



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

CIVIL APPEAL CASE NO. E014 OF 2025

BETWEEN

JOHNSON KARANJA MBURU..... APPELLANT/APPLICANT

AND

LYDIA WANGUI NDEGWA..... RESPONDENT

RULING

1. The appellant/applicant herein moved the court by way of a Notice of Motion dated the 23rd of August 2025. The application is brought under sections 1A, 1B, and 3A of the Civil Procedure Act & Order 51 Rule 1 of the Civil Procedure Rules and Article 159 (2) (d) of the Constitution of Kenya. He is seeking the following orders:
 - a) The service of this application in the first instance be dispensed with in view of the urgency. [Spent]
 - b) Pending the hearing and determination of this application, the Honourable Court be pleased to stay the proceedings before the Subordinate Court.
 - c) Pending the hearing and determination of this appeal, the Honourable Court be pleased to stay the proceedings before the Subordinate Court.
 - d) The costs of this application be provided for.
2. The application was premised on the following grounds:
 - a) The appellant has been aggrieved by the conduct of the proceedings before the trial court right from the commencement of the same to date.
 - b) The learned trial magistrate has consistently ignored the appellant's plea for leniency on account of his living with a disability.
 - c) The appellant has denied paternity over the subject minors.
 - d) The respondent falsified official documents in an effort to prove the appellant's alleged paternity over the said minors.

- e) That as far as the appellant is concerned, the respondent herein is married to one Shadrack Mugii Mureithi since the year 2011, which marriage has never been disclosed.
 - f) The said Shadrack Mugii Mureithi is the biological father of the subject minors.
 - g) The appellant has been ordered by the learned trial magistrate to pay a certain amount of money to the respondent, being maintenance expenses for the said minors, by the 4th day of September 2025, in default of which he shall be committed to civil jail.
 - h) That it is in the interest of justice that this application be granted.
3. The application was opposed by the respondent on the following grounds:
- a) The application herein is a nonstarter, malicious and a desperate attempt to interfere with the cause of justice.
 - b) The Supporting Affidavit therein is fatally defective as it is not executed by the deponent; thus, it can only stand to be struck out.
 - c) Further, the notice of motion application is incurably defective as it does not disclose the proceedings whose stay is being sought thus, the respondent is unable to respond in any way or form. The averments by the appellant/applicant are incoherent, baseless and cannot stand the test of truth.
 - d) The appellant/applicant is the father of the subject minors and has the parental responsibility to provide for them as a matter of right.
4. The supporting affidavit attached to the Notice of Motion was not executed by the applicant. The Supreme Court in **Konchellah v Sunkuli & 2 others [2018] KESC 58 (KLR)**, where the first respondent's affidavit had not been signed, dated or commissioned, held as follows:
- 8. We have no hesitation in finding that the purported Replying Affidavit filed by the 1st Respondent is fatally defective as the same contravenes all the legal requirements for the making of an affidavit. Hence, it has no legal value in the matter before us. We have checked all the eight copies of the Replying Affidavit as filed in the Court Registry and confirmed that none of the copies was signed, commissioned and dated. Consequently, as the same is defective, it is deemed that there is no Replying Affidavit on record filed by the 1st Respondent.***
5. The applicant's supporting affidavit must therefore suffer the same fate.
6. Although the applicant requests a stay of proceedings in the subordinate court pending the hearing and decision of this appeal, he has not specified which proceedings he is referring to, since his current appeal pertains to the judgment delivered on 18 May 2021. Court

orders are issued to resolve particular issues; they are not made in isolation. In this application, it is unclear what specific issue the applicant wants the court to consider.

7. The respondent in her replying affidavit has stated that the High Court at Naivasha in **HCCA No. E045 of 2022** adjudicated on this matter. The attached Memorandum of Appeal confirms that indeed the applicant/appellant filed an appeal against the decision now the subject of the appeal before this court.
8. If the applicant/appellant was dissatisfied with the decision in **HCCA No. E045 of 2022** by the High Court at Naivasha, the recourse open to him was to appeal in the Court of Appeal and not file another appeal in a court of equal jurisdiction. Even if we assume no decision has been rendered in the High Court at Naivasha, he cannot purport to file another parallel appeal.
9. Consequently, the application is dismissed for lack of merit, and the appeal is struck out with costs for want of jurisdiction.

Delivered and signed at Nyandarua, this 24th day of February 2026

KIARIE WAWERU KIARIE

JUDGE.