MKK v LJ (Miscellaneous Civil Application E200 of 2024)
[2025] KEHC 3861 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3861 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

MISCELLANEOUS CIVIL APPLICATION E200 OF 2024

JRA WANANDA, J

MARCH 28, 2025

BETWEEN

MKK ..... APPLICANT

AND

LJ ..... RESPONDENT

RULING

1. Before this Court for determination is the Applicants' Notice of Motion dated 18/07/2024. The same is filed through Messrs Isiaho Sawe & Co. Advocates and seeks orders as follows:

   i. [.....] spent

   ii. [.....] spent

   iii. Leave be granted to the Applicant/judgment debtor to appeal out of time against the ruling delivered by Hon. C.A Menya on 30th June, 2023 in Eldoret Children's case No. E095 of 2022.

   iv. Upon the grant of prayer (3) above, the said leave do operate as stay of further proceedings in Eldoret Children's case No. E095 of 2022 pending the hearing and determination of this application and the intended appeal.

   v. The draft memorandum of appeal filed herewith be deemed as properly filed and served upon payment of the requisite filing fees.

   vi. The costs of this application be provided for.

   vii. Any other orders that meet the ends of justice.

2. The Application is supported by the Affidavit sworn by Laureen Isiaho, Counsel for the Applicant. In the Affidavit, Counsel deponed that she was instructed in Eldoret Children's Case No. E095 of 2022 and when the matter came up for hearing on 22/11/2022, the Magistrate was informed by the

Advocate who held her brief that Counsel was attending to an urgent matter in Kisumu but the Magistrate proceeded to hear the matter ex parte, and that upon learning of this, Counsel moved the Court to set aside the ex parte Judgement and allow the Applicant (Defendant) to venerate his defence on merit. She added that the trial Court then proceeded on leave before delivering the Ruling and Counsel only became aware of the same after the Applicant was served with a Notice to Show Cause (NTSC) for 15/03/2023.

3. She deponed further that aggrieved by the Ruling, the Applicant instructed her to file an Application seeking stay of the NTSC and for enrolment of the minor into a school within the Applicants' means but the trial Court disallowed the Application on 24/05/2024 in the absence of the Applicant on the grounds that it could not sit on appeal on a decision issued by a Court of concurrent jurisdiction. She urged further that she then applied for proceedings which were however supplied on 17/07/2024, outside the statutory period to file an Appeal, her client has been prejudiced by the orders as his financial ability was never considered, that she was never served with a notice for the Ruling delivered on 30/06/2023 and that she came to learn of the Ruling on 15/07/2024. She urged that the Appellant has an arguable appeal and that it would be in the interests of justice that the Application be allowed.

4. The Respondent, in opposition to the Application, and acting in person, filed the Replying Affidavit sworn on 14/10/2024. She deponed that the grounds raised in the application are in bad faith and do not meet the threshold for granting the orders sought, that the Application has been brought with the intention of delaying the determination of the case and that the Applicant is guilty of material non-disclosure. She deponed that the Applicant participated in the proceedings that culminated in the Judgment delivered on 17/02/2023, that Counsel has confirmed that there was an Advocate holding her brief when the matter came up for hearing and that the hearing date of 01/11/ 2022 was fixed in the presence of both parties' Counsel. She deponed further that the Review Application dated 08/03/2023 was dismissed on merit, and that the allegation that Counsel was not aware of the Ruling of 08/03/2023 is untrue as Counsel was in Court on 04/04/2023 when the Ruling date was given. She added that the Applicant filed another Application dated 24/05/2024 which was dismissed by the trial Court, that as evidenced by the many applications, it is clear that he always participated in the whole Court process, and that the Applicant was granted 30 days stay of execution to file an appeal against the Ruling delivered on 24/03/2004.

5. In respect to Counsel's statement that she received the proceedings late, she contended that there was no evidence attached to back up this statement. In the end, she urged that the Applicant is "forum shopping" and that the Application has been presented with the intention of delaying the matter and whose end result is prejudicing and denying the minor (S.C.) her basic needs as enshrined in *the Constitution* and the *Children Act*.

Hearing of the Application

6. The Application was canvassed by way of written Submissions. The Applicant filed the Submissions dated 17/12/2024 and the Respondent's is dated 14/10/2024.

Applicant's Submissions

7. Counsel for the Applicant reiterated the matters contained in her client's Supporting Affidavit and submitted that the Judgment was based on ex-parte proceedings. She cited the case of Charles Karanja Kiiru v Charles Githinji Muigwa [2017] eKLR, the case of Wanjiru Mwangi & Another [2015] eKLR and the case of APA Insurance Co. Ltd Vs Michael Kinyanjui Muturi [2016] eKLR. In respect to the prayer for extension of time to appeal, she cited Section 79G of the *Civil Procedure Act* and urged that the Court of Appeal guided that whenever an application for extension of time is up for consideration,

the Court ought to take into account several factors as observed by Odek JJA in the case of Edith Gichungu Koine Vs Stephen Njagi Thoithi [2014] eKLR, and that the Court also has a duty to ensure such factors are in consonant with the overriding objective of civil proceedings litigation.

8. She reiterated that the Applicant was unaware of the ex-parte proceedings which culminated into the ex-parte decree, that the discovery happened outside the 30 days stipulated by law, and that the reason given for the delay informed the filing of this Application. She cited the case of Kamlesh Mansukhalal Damki Patni Vs Director of Public Prosecution & 3 Others [2015] eKLR. She also cited Article 48 of *the Constitution* on the right of access to justice, and Article 50(1) on the right to a fair hearing, and submitted that the ultimate goal and purpose of the justice system is to hear and determine disputes fully, and that no person who has approached the Court seeking an opportunity to ventilate his grievances should be locked out. Counsel submitted further that the discretion of the Court to enlarge time for filing of a late appeal is unfettered although that discretion must be exercised judiciously and not capriciously, and that the reasons given for the delay have been well articulated.

Respondents' Submissions

9. On her part, the Respondent, in respect to the prayer for stay pending Appeal, cited Order 42 Rule 6 of the Civil Procedure Rules and listed the principles applicable in such situations. She also cited the case of Equity Bank Ltd vs Taiga Adams Company Ltd [2006] eKLR. She then submitted that the case involves the welfare of a minor, and cited the case of Bhutt v Bhutt and also Article 53(2) of *the Constitution*. According to her, the Applicant has not demonstrated how "substantial loss" shall be occasioned if stay is not ordered, that "substantial loss" is such loss that is monumental in nature and the onus of proof is on the Applicant. She cited the case of Nakuru *CA No. 83 of 2016*-John Kamau Waweru -v- Joseph Muriu Waithaka, the case of Kenya Shell Ltd v Benjamin Karuga Kabiru & Others [1982-88] and also David Mwenie vs Jubilee Insurance Co. Ltd (2005) eKLR.

10. She urged that the parties are biological parents of the minor herein and that the Applicant blatantly refused to honour the Court order and has rushed to this Court with the intention of sanitizing his wrong. She reiterated that the Applicant fully participated in the trial process that gave rise to both the Judgment and Rulings herein and it cannot thus be true that "substantial loss" shall be occasioned if the orders sought are not awarded. and that the Respondent is a man of means, capable of meeting the orders. She submitted further that the Applicant has not offered any security as required by Order 42 Rule 6 aforesaid and cited several authorities. In respect to delay in filing the Application, she cited several authorities and submitted that the Judgment in the primary suit was delivered on 17/02/2023 after which the Applicant filed an Application which was dismissed by the Ruling delivered on 30/06/2023, that the Applicant filed another Application dated 8/03/2024 which was also dismissed on 24/05/2024 and was granted a 30 days stay of execution. According to her therefore, the Applicant was fully aware that he ought to have filed the appeal within the 30 days window granted to him by the trial Court but he never did so.

11. She reiterated that the Applicant has not even provided any form evidence in form of letters to the Court requesting to be supplied with typed proceeding for purposes of instituting an appeal. She therefore insisted that the Application has been brought after a period of 2 months after the delivery of the Ruling, way too late, and is an afterthought whose intention is to delay the administration of justice. The Respondent also contended that if this Application is granted, the minor herein shall continue to suffer prejudice and the longer this matter continues pending before Court, the longer the minor shall continue being denied her basic needs. She cited Mombasa Civil Appeal No. 37 of 2016-Local Authorities Pension Trust Registered Trustees v C A O & 2 others [2018] eKLR.

Determination

12. The issues that arise for determination herein are evidently the following:

    a. Whether the Appellant should be granted leave to appeal out of time.

    b. Whether the orders for stay of execution pending Appeal should issue.

13. Before I delve into determining the Application on merits, I notice suo motu, a preliminary issue that needs to be first interrogated. The issue arises from the Applicant's Counsel's statement made in her Supporting Affidavit that the Applicant, before moving to this Court, did file an Application seeking Review of the Judgment that he now wishes to challenge by way of appeal, namely, the refusal to set aside the Judgment, and that it is after that Application for Review was dismissed that the Applicant has now come to the High Court.

14. To put it in context, the substantive Judgment was delivered on 17/02/2023, the Application to set it aside was dismissed on 30/06/2023, the Application for Review of the Judgment was dismissed on 24/05/2024, and this instant Application seeking to challenge the Ruling of 30/06/2023 (refusal to set aside), was filed subsequently at this High Court on 18/07/2024. Although in this instant Application, what the Applicant is seeking is the setting aside of the Ruling refusing to set aside the Judgment, it is beyond peradventure that if that prayer is granted, the eventual effect would be the setting aside of the substantive Judgment itself. The two are therefore intertwined and for purposes of determining the preliminary issue, cannot be separated. In any case, the express prayer contained in the Memorandum of Appeal is not even for setting aside of the Ruling delivered on 30/06/2023, but that "the Judgment delivered on 27th February 2023 be set aside ...".

15. Having therefore already unsuccessfully applied for Review of the Judgment the subject of these proceedings, does the Applicant still retain any right to again subsequently pursue an Appeal against the same Judgment? To determine this issue, I will cite the provisions of Section 80 of the *Civil Procedure Act* which is premised as follows:

> " Any person who considers himself aggrieved—
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> a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
>
> b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit."

16. The above wording is perpetuated in Order 45 Rule 1(b) of the Civil Procedure Rules.

17. In interpreting the above provisions, Odunga J (as he then was), in the case of Ndithya v Total Kenya Limited (Miscellaneous Civil Application E218 of 2021) [2022] KEHC 10080 (KLR) (14 July 2022) (Ruling) remarked as follows:

> 23. It is therefore clear from the foregoing that the review remedy is only available to a party who, though has a right to challenge the decision in question by an appeal, is not appealing or to whom there is no right of appeal. In other words, a person cannot exercise both the right of appeal and review at the same time. See Orero vs. Seko [1984] KLR 238.
>
> .....

27. Whereas under Order 45 rule 1, a person aggrieved by a decision whether an appeal is allowed or not but who is not appealing, is at liberty to apply for review of the decision, that provision, in my respectful view, is not a carte blanche for abuse of the process of the Court."

18. On the same point, the Court of Appeal, in the case of Chairman Board of Governors Highway Secondary School v William Mmosi Moi [2007] eKLR, found as follows:

> "..... The Board took an active part in giving instructions to the advocate on the various matters the advocate was pursuing before the superior court. In particular the Board gave instructions that an application be filed for review of the ruling and it is the same ruling against which instructions had already been given for filing an appeal to the Court of Appeal. In those circumstances the options available to the Board were exhausted when the application for review was determined by the superior court and it is doubtful whether the intended appeal would be valid even if it was filed.
>
> An aggrieved party under Order 44 of the Civil Procedure Rules can apply for the review of a decree or order either where "no appeal has been preferred" or where "no appeal is allowed". An appeal is allowed on orders made under Order 9A rule 2 Civil procedure Rules, as in this case, and indeed the Board filed a notice of appeal under rule 74 of the rules to challenge the orders. .....
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> .....
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> ..... We have no hesitation however in stating that upon the exercise of that option and pursuit therefrom until its conclusion, there would be no further jurisdiction exercisable by an appellate court over the same orders of the court. That was the end of the matter and the notice of appeal was rendered purposeless. Both options cannot be pursued concurrently or one after the other."

19. Similarly, Asike-Makhandai JA, sitting as a single Judge in the Court of Appeal case of Gerald Kithu Muchanje v Catherine Muthoni Ngare & another [2020] eKLR held that:

> "The applicant was aggrieved by the judgment of the trial court. Under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, where a party opts to apply for review of a judgment and decree, such a party cannot after the review application is rejected exercise the option to appeal against the same judgment and decree that he sought to review. In the instant application, the applicant exhausted the process of review proceedings and now wishes to go back and try his luck once again with an appeal against the original Judgment. The applicant wants to have a second bite of the same cherry and he cannot be permitted to do so. There is no doubt that this will cause prejudice to the respondents. Litigation must come to an end somehow and it cannot be conducted on the basis of trial and error. An appeal could only lie on the outcome of the application for review. In the case of Martha Wambui v Irene Wanjiru Mwangi & Another (2015) eKLR, the court stated that "From the above provisions of section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure rules, it is clear that one cannot exercise the right of appeal and at the same time apply for review of the same Judgment/decree or order. One must elect either to file an appeal or to apply for a review... It therefore follows that the appellant herein had an unimpeded right to either appeal against the ruling of 13/6/2014 or apply to have it reviewed. And having exercised the right to a review, she lost the right of appeal against the same order ..." See also the case of Multichoice (K) Ltd v Wananchi Group (K) Ltd

& 2 Others (2020) eKLR. This is exactly what happened here. Contrary therefore to the submissions by the applicant, the law on the issue is purely settled."

20. I may also cite J. M. Mutungi J, in the case of Serephen Nyasani Menge vs. Rispah Onsase [2018] eKLR, in which he stated as follows:

> 13. Order 45 rule 1(a) and (b) in addition to setting out the conditions that an applicant in an application for review must satisfy in order to get the application granted, reiterates the proviso of Section 80(a) and (b) which in my view makes it plainly clear that the options of a review and an appeal are not simultaneously available to an aggrieved party. Once a party has opted for a review the option of an appeal cannot at the same time be available to the party. Subrule (2) of Order 45 of the Civil Procedure Rules further makes the matter clearer...
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> .....
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> 14. In my view a proper reading of Section 80 of the Act and Order 45 Rules 1 and 2 makes it abundantly clear that a party cannot apply for review and appeal from the same decree or order. In the present case, the applicant exhausted the process of review up to appeal and now wishes to go back to the same order she sought review of and failed and to try her luck with an appeal. The applicant wants to have a second bite of the cherry. She cannot be permitted to do so. Her instant application constitutes an abuse of the process of the court and the same must surely fail. The applicant had her day in court when she chose to seek a review of the order that she now wishes to appeal against. Litigation somehow must come to an end and for the applicant, the end came when she applied for review and appealed the decision made on the review application. Litigation cannot be conducted on the basis of trial and error. That is why there are provisions of the law and the procedure to be adhered to. The applicant invoked the provisions of the law and the procedure thereto and the court rendered itself on the basis of the law and the evidence."

21. I agree with the above decisions and in view thereof, my finding is that the Applicant having already applied for Review of the Judgment, cannot now purport to appeal against the same Judgment or against the Ruling that dismissed the Application that sought to set aside the Judgment. On this ground alone, I would dismiss the Application in its entirety.

22. I will however still analyse the merits of the Application.

23. Regarding the timelines within which to file an Appeal to the High Court against a decision of the lower Court, and the Court's power to enlarge the time to appeal, Section 79G of the *Civil Procedure Act* provides as follows:

> " Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order
>
> Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time."

24. Section 95 of the *Civil Procedure Act* also provides as follows:

> " Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

25. Odek JA, sitting as a single Judge in the Court of Appeal case of Edith Gichungu Koine vs. Stephen Njagi Thoithi [2014] eKLR, guided that when determining an application for extension of time, the Court ought to take into account several factors. This is how he put it:

> " Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but no limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others."

26. On the issue whether the Application was filed timeously, I note that the Judgment was delivered on 17/02/2023. The last Ruling by the trial Court, the one that dismissed the Application for Review, was delivered on 24/05/2024, and the instant Application was filed on 18/07/2024. Counting from the latter date of 24/05/2024, this is a delay of 2 months, which, in my view, has not been satisfactorily explained. Although the Applicant's Counsel puts much emphasis on the allegation that there was a delay by the Court in supplying her with typed proceedings, that excuse does not meet my consensus. I say so because, unlike in the Court of Appeal, filing of Appeals at the High Court does not require the attachment of typed proceedings. It is not therefore clear why Counsel needed the typed proceedings at that stage. If it is about appreciating or understanding what the Court's reasoning was before filing the Appeal, Counsel could have simply asked to peruse the Court file. Being of the knowledge that the Judgment was itself delivered way back on 17/02/2023, and that the time for Appeal had already long lapsed by then, I believe it was incumbent upon Counsel to have acted swiftly. The 2 months unexplained delay does not demonstrate the expected diligence. For this reason, I would not be minded to grant the enlargement of time sought for filing the Appeal.

27. On the issue of stay pending Appeal, I must say that in determining matters involving children, including an Application for stay of execution as herein, the "best interest" of the child is what is paramount. This is expressly provided under Article 53(2) of *the Constitution* and also in Section 8(1)(a) of the *Children Act* as follows:

> Article 53(2) of *the Constitution*
>
> "A child's best interests are of paramount importance in every matter concerning the child."
>
> Section 8(1)(a) of the *Children Act*
>
> "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—
>
> a. the best interests of the child shall be the primary consideration;"

28. The principles applicable in handling Applications for stay of execution in children's matters were well set out by Murithi J in the case of Bhutt v. Bhutt, Mombasa HCCC NO. 8 of 2014 (O.S.) to be as follows:

> " In determining an application for stay of execution in cases involving children, the general principles for the grant of stay of execution Order 42 Rule 6 of the Civil Procedure Rules,

must be complemented by overriding consideration of the best interest of the child in accordance with Article 53 (2) of *the Constitution*."

29. Generally, the principles guiding grant of stay of execution pending Appeal are well settled. In this respect, Order 42 Rule 6(2) of the Civil Procedure Rules provides as follows:

> " 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 unless the order is made and that the application 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."

30. From the foregoing, it is clear that an applicant for stay of execution pending appeal must satisfy 3 conditions, namely, (a) that he will suffer substantial loss unless the order is granted, (b) the Application has been made without unreasonable delay, and (c) willingness to deposit security for the due performance of any orders so stayed.

31. On the first condition, that is whether the Appeal was filed timeously, I have already found that there was inordinate delay in doing so. I will not therefore belabour that point.

32. The second condition is on whether there shall be any "substantial loss" should the order not be granted. As to what encompasses "substantial loss", F. Gikonyo J, in the case of James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR, stated as follows:

> " ..... The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory."

33. In this case, the Applicant does not dispute the paternity of the child. The effect of the Judgment of the trial Court is to compel him to participate in providing upkeep for the child, which indeed is a duty bestowed by law upon the Applicant, and also by nature itself.

34. It is important to always recall that in children's matters, the interests of the child supersede those of the parents. The "substantial loss" that prevails over and above that of the Applicant-parent is therefore that of the child. The Court must therefore look beyond the possible "loss" to be suffered by the Appellant and consider the "loss" that may be suffered by the child. In regard thereto, in the case of LDT v PAO [2021] eKLR, R. Ngetich J, stated as follows:

> " 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. I however note that the applicant averred that he will suffer great prejudice as he will be condemned to pay school fees twice if an order of 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. ....."

35. Similarly, in the case of JMR v RNM [2022] eKLR, M. Odero J, held as follows:

> " 18. The Applicant claims that he stands to suffer great prejudice if the orders are not stayed as the amount awarded as maintenance were in his view excessive and that he is not able to afford to make said payments.
>
> 19. The question of whether or not the maintenance awarded is excessive is one which cannot be determined at this interim stage. That is a matter, which can only be determined upon a full hearing of the Appeal.
>
> 20. The orders which the Applicant seeks to stay relate to the maintenance of the minors. It cannot be in the best interests of the minors to stay said orders. The Applicant has not denied paternity and as such, he together with the Children's mother has an obligation to provide for the needs of their children.
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> 21. It has been revealed that the Applicant has not complied with the orders of maintenance made by the Children Court. The Applicant has not denied this allegation. The Applicant is reminded that courts do not make orders in vain. Parties are obliged to obey court orders even when they do not agree with said orders.
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> 22. It is trite that he who comes to equity must come with clean hands. It is duplicitous of the Applicant to approach this court seeking to stay orders, which he has in any event disobeyed.
>
> 23. .....
>
> The appellant has applied to the court for a discretionary relief, yet he is not ready to obey the orders that he is seeking relief against it. He has therefore come to court with unclean hands. The court cannot exercise discretion in favour of such a litigant who has no respect for the rule of law" (own emphasis)."
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> 24. .....
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> 25. I find no valid grounds to stay the orders made on 2nd September 2021. The welfare of the children is paramount consideration and cannot be stayed, as this would be detrimental to the welfare of the said children."

36. There is also the decision of W. Musyoka J, who in the case of ZM v EIM [2013] eKLR, held as follows:

> " 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. The solution ideally lies in expediting the disposal of the appeal and staying the matter before the Children's Court to wait the outcome of the appeal. Tinkering with the quantum at this stage would amount

to determining the appeal before arguments are heard from both sides on the merits of the same". (Own emphasis)".

37. In associating myself with the reasoning made in the said decisions, I find that, in the circumstances of this case, the issue of "substantial loss" in so far as parental duty is concerned would not arise. The substratum of the Appeal is the upkeep of the child which issue cannot be addressed at this stage. Additionally, the orders were made way back in 2023, now 2 years ago, and according to the Respondent, (which allegation has not been controverted), to date, the Applicant has not made any effort to pay any upkeep. In the premises. Although I am aware that there has been an interim stay of execution since 26/09/2024, albeit on only the portion of the Judgment requiring the Applicant to provide a monthly clothing allowance of Kshs 5,000/-, I am not convinced that the Applicant has approached this Court with "clean hands" and which therefore renders him undeserving of the orders sought.

38. On the third condition, the Applicant has not offered any security for due performance of the decree. I do not believe that he expects this Court, at this stage, to excuse him from the responsibility of paying upkeep for his own child. To show his good faith, he ought to have offered security. He therefore also fails at this last hurdle.

39. For the foregoing reasons, I believe that I have said enough to indicate that the instant Application, apart from being incompetent on the ground that the avenue of Appeal is no longer available to the Applicant, a Review of the same Judgment the subject hereof having been previously unsuccessfully sought before the trial Court, is also devoid of merit and cannot therefore succeed.

Final Orders

40. The upshot of my findings above is that the Applicants' Notice of Motion dated 18/07/2024 is hereby dismissed with costs to the Respondent.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 28TH DAY OF MARCH 2025

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Ms. Isiaho for the Applicant

L J – Respondent acting in person

Court Assistant: Brian Kimathi