



**Blackyard Technologies Limited v Kamara (Environment and Land Appeal  
E034 of 2022) [2022] KEELC 2919 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2919 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E034 OF 2022**

**LN MBUGUA, J  
JUNE 23, 2022**

**BETWEEN**

**BLACKYARD TECHNOLOGIES LIMITED ..... APPELLANT**

**AND**

**RAMATU KAMARA ..... RESPONDENT**

**RULING**

1. Coming up for determination is an application dated 3rd may 2022. in which the following orders have been sought:
  - i. Spent
  - ii. That this Honourable Court do order a stay of execution of the Ruling and order made by Hon, H.M Nyaga, Chief Magistrate Court in Milimani by Hon H.M Nyaga inELC No 035 of 2020 Ramatu Kamaravs. Blackyard Technologies Limiteddelivered on 6th April, 2022, pending the inter parties hearing of this application.
  - iii. That this Honourable Court do order a stay of execution of the Ruling and order made by Hon, H.M Nyaga, Chief Magistrate Court in Milimani by Hon H.M Nyaga inELC No 035 of 2020 Ramatu Kamara vs. Blackyard Technologies Limiteddelivered on 6th April, 2022 pending the hearing and determination of the Appellant’s appeal herein.
  - iv. That the Honourable Court be pleased to issue such further Orders as it may deem fit in the interests of justice.
  - v. That the costs of this Application be provided for.
2. The application is premised on the grounds on the face of it and on the supporting affidavit of one Edward Kiprop Langat. He identifies himself as the director of the applicant. Generally the appellants



contend that they have lodged an appeal and it is therefore only fair and just that a stay of execution be granted pending the hearing and determination of the same.

3. A perusal of the record reveals that no response has been filed by the respondent, thus the application is unopposed. That notwithstanding, the court will still have to consider the application on its merit. To this end I make reference to the case of *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR, where the court held;

“... as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted...”

4. Order 42 rule 6 (2) of the *civil procedure rules* provide that:

“No order for stay of execution shall be made under sub-rule (1) unless—(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant”.

5. To grant or to refuse an application for stay of execution pending appeal is discretionary in that the court when granting a stay, it has to balance the interests of the applicant with those of the respondent. In determining this balance, the court gives due consideration to the three criteria set out under the aforementioned rules.

6. I have gone through the judgment of the trial court where the magistrate captured the current status as follows:

“As matters stand, the Defendant is holding the said deposit of Kshs. 5 million, an additional kshs. 7.5 million and the apartment in question. Surely, there can be no justification for this. The defendant ought to be satisfied with the deposit it retained, a mammoth sum of Kshs. 5 million. It should, therefore, proceed to refund the Kshs. 7.5 million on the plaintiff.”

7. In the final analysis I do grant a conditional stay in the following terms:

- i. I hereby grant a stay of execution of the judgment in Milimani CM ELC No. 035 of 2020 for a period of one year.
- ii. The applicant is to deposit a sum of kshs.7,500,000 as security in court within a period of 30 days failure to which the order of stay given in (1) above shall lapse.
- ii. The costs of this application shall abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Kiprotich for the Applicant



Court Assistant: Eddel

