



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI**

**CIVIL APPEAL NO: 98 OF 2014**

**E M R.....APPLICANT**

**VERSUS**

**R M K.....RESPONDENT**

**RULING**

1. The Motion dated 19<sup>th</sup> November 2014 seeks one principal order-stay of execution of the orders made on 18<sup>th</sup> November 2014 in Nairobi Children’s Court Case No. 90 of 2004 pending appeal.

2. In his affidavit in support of the application, the applicant pleads that he does not dispute the paternity of the children the subject of the proceedings. He states that he was not served with process with respect to the Children’s Case, consequently the suit was heard and determined in his absence. He only came to know of the matter when he was served with a notice to show cause, upon which he moved the court to set aside the judgment delivered in the matter. He alleges that a consent order to which he was not party was fraudulently recorded. The said fraudulent consent culminated in the orders that are now the subject of the appeal.

3. The application was served on the respondent who on 24<sup>th</sup> November 2014 swore an affidavit in reply. She asserts that applicant has told falsehoods and half-truths in his application. She states that the applicant did enter into a consent in 2009 with her where he was to pay to her Kshs.50,000.00 per month. He did not pay the amount of money agreed upon, and the arrears ballooned to Kshs.4,880,000.00.

4. The application was urged before me on 24<sup>th</sup> November 2014 by Mrs. King’oo-Wanjau on behalf of the applicant. The respondent appeared in person and stated her position.

5. The order sought is for stay of execution pending appeal. The application is therefore interlocutory in nature for it is expressed as filed within an appeal. I have perused the court record and I have not come across a memorandum of appeal. In the bundle of documents filed together with the Motion is a document titled “*memorandum of appeal.*” It is not clear whether this document is intended to be an annexure to the affidavit in support of the application or it is intended to be the principal pleading in the appeal. The said document does not bear a court stamp, it is not dated nor signed by counsel for the applicant.

6. It is plain that no appeal exists. The Motion dated 19<sup>th</sup> November 2014 has no foundation whatsoever and the order it seeks is no available for is sought pending “*hearing and determination of this appeal.*” The Motion is misconceived, incompetent and an abuse of the court process. It exists for the purpose only of being dismissed, and I hereby dismiss it. The respondent shall have costs of the application.

**DATED, SIGNED and DELIVERED at NAIROBI this 19<sup>th</sup> DAY OF December 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Ms. R M K in person.**



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