



REPUBLIC OF KENYA



KENYA LAW
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HAN v HMS (Civil Appeal E005 of 2023)
[2024] KEHC 3245 (KLR) (Family) (21 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3245 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E005 OF 2023
HK CHEMITEI, J
MARCH 21, 2024

BETWEEN

HAN APPLICANT

AND

HMS RESPONDENT

RULING

1. In his Motion dated 15th June 2023 the Applicant prays for orders that:-
 - (a) Pending the determination of this appeal there be stay of execution of the judgement by the honourable Kadhi dated 15.6.2023.
 - (b) The Applicant be allowed to access the children while in the country and he continues to provide kshs 69,000 upkeep, education, shelter and medical needs arising.
2. The application is based on the sworn affidavit of the applicant and the annexures thereto.
3. The Applicant feels aggrieved by the decision of the honourable Kadhi through its ruling cited above. The applicant is therefore apprehensive that unless the orders are stayed he stands to suffer loss and damage and the appeal rendered nugatory.
4. Part of the issue he has raised in the appeal is the question of jurisdiction and which the trial court failed to appreciate. At the same time, he deposes that he is unable to meet the directives of supporting the respondent in the manner directed by the trial court.
5. On her part the Respondent vide her affidavit sworn on 7th July 2023 has opposed the application and simply supported the findings of the honourable Kadhi. She accused the Applicant of evading her parental responsibilities.



6. The court has perused the application, the supporting affidavit, the replying affidavit as well as the submissions. Order 42 rule 6(2) of the Civil procedure rules clearly spells out the grounds on which to grant the orders of stay pending appeal.
7. Taking the above portion of the law this court is of the view that the application has been brought without undue delay. That the Applicant has proposed to continue with his parental responsibilities pending the determination of the appeal. This in essence is akin to security for costs pending appeal.
8. As to whether the appeal is meritorious or not is not for the court to determine at this juncture save to state that the application in my view is merited.
9. In the premises the application is allowed, let there be stay of the execution as prayed above and the prayers asked by the applicant including the continued maintenance and provisions to the children and their needs pending appeal are hereby allowed.
10. Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 21ST DAY OF MARCH 2024.

H K CHEMITEI

JUDGE

