



REPUBLIC OF KENYA



KENYA LAW

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**Galgalo v Osman (Miscellaneous Civil Application E009 of 2024)
[2025] KEHC 5422 (KLR) (Civ) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CIVIL
MISCELLANEOUS CIVIL APPLICATION E009 OF 2024**

SC CHIRCHIR, J

APRIL 29, 2025

BETWEEN

ADAN DIDA GALGALO APPELLANT

AND

ZEITUNA ABDI OSMAN RESPONDENT

RULING

1. The Applicant's Notice of Motion dated 29th November 2024 seeks orders as follows:
 1. (Spent)
 2. (Spent)
 3. That there be a stay of execution of the Kadhi's ruling and orders dated 22nd November 2024 in case No. KCMC/E026/2022 at Isiolo pending the hearing and determination of the intended appeal.
 4. That the Applicant be granted leave to appeal out of time against the ruling and orders of the Khadi's court dated 22nd November 2024.
 5. That the costs of this Application are in the cause.
2. The motion is supported by the grounds appearing on the face of it, as well as the supporting affidavit of the Applicant.

The Applicant's case.

3. It is the Applicant's case that the Khadi's ruling dated 22/11/2024 compelled him to pay significant amount of arrears and to cater for the continuing maintenance at the rate of ksh. 350 per day.; that the



ruling failed to consider this financial capacity or the significant change in the circumstances following the relocation of the children to Marsabit county.

4. The Applicant further states that following some delays occasioned by the court, he opted to refer the dispute to community elders and out of the deliberations before the elders an agreement was arrived at. The agreement was filed a Khadi's court on 12th January 2024 but which consent, the trial court rejected.
5. He submits that if the ruling of 22/11/2024 is executed before the Appeal is heard, he will suffer irreparable harm which includes financial strain and the risk of defaulting ,due to circumstances beyond his control.
6. It is further stated that the Application has been brought without undue delay and that the Respondent will not suffer any prejudice as the children's welfare will be safeguarded during the pendency of the Appeal.

Respondent's Case

7. The Application is opposed. In her Replying Affidavit dated 7th January 2025, the Respondent states that she has been taking care of the children with the assistance of her relatives as she has no gainful employment. She further states that the Applicant is financially capable of providing for his children, as he owns a "boda boda" Motorcycle, several dairy cows, from where he draws some earnings by selling milk; several chicken broilers and layers from of which he gets and supplies meat and eggs, thus bringing him more income.
8. She submits that the Kadhi's court had jurisdiction to issue the orders it did. It is the Respondent's further contention that parental responsibility is a shared responsibility and that the Applicant has completely failed to cater for the children.
9. She accuses the Applicant of consuming drugs , sometimes done in the house ,alongside his friends ,and late into the night, and in the process ,the children are unable to sleep.
10. Consequently, she submits, the orders of maintenance by the kadhi should not be disturbed.

Determination

11. I have considered the parties' pleas above. When this matter came up for directions, the Respondent indicated to the court that she doesn't object to prayer 4 of the Application , which was a prayer for enlargement of time to file an Appeal. Consequently, leave to appeal out of time was granted.
12. On stay pending appeal, the principles to be considered are well settled. The Applicant must demonstrate that substantial loss would result if stay is not granted; that he provides security for due performance of the decree and that the Appeal has high chances of success.
13. On substantial loss, the Applicant has argued that he will suffer irreparable harm, including financial strain and potential non-compliance due to circumstances beyond his control.
14. The Applicant is seeking to appeal against the Hon.Kadhi's ruling delivered on 22/11/2024. The Application giving rise to the said Ruling has not been submitted in evidence but from the ruling I can decipher that the Application was seeking for enforcement of an earlier Ruling delivered on 5/5/2023. In the Ruling of 5/5/2023, the Court made orders on custody and maintenance of the couple's children.



15. From the Applicant's prayers herein therefore, he does not seek to appeal against the ruling on maintenance and custody but orders against execution of the said orders.
16. In the orders of maintenance, the Applicant had been ordered to pay Kshs. 350/= daily for food, and to pay school fees, medication, and clothing for the children. He was also required to pay the arrears which had accrued since the order on maintenance was made.
17. In response, the Respondent has argued that the Applicant is financially capable as he is a Boda Boda operator, owns cattle, goats and chicken, from which he earns some income.
18. I have noted that this assertion by the Respondent has not been rebutted. I will take the lack of rebuttal to the financial standing of the Applicant as an admission of his capability to provide maintenance. Consequently, I am not satisfied that the Applicant has demonstrated that he will suffer substantial loss unless orders of stay are granted. In any case, this is about the children's provisions and they must be provided for even when finances are lean.
19. On security, the Applicant has not made any offer on security. However, I take cognizance of the fact that security need not be made in every case. Maintenance of the children is a continuous process, particularly in a case like this, where the other spouse states that she is not in any gainful employment. Thus, priority is to make daily provisions for the children and not to deposit funds in an account. Therefore, I decline to make orders on provision of security.
20. On whether the appeal has high chances, there is no draft Memorandum of Appeal that has been attached to demonstrate whether the intended Appeal stands a chance of succeeding. However, from the Affidavit in support of the Application, the Applicant pleads that the order on maintenance was made without considering his financial capability, and significant change in circumstances following the relocation of the children to Marsabit county. The circumstances alluded to are however not disclosed. The Applicant is also apparently faulting the trial court for setting aside a consent order that had been entered into by the parties.
21. The above issues, in my view, are arguable, but whether they have high chances of success, I opt not to venture into that, so as not to jeopardize the intended Appeal.
22. Notwithstanding that the appeal may be arguable, I am disinclined to grant stay. Am constrained because this is a case concerning maintenance and custody of children. The children must be fed, clothed and need to attend school, as the parents continue to tussle over the extent of their responsibility. As a matter of necessity, the children's basic rights cannot be suspended, pending the resolution of the dispute.
23. In view of all the foregoing, the Application herein partially succeeds and I hereby proceed to make orders as follows:
 - a). A stay of execution is hereby granted limited to order 1 only, of the Ruling dated 22nd November 2024.
 - b). Effectively orders No.2, 3, 4, 5 and 6 of the ruling dated 22/11/2024 remain undisturbed and the Applicant will continue to provide maintenance as ordered by the Kadhi's court.
 - c). Each party to meet their own costs

DATED, SIGNED AND DELIVERED VIRTUALLY AT ISIOLO THIS 29TH DAY OF APRIL 2025.

S.CHIRCHIR

Judge .



In the presence of :

Kashane Gollo- Court Assistant

AdanGalgalo- The Applicant

Zeituna Abdi Osman- The respondent.

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