



**JNM v LGM (Miscellaneous Application E185 of 2024)
[2025] KEHC 2570 (KLR) (Family) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2570 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E185 OF 2024
EKO OGOLA, J
FEBRUARY 27, 2025**

BETWEEN

JNM APPLICANT

AND

LGM RESPONDENT

RULING

1. This court was moved through a Notice of Motion dated 2nd September 2024 seeking a stay of execution of orders numbers 2 and 3 of the partial judgment delivered on 11th August 2024 in Milimani Children's Case No. E116 of 2022 pending the hearing and determination of this application and the intended appeal.
2. The trial court directed as follows:
 - a. The Plaintiff/father shall provide school fees and school-related expenses at the current school.
 - b. He shall further remit transport charges to the defendant at the rate charged by the school from the current residence of the minors to the school pending the filing of the children's officer's report, any transport charges not utilized by the school transport shall be released to the defendant forthwith.
 - c. He shall further provide clothing for the minors, the defendant shall forward a list of clothes needed by the minor on a quarterly basis.
 - d. He shall further continue maintaining the minors in his medical cover.
 - e. He shall provide food and entertainment whenever he has custody.



- f. The defendant mother shall provide shelter, related utilities and food whenever she has custody.
 - g. She shall further maintain the minors in her medical cover and provide entertainment when she has custody. She shall further meet any shortfall in clothing expenses.
3. The Respondent herein filed a Replying Affidavit in opposition to the application dated 2nd September 2024.
 4. The Respondent contends that the filing of the instant application before this Court ought to have first been made before the trial court.
 5. The applicant states that they had an option of filing an application for stay in either the trial Court or the appellate Court. It is their submission that the application was properly filed before this Court. They laid reliance in place on *Mogo Auto Limited v Thon & another (Civil Appeal 290 of 2023)* [2024] where it was held:

“An Applicant may make an application before the court that issued the order but can also opt to directly file an application for stay before this Court. There is nothing that bars him/her from exercising the latter option Therefore the application is rightly before this Court.”
 6. The Applicant also filed a supplementary affidavit which they relied on in their submissions.

Determination

7. The court notes that the issue that falls for determination: -
 - i. Whether the application was improperly filed before this Court
8. The Respondent contends to have filed the instant application before this Court indicating that the application ought to have been first made before the trial court.
9. This court notes that Order 42 Rule 6 of the Civil Procedure Rules stipulates as follows:

“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 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”
10. In the case of *Mbogo and Another vs. Shah* [1968] EA 93 where the Court stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”
11. From the foregoing and looking at the trial court’s orders, which the appellant seeks to stay, I am of the view that those orders are not prejudicial for the appellant and shall stay for the duration and determination of the appeal. I am also persuaded that the best interest of the minor at this stage is that those orders stay until the appeal is heard on its merits.



12. The upshot is that the application dated 2nd September 2024 is hereby dismissed. There shall be no orders as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.

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E.K. OGOLA

JUDGE

In the presence of:

Ms. Okech Applicant

Ms. Owino Respondent

E. OGOLA J.

