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| Case Number: | Civil Appeal 14 of 2005 |
| Date Delivered: | 03 May 2005 |
| Case Class: | Civil |
| Court: | High Court at Nairobi (Milimani Law Courts) |
| Case Action: | Ruling |
| Judge: | Martha Karambu Koome |
| Citation: | VEDDER GATHUA v GRACE NYOKABI GATHUA [2005] eKLR |
| Advocates: | - |
| Case Summary: | [Ruling] Civil Practice and Procedure - stay of execution - application for stay of execution of court order - applicant having been ordered to meet the educational maintenance expenses of the respondent, for whom parental responsibility had been extended by the court beyond her 18 years of age - duty of the court to satisfy the court that he had made the application without substantial delay and that he stood to suffer substantial loss unless a stay was given - Civil Procedure Rules Order 41 rule 4 |
| Court Division: | Civil |
| History Magistrates: | - |
| County: | Nairobi |
| Docket Number: | - |
| History Docket Number: | - |
| Case Outcome: | Dismissed |
| History County: | - |
| Representation By Advocates: | - |
| Advocates For: | - |
| Advocates Against: | - |

Sum Awarded:

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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 14 of 2005

VEDDER GATHUA.....APPELLANT/APPLICANT

Versus

GRACE NYOKABI GATHUA.....RESPONDENT

RULING

Vedder Gathua, the appellant herein and father of the respondent has sought for an order of stay of execution of the order issued by the SRM Kerugoya on 16th February 2005 in Children's Case No. 34 of 2004.

The appellant being dissatisfied with the order made against him filed an appeal on 22nd February 2005 and this application for stay of execution that was filed on 15th March 2005 which is brought vide order XLI rule 4 of the Civil Procedure Act.

The respondent in this matter applied for an order extending parental responsibility beyond 18 years and an order that her father the appellant herein be ordered to pay for her University or college education. At the time the respondent had been admitted at the Kampala International University. The court extended the parental responsibility but directed the parties to look for an affordable Institution in Kenya or elsewhere offering a course of the applicant's choice and the appellant was ordered to meet the educational and maintenance expenses.

It would appear that the applicant did not take any initiative to comply with the order and on 16th February 2005 the respondent applied for an order compelling the appellant to pay school fees as per the order of 25th August 2004. The respondent had gained admission at the Athi River Vocational Training Centre for a diploma course in business administration and school fees is Kshs.8,500 per term for three years.

The court granted the orders and that is the genesis of this application for stay of execution.

The applicant argued that he earns only Kshs.12,000/= per month and from his salary rent of Kshs.5,000/= from rental houses. This money is not enough to pay his son's school fees who is in form four and another one he is planning to send to a college. He is however ready to pay Kshs.6,000/= per term.

Secondly the applicant argued that he has a good appeal which has good chances of success.

This application was opposed by the respondent. Firstly the respondent argued that the appellant deliberately refused to get a college for her despite the court order and she therefore got a reasonable Government institution. As regards the appellants ability to meet the costs she argued that the respondent gets a total of Kshs.14,000/= from rental income in addition to his salary of Kshs.12,000/=. If her college fees is not paid, she will suffer irreparable lose.

I have given due consideration to this application that is brought under XLI rule 4 of the Civil

Procedure Rule. I have made specific reference to sub rule (2) (a)

“No order for stay of execution shall be made under sub rule (3)(a)

(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”

The appellant annexed payment receipts in his supplementary affidavit sworn on 17th March 2005 and a bank statement for August 2004 to February 2005 which shows a balance of Kshs.12,984. the only receipts payments made by the appellant for this year is for water, Kshs.975/= and Kihumbuine Secondary School a total of Kshs.7,000/=. The electricity bill is for the year 2003 and the other receipts are for the year 2004.

On the other hand, the sum ordered by the Learned magistrate is the college fees for the applicant's daughter. According to the proceedings the fees payable is Kshs.8,500/= per term. I am not at all satisfied that the applicant's application meets the test set out under the above order.

Considering that this year alone the bills paid by the appellant as per the receipts which he attached to this application amount to about Kshs.10,000/=:, even if one were to say that in the first three months of the year he earned 45,000/=:, he has more than enough income to pay the school fees for his daughter.

If there is somebody who will suffer irreparable loss as a result of granting of the order of stay of execution it is the daughter, the respondent herein. I am not also satisfied that the applicant will suffer any loss by paying school fees for his daughter.

In the premises I see no merit in this application for stay of execution and I hereby dismiss the same.

It is so ordered.

Ruling read and signed on 3rd May 2005.

MARTHA KOOME



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