in all children matters, the paramount principle that a court should consider is the best interest of a child. This is in line with Article 53(2) of *the Constitution* of Kenya and Section 4 of the Children's Act, 2001. (See the case of K.W.M.- vs- R.N. [2015] eKLR).
9. Given that the Applicant is seeking stay of proceedings of the trial court, it is trite that courts should be slow to stay proceedings in orders relating to maintenance of a child and or children as this is detrimental to the welfare of the children in so far as the expenses keep accruing by the day. On this issue, this court associates itself with the decision in the case of Z.M.O –vs- E.I.M. [2013] eKLR, where Musyoka J. stated:-

“ As a matter of principle, grant of stay of execution of

maintenance orders in children's cases should be made in very rare cases. I say so because parents have a statutory and mandatory duty to provide for the upkeep of their minor children. There are no two ways about. Suspension of a maintenance order is not in the best interests of the child, particularly in cases such as this one, where paternity is not in dispute.



To my mind, once a maintenance order is made where parentage is undisputed it should not be suspended pending appeal, where the appeal is on the quantum payable.”

10. In this case, the Respondent has opposed the prayer of the Applicant on the ground that the proceedings that are sought to be stayed concern minor children and their welfare, particularly, education, which he says the Applicant who stays with them has continued to violate and disobey the court order on this. The Applicant has not rebutted this claim by the Respondent. In view of the principle of best interest of a child and the statutory and mandatory duty for parents to provide for the upkeep of their children, this court finds it cannot invoke its discretionary power to enhance disobedience and irresponsibility towards violating the rights of children.
11. The upshot is that this court finds that the Notice of Motion application dated 28th May, 2025 lacks merit and is hereby dismissed with costs to the Respondent. The appeal before this court to proceed for hearing and determination.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 17TH DAY OF SEPTEMBER , 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Wamae holding brief for M/S Githogori for the Appellant

M/S Karwitha counsel for Respondent

Court Assistant - Martin

