



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**

**Civil Appeal 32 of 2007**

**WINFRED NYAMBURA KARUGU..... APPELLANT**

**VERSUS**

**PETER KARUGU GUANDAI.....RESPONDENT**

**RULING**

By chamber summons dated 19.07.07 stated to be brought under section 3 of the Matrimonial Causes Act, Cap.152, rule 3 (3) of the Matrimonial Causes Rules and section 3A of the Civil Procedure Act, Cap.21, the appellant applied for the following orders, namely:-

1. That this application be certified as urgent and heard *ex-parte* in the first instance.
2. That pending the hearing and determination of this application the respondent whether by himself his servants and/or agents be restrained from interfering with the petitioner's right of ingress and egress to and from the matrimonial home known as L.R. No.90/122 Loresho, Nairobi and/or from barring and/or locking out the petitioner or in any other manner whatsoever interfering with the petitioner's quiet enjoyment of the said matrimonial home.
3. That pending the hearing and determination of the appeal filed herein the respondent whether by himself his servants and/or agents be restrained from interfering with the petitioner's right of ingress and egress to and from the matrimonial home known as L.R. No.90/122 Loresho, Nairobi and/or from barring and/or locking out the petitioner or in any other manner whatsoever interfering with the petitioner's quiet enjoyment of the said matrimonial home.
4. That this honourable court grants such other and further relief as it deems fit and just to grant.
5. That costs of this application be provided for.

The grounds upon which the application is based are:-

- a) That the applicant has not had a place to stay since 22.05.07.
- b) That the applicant made an application to the subordinate court on 18.05.07 praying that the respondent whether by himself his servants and/or agents be restrained from interfering with the

petitioner's right of ingress and egress to and from the matrimonial home known as L.R.No.90/122 Loresho, Nairobi and/or from barring and/or locking out the petitioner or in any manner whatsoever interfering with the petitioner's quiet enjoyment of the said matrimonial home which prayer was not granted by the lower court.

- c) That the applicant being dissatisfied with the ruling of the lower court has preferred an appeal to this court which appeal has high chances of success.
- d) That the applicant has resided in the matrimonial home since 1993 and has never resided anywhere else unlike the respondent who deserted the matrimonial home.
- e) That the applicant is now languishing homeless which situation is causing her great suffering.
- f) That no-one currently inhabits the matrimonial home and the applicant being allowed into the home will not occasion any prejudice to the respondent.
- g) That the applicant is a university lecturer and all her documents and personal effects are locked up in the matrimonial home which situation is affecting her work and her general well-being.
- h) That the matrimonial home is jointly owned by the applicant and the respondent and the applicant should be allowed back into the home and allowed quiet enjoyment of the home.
- i) That the applicant stands to suffer irreparable loss and damage unless she is allowed back into the matrimonial home to continue with her daily activities.

The application is supported by the appellant's/applicant's affidavit sworn on 19.07.07.

The application came before this court *ex-parte* on 24.07.07 when the court certified it urgent and directed that a date be taken at the registry for *inter-partes* hearing, which subsequently took place on 27.09.07. The appellant/applicant was represented by learned counsel, Miss A.A Okuta while the respondent was represented by learned counsel, Mr M.D. Ngara.

The parties advocates made rival submissions in the course of which applicant's counsel, *inter alia*, drew attention to the respondent's replying affidavit sworn on 26.09.07 in response to the appellant's/applicant's supporting affidavit sworn on 19.07.07 and also drew attention to another replying affidavit by the respondent sworn on 29.08.07 in connection with the appellant's appeal, with a view to highlighting inconsistent positions taken by the respondent with regard to certain matters relating to the dispute between the parties, which need not detain us at this stage. Appellant's/applicant's counsel urged the court to grant the interim orders sought vide prayer 3 while respondent's counsel urged the court to dismiss the chamber summons application dated 19.07.07 with costs.

I have given due consideration to the parties respective pleadings, affidavits and rival submissions.

It is clear from the material on record that the parties, who are spouses, have fallen out with each other and that the appellant/applicant has petitioned for divorce, which is pending determination. Meanwhile there seems to be a tug-of-war about access to and occupation of L.R. No.90/122 Loresho, Nairobi reputed to be the parties' matrimonial home. The appellant/applicant complains of being locked out of the matrimonial home while the respondent maintains that the appellant/applicant has not been denied access to or occupation of the matrimonial home. This is not the place or time for the court to be involved in consideration of who as between the parties is responsible for the apparent breakdown of their marriage. The central issue at the moment is the appellant's/applicant's complaint of being denied by the respondent access to the matrimonial home, which complaint or accusation the respondent denies. There seems to be no dispute between the parties that L.R. No. 90/122 Loresho, Nairobi has been and still remains their matrimonial home. The appellant/applicant complains, *inter alia*, that the respondent placed in the matrimonial home a male person who is a stranger to the appellant/applicant and, as per paragraphs 13 and 14 of the appellant's/applicant's supporting affidavit sworn on 03.09.07, the appellant/applicant

found the said person in the matrimonial home on 26.08.07 and the appellant's/applicant's efforts to remove that male person proved futile as he maintained he had been put there by the respondent and would thenceforth be residing on the property. Since there seems to be no dispute that L.R. No.90/122 Loresho, Nairobi has been and still remains the parties' matrimonial home, the parties are reminded that neither party is entitled, while their respective claims remain undetermined, to deny the other access to the said property or occupation thereof. Accordingly, prayer 3 in the chamber summons dated 19.07.07 is granted. Costs shall be in the cause.

Orders accordingly.

**Delivered at Nairobi this 18<sup>th</sup> day of October, 2007.**

**B.P. KUBO**

**JUDGE**