

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF BUKOBA)  
AT BUKOBA.**

**MISC. CIVIL APPLICATION NO. 38 OF 2020**

*(Arising From Juvenile Court of Bukoba at Bukoba (Bukoba District Court) in Juvenile Civil Application  
No.5 of 2019, dated 30<sup>th</sup> September 2020)*

**VICTOR L. KANYORO.....APPLICANT  
VERSUS  
NEEMA KALIBOBO.....RESPONDENT**

**RULING**

**14.07.2021**

**A.Y. MWENDA, J**

In this matter the applicant have filed an application for Stay of execution of the Ruling and Order given on 30<sup>th</sup> September 2020 by the Juvenile Court of Bukoba at Bukoba District Court pending hearing of and the final determination of this Application and an Appeal filed in this Court referred to as *Juvenile Civil Appeal No....of 2020*.

This application is brought Under Section 68(e) and rule 5(1)(3)(a) and (4) of Order XXXIX and rule 2 of Order XLIII of CPC [Cap 33 R.E. 2019] and item 21 part III of the 1<sup>st</sup> Schedule to the Law of Limitation Act [Cap 89 R.E 2019].

In support of his prayers in the Chamber Application the Applicant swore an Affidavit and the respondent contested it by swearing a counter affidavit.

Briefly, what prompted the applicant to lodge this application is that before the Juvenile Court of Bukoba in Juvenile Civil Application No. 5 of 2020, the respondent herein applied for custody of their three children which the duo had previously agreed

to be under the Applicant's Custody. The reasons advanced by the respondent (the then Applicant) in support of application were that, contrary to their agreement that the said children would be under the Applicant's (the then respondent's) custody, the respondent (now the Applicant) allocated and kept them (children) under his relatives' custody at different places. Having heard the parties arguments the Juvenile Court granted custody of the three Children to respondent (the then applicant).

Aggrieved by the said decision the Applicant have now preferred this Application for Stay of executions.

When this matter was called for hearing both parties appeared in person and opted to adopt the contents of their Affidavit and Counter Affidavit in Support of each one's case, in other words they had nothing to say before this court other than praying to this court to consider the contents of their affidavits in making Court's findings.

In support of his application the applicant swore an affidavit containing 18 paragraphs but of essence are paragraphs 2 and 3 which this court considers as crucial in determining the fate of each party to this application. The summary from these two paragraphs is that the applicant being aggrieved by the decision of the Juvenile Court of Bukoba at Bukoba (supra) he filed a Juvenile Case Civil Appeal no..... of 2020 before this Court vide ERV No. 23557682. According to the Applicant the said Appeal is yet to be issued with serial case number as the said appeal and the whole proceedings of original case file are yet to be transmitted to the High Court.

In support to his case he annexed a drawn order, ruling and the purported memorandum of appeal to his Affidavit as Mark "A", "A1" and "B".

He thus concluded by praying for his application to be granted to prevent his children from suffering irreparable loss and permanent hardship.

The respondent in her response to the Applicant's Affidavit gave a general denial in her Counter Affidavit however there is not much of essence to oppose these two paragraphs i.e. Para 2 and 3 as she did not oppose them.

In this application the issue is whether the applicant have advanced sufficient grounds to warrant stay of execution.

In response to this issue this court found that there is no pending appeal which is filed as purported by the applicant in this Court. In the Memorandum of appeal purported to be filed in this court there is not even a serial Case Number and as such it cannot be assumed that the said appeal is actually filed. Also going through a receipt referred by the applicant as E.R.V no. 23557682 it was noted to bear a stamp from the District Court and not the High court and for that matter the purported appeal is not filed before this Court and as such this application is brought before this court prematurely.

In the Case of ***Stanslaus Nganyagwa V. Seif Hamad and Another, Civil Application No. 110/12 of 2017*** the Court of Appeal made reference to a case of ***alex Kyola V. Twaha Said Massawe, Civil application no. 220 of 2013(unreported)*** where the application for stay of execution was struck out because the applicant failed to attach a copy of notice of appeal and a copy of Decree.

Since there is neither a copy of a proper notice of intention to appeal nor a pending appeal before this Court, this application is incompetent and it is hereby struck out.

Each party shall bear their own costs.

It is so ordered.



**A.Y. MWENDA**

**JUDGE**

**14.7.2021**

This Ruling was delivered in Chambers under the seal of this court in the presence of the Applicant Victor I. Kanyoro and in the presence of the Respondent Neema Kalibobo



**A.Y. MWENDA**

**JUDGE**

**14.07.2021**