



**AMAMO v AAD (Family Appeal E054 of 2025)  
[2026] KEHC 1170 (KLR) (4 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1170 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
FAMILY APPEAL E054 OF 2025**

**G MUTAI, J**

**FEBRUARY 4, 2026**

**BETWEEN**

**AMAMO ..... APPELLANT**

**AND**

**AAD ..... RESPONDENT**

**RULING**

1. The Children Court delivered a judgment on 9<sup>th</sup> September 2025 in Mombasa Tononoka Children Case No E 433 of 2023, in which it granted the respondent actual custody of the minor. The respondent is the biological father of the minor. Being aggrieved, the appellant filed an appeal to this court through a memorandum of appeal dated 8<sup>th</sup> October 2025. The memorandum of appeal raises 9 grounds of appeal. The appellant seeks to have the appeal allowed, the judgment of the Children Court delivered on 9<sup>th</sup> September 2025 set aside, and for the custody of the minor to remain with the appellant, with reasonable access granted to the respondent.
2. The appellant filed a notice of motion application dated 13<sup>th</sup> October 2025, through which he seeks to have this court stay the execution of the impugned judgment. The appellant further sought to have his court interview the minor and ascertain her wishes with regard to custody and access.
3. The application was opposed by the respondent vide a replying affidavit sworn on 22<sup>nd</sup> October 2025. The affidavit stated in the main that, being the sole surviving parent, he, rather than the paternal grandfather, had the preeminent right of custody of the minor.
4. This matter was canvassed by way of written submissions. The submissions of the appellant are dated 10<sup>th</sup> November 2025. Those of the respondent are dated 10<sup>th</sup> November 2025. I have considered the submissions, the law, the expressed wishes of the child, as well as the report of the child psychologist who examined the minor.



5. The conditions governing the grant of stay of execution of the judgment or orders of a court pending appeal are well known. Order 42 Rule 6 (2) of the [Civil Procedure Rules](#) states these as being:
  - a. Whether the appellant will suffer substantial loss if a stay is not granted;
  - b. Whether the applicant was filed without undue delay; and
  - c. Whether security for due performance of the decree has been given.
6. In the case of [LDT v PAO](#) [2021] KEHC 2944 (KLR), it was held that:

“In determining an application for stay of execution in cases involving children, the general principles must be complemented by overriding consideration of the best interest of the child.”
7. Section 8 of the [Children’s Act](#) provides that ascertainable wishes of the child ought to be taken into account when the court considers what course of action to take in children’s matters.
8. Due to the difficulty in ascertaining the wishes of the child, and noting that the minor, the subject of the appeal, is 15 years old, the court had her assessed by a child psychologist. The wishes of the child, as expressed to the psychologist was that she remain with the maternal grandfather.
9. The report called for immediate psychological intervention, maintenance of the *status quo*, and gradual reintegration and structured visitation.
10. The observations made by the child psychologist appear to me as reasonable. In the case of [HKM v NIK](#) [2023] eKLR, the court opted for the maintenance of the *status quo*, rather than a course of action that would destabilize the minor and disrupt its education routine.
11. In the circumstances, I allow the application dated 13<sup>th</sup> October 2025. Execution of the judgment of the court below is hereby stayed pending appeal.
12. In the interest of justice, the appeal will be fast-tracked.
13. I make no orders as to costs, as this is a children’s appeal.
14. It is so ordered.

**DATED AND SIGNED IN MOMBASA, THIS 4<sup>TH</sup> DAY OF FEBRUARY 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:

Mr Kakai Franklin, holding brief Ms Wambani, for the Appellant/Applicant;

Mr Akanga, for the Respondent; and

Bancy- Court Assistant.

