REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

CIVIL SUIT NO. 8 OF 2014 (OS)

REGINE BUTT …… APPLICANT

VERSUS

HAROON BUTT ……..1ST RESPONDENT

AKHTAR BUTT ……2ND RESPONDENT

RULING

1. Before me is a Notice of Motion dated 7.8.15 by the Applicant seeking the following Orders:

a) Spent;

b) Akhtar Butt, Haroon Butt, Walter Abundo and Joseph Kiplagat be committed to prison for 6 months or such other period as this Honourable Court shall determine for contempt of the decision/orders of the High Court (the Hon. Justice E. Muriithi) dated 15.6.15.

c) Pending the hearing of prayer (b) for committal herein, Akhtar Butt and Haroon Butt be ordered to purge the suit contempt and in so doing to return all matrimonial property, household goods and effects including beds and beddings, furniture, kitchen equipment, utensils, electronics, children's belongings and effects and to remove strangers/goons they have put in possession, remove temporary physical alterations to the property and allow the Applicant and her children access, possession and occupation of their matrimonial home on all that property known as MN/1/1371, Mkomani Road, Mombasa as ordered by the High Court (the Hon. Justice E. Murtiithi) dated 15.6.15.

d) The Honorouble Court be pleased to issue such other or further order as it shall deem just in the circumstances.

e) Costs.

2. The Application is supported by the grounds on the face of it as well as the Supporting Affidavit of the Applicant, Regine Butt sworn on 7.8.15. She reiterated all the grounds set out on the face of the application *in extenso*.

3. By way of answer to the Application, the Haroon Butt and Akhtar Butt the 1st and 2nd Respondents respectively, filed a Notice of Preliminary Objection dated 24.8.15. They also filed a Replying Affidavit

sworn by the 2nd Respondent sworn on 3.9.15. A Ruling dismissing the Preliminary Objection was delivered by this Court on 10.11.15. Walter Abundo, the Deputy OCPD, Nyali and Joseph Kiplagat, the Deputy OCS, Nyali the 3rd and 4th Respondents respectively, each filed a Replying Affidavit sworn on 18.8.15.

The Applicant's Case

4. The Application is based on the grounds that this Court granted a mandatory injunction to restore the Applicant to the matrimonial home on MN/1/1371, Mkomani Road, Mombasa, which she occupied with her deceased husband Shahid Butt before his death in 2014. That the Respondents were further prohibited by themselves, their servants, employees, agents or assigns from interfering with the Applicant's possession and occupation of the matrimonial home on the said property. This order was affirmed by the Court of Appeal in Civil Application 31 of 2015 (UR) in a ruling on 31.7.15 on an Application for stay by the 1st and 2nd Respondents. The Court of Appeal went on to direct the 2nd Respondent to move out of the suit premises forthwith. The Applicant claims that she went to her matrimonial home on 31.7.15 as ordered by the Court but the 1st and 2nd Respondents in blatant contempt of the orders of this Court and of the Court of Appeal, denied her and her children access into, possession and occupation of the said matrimonial home thus rendering and continuing to render the said orders of this Court vain.

5. That in further contempt of the said orders, the 1st and 2nd Respondents carried away the Applicant's household goods, matrimonial property, personal effects and children's belongings rendering the matrimonial home bare and inhabitable by the Applicant and her children (Pictures in Annexure RB of the Supporting Affidavit). The Applicant alleges that as the aforesaid household goods, matrimonial property, personal effects and children's belongings being loaded into a truck by the 1st and 2nd Respondents' agents, the 1st respondent arrived with a truck full of police officers from Nyali Police Station led by the 2nd and 3rd Respondents. The Applicant claims that the 2nd and 3rd Respondents sought to know what she was doing on the property and she gave them the decisions/orders of the High Court and Court of Appeal; that the 2nd and 3rd Respondents termed the Court Orders mere court proceedings which could not allow her to trespass into the home of other people and proceeded to throw her and her advocate into the police truck and took them to the police station. The Applicant alleges that the all the Respondents had a long meeting at the police station after which the Applicant and her advocate were released with a warning never to go back to the suit property. That the 1st and 2nd Respondents were aided in their acts of contempt by the 2nd and 3rd Respondents.

6. At the oral canvassing of the Application, Mr. Kaluma leading Mr. Miyare passionately argued the Application and more or less reiterated the contents of the Application and supporting Affidavit. The gist of Counsel's submissions is that the Court in its Ruling of 15.6.15 ordered the restoration of the Applicant to the subject property and injuncted the Respondents from interfering or undermining the Applicant's possession and occupation of the said property. That the Court further directed the parties' advocates to arrange for the smooth restoration of the Applicant and her children to the matrimonial home within 7 days.

7. Mr. Kaluma contended that this was not done and outlined the 1st and 2nd Respondents' acts of contempt as hereunder:

a) On 31.7.15, when the Court of Appeal dismissed the 1st and 2nd Respondents' application for stay, the Applicant went straight to suit property but was denied access thereto by the Respondents;

b) On 1.8.15, she found a lorry belonging to one of her deceased husband's company being loaded with her goods and her children's personal effects from the suit property by the 1st and 2nd Respondents and other people. Her pleas that they stop were ignored and instead the 1st Respondent left and returned with a lorry load of police officers who arrested her and her lawyer calling them trespassers despite being shown the Court order. They were taken to the Nyali Police Station and were only released when the carting away of her goods and personal effects of her children was

complete;

c) On 3.8.15 the Applicant returned to the suit property and found ten men placed on the suit property who told her to go away if she cared for her safety;

d) The 1st and 2nd Respondents made physical alterations to the property and sealed and blocked doors and passages including those leading to the matrimonial bedroom and rooms on the first floor of the property with the intent of making the property inaccessible and inhabitable and undermining the realization and benefit by the Applicant and her children of the Court order. That the 2nd Respondent in her Replying Affidavit admits the said alterations but tries to justify the same.

e) The demolition of the main house on the suit property as confirmed by the report of the Deputy Registrar.

8. Learned Counsel further submitted that the 1st and 2nd Respondents are habitual contemnors and have little regard for Court orders and have defied and continue to defy the said Court order; that this is a classic case of blatant contempt before the Court with classic candidates for imprisonment to restore the dignity of the Court. He bolstered his submissions by citing the case of Hadkinson v. Hadkinson [1952] 2 ALL E.R. 567 regarding contempt of court. He urged the orders sought be granted to uphold the integrity of the Court and its processes and to secure that court process and court decisions/orders are not rendered in vain.

9. Mr. Kaluma further prayed that the Court orders the restoration of the property to the state it was when action began since circumstances have changed and the Applicant and her children have been denied the benefit of the Court orders. He also prayed that the Applicants and her children be given commensurate accommodation during the reconstruction period. It was his submission that monthly rents for such property ranges between Kshs. 500,000/= and Kshs. 1,500,000/=.

The 1st and 2nd Respondents' Case

10. Mr. Agwara, learned Counsel for the 1st and 2nd Respondents strenuously opposed the Application. On the issue of commensurate accommodation, he submitted that no evidence had been tendered on the rents claimed by the Applicant. He further submitted that the application for commensurate accommodation is not available for consideration as the same was not anchored in the application dated 7.8.15. That the Applicant had room to file a further affidavit but she did not do so.

11. On the issue of contempt, Mr. Agwara argues that what is key is the seven days within which the Court required the parties to meet and arrange a smooth restoration of the Applicant to the suit property. He contends that the execution of the order became available on 31.7.15 when the Court of Appeal dismissed the application for stay. He argues that given 31.7.15 was a Friday, the 1st and 2nd Respondents' advocates wrote to the Applicant's advocates on Monday 3.8.15 the first working day to arrange a meeting for the smooth handover. Counsel contends that by a letter dated 5.8.15, the Applicant's advocates refused the suggestion of a meeting and determined that the 1st and 2nd Respondents were already in contempt. He argues that the parties had up to 7.8.15 to arrange for the smooth restoration of the Applicant in the suit property.

12. Mr. Agwara further submitted that an application for contempt was filed on 7.8.15 by the Applicant rather than an application to enforce the Court order. He contends that the Applicant ought to have applied for clarification and enforcement. That after the Court of Appeal ruling, the Applicant went to the suit property with goons who attempted to bring down the gate. That there is no evidence that the 1st and 2nd Respondents were in the property and that they actively resisted the Applicant's attempt to enter the same. He submitted that on 1.8.15 the Applicant, her advocates and hired goons invaded the property and harassed the people inside and that even the 1st Respondent's wife was dragged on the ground. That there was a huge commotion until the police came to the property.

13. Mr. Agwara contends that the contempt proceedings herein are quasi-criminal in nature as a party's liberty is in issue. He further argues that whereas the Court must enforce its orders, there must be proof of breach and the breach must be deliberate. He submitted that there has not been any deliberate disobedience of the court order by the 1st and 2nd Respondents and the letters requesting meetings to enforce the orders confirm this.

14. On the demolition of the house on the suit property, Mr. Agwara submits that it was the County Government of Mombasa that demolished the house as it was a nuisance. That his clients were out of the country when demolition took place. He further argues that if the County Government wants do something one cannot stop it.

15. To buttress his submissions opposing the Application herein, Mr. Agwara cited several authorities. On the standard of proof, he submitted that no proof higher than the balance of probabilities has been submitted by the Applicant as required in Mutika v Baharini Farm Limited [1985] eKLR. He submitted that there is no proof of contempt or deliberate contempt. He also cited the case of Ochino & Another v. Okombo & 4 Others [1989] eKLR stating that the order has never been extracted or served. He relied on the case of Safepak Limited v. Malpast Industries Limited [2008] eKLR and submitted that there must be evidence and where there are two possibilities, the court could not find contempt. In the same vein, he relied on the case of Ram Kishan v. Tarun Bajaj & Others ILC-2014-SC-CIVIL-Jan-6 and argued that contempt must be a last resort.

16. Mr. Agwara sought to disprove the Applicant's case and the authorities cited. On the Hadkinson case, he submitted that the 1st & 2nd Respondents had not disobeyed the Court order. He contends that the case of Image Apparels Limited v Freight In Time Limited [2008] eKLR relates to contempt on the face of the Court and that in that case the Court did not jail but fined the contemnor.

17. Mr. Agwara finally urged the Court to dismiss the Application with costs as it has no merit.

The 3rd and 4th Respondents' Case

18. In opposition to the Application, Mr. Ngare for the 3rd and 4th Respondents relied on the Affidavits sworn by the said respondents. He submitted that the Applicants have not filed a further affidavit to controvert the Replying Affidavits and urged the Court to adopt them as they are. He submits that when the Applicant found her household goods being loaded in the truck, the police officers had not arrived at the premises. He contends that at the material time, the 3rd and 4th Respondents were at a briefing at Sheikh Khalifa Conference Hall in preparation for the Kenya Primary Head Teachers Association conference scheduled to start on 3.8.15. It was while there that the 3rd Respondent received a call that there was a fight in Mkomani and that together with other officers they rushed to the scene.

19. Mr. Ngare submits that the 3rd and 4th Respondents found a large number of people in a commotion exchanging bitter words. That to restore law and order as required by the National Police Act, they separated the two warring groups and asked them to accompany them to Nyali Police Station. And at the police station, the 3rd and 4th Respondents had a meeting with both groups where the Applicant said she had a court order but when requested to produce the same, none was availed. He contends that no one was arrested.

20. Mr. Ngare argues that the 3rd and 4th Respondents did not aid the contempt at all but rather, they should be commended for diffusing the tension at the suit property without any one getting hurt. The events on the material day were nothing akin to the smooth handover as directed by the Court.

21. On the authorities cited, Mr. Ngare submitted that a finding of guilt can only be found against a party against whom an order is made. He contends that there was no order against the 3rd and 4th Respondents and therefore they cannot be said to be in contempt or alleged contempt.

Closing Submissions

22. In his rejoinder and closing submissions, Mr. Kaluma submitted that the seven days were never suspended. The order directed the advocates to arrange for a smooth take over. That there was no mention of a meeting. He argued that copies of the passports produced showed that the 2nd Respondent was in fact in the country at the time of the demolition of the house. On the Mr. Agwara's submission that contempt must be deliberate, Counsel argued that contempt is contempt and intention is never a consideration. On the ownership of the property, Mr. Kaluma submitted that the Court in its Ruling said that the property is matrimonial property. On the submission that orders of contempt can only be issued against parties against whom orders were issued, Counsel submitted that the Hadkinson case refers to anybody and everybody who knows of a court order has to obey it. He concluded by submitting that this Court has inherent jurisdiction to make any orders and particularly given that demolition took place while proceedings were pending before the Court. Reconstruction can only arise within the context of the contempt proceedings. It cannot be an alternative.

Determination

23. I have carefully considered the Application the rival Affidavits, as well as the lengthy oral submissions and authorities. I have also conducted my own research on the matter in considering the Application herein.

24. The jurisdiction of this Court to punish for contempt is found in Section 5 of the Judicature Act which provides

> ***5(1)The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.***

25. The reason why courts will punish for contempt of court has been stated again and again. Ojwang, J (as he then was) in **B vs. Attorney General [2004] 1 KLR 431** stated:

> ***"The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people."***

26. Ndolo J in **Teacher's Service Commission vs. Kenya National Union of Teachers & 2 Others Petition No. 23 of 2013**: rendered herself thus

> ***"The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed".***

27. The standard of proof in contempt proceedings is well established. The 1st and 2nd Respondents in their submissions in opposition to the Application cited the case of **Mutitika Vs Baharini Farm Limited [1985] KLR 229, 234.** In that case, the Court of Appeal disagreed with the distinguished Lord Denning's position in, *Re Breamblevale Ltd* [1969] 3 All ER 1062, at page 1063, who said,

> ***"A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved. To use the time– honoured phrase, it must be proved beyond reasonable doubt".***

The Court of Appeal stated

"With the greatest possible respect to that eminent English judge, that proof is much too high for an offence "of a criminal character" and, ipso facto, not a criminal offence properly so defined"

28. The Court went on to state,

"In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature."

29. It is clear therefore that in contempt of court proceedings, though the standard of proof is higher than proof on a balance of probabilities it is not proof beyond reasonable doubt as that remains in the realm of criminal cases. It is not disputed that the Applicant has not been restored to her matrimonial home on the suit property as directed by this Court on 15.6.15. The 1st and 2nd Respondents contend that contempt has not been proved to the required standard. They claim that on 1.8.15 when the Applicant went to the suit premises, she was accompanied by goons and attempted to force herself in, thus causing the confrontation that led to the intervention of the police. In my view, had the 1st and 2nd Respondents allowed the Applicant unfettered access to her matrimonial home in obedience to the Court order, there would have been no confrontation. There would have been smooth restoration of the Applicant and her children to the matrimonial home as directed by the Court. It appears to me that the Respondents were hell bent to prevent the Applicant and her children from resuming possession and occupation of the matrimonial home. The fact that the Applicant has not been restored to her matrimonial home on the suit property is sufficient proof of disobedience of the Court order by the 1st and 2nd Respondents.

Further, Lenaola, J. opined in Kenya Tea Growers Association vs Francis Atwoli & 5 Others, Petition No.64 of 2010

"In the case before me, I am more than satisfied that even at the higher level of beyond reasonable doubt, when an individual has been served with and/or has knowledge of a court order but not only ignores it but in fact incites others to do the same, the threshold for contempt has been met.

In the case before me, not only did the 1st and 2nd Respondents, having knowledge of the Court order of 15.6.15, disobey it but in fact incited others to disobey it by preventing the Applicant from entering the suit property and further by carting off her household goods and her children's personal effects using the trucks of the company of the deceased and ultimately having the house on the property demolished.

30. The general principle governing contempt of court was reiterated by ROMER L.J in hadkinson v. Hadkinson [1952] 2 ALL E.R. 567 thus:

"It is the plain and unqualified obligation of every person, against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void".

31. The Court order of 15.6.15 was made by this Court which is a court of competent jurisdiction. The 1st and 2nd Respondents were accordingly under an unqualified obligation to obey the said Court order as long as it remained undischarged. This obligation extends even in cases such as this one where the 1st and 2nd Respondents are unhappy with it.

32. It has been submitted by the 1st and 2nd Respondents that an application for contempt was filed on 7.8.15 by the Applicant rather than an application to enforce the Court order. They contend that the Applicant ought to have applied for clarification and enforcement. In Judicial Service Commission v Speaker of the National Assembly & another [2013] eKLR, Odunga, J. stated thus on the issue of disobedience of a court order

"The natural consequences of disobedience of Court orders is to commence contempt of court proceedings in which case the Court will determine whether a contempt of court has in actual fact been committed and will thereafter mete out the appropriate punishment to the contemnor in accordance with the law… Respect of Court orders however disagreeable one may find them is a cardinal tenet of the Rule of Law and where a person feels that a particular order is irregular the option is not to disobey it with impunity but to apply to have the same set aside".

I do not find merit in the submission that the Applicant ought to have sought clarification or enforcement in the face of clear disobedience of the Court order.

33. In addressing Mr. Agwara's contention that the order was neither extracted nor served, I am guided by Lenaola J in the case of **Basil Criticos Vs Attorney General and 8 Others [2012] eKLR** who opined

"...the law has changed and as it stands today knowledge supersedes personal service...

The learned Judge went on to say

"The point above is that where a party clearly acts and shows that he had knowledge of a Court order, the strict requirement that personal service must be proved is rendered unnecessary. That should be the correct legal position and I subscribe to it."

34. Mr. Kaluma submitted that the physical alterations made by the 1st and 2nd Respondents were intended to undermine the realization and benefit by the Applicant and her children of the Court order. Though the alterations were admitted by the 2nd Respondent, there is nothing in the evidence to show that the same was intended to frustrate the Applicant and her children's realization of the Court order.

35. Mr. Kaluma further submitted that according to the Deputy Registrar's report, there was no tampering with the gate or walls of the suit property which led him to draw the conclusion that the 1st and 2nd Respondents were responsible for the demolition. In response, Mr. Agwara submitted that the 1st and 2nd Respondents were not responsible for demolition of the house on the suit property; that they were in fact out of the country when the demolition took place.

36. He further contends that it was the County Government of Mombasa that demolished the house as it was a nuisance. He further submitted that when the County Government wants to do something one cannot stop it. I find this argument incredible. The 1st and 2nd Respondents have strenuously defended their position in this suit. They have also used similar vigour in prosecuting their applications herein. It is therefore inconceivable that the 1st and 2nd Respondents would helplessly accept the demolition by the County Government of the deceased's house on the suit property in which they resided, without putting up a spirited fight. Any reasonable person faced with an impending demolition of his house would have urgently sought an injunction against the County Government. It is also curious that the 1st and 2nd Respondents did not inform this Court of the impending demolition given that there were Court orders against them relating to the said property. There is also no evidence that they informed the County Government that the suit property was the subject of Court proceedings. I am therefore not satisfied that it was the County Government that demolished the house. To my mind, it is more plausible that the 1st and 2nd Respondents were responsible for the demolition of the house.

37. Mr. Agwara cited the Supreme Court of India case of Ram Kishan v. Tarun Bajaj & Others ILC-2014-SC-CIVIL-Jan-6. This case brings out the mental element of a contemnor. The Court stated in part

"In order to punish a contemnor, it has to be established that disobedience of the order is willful. The word 'wilful' introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one's state of mind. 'Wilful' means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bonafide or unintentional acts or genuine inability".

38. In order to look into the mind of the contemnors, I must, from the evidence on record, gauge their actions which include denying the Applicant access to the matrimonial home, carting away the Applicant's household goods and children's personal effects, failure by the 2nd Applicant to vacate the suit property "forthwith" as directed by the Court of Appeal, and ultimately having the house on the suit property demolished. These actions manifest a conscious, calculated and deliberate disobedience of the Court order of 15.6.15

39. Mr. Ngare submitted that the Court order was not directed at the 3rd and 4th Respondents and that a finding of guilt can only be found against a party against whom an order is made. He contends that there was no order against the 3rd and 4th Respondents and therefore they cannot be said to be in contempt or alleged contempt. In **Awadh vs. Marumbu (No 2) No. 53 of 2004 [2004] KLR 458,** it was held that:

> ***"It must be remembered that court orders must be obeyed at all times in order to maintain the rule of law and good order. This of course means that the authority and dignity of our courts must be upheld at all times and this differentiates civilised societies from those applying the law of the jungle at times referred to as banana republics. It is the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors."***

40. Court orders must be obeyed at all times and by all regardless. Further it is the cardinal duty of the 3rd and 4th Respondents being police officers to safeguard the rights of all, without discrimination. Police officers should never be used to carry out the unlawful acts of any citizen, however powerful. Indeed they should be at the forefront in obeying court orders whether or not they are directed at them. The submission by Mr. Ngare therefore holds no water.

41. The Applicant has claimed that the 3rd and 4th Respondents aided the 1st and 2nd Respondents in preventing the restoration of the Applicant to her matrimonial home. She claims when they went to the suit property, they arrested the Applicant and her advocate. On their part, the 3rd and 4th Respondents claim that when they got to the suit property, they separated the two groups engaged in a bitter confrontation and that they restored order and diffused the tension. They deny having arrested the Applicant and her advocate but claim that both sides were requested to accompany them to the police station to record statements. They further claim that they were not shown the Court order they are said to have disobeyed. The accounts of the Applicant and the 3rd and 4th Respondents are conflicting and both give two likely possibilities.

42. In the case of Safepak Limited v. Malpast Industries Limited [2008] eKLR Mwilu, J. (as she then was) stated

> ***These are indeed two likely possibilities but the court cannot be satisfied that, in the absence of cogent evidence, any particular position above is the correct one and be so satisfied beyond reasonable doubt. That would be conjecture rather than inference – surmise rather than proof"***

43. In view of the conflicting accounts of the Applicant and the 3rd and 4th Respondents, I find that the Applicant has failed to adduce cogent evidence that her account is the correct one. In the circumstances, I hold that the alleged contempt of Court by the 3rd and 4th Respondents is not proved.

44. I now turn to the prayer for the restoration of the property to the state it was when action began and that the Applicant and her children be given commensurate accommodation during the reconstruction period. Mr. Kaluma submitted that given the demolition of the house on the suit property, circumstances have changed and the Applicant and her children have been denied the benefit of the court orders. He argued that the monthly rents for commensurate property ranges between Kshs. 500,000/= and Kshs. 1,500,000/=. Mr. Agwara while opposing this prayer submitted that the application for commensurate accommodation is not available for consideration as the same is not contained in the Application dated 7.8.15 nor did the Applicant file a supplementary or further affidavit to include the prayer. Mr. Agwara in his submissions did not address the prayer for restoration.

45. Prayer (d) of the Application is an omnibus prayer that seeks such other or further order as the Court shall deem just in the circumstances. This in my view covers not only the prayer for commensurate accommodation but also that for restoration of the suit premises. Besides, Article 165(3)(a) of the Constitution of Kenya 2010 grants to this Court "unlimited original jurisdiction in criminal and civil matters". In civil matters, Section 3A of the Civil Procedure Act provides that "nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court".

46. This Court must make orders to meet the ends of justice and to prevent abuse of its process. It is a principle of justice that a Court will not issue orders in vain. This Court issued orders in favour of the Applicant on 15.6.15. It is meet that the Applicant be facilitated by this Court to enjoy the fruits of her orders. I herewith exercise my discretion to allow the said omnibus prayer (d) under which I enter judgment for the Applicant. On the issue of quantum of rent, it was submitted that commensurate accommodation would attract monthly rents of between Kshs. 500,000/= and Kshs. 1,500,000/=. Mr. Agwara however submitted that no evidence of such large sums was tendered. I agree with Mr. Agwara on this. Comparative rents in the area would range from Kshs. 200,000/= to Kshs. 350,000/= per month.

47. Whenever orders of the Court are treated with contempt, it is the fundamental supremacy of the law which is challenged. The dignity and authority of this Court has been put to severe test by the conduct of the 1st and 2nd Respondents. They have undermined the authority and dignity of the Court and must be dealt with firmly so that the Court's authority is not brought into disrepute. Despite the Applicant's protests, the 1st and 2nd Respondents have to date made no effort whatsoever to purge the contempt of Court and have thereby incurred the wrath of this Court.

48. In the result, I find that the 1st and 2nd Respondents knowingly and willfully disobeyed the orders of this Court issued on 15.6.15 and are therefore cited for contempt of Court. I allow the Application dated 7.8.15 and make the following orders:-

a) That the 1st and 2nd Respondents Haroon Butt and Akhtar Butt be and are hereby ordered to reconstruct the Applicant's matrimonial home on the suit property, MN/1/1371, Mkomani Road, Mombasa which she occupied with the deceased Shahid Butt prior to his death, and restore it to a state commensurate to that it was in prior to the demolition thereof;

b) That the 1st and 2nd Respondents Haroon Butt and Akhtar Butt be and are hereby ordered to pay to the Applicant the sum of Kshs. 250,000/= per month as rent from the date of the Order that is to say 15.6.15 until the reinstatement of the Applicant in the reconstructed house on the suit property MN/1/1371, Mkomani Road, Mombasa;

c) That the 1st and 2nd Respondents Haroon Butt and Akhtar Butt be and are hereby ordered to return all matrimonial property, household goods and effects including beds and beddings, furniture, kitchen equipment, utensils, electronics, children's belongings and effects removed from the matrimonial home on the suit property MN/1/1371, Mkomani Road, Mombasa;

d) That the 1st and 2nd Respondents Haroon Butt and Akhtar Butt be and are hereby committed to civil jail for a period of 3 months without the option of a fine.

e) That the matter be mentioned before the Court 120 days from the date hereof in order to monitor the observance of Orders (a) above for reconstruction of the demolished house on the suit property MN/1/1371, Mkomani Road, Mombasa;

f) The 1st and 2nd Respondents Haroon Butt and Akhtar Butt shall bear the costs of this Application.

DATED, SIGNED and DELIVERED in MOMBASA this 18th day of February 2016.

M. Thande

Judge

In the presence of: -

……for the Applicant

……for the 1st & 2nd Respondents

……for the 3rd & 4th Respondents

……Court Assistant