



**Carling (suing as Administrator of the Estate of Mona Ingegard Bjorklund (deceased) v Apoko also known as Ringtone (Environment and Land Case Civil Suit E354 of 2021) [2022] KEELC 12824 (KLR) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12824 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT E354 OF 2021  
OA ANGOTE, J  
SEPTEMBER 30, 2022**

**BETWEEN**

**DANIEL CARLING (SUING AS ADMINISTRATOR OF THE ESTATE OF MONA INGEGARD BJORKLUND (DECEASED) ..... PLAINTIFF**

**AND**

**ALEX APOKO ALSO KNOWN AS RINGTONE ..... DEFENDANT**

**RULING**

1. In the notice of motion dated October 27, 2021, the defendant /applicant has prayed for the following reliefs;
  - a. That the plaintiff's suit against the defendant be struck out.
  - b. That in the alternative to prayer number (a) above, the plaintiff's suit be stayed pending the hearing and determination of Family Court in Nairobi HCFP & A/E1209/2021. In the estate of Mona Ingegard Bjorklund (deceased).
  - c. That the costs of the suit and this application be awarded to the defendant.
2. The application is supported by the affidavit of the defendant, who deponed that the late Mona Ingegard Bjarklund was the lawful owner of land known as L R number 7785/94 I R No 33637 (the suit property) which forms part of her estate.
3. According to the defendant/applicant, one Mr Daniel Carling, relying on an unregistered Power of Attorney, instituted succession proceedings at Family Court in Nairobi HCFP & A/E 1209/2021 seeking for an order of resealing of a purported foreign grant and that the said Daniel Carling, using the impugned letters of administration, attempted to illegally evict him from the suit property purporting that he (the defendant) is a trespasser.



4. It is the deposition of the defendant/applicant that he has been living on the suit property for over 20 years since Ms Mona rescued him from the streets and offered to live with him and took care of his basic needs, including his schooling.
5. The defendant/applicant deponed that he has moved the family court to have the letters of administration revoked; that his application is pending hearing and determination; that Daniel Carling does not have any relationship whatsoever with the estate of Mona and that the purported Power of Attorney Mr Daniel is relying on has never been registered thus lacks the requisite locus standi to institute this suit on behalf of the estate.
6. The defendant finally deponed that the filing of this suit is not only sub-judice but is also an abuse of the court process as the same was immediately filed after his advocates had served the plaintiff's advocate with the court papers for revocation of the letters of administration.
7. This court has been unable to identify the replying affidavit of the plaintiff from the e-filing portal. I have considered the defendant's submissions which are on record.
8. The plaintiff commenced this suit by way of a plaint. In the plaint, the plaintiff averred that he has commenced this suit as the administrator of the estate of the late Mona Ingegard Bjorklund (deceased) who was the registered owner of the suit property.
9. In the plaint, the plaintiff averred that in 2014, the defendant without any lawful or legal basis trespassed upon the suit property and continues with his acts of trespass to date. In his prayers, the plaintiff has prayed for an order declaring the defendant's occupation of the suit property to be wrongful and unlawful and for an order of eviction of the defendant from the suit property.
10. The defendant is seeking for the striking out of the suit on the ground that the same is sub-judice High Court Family P & A E1209/2021. In the alternative, the Defendant has prayed for the stay of the suit pending the hearing and determination of the suit in the High Court.
11. Indeed, although this court has the jurisdiction of determining the issue of title, use and or occupation of the suit property, the issue of whether the plaintiff is the duly recognized legal representative of the late Mona lies with the High Court, Family Division.
12. That being so, and considering that the issue of who is the legitimate owner of the suit property after the demise of Mona will be determined by this court, the court will have to await the decision of the High Court on who should administer the estate of the late Mona.
13. That being so, the most appropriate orders to make in this matter is to have this suit stayed pending the hearing and disposal of the suit in the High Court.
14. For those reasons, the application dated October 27, 2021 is allowed as follows:
  - a. The suit is hereby stayed pending the hearing and determination of Family Court in Nairobi HCFP & A/E 1209/2021 *In the estate of Mona Ingegard Bjorklund (deceased)*.
  - b. Costs to be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

**O. A. ANGOTE**

**JUDGE**

In the presence of:



No appearance for the Plaintiff/Respondent

Mr. Odnga for the Defendant/Applicant

Court Assistant - June

