



REPUBLIC OF KENYA



**Ngetich v Chepkirui (Civil Appeal E089 of 2025)
[2026] KEHC 2402 (KLR) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2402 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E089 OF 2025
JK SERGON, J
FEBRUARY 19, 2026**

BETWEEN

VICTOR NGETICH APPELLANT

AND

MERCY CHEPKIRUI RESPONDENT

RULING

1. Victor Ngetich, the Appellant herein, has taken out the motion dated 30th September, 2025, whereof he sought for the following Orders:-
 - i. That this Honourable Court stay execution of ruling dated 13th August, 2025 and warrant of attachment pending hearing and determination of Appeal dated 12th September, 2025.
 - ii. That pending the hearing and determination of Appeal dated 12th September, 2025, the appellant herein in love and affection of his children undertake do;
 - a. Pay School Fees that will arise in the cause of proceedings.
 - b. Provide comprehensive medical cover for the issues of marriage.
 - c. Pay Schools' requirements for the issues of marriage.
 - iii. That the costs of this Application be provided for.
2. The Appellant/Applicant filed an Affidavit he swore in support of the motion. When served, Mercy Chepkirui filed a Replying Affidavit she swore to oppose the motion.
3. The background of this matter is short and straightforward. The Appellant was sued by the Respondent for Inter alia Custody and maintenance of minor children. In a Judgment delivered by



Hon. Limo, Learned Resident Magistrate, on 13th March, 2018, the Appellant was inter alia ordered to pay school fees and transport costs and Kshs.5,000/= for the minors upkeep. The appellant was also ordered to provide medical, shelter and tender care of the minors. Pursuant to an Application for review, Hon. Nyakundi, Learned Principal Magistrate, reviewed and varied the decision of Hon. Limo vide his Ruling made on 26th July, 2022 as follows:-

- i. The Appellant to cater for school fees for the 3 issues only.
 - ii. The Respondent to cater for the transport costs of the three issues.
 - iii. The Appellant to be remitting Kshs.3,000/= per month for the Respondent.
4. The Appellant being unhappy with the decision of Hon. Nyakundi, preferred the Appeal dated 12/9/2025. He is now before this Court seeking for interim Orders earlier stated hereinabove.
 5. It is the submission of the Appellant that his appeal has high chances of success. He argued that if the order for stay is not granted, the appeal will be rendered nugatory. The appellant argued that he will incur substantial loss in that he may lose his job and reputation. He pointed out that he was served with the Ruling of 13/8/2025 for an amount of kshs.247,000/= which is alleged to have been issued pursuant to an amount totally unknown to the Appellant.
 6. He further pointed out that the decision of 13/03/2018 was reviewed vide the ruling of 26th July, 2022. The appellant also argued that the Trial magistrate failed to appreciate that he had fully paid and filed copies of evidence of payment of Kshs.247,000/= in respect of Primary and Secondary School Fees. The appellant has undertaken to continue paying school fees, provide medical cover and pay school's requirements for the issues of marriage pending appeal.
 7. The Respondent has averred that the Appellant has on his part not complied with the decision of the Trial Court while she herself has performed her part of the bargain by providing shelter, tender care and medical expenses. The Respondent pointed out in the proceedings of the Trial Court there are numerous Court Rulings directing the appellant to remit Kshs.5,000/= on or before 10th of every month but the Appellant has not been doing so and that is how there is an outstanding sum of Kshs.247,000/=.
 8. The Respondent disputed the Appellant's assertion that he had been paying for any other requirements. She asserted that she has been the one who buys school uniforms, exercise books, text books, school academic trips, school shopping and transport. The Respondent argued that the Appellant's Application for Stay is meant to delay justice that goes against the best interest of the children.
 9. She further pointed out that the Appellant has failed to provide evidence of payment. She also pointed out that the Appellant is capable of raising the Kshs.5,000/= since he is employed on permanent and pensionable terms as a teacher and also has tea bushes and a dairy farm. The Respondent also attached to her Replying Affidavit a Ruling delivered on 2nd April, 2025 as proof that the Appellant has always made numerous applications seeking orders to frustrate compliance with the Court Orders.
 10. The main order sought before this court is the order for Stay of Execution of the Ruling dated 13th August, 2025 and the warrants of attachment pending Appeal. In determining an Application for Stay of Execution, an Applicant must inter alia show the substantial loss one would suffer if the order for stay is denied. The Appellant has merely deponed in his Affidavit that if the order for stay is not granted, he would suffer substantial loss in that he may lose his job and his reputation.



11. The Appellant was enjoined to explain how being required to settle the decree and or settle the order by making payments as directed by the Court. The Appellant has not been able to show that he had settled the monthly payment. He has not been able to controvert the Respondent's assertion that he has been in arrears in making the monthly payments in compliance with the various Court Orders.
12. If the order for stay is granted, it obviously affect forestall the order requiring the Appellant to meet his parental responsibility of settling inter alia school fees and maintenance of the children thus negatively compromising the interest of the children. If the order is granted, it will go against the best interest of the children.
13. It is in the best interest of the children to decline the stay order. The appellant/applicant should strive to meet his side of the bargain. Having failed to show the actual substantial loss, the Appellant would suffer if the order for stay is denied, the motion dated 30/9/2025 must fail.
14. In the end, motion dated 30/9/2025 is found to be without merit. It is dismissed with costs to the Respondent.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF FEBRUARY, 2026

J.K. SERGON

JUDGE

In the presence of:-

C/Assistant - Rutoh

No Appearance for Applicant

Respondent – Present

