



JFA v JN (Civil Appeal E017 of 2024) [2024] KEHC 5945 (KLR) (27 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5945 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL APPEAL E017 OF 2024**

WM MUSYOKA, J

MAY 27, 2024

BETWEEN

JFA APPELLANT

AND

JN RESPONDENT

(An appeal arising from the judgment of Hon. EC Serem, Resident Magistrate, RM, delivered on 20th March 2024, in Busia CMCCC No. E003 of 2024)

RULING

1. I am tasked with determining a Motion, dated 2nd April 2024, seeking stay of execution of orders that were made on 20th March 2024, by the trial court, pending appeal.
2. The applicant avers that the trial court proceeded with the case before it, disregarding the fact of on-going proceedings in Siaya CMCCC No. 5 of 2016, between the 2 parties. He states that the judgement of 20th March 2024 set the monthly deductions at a sixth of his salary, and ordered that the same be remitted to the respondent, to cater for the educational needs of the children, the subject of the proceedings. He says that he has filed the instant appeal, and he fears that the decree of 20th March 2024 may be executed, imperilling his appeal. He says that he has 2 other children, who also depend on him. He has attached copies of a notice of appeal, a notice of change of Advocates, a consent for his Advocates to come on record, and the memorandum of appeal filed herein.
3. He filed a further affidavit, sworn on an undisclosed date, ostensibly to place on record the judgement of 20th March 2024, and the proceedings in the Siaya matter. He also attaches copies of certificates of birth for his 2 children, with his wife, who he says depend on him. He says that he recognises the 2 children of the respondent, who are the subject of this matter, as his own, and that he is willing to pay 4,000.00 per month for their upkeep.



4. Although there is evidence that the application was served on the respondent, she did not appear in the matter.
5. From the material placed before me, it would appear that there are 2 matters, one at Busia and the other at Siaya, between the 2 parties, over the same minors. The proceedings in the Siaya matter go up to 27th June 2017, and it is not clear about what happened thereafter. I cannot tell whether the matter proceeded at Siaya beyond that date. If it did, I cannot tell whether it was finalised, or what its current status is. There is also the possibility that the Siaya matter was eventually transferred to Busia for finalisation, and that Siaya CMCCC No. 5 of 2016 and Busia CMCCC No. E003 of 2024 could, in fact, be one and the same matter.
6. The file in Busia CMCCC No. E003 of 2024 has not been placed before me, so I cannot tell, whether Siaya CMCCC No. 5 of 2016 was transferred to Busia, and became Busia CMCCC No. E003 of 2024, or whether Busia CMCCC No. E003 of 2024 is a totally new matter, completely different from Siaya CMCCC No. 5 of 2016.
7. The law does not allow the maintenance of parallel proceedings, in 2 different courts, by the same parties over the same subject-matter. If it is true that the suit at Siaya is still alive, and going on, then it would have been wrong for the Busia matter to have been filed and prosecuted. It would mean that the Busia matter was sub judice the Siaya one, and if orders were made in the Siaya court, which subsisted prior to the orders now being made at Busia, it would mean that the Busia orders could be res judicata those of the Siaya court.
8. I am operating in a sea of uncertainty, without the original trial court records from Busia. I direct the Deputy Registrar to call for them for my perusal, to ascertain whether or not they are the same proceedings that were at Siaya. Should they turn out to be different, then I direct the Deputy Registrar to call for the Siaya file for my perusal. In view of everything said above, it may not be prudent to make any interim orders, ahead of perusal of that file or those files. It is so ordered.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 27TH DAY OF MAY 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Mr. Mungai, instructed by BA Okwiry & Associates, Advocates for the appellant.

