



CMK v DM (Suing as the mother and next friend to CN, AK, AK and MVM) (Civil Appeal E300 of 2025) [2026] KEHC 1629 (KLR) (16 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1629 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E300 OF 2025
RC RUTTO, J
FEBRUARY 16, 2026**

BETWEEN

CMK APPELLANT

AND

DM (SUING AS THE MOTHER AND NEXT FRIEND TO CN, AK, AK AND MVM) RESPONDENT

(Being an appeal from the ruling/orders of Hon. Langat Betty Koech (SPM) made on 14th November, 2025 in Machakos CM's Children Case NO. E039 of 2025)

RULING

1. Before this court is a Notice of Motion Application dated 13th January 2026 supported by affidavit of even date and further affidavit sworn on 27th January 2026. In this application, the appellant challenges the ruling and orders made by the trial court which requiring him to contribute kshs 5,000 every month towards maintenance of the subject issues (the children).

Specifically, the appellant seeks the following orders:

1.Spent
2. That pending the hearing and determination of the application herein and/or further orders, this honourable court pleased to order a partial stay of the orders issued on 14/11/2025 in Machakos CM's Children Case No. E039 of 2025 and/or this honourable court be pleased to stay the payment by the appellant of the sum of Kshs 5,000 towards the maintenance of CN, AK, AK and MVM as ordered by the court on 14th November, 2025 in Machakos CM's Children Case No. E039 of 2025.
3. That pending the hearing and determination of the appeal herein and/or further orders, this honourable court pleased to order a partial stay of the orders issued on 14/11/2025 in



Machakos CM's Children Case No. E039 of 2025 and/or this honourable court be pleased to stay the payment by the appellant of the sum of Kshs 5,000 towards the maintenance of CN, AK, AK and MVM as ordered by the court on 14th November, 2025 in Machakos CM's Children Case No. E039 of 2025.

4. That costs of this application be provided for.

Appellant's case

2. The appellant contends that the Ksh.5,000 ordered by the trial court as maintenance is akin to alimony which is not provided for under Kenyan law. He urges that since he has already been paying school fees the additional sum of Ksh.5,000 is ambiguous and does not specify the particular needs of the minor it is intended to cover.
3. He submits that he filed a replying affidavit which was not contested wherein he averred that he is not in gainful employment and only engages in menial jobs.
4. It is his case that he lacks the financial capacity to pay the Ksh.5,000 and therefore urges this court to exercise its discretion under section 119 of the Children's Act and Order 42 Rule 6 of the Civil procedure Rules.
5. In conclusion the appellant submits that committing him to civil jail for failure to pay the sum of kshs.5,000 would not serve the best interest of the minors. On those grounds he urged the court to allow the application.

Respondent's Case

6. The respondent filed a Replying affidavit sworn on the 21st January 2026 in opposition to this application. She states that she instituted a children case against the appellant, being Machakos Magistrates Court Children Case No. E039 of 2025 together with an application dated 20th August 2025 in which she sought maintenance orders in favor of the four children who are in her custody and care.
7. She averred that though she sought a maintenance sum of Kshs. 20,000 for the four children, the trial court ordered the appellant to contributing a sum of Kshs. 5,000 towards their upkeep. She contends that the appellant failed to provide an affidavit of means.
8. She further avers that on 28th February 2025, she and the appellant appeared before a children officer at the Mwala sub-county children office and after lengthy discussions signed a joint parental responsibility agreement. In that agreement, the appellant willingly undertook, among other duties, to be contributing to the minor's food by sending a monthly sum of Kshs. 5,000 to her.
9. It is her case that the appellant's failure to comply with the court's directive on maintenance has negatively affected the children and poses a threat to their right to education, food, healthcare, shelter and clothing.
10. The respondent submits that the trial court duly considered the appellant's financial ability and emphasized that the overriding principle for this court's consideration is the best interest of the children.
11. In conclusion, she urges this court to find that the appellant's application lacks merit and to dismiss it with costs.



Analysis and Determination

12. I have carefully considered the application together with the affidavit in support of and in opposition to the application as well as the oral submissions made by the parties.
13. The sole issue that arises for determination is whether the appellant's application satisfies the conditions for the grant of stay of execution.
14. An order of stay of execution pending an appeal is governed under Order 42 Rule 6 of the Civil Procedure Rules which provides as follows:
 - “ 1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”
 2. No order for stay of execution shall be made under sub rule (1) unless-
 - (a) the court is satisfied that substantial loss may result to the applicant has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
15. The appellant is therefore required to satisfy the aforesaid conditions in order to secure an order of stay of execution pending appeal.
16. Similarly, in LDT v PAO [2021] eKLR, Justice Ngetich emphasized at paragraphs 17,18 and 20:
 - “In exercising discretion in respect to stay of execution, Order 42 Rule 6(2) provide that the Court should be satisfied that:-
 - a. The applicant will suffer substantial loss if a stay is not granted;
 - b. The application for stay has been brought without undue delay; and
 - c. The applicant has provided security for the due performance of the decree.
 18. While considering stay of execution in respect to children matters, beside the above, the Court has to consider the best interest of the child. The applicant is expected to demonstrate that the minors will suffer if a stay is not granted.



20. The best interest of a child is superior to rights and wishes of parents; they should incorporate the welfare of the child in its widest sense.”
17. This court is mindful of the constitutional imperative under Article 53(2) of the *Constitution* as well as Section 8(1) (a) of the *Children Act*, both of which underscore that the best interests the child are of paramount importance in every matter concerning the child.
18. In the present instance, the ruling being appealed was delivered on 14th November 2025, and by 14th January 2025, the Applicant had filed his appeal and moved this Court. Given the court’s vacation period, I find that the application for stay was indeed timely filed. However, it is crucial to consider the potential effect of granting a stay in this matter. If granted such an order would not only stay the ongoing children’s case but also suspend the implementation of the ruling requiring the Applicant to pay maintenance for the minors.
19. This Court is guided by the pronouncements in *Z.M.O v E.I.M* [2013] eKLR, where the court 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.”
20. The respondent’s characterization of the ordered sum as “maintenance” and his assertion that it is akin to alimony is misplaced. Merely labelling the amount as alimony does not absolve him of his legal obligation to support his children. The duty to maintain children is distinct, mandatory, and constitutionally protected.
21. The applicant has not demonstrated how he stands to suffer substantial loss if the stay is denied. It was incumbent upon him to provide cogent, persuasive reasons to satisfy the court that substantial loss would result from immediate compliance of the trial court orders. Simply asserting that the sum resembles alimony is insufficient, particularly when the issues before the court concern child maintenance, not spousal support.
22. This court is guided by the constitutional imperative to act in the best interests of children, which always outweighs the personal wishes or convenience of parents. The respondent’s arguments fail to establish any legal or factual basis for granting a stay. On the contrary, granting such relief would undermine the paramount principle of safeguarding children’s welfare.
23. Having considered the application, it is my finding that granting the orders sought would not serve the best interests of the children since the children ought to be maintained.
24. This court therefore finds that the appellant has failed to meet the threshold set out under Order 42 Rule 6 of the *Civil Procedure Rules*.
25. The upshot is that this application is dismissed with costs. The Appellant is directed to file and serve a record of appeal within 30 days. Mention on 13th April 2026 to confirm compliance and take directions on the hearing of the Appeal.

It is so ordered.



DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 16TH DAY OF FEBRUARY, 2026.

RHODA RUTTO

JUDGE

In the presence of;

..... Appellant

..... Respondent

Selina Court Assistant

