



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1596 OF 2015**

**IN THE MATTER OF THE ESTATE OF GEOFFREY NGIGI NG'ANG'A (DECEASED)**

**WINNIE WAHU NGANGA.....APPLICANT**

**VERSUS**

**IRENE WAMBUI NGIGI.....RESPONDENT**

**RULING**

1. Before this Court is summons dated **29<sup>th</sup> April 2021** which summons was amended on **15<sup>th</sup> June 2021** by which the Applicant **WINNIE WAHU NGANGA** seek the following orders: -

“(a) **SPENT**

(b) **SPENT**

(c) **THAT the Respondent be and is hereby restrained by herself her employees servants or agents from collecting rent from the property known as BLOCK A KISERIAN PLOT NO 83 B.**

(d) **THAT the Respondent be and is hereby restrained by herself, her employees, servants or agents from humiliating, intimidating, harassing and threatening the tenants residing in the property known as BLOCK KISERIAN PLOT NO. 83B.**

(e) **THAT the Respondent be and is hereby restrained by herself, her employees, servants or agents from humiliating, intimidating, harassing and threatening the Applicant, her employees, servants or agents in the course of managing and collecting rent from the tenants residing in the property known as BLOCK A KISERIAN PLOT NO. 83B.**

(f) **THAT the Respondent be and is hereby restrained by herself, her employees, servants or agents from interfering with the ownership, possession and control of the property known as BLOCK A KISERIAN PLOT NO. 84B.**

(g) **THAT the Respondent be and is hereby ordered to pay the Applicant all the monies received by her from December 2020 to date being rent collected by the Respondent from the property, BLOCK A KISERIAN PLOT NO. 83B.**

(h) **THAT the officer Commanding Kiserian Police Station to enforce and assist in the compliance of the order.**

(i) **Any other order which the Honourable court may deem fit to grant.**

(j) **Costs of the Application be provided for.**

2. The summons was premised upon **Section 47** of the **Law of Succession Act, Cap 160, Laws of Kenya Rules 49** of the **Probate & Administration Rules** and all enabling provision of the law and was supported by the Affidavit dated **29<sup>th</sup> April 2021**, sworn by **PETER NGANGA** one of the Administrators of the estate.

3. The Respondent **IRENE WAMBUI NGIGI** through her advocates **Messrs KARANJA & GISORE ADVOCATES** filed an Affidavit dated **21<sup>st</sup> May 2021** in opposition to the Application. The summons was canvassed by way of written submissions. The Applicants filed their written submissions dated **24<sup>th</sup> June 2021** whilst the Respondent relied on her written submissions **dated 21<sup>st</sup> June 2021**.

**BACKGROUND**

4. This Succession Cause was filed in relation to the estate of **GEOFFREY NGIGI NGANGA** (hereinafter ‘the Deceased’) who passed away intestate on **3<sup>rd</sup> April 2015**. The Deceased who was polygamous and had two wives was survived by the following –

**1<sup>st</sup> House**

- Peter Nganga - son
- James Mungai Ngigi - son
- Stephen Mbugua Ngigi – son
- Winnie Wahu Nganga – Daughter

**2<sup>nd</sup> House**

- Irene Wambui Ngige – 2<sup>nd</sup> Wife
- Peter Nganga Ngige – son
- Charity Wanja Ngigi – Daughter
- Winfred Wahu Ngigi – Daughter
- Alicia Wambui Ngigi – Daughter

5. In the petition filed on **21<sup>st</sup> June 2015** seeking Grant of letters of Administration Intestate the inventory of the Deceased assets was given as follows –

**“(a) Title No. Ngong/Ngong 45588**

**(b) LR No 4480/210 Ngong Town**

**(c) LR No 4480/194 Ngong Town**

**(d) LR No. 305/101 B**

**(e) Title No. Kajiado-Olchoro-Onyore 13999**

**(f) Motor vehicle Registration No KBJ 457R**

**(g) Motor vehicle Registration No. KBV 065X**

**(h) Motor vehicle Registration No. KAR 520K**

**(I) Account with Equity Bank Limited, Ngong Branch.**

**(j) Kiserian/Kiserian Plot 83B”**

6. On **25<sup>th</sup> September 2019** letters of Administration Intestate were issued to **PETER NGANGA, JAMES MUNGAI NGIGI, IRENE WAMBUI NGIGI** and **PETER NGANGA** as joint Administrators of the estate. On **25<sup>th</sup> November 2020** the letters of Administration were fully confirmed. The certificate confirmed grant indicated that the estate of the Deceased would be distributed as follows: -

Name	Description of Properties	Share of Heirs
Irene Wambui Ngigi	Block B Kiserian Plot No. 83B	Whole
James Mungai Ngige	LR No. 3429 LR No. 4480/194	Whole
Stephen Mbugua Ngigi	LR No. 4581 LR NO. 14140	Whole
Winnie Wahu Nganga	Block A Kiserian Plot No 83B	Whole

	Lorry Registration No. KBJ 457J Ngong/Ngong/45588	
Peter Nganga	Title No. IR No 395 (LR No. 4480/210)	Whole
Alicia Wambui Ngigi Winfred Wahu Ngigi Charity Wanja Ngigi	Olochoronyore (3 acres)	Equally
Alicia Wambui Ngigi	Motor Vehicle Reg. No. KBV 856D	Whole
Winfred Wahu Ngigi	Motor Vehicle RAV4 Reg. No. KAR 520K	Whole
Charity Wanja Ngigi Peter Nganga Ngige	Equity Bank Fund	Equally
Peter Nganga Ngige	Kiserian Posho Mill	Whole

7. The Applicants case is that notwithstanding the fact that she was allocated **BLOCK A KISERIAN PLOT NO. 83B** (hereinafter referred to as '**BLOCK A**'), and the Respondent was allocated **BLOCK B KISERIAN PLOT NO 83B** (hereafter referred to as **BLOCK B**) her attempt to take control of **Block A** has been rebuffed by the Respondent who has used force coercion, intimidation and violence in order to remain in control of the entire property. That the Respondent has all along been collecting rent from **Block A** which was allocated to the Applicant to the tune of roughly **Kshs 150,000** monthly.

8. The Applicant alleges that the Respondent has threatened and intimidated the tenants in **Block A** to pay the rent to her thereby causing loss to the Applicant. The Applicant submits that the certificate of confirmed Grant by which she was allocated **Block A** remains valued – it has neither been set aside nor revoked. That the actions of the Respondent amounts to contempt of court hence the present application.

9. The Respondent on her part states that there are no two properties known as **Block A Kiserian Plot 83B** and **Block B Kisearin Plot NO. 83B**. The Respondent asserts that there is only one single property known as **KISERIAN PLOT NO. 83B/BUS** which is her matrimonial home and which she acquired and registered in her own name. That said property **does not** form part of the estate of the Deceased and could not therefore have been allocated to the Applicant. The Respondent states that the description of the property at **BLOCK A** and **BLOCK B** is a creation of the Applicant in an attempt to mislead the court.

10. The Respondent further alleges that the Grant was confirmed without her knowledge and/or involvement and states that she fully intends to challenge the confirmed Grant. That she only became aware that the Grant had been confirmed when the Applicant approached her tenants seeking to be paid rent. The Respondent urges the court to dismiss the application its entirety.

#### **Analysis and Determination**

11. I have carefully considered the summons before this court. The affidavit filed in rely thereto as well as the written submissions filed by both parties.

12. The Applicant herein is seeking declaratory orders with respect to **Block A** as well as orders to restrain the Respondent from collecting rent from said property. The orders which are being sought are final in nature and can only be granted after a full hearing at which evidence is called and parties are at liberty to cross-examine the witnesses.

13. The bone of contention is whether there exists two properties being **Block A** and **Block B** or whether as the Respondent asserts there is only one single property being **Kiserian Plot No 83/BUS**.

14. The certificate of confirmed Grant issued on **25<sup>th</sup> November 2020** refers to two distinct plots being **Block A Kiserian Plot No. 83B** and **Block B Kiserian Plot No 83B**. However, a certificate of official search dated **27<sup>th</sup> November 2015** refers to a **Plot No 83 BUS Kiserian** which is registered in the name of **Irene Wambui** the Respondent herein. The search indicates that said plot was transferred to the Respondent on **28<sup>th</sup> August 2013**. Yet another certificate of official search dated **23<sup>rd</sup> February 2016** refers to one property being **Plot No. 83B Kiserian** which is registered in the name of **Geoffrey Ngigi Nganga (the Deceased)**. From the documents, it is difficult to determine the true status of the **Kiserian Plot**.

15. The question of whether there exists one plot or two separate plots and the question of who between the Applicant and the Respondent is entitled to the rental income arising therefrom are questions that cannot be determined on the basis of Affidavit evidence.

16. I do note that the Respondent has filed an application for review of Grant dated **6<sup>th</sup> July 2021** in which she seeks the removal of the

property known as **Kiserian Plot No. 83/BUS** as an asset subject to distribution by the Administrators. The said application is yet to be heard. It is my view that these are matters that can be canvassed during the hearing of that summons for review of Grant.

17. In the circumstances I am not inclined to allow the present summons. The same is dismissed in its entirety. This being a family matter I make no orders on costs.

**DATED IN NAIROBI THIS 22<sup>ND</sup> DAY OF OCTOBER, 2021**

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**MAUREEN A. ODERO**

**JUDGE**