



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROB(MILIMANI LAWL COURTS)**

**CIVIL APPEAL NO 32 OF 2007**

**WINFRED NYAMBURA KARUGU. .... APPLICANT**

**VERSUS**

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

**R U L I N G**

The application before me is dated 6.11.2007. It seeks Orders of this court to evict a stranger installed in the matrimonial house by the respondent and thereafter to also restrain the respondent from one Njeri Mburu from entering the premises. The applicant finally seeks that the police should be directed to enforce the orders which the court can, make.

During the proceedings, it was disclosed that the person mentioned whose name is Njeri Mburu, is adversely mentioned in this suit as the person possibly committing adultery with the respondent, which became one of the grounds for seeking divorce.

It was also admitted by the applicant that on 18.2.2007 this court issued an order requiring the respondent to give the applicant a quiet enjoyment of the matrimonial house which turned out to be registered in the names of both the applicant and the respondent. It was stated by the applicant, which was admitted by respondent, that since the order of quiet enjoyment was made, the respondent, not only installed a third party in the house, but as well kept a second bunch of keys with him and also later broke several window panes of the house. This not only attracted the police to the house but made the police advise the police to change the door locks of the house.

It was on the above basis that the applicant sought the reliefs earlier tabulated.

When the respondent got opportunity to reply, he through his counsel admitted that he placed a house servant in the house to take care of the house. He admitted that he indeed broke the house's window panes when the applicant disallowed him from entering the house. He regretted the occurrence. He concluded by offering a truce, stating that since these things happened he had reconciled with applicant. He had agreed to and has removed the house worker from the main house to the servant's quarters while a housemaid who lived in the servant quarters was taken into the main house.

It was also brought to the attention of this court that while the lower court orders gave access into the house to both parties, this court ordered quiet enjoyment to the applicant until the appeal is heard and finally determined.

I have carefully considered the arguments from both sides. It is noted that the house belongs to two parties jointly and that they would without more have equal rights. What is sought, however, are temporary orders during the pendency of the appeal. Since this court made orders giving the applicant

quiet enjoyment until the appeal is heard and finally determined, the parties were both under legal obligation to observe the order. This court's order coming from a superior court, it took precedence over all earlier orders including those made by the lower court. This means that the respondent's act of installing a house servant in the house being occupied by the applicant, was an attack against this court's order for quiet enjoyment. So was the respondent's act of breaking the window panes of the house. Furthermore the advise of the police to the applicant to change door locks was not only a wise advise but also was intended to strengthen the applicant's quiet enjoyment.

It is noted however, that the parties have reached some kind of agreement, which is a good step. If the agreement is maintained, it will give the applicant safety and security although it was indicated that the respondent lately removed the new door locks fixed by the applicant on advise of the police. His above conduct amount to contempt of this court's early order for quiet enjoyment. Indeed had the applicant approached this court through contempt proceedings, this court would have found that contempt had been committed by the respondent and would have proceeded to punish the respondent. Since the applicant's approach was effectively to seek similar orders, which she already had earlier obtained, this court will say no more.

In conclusion the applicant's application has merit and it will be allowed but in the following orders: -

**ORDERS**

1. The applicant shall have quiet enjoyment of the premises called L.R. No. 90/122 Loresho, Nairobi until this appeal is heard and finally determined.
2. The applicant is hereby authorized at her own expense, to fix new door locks for the purpose of safety and security and for that purpose to keep all the keys thereof.
3. If this appeal is not disposed of within a period of six months hence, the house to be valued for the purpose of a rental and the parties to agree on a suitable rent to be paid by the occupant otherwise the same to be deiced by the court.
4. The respondent is to bear costs of this application.

Dated and delivered at Nairobi this 28<sup>th</sup> day of November, 2007.

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**D A ONYANCHA**

**JUDGE**